

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**LOIS JEAN MORRIS**

**Grievant,**

**v.**

**Docket No. 2019-0315-NicED**

**NICHOLAS COUNTY BOARD OF EDUCATION,**

**Respondent.**

**DECISION**

Grievant, Lois Jean Morris, filed a level one grievance against her employer, Respondent, Nicholas County Board of Education, dated August 31, 2018, stating as follows:

[w]as asked to try a new bus run to shorten time on buses the last two months of school. Was told still had to do bus run that way or be fired. So then I asked if I get more pay. I was told no xtra (sic) pay. The reason I was asking for xtra pay is because I am parked up with my evening run at 3:00 and am made to come back out 1 hour and 20 min later to get 4 kids off the High School bus to take home. My boss asked me to do this run the same way again this year till Labor Day so I did. I called him 8-31-18 and asked if I could stop doing the xtra bus run and he said I will have to check on it and let you know. So now I am filing my grievance.”

As the relief sought, Grievant seeks “[o]ne of two things[:] 1. Either stop the xtra run, or 2. Give me more pay.”

A level one hearing was conducted on September 24, 2018, and denied by decision issued October 2, 2018. Grievant appealed to level two on October 17, 2018, and a mediation was conducted on March 25, 2019. Grievant perfected her appeal to level three on April 9, 2019. A level three hearing was conducted by the undersigned administrative law judge on June 19, 2019, at the Raleigh County Commission on Aging

in Beckley, West Virginia. Grievant appeared at the level three hearing in person and by counsel, George B. Morrone, III, Esquire, General Counsel, West Virginia School Service Personnel Association (“WVSSPA”). Respondent, Nicholas County Board of Education, appeared by counsel, Melissa Adkins, Esquire. This matter became mature for decision on August 28, 2019, 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 added an additional daily evening run to Grievant’s regular duties without her consent, written or otherwise. She was required to perform this run at a time after her regularly scheduled work hours and was given no compensation for the same. Grievant filed this grievance asserting that Respondent’s actions in assigning her this additional run violated West Virginia Code § 18A-4-8a(j), was arbitrary and capricious, and that the additional evening runs constituted an extracurricular run for which she was entitled to compensation. Respondent denied Grievant’s claims asserting that the addition of the second evening run to Grievant’s daily duties was proper and violated no statute. Grievant proved all of 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, and has been so employed since 2005. Grievant has held a 200-day Continuing Contract of Employment since 2008.

2. For the 2012-2013 school year, Grievant bid on and received the following position: Bus Operator Bus #77—Twenty Mile Creek Road, Bell Creek Road, Route 16, Dixie area. This position included the following responsibilities: “Regular route of Bus #77—Route includes DES [Dixie Elementary School] AM and PM. . . .” The term of employment for this position was “[s]tandard 200 day contract. Morning run from approximately 6:00 am to 8:00am. Afternoon run from approximately 2:00pm to 4:00pm. Subject to change per student needs.”<sup>1</sup>

3. For four consecutive years, Grievant performed her Bus #77 runs, a morning run and an evening run, until DES closed at the end of the 2015-2016 school year.

4. For the 2016-2017 school year, as DES had closed, Grievant agreed to take a new run which consisted of transporting many of the same students to their new school, Zeta Elementary School. This run was not posted.

5. In both of these positions, Grievant completed her evening run and parked her bus at around 3:00 p.m. each day.

6. Grievant continued making her morning and evening run for the Zeta Elementary School Students during the 2017-2018 school year.

7. Near the end of school year 2017-2018, Fred “Rocky” Roberts, the new Transportation/Maintenance Director required Grievant to temporarily perform an additional evening bus run asserting that he was evaluating travel times. When Grievant asked if she would be paid for these extra duties, Mr. Roberts told her that she would not

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<sup>1</sup> See, Grievant’s Exhibit 2, Nicholas County Schools Service Employee Vacancy Announcement.

be paid, and that if she failed to perform the temporary additional duties, she would be fired. Grievant complied and performed the temporary additional run until the end of the school year.

8. The additional daily duties required that about an hour after she parked her bus for the day and performed her post-trip inspection, Grievant had to again do a pre-trip inspection, then pick up the middle school and high school students at 4:15 p.m. After transporting these students home, Grievant had to complete another post-trip inspection before concluding her workday. She normally finished her workday just before 5:00 p.m.

9. Grievant continued to perform her regular Zeta Elementary School run in the 2018-2019 school year. At the beginning of the school year, Mr. Roberts again required Grievant to perform the additional bus run taking the high school and middle school students home in the evenings. Mr. Roberts again told Grievant that these additional duties would be temporary.

10. A few days into the 2018-2019 school year, the additional evening run duties were removed from Grievant's assignment. It is unknown why this was done. However, within a matter of days, those duties were returned to her. Again, she was required to make the evening bus run for the high school and middle school students without compensation.

11. While Grievant's bus run changed when DES closed, her schedule and the students did not. For approximately six years, as her regular run, Grievant has transported elementary school students to school in the mornings, and transported them home, then concluded her day at about 3:00 p.m.

12. Grievant did not consent to the change in her work schedule or her duties. She has performed the additional evening run each day without compensation because the alternative presented to her was dismissal.

13. Grievant performed the additional evening run and associated duties without compensation near the end of the 2017-2018 school year and for 165 days during the 2018-2019 school year.

14. Respondent did not post the additional evening run for the high school and middle school students. Respondent, through Mr. Roberts, simply assigned it to Grievant.

15. While Respondent has asserted that the additional run was assigned to Grievant in an effort to shorten students' travel times and to get into compliance with WV Department of Education policy, it appears that travel time is still out of compliance.

### **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 (2018). "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 West Virginia Code § 18A-4-8a(j) when it changed her daily work schedule to include an additional evening bus run without her consent. Grievant further argues that the run Respondent added to her daily schedule constituted an extracurricular assignment for which she should be compensated.

Respondent denies Grievant's claims arguing that it has the freedom to make reasonable changes to Grievant's schedule, and that these changes were reasonable and proper as they were made to reduce the high school and middle school students travel time which had been out of compliance with West Virginia Department of Education policy. Respondent asserts that the additional run added to Grievant's duties is not an extracurricular run, and she is not entitled to any additional compensation for performing the same.

“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).

West Virginia Code § 18A-4-8a(j) states as follows:

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). This statute has been interpreted to allow a board of education “freedom to make reasonable changes to a service employee’s daily work schedule, within the parameters of his contract, some of which cannot reasonably be effected until shortly after school starts.” *Bucher v. Wetzel County Bd. of Educ.*, Docket No. 03-52-051 (June 18, 2003). Whether the changes are reasonable involves a case-

by-case, fact-specific inquiry. See *McClain v. Hancock County Bd. of Educ.*, Docket No. 96-15-114 (June 27, 1996). Minor alterations to a route, which cannot be anticipated prior to the beginning of the school year, may be made after the school year begins; for example, if a child moves into an area, or to alleviate “overloading.” See *Id.*

Accordingly, it is necessary to determine whether the changes made to Grievant’s bus run were reasonable. The Grievance Board has addressed such issues in the past. In *Bucher*, the grievant’s route was extended by four miles which added approximately fifteen minutes to the time required to complete his run. The Administrative Law Judge concluded that this “addition does not require Grievant to work more hours each day than provided by his contract,” and that the respondent had “not changed Grievant’s work schedule in violation of W. VA. CODE §18A-4-8a. See *Stover [v. Mason County Bd. of Educ.*, Docket No. 96-26-048 (Nov. 27, 1996)]; *Cook v. Mason County Bd. of Educ.*, Docket No. 96-26-105 (Aug. 19, 1996); *Teller v. Hancock County Bd. of Educ.*, Docket No. 96-15-188 (June 28, 1996); *Sipple [v. Mingo County Bd. of Educ.*, Docket No. 95-29-487 (Mar. 27, 1996)]; *Conner v. Barbour County Bd. of Educ.*, Docket No. 94-01-1100 (Aug. 2, 1995).” The Administrative Law Judge further noted that, “because [Respondent] determined that the children who reside on State Run Road should be transported from their homes, pursuant to citizens’ requests, a reasonable basis existed for making the change to Grievant’s assigned bus route. See *Roberts v. Lincoln County Bd. of Educ.*, Docket No. 92-22-131 (Aug. 31, 1992).” *Bucher v. Wetzel County Bd. of Educ.*, Docket No. 03-52-051 (June 18, 2003).

Further, in *Freda v. Lewis County Bd. of Educ.*, Docket No. 2014-0866-LewED (Aug. 7, 2015), the grievant’s bus run was changed mid-year and extended his run an



additional mile to pick up a student who was being allowed to attend a school outside the student's attendance zone. The change added no additional time to the grievant's workday. The Grievance Board found that the change was reasonable. Grievant had also asserted a claim of discrimination pertaining to compensation for making the extended run. The ALJ also found that Grievant was entitled to compensation for transporting the student, but only because similarly situated bus drivers received pay for transporting students outside their areas.

In *Skaggs v. Ritchie County Bd. of Educ.*,, Docket No.: 2014-0516-RitED (Oct. 31, 2014), the grievant alleged that the respondent violated West Virginia Code § 18A-4-8a(j) when it made changes to his bus run after the beginning of the school year. The grievant also argued that he should be compensated for the additional time it took him to complete his run and fuel his bus during that time. The changes had been precipitated by parents' complaints about the length of time their children, elementary school students, spent on the bus even though they lived close to the school. The grievant was the only bus driver who made runs in the students' area of the county. The changes reduced the time the students were on the bus, but added twenty-three minutes and eleven miles to the grievant's morning run. They added four minutes and three miles to Grievant's afternoon bus run. The changes also required Grievant to refuel his bus twice each week instead of once, which added another thirteen miles and additional driving time to his workday. The ALJ found the changes made to Grievant's bus run were minimal, and concluded "that the changes made to Grievant's route were reasonable changes, which were not anticipated at the beginning of the school year, and which did not extend his work day in violation of his contract terms." The ALJ denied the grievant's claim for compensation.

In the instant matter, Grievant clearly did not consent to Respondent changing her daily work schedule and adding the additional evening run to her duties. She was required to do the additional run or face dismissal. The change in Grievant's run was not the usual type of run change in cases regarding West Virginia Code § 18A-4-8a(j), such as where a bus operator's regular bus run is being changed by extending or rerouting the run to accommodate the needs of students and road conditions. This is demonstrated by the cases discussed herein. In none of those cases were any separate, additional runs simply added to bus operators' work duties. Instead, the regular runs they had bid on and received were merely altered. Respondent's actions in this case did not alter or extend Grievant's regular bus run. Respondent did not add a few miles or any time to the Grievant's runs with the Zela Elementary School students. Instead, the change Mr. Roberts implemented added an entirely new bus run to her duties, a run to take high school and middle school students home later in the evening. There is at least one hour between the end of Grievant's regular Zela evening run and when she is required to start her duties for this additional evening run. On the additional evening run, the students were different, as were the route, the time, and the pick-up place. From the evidence presented, this was a new run, but it was not posted so that people could bid on it.

The change in Grievant's duties also ultimately resulted in a loss of compensation as the extra run added to her regular workday and made her unavailable to take any extra duty or extracurricular trips after school hours. Respondent disputes this citing Grievant's "Bus Driver Trip Information Sheet Summersville Drivers" on which she indicated that she did not want to take any evening trips. However, Grievant completed and signed that form on November 30, 2018. She was already being required to perform the additional

evening run at that time, and she knew that she would be unavailable until approximately 5:00 p.m., which would be too late to take any evening runs. It is for this reason that she indicated the same on this sheet.

West Virginia Code § 18A-4-8a(j) is very clear that a service person's daily work schedule cannot be changed during the school year without his or her written consent. However, reasonable, minimal changes to a bus run which cannot be anticipated prior to the beginning of the school year may be allowed after a school year starts. In this matter, the changes made were not minimal and Mr. Roberts and Respondent knew about this issue well before the school 2018-2019 school year began. Also, while Respondent asserts that this was a reasonable change because it was implemented to shorten the students' travel time in order to comply with WV Department of Education policy also fails. Even if the addition of this run to Grievant's duties put Respondent into compliance, it still violates statute, and it is unreasonable. This was not the type of change envisioned in *Butcher* and *McClain*. Further, it is not clear from the evidence presented that this additional run actually put Respondent in compliance with state policy.

In addition to prohibiting a service employee's daily work schedule from being changed during the school year without the employee's written consent, the statute also states that 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) (emphasis added). Respondent added a full bus run to Grievant's daily duties which is unrelated to her regular daily run with the Zela students. This was a new bus run and it is unknown why it was not posted. However, if it had been posted, Respondent would have had to pay a bus operator to perform the run. By assigning it to

Grievant without her consent and refusing to compensate her, Respondent has avoided additional expense. Given the evidence presented, it appears that Respondent violated the second part of the statute because it changed Grievant's daily work schedule without her consent in order to prevent the employment of another employee. This is certainly unreasonable. Accordingly, Respondent violated West Virginia Code § 18A-4-8a(j) when it required Grievant to make the additional evening run for the high school and middle school students.

Grievant's next argument is that the extra run Mr. Roberts assigned her is actually an extracurricular run for which she is entitled compensation. West Virginia Code § 18A-4-16, "Extracurricular assignments," states, in part, as follows:

- (1) The assignment of teachers and service personnel to extracurricular assignments shall be made only by mutual agreement of the employee and the superintendent, or designated representative, subject to board approval. Extracurricular duties shall mean, but not be limited to, any activities that occur at times other than regularly scheduled work hours, which include the instructing, coaching, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly scheduled basis: Provided, That all school service personnel assignments shall be considered extracurricular assignments, except such assignments as are considered either regular positions, as provided by section eight [§ 18A-4-8] of this article, or extra-duty assignments, as provided by section eight-b [§ 18A-4-8b] of this article.
- (2) The employee and the superintendent, or designated representative, subject to board approval, shall mutually agree upon the maximum number of hours of extracurricular assignment in each school year for each extracurricular activity.
- (3) The terms and conditions of the agreement between the employee and the board shall be in writing and signed by both parties.

(4) An employee's contract of employment shall be separate from the extracurricular assignment agreement provided for in this section and shall not be conditioned upon the employee's acceptance or continuance of any extracurricular assignment proposed by the superintendent, a designated representative, or the board. . . . *Id.*

Aside from the contract requirements of this statute that have not been met, the additional evening run Grievant has been required to perform since near the end of the 2017-2018 school year meets the definition of an extracurricular assignment. Grievant drives to pick up the high school and middle school students each day and escorts them home at least an hour after her regularly scheduled work hours. She completes this additional run, parks her bus, and completes her post-trip inspection each day just before 5:00 p.m. Grievant's regularly scheduled workday ended at about 3:00 p.m. each day at the conclusion of her Zela evening run and post-trip inspection, and has been so since she began performing the DES run. As such, Grievant had worked these same hours for approximately six school years. It is noted that the posting on which Grievant bid and received her regular bus run stated as terms of employment: "[m]orning run from approximately 6:00 a.m. to 8:00 a.m. Afternoon run from approximately 2:00 p.m. to 4:00 p.m. Subject to change per student needs."<sup>2</sup> West Virginia Code § 18A-4-16 also provides "that all school service personnel assignments shall be considered extracurricular assignments, except such assignments as are considered either regular positions, as provided by section eight [§ 18A-4-8] of this article, or extra-duty assignments, as provided by section eight-b [§ 18A-4-8b] of this article." This additional evening run is not

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<sup>2</sup> See, Grievant's Exhibit 2, "Nicholas County Schools Service Employees Vacancy Announcement," dated July 30, 2012.

part of Grievant's regular position. Further, the additional evening run is not an extra-duty assignment pursuant to West Virginia Code § 18A-4-8b(f), which is an "irregular job that occurs periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trip." The additional evening run is, therefore, an extracurricular run.

For the reasons set forth herein, Grievant has proved by a preponderance of the evidence that Respondent has violated West Virginia Code § 18A-4-8(j) by changing her daily work schedule without her written consent and to prevent the employment of another employee. The additional run is a separate run from Grievant's regular position and should have been posted for bid. Grievant proved by a preponderance of the evidence that Respondent's decision to assign her the additional evening run and require her to perform those duties was unreasonable, and arbitrary and capricious. This was not a reasonable change to her regular run, like an extension or minimal change. Instead, Respondent assigned her an entirely separate run that she was required to make after her regularly scheduled hours. Further, Grievant has proved by a preponderance of the evidence that the additional evening run she has been performing over her objections is an extracurricular assignment for which she should have been granted a contract and paid accordingly. Therefore, this 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. “The assignment of teachers and service personnel to extracurricular assignments shall be made only by mutual agreement of the employee and the superintendent, or designated representative, subject to board approval. Extracurricular duties shall mean, but not be limited to, any activities that occur at times other than regularly scheduled work hours, which include the instructing, coaching, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly scheduled basis: Provided, That all school service personnel assignments



shall be considered extracurricular assignments, except such assignments as are considered either regular positions, as provided by section eight [§ 18A-4-8] of this article, or extra-duty assignments, as provided by section eight-b [§ 18A-4-8b] of this article. . . .” W. Va. Code § 18A-4-16.

8. Grievant has proved by a preponderance of the evidence that Respondent has violated West Virginia Code § 18A-4-8(j) by changing her daily work schedule without her written consent to add the additional evening run for the high school and middle school students. Grievant proved by a preponderance of the evidence that Respondent’s decision to assign her the additional evening run and require her to perform those duties was unreasonable and arbitrary and capricious. Grievant also has proved by a preponderance of the evidence that the additional evening run she has been performing over her objections is an extracurricular assignment for which she should have been granted a contract and paid.

Accordingly, this grievance is **GRANTED**.

Respondent is **ORDERED** to reinstate Grievant’s regular bus run as it was prior to the changes made thereto toward the end of the 2017-2018 school year, and to pay her back pay with interest in accordance with its schedule to pay bus operators for extracurricular assignments pursuant to West Virginia Code § 18A-4-16 for each day she has performed the additional evening bus run, and provide to Grievant with all benefits, including seniority, to which she may be entitled.

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: November 19, 2019.**

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**Carrie H. LeFevre**  
**Administrative Law Judge**