VICTORIA FARLEY and

DAVID DOWNING,

Grievants,

v. DOCKET NO. 94-26-243

MASON COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, Victoria Farley and David Downing, filed their grievance on April 21, 1994 as follows:

> According to Grievance number 94-43, this route was paid a day and 1/2 wages. We are asking for the additional 1/2-day pay for the duties performed. These duties were performed on a rotating basis according to State Law. At the time we were ask [sic] to do the vocational runs, the pay was for one day, but Judith Murphy, Control # 94-43 has since then won a grievance for an additional 1/2-day pay.

The grievance was denied at Levels I and II after hearing, and Respondent waived participation at Level III. Thereafter, the grievants filed a somewhat differently-worded appeal to Level IV on June 14, 1994:

> We filed for an additional 1/2-day pay for Wahama Vocational Runs that we made during a vacancy on that route. Dates involved are March 01-April 01, 1994. The driver that had this route previously filed a grievance and won the extra pay. We performed the same duties, but our grievance at Level I and II was denied. We ask that we be paid on the same basis as the previous driver.

Hearing was held at Level IV on October 13, 1994, at which time this case became mature for decision.

Background

This matter involves bus route 873 in the Mason County School system. Judy Murphy drove route 873 for several years prior to the instant grievance. Route 873 initially constituted driving Wahama High School students to and from the Vocational School. Ms. Murphy's duties expanded when she volunteered to drive the vocational students to their place of work or assignments. She took on these extra duties for the same one (1) day's pay she had been receiving for her regular run.

At some point, Ms. Murphy's duties changed again when a vacancy arose for a run transporting students from Point Pleasant High School to the Vocational School and back again. Ms. Murphy agreed to take on the additional Point Pleasant Run. Ms. Murphy was still receiving 1 day's regular pay, but there was an agreement that Mason County would attempt to get her an extra 1/2 day's pay for assuming that run. Ms. Murphy was never paid the extra 1/2 day's pay and she subsequently filed a grievance in early 1994 for the extra pay.

Ms. Murphy transferred out of route 873 to another position on February 28, 1994. The Board initially was undecided about what to do with that run, and asked substitutes to fill the route temporarily. No substitutes were available to take the run, and the Superintendent instructed Transportation Director Gene Haer to offer the run to the regular Wahama High School drivers for 1/2day's extra pay. Mr. Haer discussed this offer with Grievant David Downing and Mr. Downing informed Mr. Haer that he would be willing to do it for 1 day's extra pay. Mr. Haer offered the route to the Wahama drivers the next day for 1 day's extra pay. The drivers agreed to take the route on a rotational basis and proceeded to drive route 873 for 1 day's extra pay in addition to the 1 day's regular pay they were receiving for their regular runs. The route was the same route, including the Point Pleasant run, that Ms. Murphy had previously driven. G Ex. 1; R Ex. 2. The Wahama drivers, including Grievants, were receiving a total of 2 days' pay for their regular routes plus route 873.

On March 17, 1994, the Wahama drivers submitted a one-line letter to Elizabeth Mattox, Director of Personnel for Mason County, as follows:

> We, the undersigned, mutual agree to have the Wahama Vocational Runs put on a rotational basis as Hannan Vocational.

Level II, Adm. Ex. 2

The Board subsequently decided to fill the route 873 run with a full-time driver and posted the run

on March 24, 1994, specifying that the salary was based upon paygrade "d", which Ms. Mattox testified referred to 1 day's daily pay. R Ex. 1. A driver was hired for the run on April 5, 1994. The Wahama drivers, including Grievants, continued to drive the run on a rotational basis until the new driver began his duties on April 11, 1994.

In the meantime, on March 15, 1994, Ms. Murphy and the Superintendent entered into a settlement agreement wherein theSuperintendent agreed to pay her an extra 1/2 day's pay for having agreed to assume the Point Pleasant vocational run. G Ex. 2. No Level II hearing was held in the Murphy grievance.

When the Grievants learned that Ms. Murphy received an extra 1/2-day's pay for the run, they filed their grievance on April 21, 1994, alleging that they, too, should be paid an extra 1/2-day's pay for the days they ran the same run, which in effect would give them a total of 2-1/2 days' pay.

Discussion

Grievants allege that they are entitled to 1-1/2 days' pay for the days they ran the Wahama Vocational Run previously held by Ms. Murphy, and by failing to pay them the same pay as Ms. Murphy, Respondent has violated W. Va. Code § 18A-4-5b. Grievants allege that it was the drivers' intent in sending the March 17, 1994 letter to Ms. Mattox indicating their willingness to drive route 873 on a rotational basis that they would drive it for 1 day's pay only if they could get the run for the entire year. Conversely, Grievants allege that they had no mutual agreement with Mr. Haer or Ms. Mattox to drive the run for 1 day's pay. See G Ex. 3, Affidavit of David Downing.

Respondent argues that Grievants agreed to run route 873 for 1 day's extra pay, that they were not promised anything but 1 day's extra pay, and they are not entitled to an extra 1/2 day's pay simply because Ms. Murphy was awarded that pay in settlement of her grievance. The undersigned agrees with Respondent.

W. Va. Code § 18A-4-5b provides, in pertinent part, as follows:

> The county board of education may establish salary schedules which shall be in excess of the state minimums 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 assignments and duties within the county: . . .

Grievants argue this statute, as applied to this grievance, means that, because Ms. Murphy was awarded 1/2 day's extra pay in settlement of her grievance, they are entitled to be paid an additional 1-1/2 days' pay for driving the same route. Grievant's reliance on W. Va. Code § 18A-4-5b in this case is misplaced.

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 univeral 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).

Additionally, Grievants would have one believe that once an employee of a board of education is paid a certain amount of money for a specific job responsibility, that the board of education iscommitted thereafter to paying any future employee the same salary. There is nothing in the law which supports this position. A board of education is not prohibited from combining what was once previously designated as a shuttle run with other duties to create a regular, full-time position. Conner v. Barbour County Bd. of Educ., Docket No. 92-01-191 (Feb. 26, 1993). Thus, even if the Point Pleasant run which Ms. Murhpy assumed was considered a supplemental run for which she received additional compensation, there is nothing to preclude Respondent from combining the Point Pleasant run into the regular route 873 run and making it one regular run with a regular rate of compensation.

Finally, Grievants have not established that there was any agreement with or promise by Respondent to pay them an additional 1-1/2 days' pay for agreeing to drive route 873 on a rotational basis. Grievants' agreed to drive the run for 1 day's extra pay and did not grieve the matter until Ms. Murphy was awarded 1/2 day's extra pay as a result of her grievance. Settlement of a grievance does not entitle another like-situated employee to the relief provided pursuant to that settlement agreement. Smith v.
W. Va. Dept. of Health and Human Resources, Docket No. 90-H-470 (Sept. 30, 1991).

Based on the foregoing narrative, it is appropriate to make the following finding of fact and

conclusions of law.

Finding of Fact

Grievants had no promise or contract with Respondent to be paid 1-1/2 day's extra pay for agreeing to drive route 873 on a rotational basis.

Conclusions of Law

1. It is incumbent upon the grievants to prove the allegations of their grievance by a preponderance of the evidence. Black v. Cabell County Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989).

2. Settlement of a grievance does not entitle another like-situated employee to the relief provided pursuant to that settlement agreement.

3. Grievants have not established a violation of the uniformity provision of W. Va. Code § 18A-4-5b.

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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MARY JO SWARTZ

Administrative Law Judge

Dated: December 14, 1994