JOHN J. GUE

v. Docket No. 93-32-288

MORGAN COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, employed by Respondent Morgan County Board of Education (MCBE) as a service employee, is multiclassified as a Bus Operator and Truck Driver, both ranked at pay grade "D" for salary purposes. He seeks additional compensation, retroactive to May 8, 1993, pursuant to an amendment of W.Va. Code §18A-4-8, effective April 8, 1993. Prior to the amendment, the statute required school boards to pay a salary supplement to custodians who were assigned to work an interrupted work schedule; now, certain other service employees who work under a split-day schedule are also eligible for the salary boost. (See footnote 1)

The facts in this case are not in contention. Grievantbegan his assignment in the multiclassified position on or about January 14, 1993. Basically, in his capacity as a split-sched ule bus operator, Grievant drives a morning and an afternoon bus run on a daily basis. Immediately after completing his morning bus run, he performs his duties as a truck driver. As such, Grievant reports to MCBE's maintenance department to monitor the temperature of the "central freezer" and, when necessary, to deliver food commodities from the freezer or to receive goods being delivered to the freezer. The food is for MCBE's school lunch program. After a period of unscheduled time or "down" time typical of most bus operators' work schedules, Grievant begins his afternoon bus run.

More precisely, Grievant's morning run begins at 6:30 a.m., and he is back at the bus garage by 8:05. He then drives a school-owned van to where the central freezer is located, arriving at about 8:15. The amount of time required of Grievant to perform his duties varies according to need. First, Grievant must daily check and log the temperature of the freezer and then review the delivery schedule to see if he must transport food stuffs to one or more schools.

If Grievant is scheduled to make a delivery or deliveries, he may need as little as twenty minutes to complete the task on some days or, infrequently, as much as three plus hours on other days. However, Grievant is permitted to go home if he is not scheduled to make a delivery. Occasionally, after he has departed from the job site, he may be required to return at 10:30 a.m. to receive and unload a shipment of government food. Thus, in any given situation, Grievant's morning duties are

usually completed by 11:30 a.m. at the latest. Thereafter, Grievant's afternoon bus driving duties begin at 2:35 p.m. and end at 4:25.

The amendment to W.Va. Code §18A-4-8 which broadens the classes of service employees who must receive supplemental pay when required to perform their duties under a split working schedule added certain words and phrases to the existing lan guage of the provision, as highlighted below: Custodians, **aides, maintenance, office and school lunch employees** required to work a daily work schedule that is interrupted, that is, who do not work a continuous period in one day, shall be paid additional compensation which shall be equal to at least one eighth of their total salary as provided by their state minimum salary and any county pay supplement, and payable entirely from county funds: **Provided, That when engaged in duties of transporting students exclusively, aides shall not be regarded as working an interrupted schedule.**

It is also noted that another portion of §18A-4-8 identi fies and describes over 75 service positions or classes, among others, accountant (I through III), aide (I through IV), cabinet maker, cook (I through III), custodian (I through IV), electron ic technician (I and II), general maintenance, glazier, graphic artist, heavy equipment operator, lubrication man, printing supervisor, secretary (I through III) and warehouse clerk. While the revised portion of §18A-4-8 names two existing class titles, custodian and aide, the portion of the statute which identifies positions contains no position specifically titled "maintenance," "office" or "school lunch" employee.

In Grievant's view, he qualifies for the salary incrementbecause he definitely works an interrupted schedule, and not solely as a school bus operator, but also as a truck driver who operates a vehicle for purposes other than transporting stu dents. He cites Morgan v. Pizzino, 286 S.E.2d 592 (W.Va. 1979), and argues that the portion of Code §18A-4-8 which provides enhanced economic benefits for certain workers on a split work schedule must be liberally construed in favor of the employees. In this vein, Grievant urges that "the terms 'maintenance' and 'school lunch employees' as used in Code §18A-4-8 hold a broader meaning than referring to solely those employees who hold the classification title of 'General Maintenance' or 'Cooks'."

According to Grievant, workers titled "General Maintenance" are hired to help skilled maintenance workers and to perform minor repairs to equipment and buildings; therefore, skilled service employees holding titles such as electrician, plumber and glazier and who normally maintain equipment also qualify as maintenance workers under the statute. A truck driver, he insists, generally

works out of a maintenance department; in his case, he also "maintains" a piece of electrical equipment, the central freezer. He also urges that cooks, cafeteria managers and food service directors all qualify as school lunch employ ees. Because he is assigned to work with the school lunch program in his capacity as a truck driver, he must also be regarded as a school lunch worker as well as a maintenance worker, in his view.

Grievant also relies on two interpretations rendered prior to the amendment by the State Superintendent of Schools on thesubject of multiclassified workers who serve part of the time as a custodian under a split work schedule. (See footnote 2) In one case, a bus operator drove a morning and a late afternoon bus run. However, after he completed his second run, he reported to a school to begin work as an evening custodian. The Superintendent advised that the worker had an interrupted work schedule and was eligi ble for the additional compensation. In another case, a half- time early morning custodian applied for a later-scheduled, half-time school aide position. According to the Superinten dent, the employee was entitled to multiclassified status, wages based on the highest pay grade or salary rate of the two class es, and the split shift salary supplement.

MCBE's position is that Grievant is not eligible for the salary supplement mentioned in Code §18A-4-8 because he is not multiclassified as a custodian, aide, or as a maintenance, office or school lunch worker. MCBE also argues that because Grievant begins his truck driving duties immediately after the completion of his morning bus run and does not appear for work again until he begins an afternoon run, the typical schedule for every bus operator, he does not have an interrupted work sched ule as contemplated by the statute.

Given the facts in this case, it cannot be said that Grievant is entitled to the supplemental wages provided by Code §18A-4-8, as amended. Clearly, all custodians and certain aidesare covered while bus operators and aides "when engaged in duties of transporting students exclusively" are not. What constitutes maintenance, office and school lunch employees is open to interpretation.

With respect to bus operators, Grievant does not dispute that these employees have always been excluded from receiving salary supplements for split-schedule work despite the fact bus drivers generally always have interrupted work hours. The question then arises: Why have bus operators been omitted? Bus operators are ranked midway with respect to their salary grade and are neither the lowest nor highest paid service employees. (See footnote 3) Moreover, bus operators generally work fewer hours than other (eight-hour per day) service employees yet receive the same full-time

wages designated for their salary rank as do those other classes of employees in the same salary rank who work a full eight-hour day. Despite this salary advantage, because of sporting events and other after-school functions for which students must be transported, bus operators usually have much more opportunity for occasional extra-duty work than do other service employees. One possible answer as to why bus operators have been excluded from the salary benefit might be becausefull-time bus operators, although paid for eight hours, rarely work a full, eight-hour day, unlike service employees in other classifications who are generally scheduled to work an eight- hour day.

From this it reasonably could be inferred that the statute initially intended that split-schedule custodians, generally service workers who work an eight-hour day, were the only beneficiaries of the one-eighth salary supplement and that, under the amendment, the new classes of qualifying employees should also be workers who work an eight-hour day. Tellingly, the supplement in question "shall be equal to one eighth of their total salary." Why "one eighth" and not some other figure? The reference to "one eighth" must have some signifi cance related to an eight hour work day; otherwise, a different figure would have been used. For example, under Code §18A-4-8a, which also contains a schedule of required minimum monthly salaries for service employees, see n. 3, workers are to be paid an hourly rate for extra-duty work which is based on one-seventh of their "daily total salary."

Thus, it could be that the only time a bus operator might qualify for the salary supplement is when he or she also holds title to a qualifying class and is regularly scheduled to work an eight-hour day. Grievant does not work an eight-hour day, even on his busiest day. In Grievant's capacity as a bus operator, he works only one hour and thirty-five minutes in the morning and one hour and fifty minutes in the afternoon, for a total of three hours and twenty-five minutes. The most Grievantmust ever work on any given day is six hours and forty minutes.

In addition, Grievant's work schedule is interrupted solely because he is a bus operator and not for any other reason. Moreover, Grievant does not even have an ongoing, designated amount of time to work in his capacity as a truck driver, as the time required for the completion of his duties varies on a daily basis according to need. As he testified, some days he can leave for home as soon as he has logged the freezer temperature and checked the delivery schedule, surely not more than fifteen minutes' work. According to Grievant, the most he ever works as a truck driver is three hours and fifteen minutes, and even this does not occur very often. (See footnote 4)

Having discussed the possibility that Grievant may not qualify for the supplement because he is

not an eight-hour-a-day worker and also because he works under an interrupted schedule for the sole purpose of accommodating bus driving duties, the question of whether Grievant somehow qualifies by virtue of his alternate classification must be addressed. Obviously, if the amendment intended for all service personnel **except** bus opera tors and full-time school bus aides to be entitled to the salary benefit, the drafters of the legislation could have easily written specific language to that effect. That is not the case. Tellingly, "truck driver" is not one of the newly-designated classes.

Moreover, contrary to Grievant's argument, he does not qualify as a "maintenance" or "school lunch" employee by virtue of his truck driver classification. Simply because a board of education houses a truck at its maintenance department does not mean that the person who drives the truck is a maintenance worker. Generally, a truck driver delivers or hauls goods. Grievant, on occasion, delivers food allocations to one or more schools. He simply does not become a "school lunch" worker on that basis alone. Additionally, Grievant does not "maintain" or repair the food freezer, he merely monitors that piece of equipment.

In summary, even if Grievant is not precluded from receiv ing §18A-4-8's mandated salary enhancement for certain split- schedule service workers by virtue of his work hours, a reason able interpretation of the statute leads to the conclusion that he is not entitled to the benefit for other reasons. Grievant does not qualify because the sole reason he works a split schedule is to accommodate his bus operator duties and not to facilitate his alternate classification; because his alternative employment title is truck driver, an occupation not cited as a qualifying class in the statute; and, finally, because truck driver is not normally regarded as a "maintenance" occupation, or, given the facts in this case, is not a "school lunch" related function.

In addition to the foregoing findings of fact, the following formal findings of fact and conclusions of law are appropri ate.

Findings of Fact

1. Grievant is multiclassified as a bus operator and truck driver.

2. Grievant's bus driving duties require a bus operator's traditional interrupted or split work schedule. These driving duties (for the morning and afternoon bus runs) require approxi mately three hours and twenty-five minutes to complete.

3. Grievant begins his duties as a truck driver immedi ately after he concludes his morning bus run; these duties vary according to need and require a minimum of just a few minutes of work to a

maximum of three plus hours of work.

4. After Grievant monitors the food freezer, he is free until he reports to work for his afternoon bus run, unless he has to deliver food to one or more schools or receive a delivery at the freezer.

5. Despite Grievant's variable work hours, he is never scheduled or required to work an eight-hour day.

Conclusions of Law

1. "Custodians, aides, maintenance, office and school lunch employees required to work a daily work schedule that is interrupted. . .shall be paid additional compensation which shall be equal to at least one eighth of their total salary. . .Provided, That when engaged in duties of transporting studentsexclusively, aides shall not be regarded as working an inter rupted schedule." W.Va. Code §18A-4-8 (1993). Notably, the "truck driver" classification is not identified as one of the qualifying titles for the economic benefit set forth in the statute.

2. The "one eighth" total salary designation in Code §18A-4-8 (1993) likely relates to an eight-hour work day. Bus operators and school bus aides who work an interrupted work schedule generally do not work an eight-hour day, while at least custodians, clerical and school aides, and maintenance and office workers generally do work an eight-hour day.

3. Grievant, a split-schedule, multiclassified bus operator and truck driver, whose work schedule is interrupted to accommodate bus driving and whose work day entails less than eight hours per day to perform the combined duties of each title, bears the burden of proof in demonstrating a statutory violation of W.Va. Code §18A-4-8 (1993).

4. Grievant failed to prove that MCBE violated Code §18A- 4-8 (1993) when it refused to pay him the salary supplement in issue and otherwise failed to demonstrate that he qualifies for the salary supplement set forth in the statute by virtue of his "truck driver" (second) classification.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Morgan 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 Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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NEDRA KOVAL

Administrative Law Judge

Date: April 8, 1994

Footnote: 1 Grievant did not prevail on the merits of his case at the lower levels. While he requested a hearing when he appealed to level four, he later agreed to submit the matter for a decision based upon the record and supplementary, written argument. Subsequently, on or about March 7, 1994, the grievance was transferred from another Grievance Board Office to the undersigned for administrative reasons.

Footnote: 2 Grievant cites Smith v. Board of Educ., 341 S.E.2d 685 (W.Va 1985), for the proposition that "the interpretation of the State Superintendent of School relating to school law must be given great weight unless it is clearly wrong."

Footnote: 3 A salary schedule for service workers is found in Code §18A-4-8b which lists minimum monthly salaries by "pay grade" and "years of employment." It then identifies one of eight progressively higher paying pay grades, ranked from "A" through "H," for all service employee class titles. As a practical matter, the monthly salaries for service workers also must be calculated in terms of annual salaries for purposes such as in the event ten-month employees desire a twelve month payment schedule. Wages must also be broken down into daily and hourly rates in order to determine the proper hourly rate of pay for extra duty work and overtime wages when an employee accrues over forty hours work during the work week.

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*Footnote: 4 It is noted that the advisories upon which Grievant relies cannot be applied to this situation because those opinions were issued prior to the amendment of §18A-4-8. The workers involved, a bus operator and school aide, were multiclassified but both were also classified as custodians, the only split-schedule beneficiary of the salary supplement at the time. Grievant is not classified as a custodian. Moreover, little information is given in the narratives with respect to those workers' actual work hours, except that the custodian\aide held two **half-time** jobs.*