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RALPH HARDBARGER and

HAROLD HARDBARGER

v.

Docket No. 89-43-74

RITCHIE COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants Ralph Hardbarger and Harold Hardbarger are bus operators employed by respondent Ritchie County Board of Education. In March 1989 they advanced the following grievance to level four:¹

We are bus operators who daily drive a bus run to a vocational school in in another county. According to contracts we are classfied [sic] as extra duty assignments and these were hired by the board as extra duty assignments. We are seeking back pay for the 88-89 school year which we are not being paid according to Senate Bill 14. Also uniformity is being violated.

¹The record reflects decisions adverse to grievants at levels one through three November 28, 1988, February 1, 1989, and February 22, 1989, respectively.

Hearings were set for April 7, May 31, and June 15, 1989, but continued by the parties by agreement and for cause shown. The level four hearing was conducted July 7, 1989.² Respondent waived submission of a brief or proposed findings of fact and conclusions of law. Grievant's counsel agreed to an August submission; his proposals were received August 25, 1989.

Grievants have regularly scheduled morning and afternoon bus runs. In addition, each has a daily "supplemental" run between the a.m. and p.m. runs in which he transports Ritchie County High School students to a vocational school in Pleasants County. Grievant R. Hardbarger transports a group of students to the school in the morning and returns at noon while grievant H. Hardbarger departs at noon and returns before the school day ends. Pleasants, Ritchie and Tyler Counties participate in the tri-county "PRT" Vocational Center (PRT). Bus operators from the three counties rotate, on a weekly basis, the additional responsibility of transporting PRT students to various vocational instructional sites in proximity to PRT.

Respondent pays both grievants for the PRT run in the form of a \$3000 yearly salary supplement, said amount based on a \$15 daily rate for the 200-day school year. Grievant R. Hardbarger testified that he had been performing the PRT run since 1976,

²At level four, grievants submitted the January 11, 1989 level two transcript; they announced their intention to merely supplement the lower level record. Junior White was called on to testify and his various contracts were also admitted into the evidence.

but he did not recall ever signing a contract on the matter. H. Hardbarger, however, did sign a contract in 1987 when he initially began his PRT duties. The form contract used in the school system is titled "Contract of Employment for Extra Duty Assignment" and the word "Curricular" after "Extra" has been blacked out by respondent. Respondent's September 14, 1987, board minutes memorialize grievant's employment as a Bus Operator "Extra-Duty Contract" for the "PM" PRT run.

Grievants were apparently satisfied with the arrangement until they learned after the 1988-89 school year began that another operator, Junior White, who retired at the end of the year, received a different form of payment to thrice weekly transport students to Parkersburg Community College (PCC) for pre-college enrichment studies. Mr. White verified that, until 1988-89, respondent contracted with him to perform supplemental driving on the same salary basis as was paid grievants. However, Mr. White's 1988-89 contract provided an hourly rate based on 1/7th of his daily operator's rate. Mr. White's contract form is identical to grievants'.

Grievants claim entitlement to the same contract adjustment as White for two reasons. They first contend that newly-amended W. Va. Code §18A-4-8a requires that all extra-duty work be paid on the basis of an hourly rate 1/7th of the service employee's daily rate. The applicable portion of §18A-4-8a reads,

The minimum pay for extra-duty assignments as defined in section eight-b [§ 18A-4-8b] of this article shall be no less than one seventh of the employee's daily total salary for each hour the employee is involved in performing the assignment and paid entirely from local funds. The salary for any fraction of an hour the employee is involved in

performing the assignment shall be prorated accordingly. When performing extra-duty assignments, employees who are regularly employed on a one-half day salary basis shall receive the same hourly extra-duty assignment pay computed as though such an employee were employed on a full-day salary basis.

Grievants state that their contract of employment and/or understanding of the PRT supplemental assignment was that it was "extra-duty" work, thus they were entitled to the salary defined in §18A-4-8a. They further charge that respondent violated the uniformity provisions of Code §18A-4-5b when it contracted to pay White, and not them, the higher extra-duty rate. They request back-wages to the beginning of the 1988-89 school year.

The February 23, 1989, decision penned by then-Superintendent Dixon Law's counsel and level two designee found:

The aforesaid grievance is denied due to the fact that the PRT bus run is not an extra duty assignment as defined in Chapter 18A, Article 4, Section 8b of the Code of West Virginia. The aforesaid statute defines extra duty assignments as irregular jobs that occur periodically or occasionally.

It is clear from the evidence in this case that the PRT run is not an irregular job that occurs periodically or occasionally.

Respondent's reasoning is correct. However, grievants prevail in this matter. Respondent has yet to explain why it altered grievant R. Hardbarger's contract to reflect that he was employed for an "Extra-duty" driving assignment and specifically hired him to an "extra-duty" position in an open board meeting, and later denied the extra-duty designation when challenged by grievant about the remuneration. Respondent's response about White's differing contract and the uniformity issue was minimal. It contends that the PCC and PRT runs were different because the

PCC run was only required three days and three days per week made it irregular and an extra-duty run.

Grievants clearly proved a violation of Code §18A-4-5b. Mr. White's driving assignment to PCC could not be construed as "extra-duty" work subject to Code §18A-4-8a because he held a contract for the duty and Code §18A-4-8b(b) specifically states that extra-duty assignments must be rotated among the employees within a classification. Further, a thrice-weekly run contracted for an entire school year is not an irregular periodic run. Since White therefore could not hold a contract and be the sole bus operator to perform Code §18-4-8b(b) extra-duty assignments, there was no basis for respondent to pay him different wages for his supplemental run to PCC than it paid grievants for their runs to PRT.

In addition to the foregoing narration, the following findings of fact and conclusions of law are made.

FINDINGS OF FACT

1. Grievants are bus operators; they had "extra-duty" supplemental driving assignments before and during the 1988-89 school year for which they received a \$3000 annual salary supplement.

2. Prior to 1988-89, Junior White, another bus operator, had a similar supplemental run and received the same salary supplement as grievants.

3. Mr. White was contracted to perform a supplemental run of 3.5 hours Monday, Wednesday and Friday for the 1988-89 school year. He received a hourly wage of 1/7th of his daily rate. Grievants' supplementary salary was not changed for the 1988-89 school year.

4. Grievants' and White's supplemental runs are of the same genre as extra-curricular assignments. Grievants' assignments were contracted for, or perceived to be duties beyond the regular contract of employment, and the school board improperly characterized the supplementary driving assignments as extra-duty assignments.

CONCLUSIONS OF LAW

1. W.Va. Code §18A-4-5b requires uniformity of compensation for all persons performing like assignments and duties.

2. The provision of Code §18A-4-8a which requires that service employees receive hourly wages of 1/7th of their daily rate for §18A-4-8b(b) extra-duty work, does not preclude a board of education from using that same salary determinant for contracted extra curricular assignments or supplementary bus run assignments.


3. Grievants were entitled to the same compensation as another bus operator received for performing similar supplemental driving runs.

Accordingly, this grievance is GRANTED and respondent is Ordered to pay grievants back-wages for their 1988-89 supplemental driving assignments at the rate of 1/7th their daily rate for each hour, or fraction thereof, of actual work, less appropriate set-off.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Ritchie 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:

Aug. 31, 1989


Nedra Koval
Hearing Examiner