VALERIE TIBBS

v. Docket No. 93-15-501

HANCOCK COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant is employed by Respondent Hancock County Board of Education (HCBE) as a full-time bus operator with a five and three-quarter hour daily work contract. At issue is whether HCBE may occasionally assign Grievant, within her required daily work hours but without extra pay, to complete the work of other drivers who have accepted "extra-duty" driving. With respect to that issue and of utmost importance to Grievant, is a claim that the other drivers are being enriched at her expense. HCBE denies wrongdoing and counters that Grievant accepted her present job knowing the schedule provided for flexible work hours and that Grievant is not precluded from also vying for paid, rotational extra-duty work. (See footnote 1)

Based on all matters of record, the following findings of fact are made. (See footnote 2)

Findings of Fact

1. When Grievant accepted her present assignment on bus route No. 53 (Weirton area) beginning the 1992-93 school year, the printed schedule showed a morning run transporting students to school, and in a second column, the "reverse" run taking students home.

2. Grievant's morning run took students to a high school and an elementary school requiring one continuous hour of driving, from 6:50 to 7:50 a.m. The afternoon run required one hour and thirty-five minutes' driving, from 1:45 to 3:20 p.m. Beneath each of the detailed driving runs was a statement that a future run could be scheduled in that time frame. The bottom of the work schedule also included the statement:

PLUS ANY ADDITIONAL CHANGES NECESSARY TO TRANSPORT STUDENTS IN AREA OR AREAS NEAR THE LOCATION OF THIS SCHEDULED BUS RUN. THE DUTIES ON THIS RUN COULD BE REQUIRED UNTIL 4:00 PM.

3. The 1993-94 schedule for bus route No. 53 was nearly identical to that of the 1992-93 school year except for some minor modifications in the afternoon run and the addition of a run to a middle school in the morning. As as result, during 1993-94, Grievant usually had the bus back in the garage in the morning by 8:50 a.m., and had her work completed in the after noon by approximately

3:21 p.m. In all, one hour and one minuteof driving time had been added to the previous year's schedule.

4. On four occasions in September during the 1993-94 school year, Grievant was given additional driving assignments in the Weirton area after she completed her afternoon run. Each time she drove an afternoon run of a driver who had taken an extra-duty assignment transporting students to a sports event. Grievant produced no records as to how long it took her to complete the runs, but estimated that it took at least forty- five minutes to complete each one. T.14, 16.

5. During 1993-94, Grievant's morning and afternoon driving duties required a total of three hours and thirty-six minutes to complete, work time which fell far short of her contracted day, but for which she received full compensation.

6. Notwithstanding the addition of forty-five minutes more to Grievant's driving time on the few occasions when she was required to fill in for an operator who took an extra-duty driving assignment, her work hours still fell short of the required five and three-quarter hours of compensated service.

Discussion

Grievant argues that adding driving time to her schedule without obtaining her permission or giving her additional compensation is a violation of W.Va. Code §18A-4-8a: "No service employee shall have his daily work schedule changed during the school year without his written consent." (See footnote 3) Assupport, she cites Froats v. Hancock County Bd. of Educ., Docket Nos. 89-15-164/202 (Aug. 31, 1989); Smith v. Lewis County Bd. of Educ., Docket No. 21-88-043-3 (Dec. 30, 1988); and Terek v. Ohio County Bd. of Educ., Docket No. 35-87-294-3 (July 20, 1988). Grievant also maintains that she is due two hours' wages each time she performed the additional driving. In support of this contention, she states as follows in her level four brief at 2:

This issue of the two hour minimum compensation was addressed in the Circuit Court of Hancock County through Jayell E. Froats v. Hancock County Board of Education, Civil Action No. 90-P-2 W. On April 26, 1993, W. Craig Broadwater, Circuit Judge, ordered the Hancock County Board of Education to pay Ms. Froats the sum of $1,934.02. The specific reason for this Order is not stated. The history resulting in this Order can be traced back to the level IV decision of Jayell E. Froats v. Hancock County Board of Education, Docket Nos. 89-15-164/202.

According to HCBE, Grievant's belief and claim that she is forced to do extra work for free is not accurate. HCBE main tains that the posting and schedule for Grievant's position, route No. 53,

specifically provided for flexibility because that run had no daily middle school run. As such, Grievant is compensated fully for her contracted time of five and three- quarter hours, but when certain situations arise, such as, emergencies, breakdowns or other drivers leaving on trips, Grievant is required to work for her compensation. In HCBE's view, "others are not profiting" from Grievant's work when she occasionally fills in for them, rather, when Grievant is not required to fill in for other drivers, she is not working all of her scheduled hours and is "receiving compensation for services not rendered."

Grievant has not demonstrated a violation of W.Va. Code §18A-4-8a. First, the cases upon which Grievant relies do not support her position in the matter at hand. In each of those cases, Froats, Smith and Terek, supra, the school boards had improperly added ongoing schedule changes to the grievants' (bus operators) daily work requirement. In this case, Grievant's ongoing, daily schedule had not been altered at all, rather, she had been assigned on four occasions to a forty-five minute driving task after she completed her afternoon run but within her daily alloted work hours.

The record supports that Grievant agreed to the possibility of occasional schedule changes when she accepted her present job. In addition, she fully acknowledged that she understood the scheduling flexibility of bus route No. 53 when she accepted the contract for the job two years ago. T.13. Route No. 53's schedule (job description) provides for flexibility for the current year and in the prior year in which Grievant had the same bus driving assignment. Moreover, said schedule does not qualify what type of occasional work might be assigned and certainly does not limit such work to "emergency" work. Grievant's contention that the only time she is bound to perform extra driving is when an emergency occurs such as a bus break down is not supported by the evidence. She agreed to schedule alterations in the form of "any additional changes necessary totransport students" in the area and to perform duties until 4:00 p.m., when needed. (See footnote 4)

In addition to the foregoing, the following formal conlusions of law are appropriate.

Conclusions of Law

1. School service employees shall not have their daily work schedules changed during the school year without their written consent. W.Va. Code §18A-4-8a.

2. Altering a daily work schedule would include adding driving time to a bus operator's duties and extending an employ ee's work day beyond that designated by the board without the driver's consent. Froats v. Hancock County Bd. of Educ., Docket Nos. 89-15-164/202 (Aug. 31, 1989); Terek

v. Ohio County Bd. of Educ., Docket No. 35-87-294-3 (July 20, 1988).

3. "Slight alterations of a bus operator's driving schedule during a school year may be necessary due to need: however, an arbitrary alteration, which adds time or distance to the workday and which serves no useful purpose, constitutes an unlawful schedule change as contemplated by W.Va. Code §18A-4- 8a." Smith v. Lewis County Bd. of Educ., Docket No. 21-88-043-3 (Dec. 30, 1988).

4. The bus driving position upon which Grievant bid andagreed to accept included a "flexible" driving schedule which contained specific language that the employee would be subject to scheduling changes and could be required to (occasionally) work until 4:00 p.m.

5. HCBE's requirement that Grievant occasionally fill in for less than an hour for an operator who took another run was not inconsistent with Grievant's agreement to accept schedule changes when needed and did not add to her required work hours.

6. Based on the record herein, Grievant failed to prove a violation of Code §18A-4-8a or any other statute, regulation or policy with respect to her grievance.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock 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.

_____

NEDRA KOVAL

Administrative Law Judge

Date: July 28, 1994

Footnote: 1 Grievant requested a decision based on the evidence adduced below. Grievant's union representative filed fact/law proposals on April 18, 1994, and HCBE's counsel filed a letter brief on May 2, 1994.

Footnote: 2 The record consists of the pleadings; the adverse level one and two decisions, rendered October 11 and

November 16, 1993, respectively; and the transcript/exhibits of the November 10, 1993 level two hearing.

Footnote: 3 On her filing form, Grievant alleged "violation of but not limited to: West Virginia Code 18-29-1, 2(n)(o)(p); 18A-2-7; 18A-4-5b, 8a, 8b; WV School Trans. Reg. XII-A-3; Civil Rights VII Act of 1964; HCBE practice(s)." However, the bulk of these issues werenot pursued during the level two hearing or in her level four brief and are considered abandoned.

Footnote: 4 While Grievant has not prevailed on the merits of her claim that HCBE acted unlawfully in the instant matter, it must also be noted that, had Grievant prevailed herein, her evidence regarding possible wages and/or with respect to the issue of "the two hour minimum compensation" is deficient. The materials she submitted from a dissimilar case decided in the Hancock County Circuit Court contained nothing in support of her claim that she would be due two hours' pay for forty-five minutes of extra-duty work.