THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

MARY DAWSON

Grievant,

v. **Docket No. 2018-0424-WyoED**

WYOMING COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Mary Dawson, filed a level one grievance against her employer, Respondent, Wyoming County Board of Education, dated September 18, 2017, stating as follows: "[i]n violation of WV Code 18A-4-16-Extra-Curricular. When I was RIFed from my run on September 11, 2017, it was reposted and I should've been put back into the same position. They changed my route without an agreement in violation of 18A-2-7." As the relief sought, Grievant seeks "[t]o be placed back on my run with back pay of the days I was not on my run."

A level one hearing was conducted on October 2, 2017, and denied by decision issued October 30, 2017. Grievant appealed to level two on October 30, 2017, and a mediation was conducted on January 12, 2018. Grievant perfected her appeal to level three on January 23, 2018. A level three hearing was conducted by the undersigned administrative law judge on May 14, 2018, at the Raleigh County Commission on Aging in Beckley, West Virginia. Grievant appeared at the level three hearing in person and by counsel, Joe Spradling, Esquire, of the West Virginia School Service Personnel Association ("WVSSPA"). On July 25, 2018, George B. Morrone, III, Esquire, General Counsel for the WVSSPA, filed a Notice of Appearance informing the Grievance Board

and the Respondent that he would be representing Grievant in this matter, thereby replacing Mr. Spradling. Respondent, Wyoming County Board of Education, appeared by counsel, Rebecca M. Tinder, Esquire, Bowles Rice, LLP. This matter became mature for decision on August 6, 2018, upon receipt of the last of the parties' proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant is employed by Respondent as a bus operator. Respondent changed Grievant's regular bus run to correct what it believed to be a mistake made in 1987 or 1988, which created a time conflict with the extracurricular vocational run Grievant had driven since 1985. Thereafter, Respondent deemed Grievant unavailable to make the vocational run, and selected a less senior bus operator for the vocational run. These changes resulted in a change of Grievant's work schedule and duties, and a decrease in her compensation. Grievant asserted that in making all of these changes, Respondent violated numerous provisions of the West Virginia Code. Respondent denied Grievant's claims asserting that it made the changes to Grievant's regular run to lawfully correct a mistake. Also, Respondent argued that Grievant was not selected for the vocational run because she was unavailable to perform the same due to a time conflict with her regular bus run. Grievant proved her claims by a preponderance of the evidence. Therefore, this grievance is GRANTED.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

Findings of Fact

1. Grievant is regularly employed by Respondent as a bus operator. Grievant has been so employed since 1980. Grievant entered into a Continuing Contract of Employment with Respondent in 1983. Grievant is the most senior bus operator in the county.

2. Grievant's original regular bus run required her to transport both elementary and high school students on the same bus at the same time to and from Huff Elementary School. The elementary students attended Huff Elementary and the high school students transferred from Grievant's bus to another bus at Huff.

3. In or about October 1985, Grievant bid on a vocational school run that was posted as "Vocational School Bus Operator, Baileysville area." Grievant was awarded this run, effective October 15, 1985.[1] Grievant was the only bus operator who would take this run.[2]

4. Grievant made the vocational run between her regular morning and afternoon runs. The vocational run was from about 8:30 a.m. to 9:00 a.m. and 11:30 a.m. to12:00 p.m. daily. At that time, Grievant's regular runs did not conflict with the time of her vocational run.

5. In or about 1987 or 1988, the start times for the high school and/or Huff Elementary changed.[3] Because their schools would be starting at different times, the high

[1] *See*, Grievant's Exhibit 1, Wyoming County Board of Education meeting minutes dated October 14, 1985.
[2] *See*, testimony of Grievant, level three hearing.
[3] It did not appear that anyone was certain of the year the school start times changed. Grievant was the only person involved in this grievance who was actually employed by Respondent at that time. She testified that the change occurred a couple of years after she was awarded the vocational run. Grievant's counsel has cited 1988 as the year the

school students and the elementary students could no longer ride the same bus. From the evidence presented, it appears that the high school began to start earlier than the elementary school.

6. The start time change caused a conflict, or an overlap, between Grievant's regular bus run schedule and her vocational run. The scheduling conflict prevented Grievant from doing both her entire morning regular run and the vocational run. She could transport the high school students from home to their drop off point, but would not have time before her vocational run started to go back to pick up the elementary school students along the same route and transport them to Huff Elementary. As a result, someone in the administrative office, whose identity is unknown, modified Grievant's regular bus run to remove the morning elementary school portion of her regular run. Another driver was then assigned to transport the elementary students to school in the mornings. Grievant continued to transport the high school students each morning and to make her vocational run each day. Grievant also continued to transport both the elementary school students and the high school students home from school each day as part of her regular afternoon bus run.

7. There was no evidence presented to suggest that the morning elementary portion of Grievant's regular run was posted for bid. Another driver was assigned to make only that portion of the morning run. The record is unclear as to the identity of this other driver. Again, it is unknown who made the decision to modify Grievant's regular morning run, the reasoning therefore, and the decision to assign it to another driver.

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start times changed. Counsel for Respondent has not cited a date in her proposed Findings of Fact and Conclusions of Law.

8. Grievant continued to make her modified regular run and the vocational run from the time the administration made the change in 1987 or 1988 until September 8, 2017, about thirty years. It is noted that Grievant had started making her original regular bus run, which was the exact same physical route, in 1983. Therefore, she had driven the same physical route for about thirty-four years when the events leading to this grievance occurred.

9. The Wyoming County Board of Education and the members of the administration of Wyoming County Schools have changed numerous times since the 1980s. The administration in place when the decision to modify Grievant's run was made is no longer there.

10. By letter dated March 7, 2017, Respondent, by Superintendent Deirdre A. Cline, informed Grievant that her vocational run would be eliminated "[t]o permit the realignment of staff in accordance with the school funding formula and adjustment of the needs of the Wyoming County School System, due to changes in enrollment."[4] Further, all vocational runs were eliminated that personnel season, not just Grievant's.

11. At the time Grievant's extra-curricular contract was terminated, she was being paid $30.00 per day to perform the morning vocational run.

12. Vocational runs with new terms were later posted for bid for the 2017-2018 school year.

13. Around this time, another employee, who was bidding on a different run, asked for a "deal" like that of Grievant's, explaining that a portion of Grievant's morning run had been assigned to another driver years prior so that Grievant could continue to

[4] *See*, Grievant's Exhibit 2, letter dated March 7, 2017.

drive her vocational run. This comment prompted an investigation into Grievant's bus runs.

14. Jeffrey Hylton, Director of Safety and Transportation, researched Grievant's regular bus run and the vocational run she had been driving since 1985. Mr. Hylton discovered that Grievant's original regular run had her transporting both elementary and high school students to school in the mornings and to their homes in the afternoons. Further, the Board's meeting minutes from October 14, 1985, showed that Grievant was awarded the vocational run effective October 15, 1985. He found no record of the elementary school portion of Grievant's regular morning run being posted for bid and no record of the Board approving the modification to the morning portion of Grievant's regular bus run.

15. At the time the 2017-2018 school year started, Grievant's vocational run had not been filled. However, for nineteen days, from August 14, 2017, to September 8, 2017, Grievant was assigned to make the vocational run at the direction of Respondent.

16. Respondent posted the vocational run that Grievant had been making and Grievant bid on the same.

17. After his investigation, Mr. Hylton concluded that assigning the morning elementary school portion of Grievant's original regular run to another driver and allowing Grievant to continue to make the vocational run back in 1987 or 1988 was a mistake. Accordingly, Mr. Hylton changed Grievant's regular bus run back to what it had originally been before the start times of the schools changed, that being, transporting both elementary and high school students to school in the mornings and from school in the afternoons. Grievant did not consent to this change in her regular run.

18. On or about September 11, 2017, the vocational run Grievant had made since 1985 was awarded to a less senior bus operator who had bid on the posting. Grievant was not offered the vocational run despite her years making that run and even making it at the direction of Respondent from August 14, 2017, until September 8, 2017. As its reason for not offering the vocational run to Grievant, Respondent cited the conflict between the start times of her newly changed morning elementary and high school runs and the start time of the vocational run. In other words, Respondent asserts that Grievant was not available to perform the vocational run because at the time it was to start, she was still driving her newly changed regular morning run.

19. The parties do not dispute that Grievant was the most senior applicant for the vocational run posted in or about September 2017. The parties also do not dispute that but for Mr. Hylton's change to her morning run in September 2017, she would have been awarded the vocational run.

20. From the time the high school and elementary school's start times changed in or about 1987 or 1988 until the end of the 2016-2017 school year, Grievant drove the same modified regular run and the vocational run without incident or interruption. Further, she drove the same runs from August 14, 2017, until September 8, 2017, at the beginning of the 2017-2018 school year.

21. As Grievant lost her vocational run, she was being paid less money per day. Grievant subsequently bid on and was awarded two different extra-curricular runs, that being a block run and a preschool run. The preschool run paid $15.00 per day and the block run paid $30.00 per day. Grievant gave up the preschool run to take the block run. It is unclear from the evidence presented when Grievant was awarded the preschool run

and how long she drove it. Also, it is unclear from the evidence presented when Grievant was awarded the block run and how long she drove it.

22. Grievant is the most senior bus operator employed at Wyoming County Schools.

23. The record of this grievance is silent as to the number of bus operators employed by Respondent in October 1985 when Grievant was awarded the vocational run and in 1987 and 1988 when Grievant's regular morning bus run was modified by administration.

24. No written contracts were presented as evidence at the level three hearing in this matter.

25. The only witnesses called at the level three hearing were Grievant and Mr. Hylton.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2008). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff'd*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id*.

Grievant argues that Respondent violated a number of statutes when it changed her regular bus run without her consent and awarded the vocational run she held for over thirty years to a less senior employee. Respondent asserts that it was a mistake to

administratively assign the morning elementary school portion of Grievant's regular bus run to another driver, back in 1987 or 1988, without Board approval or posting the same. Respondent further argues that it corrected its mistake when it was discovered by returning the morning elementary portion of Grievant's run to her. As a result of this change, Grievant was not available to make the vocational run because of the time conflict; therefore, it was awarded to another employee.

"'County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious.' Syl. pt. 3, *Dillon v. Wyoming County Board of Education*, 177 W. Va. 145, 351 S.E.2d 58 (1986)." Syl. Pt. 2, *Baker v. Bd. of Educ.*, 207 W. Va. 513, 534 S.E.2d 378 (2000).

An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. *See Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996)." *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997), *aff'd* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998).

"'[T]he "clearly wrong" and the "arbitrary and capricious" standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. Syllabus Point 3, *In re Queen*, 196 W.Va. 442, 473 S.E.2d 483 (1996).'" Syl. Pt. 1, *Adkins v. W. Va. Dep't of Educ.,* 210 W. Va. 105, 556 S.E.2d 72 (2001) (*per curiam*). "While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of [the employer]." *Trimboli v. Dep't of Health and Human Res.,* Docket No. 93-HHR-322 (June 27, 1997), *aff'd* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998); *Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001), *aff'd* Kanawha Cnty. Cir. Ct. Docket No. 01-AA-161 (July 2, 2002), *appeal refused*, W.Va. Sup. Ct. App. Docket No. 022387 (Apr. 10, 2003).

Grievant asserts the Respondent violated the following statutes when it changed her regular run without her consent and when it did not award her the vocational run she had been making since 1985:

> [a]n employee who was employed in any service personnel extracurricular assignment during the previous year shall have the option of retaining the assignment if it continues to exist in any succeeding school year. If an extracurricular contract has been terminated and is reestablished in any succeeding school year, it shall be offered to the employee who held the assignment at the time of its termination. If the employee declines the assignment, the extracurricular assignment shall be posted and filled pursuant to section eight-b of this article.

W. Va. Code § 18A-4-16(6);

> The superintendent, subject only to approval of the board, may assign, transfer, promote, demote or suspend school personnel and recommend their dismissal pursuant to

> provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before April 1 if he or she is being considered for transfer or to be transferred. . . .

W. Va. Code § 18A-2-7(a);

> A service person may not have his or her daily work schedule changed during the school year without the employee's written consent and the person's required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

W. Va. Code § 18A-4-8a(j); and,

> Without his or her written consent, a service person may not be: . . .Relegated to any condition of employment which would result in a reduction of his or her salary, rate or pay, compensation or benefits earned during the current fiscal year; or for which he or she would qualify by continuing in the same job position and classification held during that fiscal year and subsequent years.

W. Va. Code § 18A-4-8(m).

Grievant clearly did not consent to Respondent changing her regular bus run in September 2017 which changed her daily work schedule and duties, and ultimately resulted in a loss of compensation. Further, Grievant did not consent to the removal of her vocational run, which also changed her duties and daily schedule, and resulted in a loss of compensation. Therefore, Respondent's actions violated West Virginia Code § 18A-4-8a(j) and 18A-4-8(m). Respondent also violated West Virginia Code § 18A-4-16(6) by not offering the vocational run to Grievant in September 2017 because she had been employed in that extracurricular assignment in all prior school years back to October 14, 2015, and she held it when the contract was terminated at the end of the 2016-2017 school year and reestablished in the 2017-2018 school year. As Respondent's decisions to change Grievant's regular bus run, removing her from the vocational run, and to give

the same to a less senior bus operator violate statutes, the same are unreasonable and deemed arbitrary and capricious.

Respondent argues that administration's decision in 1987 or 1988 to assign the morning elementary portion of Grievant's regular run to another driver and to allow Grievant to continue making the vocational run was a mistake that it was permitted to correct as "boards of education are encouraged to correct their errors as early as possible," citing *Conners v. Hardy County Board of Education,* Docket No. 99-16-459 (Jan. 14, 2000), *Barrett v. Hancock County Board of Education*, Docket No. 96-15-512 (Dec. 31, 1997), and *Petrovich v. Hancock County Board of Education*, Docket No. 98-15-074 (July 13, 1998). A respondent made a similar argument citing the same quote and cases in *White v. Webster County Board of Education*, Docket No. 2018-0299-WebED (May 4, 2018). Therein, the ALJ granted the grievance stating, in part, as follows:

> In *Conners*, the grievance was granted ordering the grievant be reinstated to his prior position when he had been awarded a position for which he was not qualified due to the respondent's error in posting the position. The respondent's failure to correct its error was a factor [cited] in support of granting the grievance. In *Petrovich*, after being awarded a position, the grievant's principal changed the job duties significantly from those listed in the posting. As soon as they were altered to this action, administration corrected the error and changed the grievant's duties to match what had been posted. The grievant alleged discrimination and required to be placed in her previous position. The Grievance Board denied the grievance because the respondent had timely corrected its error. In *Barrett*, the superintendent had recommended the grievant for hire, which recommendation the school board rejected and ordered the candidates be reassessed. In conducting a second evaluation of the candidates, it was found that another employee was more qualified for the position and that person was ultimately hired. In denying the grievance, the Grievance Board found that the school board had corrected an error before a final determination was made and should be encouraged to do so.

> **None of the cases cited by Respondent involve an error in the application of a respondent's unwritten procedures or the violation of statute to correct such an error. The general notion that respondents should be encouraged to correct mistakes does not absolve a respondent of liability for the violation of statute.**

Id. (emphasis added).

The same is true herein. None of the cases cited by Respondent have anything to do with a board violating statutes to correct a mistake. Further, none of those cases involved a mistake that had been allowed to go on for thirty years. In fact, it appears that all the mistakes discussed in those cited cases occurred only briefly. While the facts of *White* differ from those of this grievance, in both, the respondent boards violated statutes in order to correct what they viewed as error. In this matter, it appears that Respondent is asserting that Board approval is required when a bus run is modified and that the fraction of Grievant's original bus run that was administratively assigned to another employee should have been posted as a separate, newly created position. In support of this position, in its proposed Findings of Fact and Conclusions of Law, Respondent states "[i]t is well settled that county boards of education have substantial discretional in matters relating to the hiring, assignment, transfer, and promotion of school personnel," citing *Dillon v. Board of Education of County of Wyoming*, 177 W. Va. 145, 351 S.E.2d 58 (1986). Such is well settled. However, this does not say that board approval is required for modifying a bus run or assigning another operator to make a modified run. Respondent cites nothing in support of its argument that the fraction of Grievant's run that was assigned to another driver should have been posted as a new position.

West Virginia Code § 18A-2-7(a) states as follows:

> The superintendent, subject only to approval of the board, may assign, transfer, promote, demote or suspend school personnel and recommend their dismissal pursuant to provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before April 1 if he or she is being considered for transfer or to be transferred. . . .

The decision to assign another bus operator to drive only the morning elementary portion of Grievant's original bus run was made in or about 1987 or 1988. There is, apparently, no written record of the board approving this decision or the decision not to post that one fraction of Grievant's morning bus run as a separate position. This does not necessarily mean that there was no approval. Given that all of this was done about thirty years ago, and the person or persons who made the decision are not around, there is simply no way to tell what they did or did not do, or how they came to their decision. For all we know, the superintendent got approval from the board and it was not put in writing or included in any meeting minutes. In the end, Grievant did as she was told by the administration, as did the other bus operator(s) who drove the elementary portion of Grievant's morning run, and made her regular run and the vocational run as directed for about thirty years, throughout numerous administrations and board configurations. She was not hiding what she was doing. She turned in her time sheets, was assigned the same runs every year, and obviously did a good job. The absence of written documentation alone does not make what occurred thirty years ago a mistake.

Grievant testified that she was the only person the Respondent could get to do the vocational run in 1985. She testified that no one else wanted it. There was no evidence presented to contradict Grievant's testimony. If Respondent had a hard time getting anyone to take the run to start with, it would appear logical that such would be, at least,

anticipated a couple of years later when the schools' start times changed. In that case, it would be plausible that the administration would have better luck getting someone to drive the elementary portion of Grievant's morning run than getting someone to make the vocational run from 8:30 to 9:00 and again from 11:30 to 12:00. This is especially plausible as Grievant was already driving the vocational run and had done so for years. Lastly, it appears more likely that the change to Grievant's morning run was not simply made to allow her to keep the additional pay for the vocational run. Rather, it appears more likely that the change was made to ensure all of the children got to school, both elementary and vocational, on time. Again, the general notion that respondents should be encouraged to correct mistakes does not absolve a respondent of liability for the violation of statute. Grievant proved by a preponderance of the evidence her claims that Respondent violated West Virginia Code §§ 18A-4-8a(j), 18A-4-8(m); and 18A-4-16(6). Accordingly, the grievance is granted.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2008). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff'd*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id*.

2. "An employee who was employed in any service personnel extracurricular assignment during the previous school year shall have the option of retaining the

assignment if it continues to exist in any succeeding school year. A county board of education may terminate any school service personnel extracurricular assignment for lack of need pursuant to section seven [*§ 18A-2-7*], article two of this chapter. If an extracurricular contract has been terminated and is reestablished in any succeeding school year, it shall be offered to the employee who held the assignment at the time of its termination. If the employee declines the assignment, the extracurricular assignment shall be posted and filled pursuant to section eight-b of this article." W. Va. Code § 18A-4-16(6).

3. "'County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious.' Syl. pt. 3, *Dillon v. Wyoming County Board of Education*, 177 W. Va. 145, 351 S.E.2d 58 (1986)." Syl. Pt. 2, *Baker v. Bd. of Educ.*, 207 W. Va. 513, 534 S.E.2d 378 (2000).

4. An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. *See Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-

081 (Oct. 16, 1996)." *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997), *aff'd* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998).

5. "The superintendent, subject only to approval of the board, may assign, transfer, promote, demote or suspend school personnel and recommend their dismissal pursuant to provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before April 1 if he or she is being considered for transfer or to be transferred. . . ." W. Va. Code § 18A-2-7(a).

6. "A service person may not have his or her daily work schedule changed during the school year without the employee's written consent and the person's required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee." W. Va. Code § 18A-4-8a(j).

7. "Without his or her written consent, a service person may not be: . . . Relegated to any condition of employment which would result in a reduction of his or her salary, rate or pay, compensation or benefits earned during the current fiscal year; or for which he or she would qualify by continuing in the same job position and classification held during that fiscal year and subsequent years." W. Va. Code § 18A-4-8(m).

8. "The general notion that respondents should be encouraged to correct mistakes does not absolve a respondent of liability for the violation of statute." *White v. Webster Cnty. Bd. of Educ.*, Docket No. 2018-0299-WebED (May 4, 2018).

9. Grievant proved by a preponderance of the evidence that Respondent violated sections 18A-4-8a(j), 18A-4-8(m), and 18A-4-16(6) of the West Virginia Code when, without her consent, it changed her regular bus run, removed her from the vocational run she had driven for thirty years, thereby changing her duties and work

schedule, and reducing her compensation, and awarded the vocational run to a less senior bus operator. As such, Respondent's decisions were arbitrary and capricious.

Accordingly, this Grievance is **GRANTED**.

Respondent is **ORDERED** to reinstate Grievant's regular bus run as it was prior to the changes made thereto on or after September 9, 2017, and to reinstate her to the vocational bus run that she had ran since 1985, and to pay her back pay from the time she was removed from her vocational bus run until the time she is reinstated, plus interest, to be offset by the pay she received for the pre-school run and block run she made during the same time period.

Any party may appeal this decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its administrative law judges is a party to such appeal and should not be so named. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The civil action number should be included so that the certified record can be properly filed with the circuit court. *See also* W. VA. CODE ST. R. § 156-1-6.20 (2018).

DATE: September 18, 2018.

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Carrie H. LeFevre
Administrative Law Judge