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

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RONALD SKAGGS, JR.

v.

Docket No. 90-06-054

CABELL COUNTY BOARD OF EDUCATION

D E C I S I O N

Ronald Skaggs, Jr., is employed by Respondent Cabell County Board of Education as a bus operator. On November 13, 1989, he initiated the following grievance at Level I:

Violation of. . .[W.Va. Code §]18A-4-5b in regard to uniformity of salaries in regard to the supplement paid for "extra duty" [extracurricular] vocational runs.¹ Grievant receives \$300.00 per month for two runs each day -- to and from the vocational school. Other drivers receive \$200.00 per month for one run to the vocational school and another driver receives \$200.00 to return students from the vocational school. Grievant seeks relief by being granted \$400.00 for his vocational run (payment of \$200.00 per trip).

¹ Although these runs may be called "extra duty" within the Cabell County school system, it is clear that they are not "extra-duty assignments" per Code §18A-4-8b(b), but rather "extracurricular assignments" per Code §18A-4-16. See n. 5, infra.

After waiver at Level I², denial at Level II and waiver at Level III³, Grievant advanced his claim to Level IV, for decision on the record compiled at Level II, on February 14, 1990. The parties agreed to submit any proposed findings of fact and conclusions of law by March 15; that date having passed, the case is mature for disposition.⁴

The relevant facts are not in dispute. Grievant has an extracurricular contract, see Code §18A-4-16, for a daily midday round-trip, i.e., transporting students both ways, Cabell County Vocational-Technical Center (Vo-Tech) run which has an intervening layover.⁵ During this layover, Grievant may, if he chooses, leave Vo-Tech's campus, but in any event he must remain "on call." Certain other drivers have daily one-way, i.e., transporting students to or from, extracurricular Vo-Tech assignments for which they earn

² The Level I evaluator found himself without authority to grant the relief requested and, per Code §18-29-3(c), waived participation in writing.

³ See W.Va. Code §18-29-4(c).

⁴ Respondent filed its presentation March 7, and therein made no mention of the timeliness defense which it posed at Level II, so it must be assumed that defense has been abandoned.

Grievant's submission, while not received until March 19, has nonetheless been considered upon request of his representative.

⁵ Extracurricular runs are regularly scheduled and separately contracted, usually with an individual driver, as opposed to extra-duty one, which are occasional and rotated among available operators. Compare Code §§18A-4-8b(b), 18A-4-16.

\$200.00 each month.⁶ Grievant alleges he is entitled to \$400.00, or an additional \$100.00, per month, since he both delivers pupils to and from Vo-Tech and the other drivers are paid \$200.00 for doing either.

Code §18A-4-5b provides, in pertinent part,

[U]niformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county. . . .

It is established that §18A-4-5b's uniformity mandate applies to extracurricular contracts of employment. See, e.g., Hardbarger v. Ritchie Co. Bd. of Educ., Docket No. 89-43-74 (Aug. 31, 1989); Swisher v. Preston Co. Bd. of Educ., Docket No. 39-87-266-2 (Apr. 29, 1988).⁷ However, Grievant's Vo-Tech run is longer than and otherwise dissimilar to those of the other drivers he cites. Although Grievant, in his statement of claim, characterizes his assignment as "two," it is only one run, albeit one with a somewhat flexible amount of lagtime midway.⁸ Certainly, a

⁶ It is recognized that these runs are not truly "one-way," in that the operators obviously must drive the buses both to and from Vo-Tech regardless of their occupancy.

⁷ In Swisher, the Preston County Board of Education apparently used the term "extra duty assignments" for Code §18A-4-16 extracurricular assignments, as, again, seems to also be true in Cabell County.

⁸ At least usually, the students Grievant delivers are in classes at Vo-Tech during his layover time. Presumably, the same students then return to his bus for travel back to their respective schools.

county board of education in West Virginia is not required to pay the same salary under each extracurricular contract it issues, so long as it in a uniform manner compensates all employees who perform substantially-identical extracurricular tasks. In the within case, Respondent's Director of Transportation, Greg Porter, explained the salient difference between Grievant's and the others' assignments, in his view, was the on-call layover time, T. 22.⁹ It is also significant that no evidence was presented that Grievant's or any driver's extracurricular wage was based on an hourly rate or anything beyond a flat supplement.

The remainder of this Decision will be presented as formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant has an extracurricular contract for a daily midday bus run to and from the Cabell County Vocational-

⁹ Mr. Porter did state one "driver. . .[with] really no layover" is paid \$300.00 per month for his extracurricular run. T. 22. However, he went on to explain, "[H]e [the operator] drives to the C.P. Clinic, and he hauls students back and forth. The time will vary each day. Some days it may be all day. So he gets the \$300." Id. It would appear that this driver's assignment is more similar to Grievant's than to the one-way operators' extracurricular tasks.

Porter at one point mentioned one-way student travel as a factor in salary determinations, T. 20, but the overall record clarifies that the layover time was deemed the significant departure point between the run-types in question. It is therefore assumed, all other things being equal, that the \$200.00 bus operators referenced in this Decision would not make more if they delivered students both to and from Vo-Tech. See also n. 6.

Technical Center (Vo-Tech). There is a mid-run layover time which usually permits Grievant to leave Vo-Tech's campus so long as he remains "on call." Under this contract, he is paid a flat-rate supplement of \$300.00 per month.

2. Other bus operators in Cabell County who, pursuant to extracurricular agreements, daily either drive students to or from Vo-Tech, receive a flat-rate supplement of \$200.00 per month. These drivers have no mid-run layover time.

CONCLUSIONS OF LAW

1. "[U]niformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county. . . ." W.Va. Code §18A-4-5b.

2. Code §18A-4-5b's uniformity mandate applies to Code §18A-4-16 extracurricular contracts of employment. Hardbarger v. Ritchie Co. Bd. of Educ., Docket No. 89-43-74 (Aug. 31, 1989); Swisher v. Preston Co. Bd. of Educ., Docket No. 39-87-266-2 (Apr. 29, 1988).


3. In order to prevail, a grievant must establish the truth of the allegations of his complaint by a preponderance of the evidence. Black v. Cabell Co. Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989).

4. A bus operator's extracurricular job to transport students to and from a facility which involves a mid-run, on-call layover time is not a "like assignment or duty" to

another driver's extracurricular task of transporting students only to or from that facility without any layover. No lack of uniformity per Code §18A-4-5b results if there is a variance between these two drivers' extracurricular flat-rate compensation.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Cabell 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. This office should be advised of any intent to appeal so that the record can be prepared and transmitted to the appropriate court.


M. DREW CRISLIP
Hearing Examiner

Date: March 27, 1990