DONNA RIGGLEMAN

v. Docket No. 94-12-089

GRANT COUNTY BOARD OF EDUCATION

DECISION

Grievant, Donna Riggleman, employed by the Grant County Board of Education (Board) as a bus operator, advanced a grievance to level four on March 16, 1994, in which she alleged violations of W.Va. Code 18A-4-5b and 21-5C-3. Specifically, Grievant alleges that the Board failed to pay her for a supplemental run when compensation was awarded to a similarly-situated employee and that she has been required to work in excess of forty hours per week without compensation. Grievant requests "supplemental pay equivalent to one-half day's salary for each day that she has performed this assignment, or in the alternative, time and one-half her regular hourly rate for heach [sic] hour worked in excess of forty hours per week" retroactive to the beginning of the 1993-94 school year. An evidentiary hearing was conducted on May 16, 1994, and proposed findings of fact and conclusions of law were filed on or before June 8, 1994, at which time the matter became mature for decision.1

The facts of this matter are undisputed. Grievant has been employed by the Board as a bus operator for approximately twelve years. During the 1992-93 school year two bus operators were assigned routes transporting preschool handicapped children. One driver was responsible

for the morning session and the other covered the afternoon session of instruction. Due to budgetary constraints the Board reviewed the transportation system, making several changes in routes and assignments. As a result of the revisions both of the preschool handicapped positions were eliminated and consolidated into one position, effective the 1993-94 school year.

The combined position was posted and subsequently awarded to Grievant. Although Transportation Director Harold Garber suggested that the combined route include a salary supplement, then-Superintendent Michael Eberbaugh listed the position at a regular salary only. Grievant accepted the position with the knowledge that only regular salary was being offered but with the understanding that Mr. Garber would continue to pursue a supplemental salary. When

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1The lower-level record indicates that the grievance was initially filed at level two. Following a hearing held at that level on February 16, 1994, the designated hearing evaluator denied the matter. Grievant bypassed consideration at level three as is permitted by W.Va. Code 18-29-4(c).

it became evident that no additional compensation would be offered, Grievant filed this complaint.

Grievant states that her schedule for the 1993-94 school year is as follows:

7:00 a.m. pretrip inspection

7:10 a.m. leaves designated parking site

7:25 a.m. picks up first student

9:40 a.m. finishes first route (a.m. session)

9:40 -

10:50 a.m. washes bus once a week, talks with

mechanic if bus need repair, adds motor

oil if needed, takes lunch break;

approximately one day a week she has no

duties at all

10:50 a.m. begins second route (p.m. session)

12:00 p.m. finishes second route (p.m. session)

12:05 p.m. begins third route (taking a.m. session

students home)

2:00 p.m. finishes third route

2:00 -

3:00 p.m. stays on bus, usually takes a nap

3:00 p.m. begins fourth route (taking p.m.

students home)

4:30 p.m. arrives at designated parking site,

begins cleaning bus

4:45 p.m. duties completed

Grievant asserts that the hour between 2:00 and 3:00

p.m. should be included in the computation of hours worked

since the amount of time is inadequate and the location not

conducive for personal use. If this hour is included,

Grievant's daily schedule extends for nine hours and

forty-five minutes. Based upon this calculation she

concludes that she is entitled to overtime compensation.2

Grievant's second basis for the requested relief is

that she is not compensated in a manner uniform with other

bus operators. First, the Board does not dispute that

Grievant's assignment entails driving approximately one

hundred eighty-five miles per day. The second longest run in the county, which is representative of the regular runs, is sixty miles per day. Second, only one other bus operator is scheduled a mid-day run. That individual, Ms. Cosner, is assigned a vocational run, both morning and afternoon, for which she is awarded additional compensation equivalent to one-half day's salary. Grievant argues that her four-part assignment is comparable to the regular and vocational runs completed by Ms. Cosner; therefore, if she is not to be paid

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2W.Va. Code 21-5C-3(a) cited herein states

On and after the first day of July, one thousand nine hundred eighty, no employer shall employ any of his employees for a workweek longer than forty hours, unless such employees receives compensation for his employment in excess of the hours above specified at a rate of not less than one and one-half times the regular rate at which he is employed.

overtime, in the alternative, she should receive the same additional compensation awarded Ms. Cosner.

The Board denies that Grievant is entitled to additional compensation under either of her theories because she neither works in excess of forty hours per week nor is she similarly-situated to another employee who does receive additional compensation. The Board first denies that Grievant's calculation of daily hours worked is accurate. In addition to the hour that Grievant naps, Mr. Garber opined that it was unlikely that Grievant would need the bus

maintained four out of five days. The Board further notes that even if the bus does require repair, it is not Grievant who performs same. Evidence was also offered during the cross-examination of Grievant to show that during the first part of the year she did not drive to the bus garage at Petersburg but stayed at Maysville and drank coffee between runs. The Board notes a twenty-five minute discrepancy between Grievant's level two and level four recitations of her schedule; however, even granting her the elongated version, she is not required to perform duties or stay with her bus for nine hours and forty-five minutes daily. Because she is free between runs, the Board argues that Grievant has failed to prove a violation of W.Va. Code 21-5C-3(a).

The Board denies that Grievant's assignment is comparable to Ms. Cosner's. Specifically, even though Grievant's run is in four parts, as opposed to the usual two-part morning/afternoon run, the Board characterizes it as one continuous assignment as opposed to the schedule of Ms. Cosner who has a regular a.m./p.m. run plus a completely separate vocational run during the mid-day. The vocational run was posted and filled separately as an extra-duty position. Although Grievant is required to drive during the mid-day, the Board distinguishes her run as being what is usual, expected and needed for her regular run as opposed to the vocational run which was beyond Ms. Cosner's regular run transporting students to and from the Union Educational Complex. Because Grievant does not perform an extra-duty assignment, the Board denies any violation of W.Va. Code 18A-4-5b.

The Board recognizes that Grievant drives more miles than other bus operators with "regular" runs but asserts that this fact is not of itself dispositive of the issue.

The excessive mileage Grievant is required to drive is mitigated, the Board argues, by several other factors such as the bus she operates is less than half the size of a normal school bus and that Grievant has expressed a preference for a smaller bus. Additionally, Grievant transports fewer students and thus does not have the added responsibility and aggravation experienced by other drivers who must make repeated stops nor does she have the potential disciplinary problems of drivers who transport older students. Finally, the Board asserts that it has acted in a reasonable manner and in the best interests of the school system in its handling of this matter.

Grievant's claim for overtime under the provisions of W.Va. Code 21-5C-3 may not be considered herein. The Grievance Board has previously held that notwithstanding the broad statutory definition of "grievance" given the available administrative and civil remedies to enforce such laws, the Legislature never intended the grievance procedure to be utilized as an additional mechanism for the adjudication of federal or state wage and hour claims. Campbell v. W.Va. Dept. of Commerce/Div. of Natural Resources and W.Va. Dept. of Administration/Div. of Personnel, Docket No. 90-DNR-081 (August 30, 1991). Consistent with this holding no further discussion of the overtime issue is required.

Grievant has proven entitlement to additional compensation under the provisions of W.Va. Code 18A-4-5b.

Traditionally, bus operators were hired to transport children to school in the morning and home in the afternoon. As the need developed for mid-day or extra-duty runs, drivers were enticed into accepting the additional work with supplemental contracts offering additional compensation. More recently, with constantly dwindling resources available to them, boards of education have been challenged to restrain costs in all areas. In addition to reductions in force and consolidation of positions, many boards find that they can no longer offer additional compensation for mid-day work. Because bus operators are rarely required to work a standard eight hour day many counties now require the mid-day work as part of their regular assignments. It would appear that this change in practice is acceptable so long as all employees are treated uniformly as is required by W.Va. Code 18A-4-5b. In the present matter the Board has failed to comply with this uniformity requirement.

The Board's characterization of Grievant's assignment as one run is not without merit. This assignment could well be viewed as a self-contained, unique run encompassing all preschool handicapped students; however, this factor is not controlling. All but two bus operators employed by the Board are assigned a regular morning and afternoon only run. Grievant clearly is required to complete work above and beyond that required of the vast majority of the bus operators in Grant County.

By the Board's own admission Grievant now completes the work previously performed by two full-time employees. Grievant and Ms. Cosner are the only two bus operators who are transporting students during mid-day. Ms. Cosner

receives additional income while Grievant does not. Neither the fact that Ms. Cosner's mid-day run is not related to her "regular" run nor that the mid-day run was posted and filled as an extra-duty assignment affects the controlling fact which is that both employees provide mid-day transportation for students. The Board's failure to compensate Grievant is in violation of the W.Va. Code 18A-4-5b provision that

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 assignments and duties within the county . . . .

This provision clearly requires that Grievant receive the same supplemental salary as that awarded to Ms. Cosner. In addition to the foregoing narration it is appropriate to make the following formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant has been employed by the Grant County Board of Education as a bus operator for approximately twelve years.

2. During the 1992-93 school year Grievant and another bus operator were scheduled to transport the morning and

afternoon sessions of preschool handicapped instruction.

3. Effective the 1993-94 school year the two runs were consolidated into one. Grievant bid upon and received the assignment which was posted as a regular run.

4. Grievant's assignment requires that she transport students to school in the morning, return them mid-day, collect the afternoon students at mid-day and return them in the afternoon. Grievant travels approximately 185 miles per day; the average run is 60 miles per day.

5. One other bus operator is required to complete a mid-day run. She is responsible for a vocational run for which she is paid a supplemental salary.

6. Grievant's daily schedule begins at 7:00 a.m. and ends at 4:45 p.m.; however, her actual work time is less due to breaks between runs.

CONCLUSIONS OF LAW

1. As a general rule the Grievance Board has no power to rule on state wage and hour law claims. Campbell v. W.Va. Dept. of Commerce/Div. of Natural Resources and W.Va. Dept. of Administration/Div. of Personnel, Docket No. 90-DNR-081 (August 30, 1991). Consistent with this ruling the alleged violation of W.Va. Code 21-5C-3 may not be considered.

2. Grievant has proven by a preponderance of the evidence that her work schedule is similar to that of another employee who earns a supplemental salary for a mid-day run. The failure of the Board to uniformly compensate employees who perform similar work is a violation of W.Va. Code 18A-4-5b.

Accordingly, the grievance is GRANTED and the Board Ordered to award Grievant a salary supplement equal to one-half day of pay, retroactive to the beginning of the 1993-94 school year.

DATD 9/30/94 SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE