PAUL GLEASON, .

.

Grievant, .

.

v. . Docket No. 94-26-282

.

MASON COUNTY BOARD OF EDUCATION, .

.

Respondent. .

D E C I S I O N

This is a grievance by Paul Gleason (Grievant), a school service personnel employee working as a Bus Operator for the Mason County Board of Education (MCBE). Grievant complains that he is not receiving the amount of compensation he is entitled to under W. Va. Code § 18A-4-5b for the bus route he presently drives. His original grievance statement was worded as follows:

> At Board Meeting XXXV, page 4, item 8, level 2 decision was to award Judith Murphy 1 & 1/2-days pay for Route 873, due to grievance 94-43. Judith Murphy transferred to another route. I bid and received Bus Route 873 and I am doing and have done the exact same route as Ms. Murphy did. Therefore, I am entitled to the same pay according to 18A-4-5b. I am asking for 1 & 1/2-days pay for my duties and back pay from April 11, 1994.

This grievance was initiated at Level I on June 7, 1994. Grievant's immediate supervisor could not resolve the grievance and Grievant appealed to Level II where a hearing was conducted on June 13, 1994. Grievant received an adverse decision at Level II onJune 27, 1994 and Grievant appealed to Level III where his appeal was waived by MCBE on July 5, 1994. Grievant elected to appeal to Level IV and a hearing was held in this Board's office in Charleston, West Virginia, on September 20, 1994. Following receipt of Respondent's post-hearing submission, this matter became mature for decision on October 6, 1994. (See footnote 1)

Since the relevant facts necessary for resolution of this case are not in dispute, the following findings of fact are in order:

FINDINGS OF FACT

1. Grievant is employed by the Mason County Board of Education (MCBE) as a regular full-time Bus Operator.

2. On March 15, 1994, another bus operator, Judy Murphy, settled a grievance with MCBE regarding compensation for Bus Route 873. MCBE agreed to pay Ms. Murphy an additional one-half day's compensation for each day she drove the route from the beginning of the 1993-1994 school year to February 28, 1994, when Ms. Murphy was assigned to another route. Adm Ex 1 at L II.

3. Ms. Murphy drove a series of bus runs during the day which generally involved shuttling students between Wahama High School (WHS) and Point Pleasant Vocational Center (PPVC), with certain intervening stops, as well as between PPVC, certain vocational employment locations, Point Pleasant High School and WHS.

4. Grievant became aware of a posting for Route 873, although he never actually saw the posting. Grievant bid on Route 873 and was ultimately awarded the position. At the time Grievant bid on the route, he was aware that Ms. Murphy had settled her grievance for an additional one-half day's pay for each day she drove Route 873.

5. The posting for Route 873 dated March 24, 1994, included the following provision relating to salary: "Salary based upon paygrade d, experience and salary schedule (state and county)." R Ex 1 at 2.

6. Grievant began driving Route 873 on April 11, 1994, following the same route as Ms. Murphy for the remainder of the 1993-1994 school year. (The route number was later changed to Route 933 when Grievant received a new bus.)

DISCUSSION

Grievant alleges that, by failing to pay the same rate of pay for Route 873 as was awarded to the employee who previously held that route, MCBE is violating W. Va. Code § 18A-4-5b (1993). That statute provides in pertinent part:

> The county board of education may establish salary schedules which shall be in excess of the state minimum fixed by this article.

> These county schedules shall be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation of equipment or other requirements. Further, uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like duties and assignments within the county . . . .

This same bus route was the subject of a related grievance recently decided by this Grievance Board in Farley v. Mason County Board of Education, Docket No. 94-26-243 (Dec. 14, 1994). In that case, a grievance filed by certain MCBE bus operators who drove Route 873 between Ms. Murphy's departure and Grievant's arrival was addressed. Farley rejected essentially the same theory advanced by the Grievant here in regard to the effect of MCBE's settlement with Ms. Murphy on Grievant's entitlement to like pay under § 18A-4-5b. In particular, this Board concluded:

> Ms. Murphy's extra 1/2 day's pay was an award granted as a result of settlement of her grievance. Administrative adjudications generally affect directly only the parties thereto. If a county board of education chooses to grant like relief to non-parties, it is certainly within its authority to do so. However, this Board has held that there is no universal entitlement to such consideration, and clearly Grievants have demonstrated none herein. Steele v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989).

Farley, supra, at 5.

As noted in Fowler v. Mason County Board of Education, Docket No. 94-26-037 (Oct. 6, 1994), W. Va. Code § 18A-4-5b is directed toward employees who perform comparable work but receive dissimilar pay. Grievant has not identified any other MCBE employee who is currently operating a similar bus run and is receiving a greater amount of pay. See Harper v. Pendleton County Bd. of Educ., Docket No. 89-36-708 (Aug. 21, 1990).

W. Va. Code § 18A-4-8b requires school boards to include certain specific information in postings of job vacancies including the "amount of pay." See Weaver v. Mason County Bd. of Educ., Docket No. 94-26-129 (Nov. 22, 1994). Grievant cannot convert hisfailure to confirm the amount of pay MCBE was offering for this position (See footnote 2) into an obligation of the school board to pay him the same salary obtained by his predecessor based on the unique circumstances of a grievance settlement. There is no evidence that MCBE ever affirmatively represented that Grievant would

receive more than one day's pay for this bus route and Grievant has not cited any viable legal theory to support such an entitlement. In addition to the foregoing discussion, the following conclusions of law are appropriate in this matter.

CONCLUSIONS OF LAW

1. W. Va. Code § 18A-4-5b requires uniformity of compensation for all persons performing like assignments and duties. Weimer-Godwin v. Bd. of Educ., 369 S.E.2d 726 (W. Va. 1988); Mersing v. Preston County Bd. of Educ., Docket No. 89-39-513 (July 12, 1991); Hardbarger v. Ritchie County Bd. of Educ., Docket No. 89-43-74 (Aug. 31, 1989).

2. In order to prevail in a grievance alleging a violation of W. Va. Code § 18A-4-5b, a Grievant must establish such violation by a preponderance of the evidence. Collins v. Wayne County Bd. of Educ., Docket No. 50-86-368-1 (Aug. 20, 1987). See Skaggs v. Cabell County Bd. of Educ., Docket No. 90-06-054 (Mar. 27, 1990).

3. Settlement of a grievance does not entitle another like-situated employee to the relief provided pursuant to that settlement agreement. Farley v. Mason County Bd. of Educ., Docket No. 94-26-243 (Dec. 14, 1994).

4. Grievant has not established a violation of the uniformity provision of W. Va. Code § 18A-4-5b. See Farley, supra.

Accordingly, this Grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mason 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 intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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LEWIS G. BREWER

Administrative Law Judge

Dated: December 22, 1994

Footnote: 1Grievant was afforded the opportunity to make a written post-hearing submission in accordance with W. Va. Code § 18-29-6. Grievant apparently elected not to make a submission as none was received.

Footnote: 2There was testimony that this position was only posted in the bus garage for "four hours" on one day. While the duration of such posting does not comply with W. Va. Code § 18A-4-8b, Grievant did not represent that he attempted to track down the posting and MCBE withheld its contents. Instead, Grievant testified at Level IV that he heard rumors of the posting and that it was on the telephone "hotline." In any event, Grievant applied for the position without clarifying the rate of pay.