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RICHARD O'CONNOR

v.

DOCKET NO. 24-88-250

MARION COUNTY BOARD OF EDUCATION

DECISION

Grievant, Richard O'Connor, is employed as a bus operator by the Marion County Board of Education (Board). Mr. O'Connor filed a level one grievance on September 6, 1988 in which he alleged violations of W.Va. Code §§18A-4-8, 18A-4-8a, 18-29-2(m),(n),(o) and (p), 18-29-3(h), 18-29-6, 18-29-9, 18-29-11, 18A-4-8b, 18A-1-1 and 18A-4-5b when his assigned route was changed, without his permission, during the school year.¹ The grievance was denied at levels one and two; a level four appeal was filed on December 16, 1988. An evidentiary hearing was held on March 27, 1989 with

¹The only violation pursued at level four was that of W.Va. Code §18A-4-8a and the remaining references are deemed abandoned.

proposed findings of fact and conclusions of law submitted by the grievant on May 1.

The facts in this matter are not in dispute. In May 1988 Assistant Superintendent Dennis Edge advised all bus operators that their work schedule might be changed for the 1988-89 school year. Any changes could modify their beginning/ending time slightly increasing or decreasing the total work time and might alter the number of schools and/or attendance areas served. The reasons stated for the possible changes were to increase services to parochial students and to insure the efficient use of buses serving a declining student enrollment. The drivers were to be given official verification of their 1988-89 work schedule prior to the first day of school, September 1, 1988.

The grievant testified that his 1988-89 schedule contained seven changes from the previous year but that he protests only two, the additions of Lanham Lane and Dean Drive which together with Route 73 form a loop adding miles and time to his schedule. The grievant testified at the level four hearing that these two roadways were listed on his schedule for the morning but that it was not clear for the afternoon and he did not begin to cover that area on his p.m. run until the second or third day of school. He argues that the addition of this loop which extends approximately 5.5 miles and increases his time worked by one-half hour was made after the beginning of the school year without his permission. The grievant requests that the loop be deleted

from this run for the 1989-90 school year and that he be compensated for a half-hour extra-duty assignment for the 1988-89 school year.

The Board argues that the grievant's schedule had not been changed but that he had simply misunderstood the directions and that he was to service Lanham Lane and Dean Drive via Route 73 and was to return the children in the afternoon.

A copy of the grievant's schedule states his morning stops to be: (3) Dean Drive and Lanham Lane. The afternoon stops include (6) Lanham Lane. Handwritten notes on the schedule include "(new) by Route 73N" on the morning run and "(new) by Dean Drive by Route 73N" on the afternoon run. The additional notations supplementing the typed schedule indicate that the directions were not explicit and that the grievant's misunderstanding was reasonable. However, the Board has shown that the area was assigned to the grievant prior to the beginning of the school year as the two other bus drivers in the area had longer runs and more students. The crux of the situation is that the assignment was made but was not clearly conveyed to the grievant; however, the communication problem was discovered and rectified within the first day or so of the school year. This situation does not fall within the intent of W.Va. Code §18A-4-8a as there was no change in the grievant's schedule during the school year, but rather a clarification of a schedule change made prior to the school year.

The grievant's request for an additional one-half hour of extra-duty pay cannot be granted as the loop is a part of his regular run and not extra-duty in nature. It cannot be determined that the grievant works a half-hour beyond his regular day of four hours and thirty minutes and clearly he does not have a longer work day than the majority of bus operators who work as long as seven hours and fifteen minutes.²

In addition to the foregoing it is appropriate to make the following specific findings of fact and conclusions of law.

Findings of Fact

1. The grievant is employed by the Marion County Board of Education as a bus operator assigned to the Fairmont Senior High School area.

2. The grievant and all bus operators were advised by letter dated May 23, 1988 that their runs might be changed for the 1988-89 school year as a result of declining student enrollment and the increased service to parochial students.

3. Sometime prior to the first day of school the grievant was given his assigned run which included seven changes from his 1987-88 route.

²An exhibit submitted by the Board indicates that sixty-nine bus operators work longer than the grievant while only seven have a shorter shift.

4. The grievant objects to only the additions of Dean Drive and Lanham Lane to his schedule which he asserts occurred after the beginning of the school year and adds 5.5 miles and one half-hour to his run.

5. The schedule given the grievant prior to the first day of school included Dean Drive and Lanham Lane on his morning run but only Lanham Lane in the afternoon. For the first day or two the grievant did not deliver children on this loop in the afternoon.

6. Handwritten notations on the grievant's schedule clarify that he was to serve Dean Drive and Lanham Lane by way of Route 73 in both the morning and afternoon. The confusion was corrected by the second or third day of school.

7. The Dean Drive and Lanham Lane addition is part of the grievant's regular run and is not an extra-duty assignment.

8. The grievant has failed to show that these changes have extended his run by one-half hour longer than his 1987-88 run. Evidence does show that the grievant has one of the shortest runs (measured by time) in the county.

Conclusions of Law

1. It is incumbent upon a grievant seeking relief pursuant to W.Va. Code §§18-29-1 et seq. to prove all of the allegations by a preponderance of the evidence. Romeo v. Harrison County Board of Education, Docket No. 17-88-013 (Sept. 30, 1988).

2. W.Va. Code §18-4-8a provides that no service employee shall have his daily work schedule changed during the school year without his written consent.

3. Clarification of a bus operators schedule, when that schedule indicates that an area is to be served but does not explicitly state in what manner and when the clarification occurs within the first week of school, does not constitute a change in work schedule as contemplated by W.Va. Code §18A-4-8a.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Marion County or 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.

DATED: May 31, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER