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JOHN MAYLE

v.

DOCKET NO. 01-89-039

BARBOUR COUNTY BOARD OF EDUCATION

DECISION

Grievant, John Mayle, is employed by the Barbour County Board of Education (Board) as a bus operator. Mr. Mayle filed a level four grievance appeal in which he alleged violations of W.Va. Code §§18A-4-8 and 18A-4-8b and reprisal, defined in W.Va. Code §18-29-3(h). Both parties agreed that the matter could be submitted for decision based upon the record developed at level two, supplemented with proposed findings of fact and conclusions of law.

The facts of this matter are not in dispute. On November 30, 1988 an extra-duty assignment transporting a basketball team was scheduled to begin at 3:00 p.m., prior to the conclusion of the grievant's regular afternoon run. The grievant was the operator next in line on the rotating list but was not offered the assignment which was awarded to a substitute employee.

The grievant argues that the Board had established a practice of allowing bus operators to take extra-duty assignments, even when the assignment conflicted with the employee's regular duties, and that its action in this instance relegated him to a condition of employment resulting in a lower salary and rescinded an established benefit. Secondly, he argues that extra-duty assignments are the province of regular employees in that there is no statutory reference to substitute employees being assigned extra-duty assignments.¹

The Board asserts that it may implement any changes to its policies and practices it deems appropriate and that it is not required to relieve a bus operator from his regular duties so that he may be available for an extra-duty assignment. In support of its position the Board cites the State of West Virginia School Transportation Regulation VII 2. which states "[s]chedules for approved trips shall not interfere with the regular transportation schedule" and an interpretation of the State Superintendent of Schools that "[a] county does not have to relieve a driver of his regular run in order to make him available for a extra-curricular trip."² The Board additionally argues that W.Va. Code

¹The allegation of reprisal was not pursued at level four and is considered abandoned.

²The interpretation of the State Superintendent can be accorded no weight in this matter because it is in reference
(Footnote Continued)

§18A-4-8 does not apply because extra-duty assignments are voluntary and may be refused without penalty.

The revision of Board policy resulting in the assignment of substitute drivers to extra-duty runs made during school hours was improper because it deprives regular operators of the opportunity to earn more money from an extra-duty assignment than they might earn from their regular runs; thus it has relegated bus operators to a condition of employment which would result in a reduction of salary, compensation or benefits without their written consent, a violation of W.Va. Code §18A-4-8. Releasing drivers from their regular runs to accept extra-duty assignments has not interfered with the regular transportation in the past since substitute drivers are secured for the regular run rather than the extra-duty run. While a Board may not be obligated to relieve drivers of their regular runs for this purpose, once granted it becomes a benefit to the drivers which cannot be rescinded without their consent. Moss, et al. v. Barbour County, Docket No. 01-88-260 (Aug. 31, 1989). That statutory rights and requirements apply equally to extracurricular, and so reasonably to extra-duty assignments, is well established. See: Hosaflook v. Nestor, 346 S.E. 2d 798 (W.Va. 1986); Smith v. Board of Education of

(Footnote Continued)

to extra-curricular work whereas this issue involves extra-duty assignments, two distinctly different types of assignments.

County of Logan, 341 S.E. 2d 685 (W.Va. 1985); Martin v. Lincoln County Board of Education, Docket No. 22-87-254-1 (Mar. 23, 1988).

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

Findings of Fact

1. The grievant is employed as a bus operator by the Barbour County Board of Education.

2. An extra-duty assignment scheduled for November 30, 1988 was awarded to a substitute driver even though the grievant was next in line on the rotating list to be offered such assignments.

3. The grievant was not offered the assignment due to a change in Board policy and practice that drivers would not be released from their regular runs to accept extra-duty assignments.

4. The change in Board policy, made without the consent of the affected employees, deprives bus operators of an opportunity to earn additional income, a benefit which they had previously enjoyed.

Conclusions of Law

1. Extra-duty assignments shall be assigned by giving the employee with the greatest length of service time in a particular category of employment priority in accepting such assignments followed by other fellow employees on a rotating basis, according to the length of their service time, until all such employees have had an opportunity to perform similar assignments. The cycle shall then be repeated. An alternative method of making extra-duty assignments may be utilized if the procedure is approved by both the county board of education and two-thirds of the employees within the affected classification of employment. W.Va. Code §18A-4-8b(b).

2. No service employee, without his written consent, may be relegated to any condition of employment which would result in a reduction of his salary, rate of pay, compensation or benefits earned during the current fiscal year or by continuing in the same job position and classification held during said fiscal year and subsequent years. W.Va. Code §18A-4-8.

3. The Board's change in policy relegated the grievant to a condition of employment which deprived him of additional compensation without his written consent in violation of W.Va. Code §18A-4-8.

Accordingly, the grievance is **GRANTED** and the Board is ORDERED to compensate the grievant for the extra-duty trip to Nutter Fort of which he was deprived and to revert to the prior practice of offering extra-duty trips to regular bus operators in proper rotational order as is statutorily required.

Either party may appeal this decision to the Circuit Court of Barbour 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: December 21, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER