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**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**

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CURTIS GUNNOE

v.

Docket No. 89-20-263

KANAWHA COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Curtis Gunnoe, employed by Respondent Kanawha County Board of Education as a bus operator, contends that on February 28, 1989, his supervisor, Scott Beane, in contravention of W.Va. Code §18A-4-8a,<sup>1</sup> required Grievant to drive a coworker's run rather than his usual run. Proceedings were initiated on March 9, 1989, and the grievance was denied at Level I on March 23, 1989, and at Level II on May 30, 1989. Participation was waived by Respondent at

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<sup>1</sup>W.Va. Code §18A-4-8a provides, in pertinent part:

No service employee shall have his daily work schedule changed during the school year without his written consent, and his required daily work hours shall not be changed to prevent the payment of time and one-half wages or the employment of another employee.

Level III on June 7, 1989, and Grievant advanced his claim to Level IV on June 12, 1989. A hearing was held July 17, 1989, and with Respondent's submission of a letter-brief on July 21, 1989, the record is complete.<sup>2</sup>

The facts, which are not in dispute,<sup>3</sup> are as follows: Due to decreased state funding, Respondent issued a policy which required, in pertinent part, that terminal supervisors and mechanics drive the bus runs of absent employees instead of having substitutes drive the runs. In implementation of the policy Respondent's Director of Pupil Transportation required that, when the absent employee has a longer run than other bus operators, the supervisor drive the shortest run "possible"<sup>4</sup> and have the operator of that run drive the longer run of the absent employee so that the supervisor can spend more time at the terminal for his regular work. Grievant's being required to drive the longer run on February 28th resulted from implementation of these policies.

Grievant testified at the Level IV hearing that the run he made on February 28th did not exceed the maximum 6 hours'

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<sup>2</sup>Grievant, appearing pro se at the hearing, waived submission of post-hearing briefing.

<sup>3</sup>At the Level IV hearing the parties agreed that the statement of the facts provided by the Level II evaluator's decision was accurate.

<sup>4</sup>The bus operators were notified of these requirements in a February 24, 1989, memo from the Director marked "to be posted."

driving time for bus operators in Kanawha County.<sup>5</sup> Also admitted into the record was an agreement titled "Employee Work Assignments," signed by Grievant, wherein he requested the option of working "8 hours/day"<sup>6</sup> rather than on the "flex time basis" also offered as an option. The agreement further provides,

Working on a strict eight (8) hours/day will mean having a daily assignment of eight (8) hours. This will also constitute forty (40) hours/week and may require changes in daily assignments that shall not exceed eight (8) hours on a normal basis [emphasis supplied].

The remainder of this decision shall be presented as formal findings of fact and conclusions of law.

### Findings of Fact

1. On February 28, 1989, Grievant's supervisor required Grievant to drive the run of an absent employee,

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<sup>5</sup>This testimony was consistent with the finding of the Level II evaluator, "The grievant's driving time for the day did not exceed the six hour maximum established by Kanawha County Schools despite the fact that he drove a slightly longer run that day." Finding of Fact 8.

<sup>6</sup>The eight-hours' workday was composed of the six-hours' driving time, two fifteen-minute breaks, a thirty-minute lunch period, a thirty-minute maintenance period, and fifteen-minute check-in and check-out periods.

which was longer than Grievant's regular run, while he himself drove Grievant's regular run.

2. Grievant signed an "Employee's Work Assignments" agreement wherein he opted to work "8 hours/day" and which provided for "changes in daily assignments" of those bus operators opting for the 8 hours/day assignments.

### Conclusions of Law

1. This case is controlled by the decision of Breeding v. Kanawha Co. Bd. of Ed., Docket No. 89-20-70 (Apr. 25, 1989), wherein it was held, "The EWA's [Employee's Work Assignments], once executed, constituted 'written consent' per Code §18A-4-8a" for mid-year schedule changes for bus operators.


2. Grievant accordingly did not establish a violation of Code §18A-4-8a nor did Grievant establish any abuse of discretion by Respondent.<sup>7</sup>

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<sup>7</sup>In Grievant's statement of his case he contended that his run was "not the shortest run," presumably thereby contending that the supervisor failed to follow the directive of the Director of Transportation. However, he presented no evidence on the issue and at hearing solely relied on his argument that Code §18A-4-8a was violated.

Accordingly, this grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate court.

  
SUNYA ANDERSON  
HEARING EXAMINER

Dated: August 10, 1989