JOANN FOWLER AND EADKER RUSSELL, .

.

Grievants, .

.

v. . Docket No. 94-26-037

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MASON COUNTY BOARD OF EDUCATION, .

.

Respondent. .

D E C I S I O N

This is a grievance by Joann Fowler and Eadker Russell (Grievants), school service personnel employed as Bus Operators by the Mason County Board of Education (MCBE). Grievants complain they are not being properly compensated for their daily mid-day supplemental assignments transporting kindergarten students. Grievants initiated their grievance at Level I on November 16, 1993. Their immediate supervisor could not resolve the grievance at that level and Grievants appealed to Level II where a hearing was conducted on December 14, 1993. MCBE's Superintendent of Schools rendered an adverse decision at Level II on January 3, 1994 and Grievants appealed to Level III where their appeal was waived by MCBE on January 25, 1994. Grievants elected to appeal to Level IV and a hearing was held in this Board's office in Charleston, West Virginia, on April 14, 1994. Following receipt of timely post-hearing submissions from both parties, this matter becamemature for decision upon the expiration of the time set for optional reply briefs on May 26, 1994.

The salient facts in this case are not significantly controverted, thus warranting the following findings of fact:

FINDINGS OF FACT

1. Grievants are employed by the Mason County Board of Education (MCBE) as regular

full-time Bus Operators.

2. Each Grievant drives a daily morning and afternoon bus run to transport students to certain MCBE schools. For these regular runs, Grievant Fowler is paid a daily rate of $77.35 while Grievant Russell receives a daily rate of $84.55.

3. Grievants and two other Bus Operators, Pam Simpkins and Robert Russell, bid upon and received supplemental mid-day bus runs to transport kindergarten students for MCBE.

4. Grievants Fowler and Russell are compensated one-half day's regular salary for their daily kindergarten runs, $38.68 and $42.28, respectively. Ex 5 & 6 at L II.

5. Mr. R. Russell and Ms. Simpkins are similarly compensated one-half day's regular salary for their respective mid-day kindergarten runs.

6. Mr. R. Russell's mid-day run takes approximately 38 minutes and covers approximately 5 miles within the city of Point Pleasant, West Virginia. See G Ex 1. (Of the four mid-day runs at issue, Mr. R. Russell's route begins closest to MCBE's bus garage.)

7. Ms. Simpkins' mid-day run takes approximately one hour and twenty-eight minutes and covers approximately 15 miles per day. See G Ex 2.

8. Grievant Russell's mid-day run takes approximately three hours and twenty minutes and covers approximately 75 miles. See G Ex 3.

9. Grievant Fowler's mid-day run takes approximately three hours and fifty minutes and covers approximately 81 miles. See G Ex 5.

10. During the 1992-93 school year, two drivers were assigned to each of the routes currently assigned to Grievants Fowler and Russell. One position was eliminated from each route after the 1992-93 school year and the routes were consolidated into their present form before Grievants bid upon them.

DISCUSSION

Grievants allege MCBE is failing to maintain uniformity in the rates of pay extended to similarly situated employees performing like assignments as required by 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....**

In Miller v. Lincoln County Board of Education, (See footnote 1) this Board addressed a similar situation regarding a bus operator whose mid-day vocational runs required him to perform driving duties for approximately two hours and twenty minutes per day while other bus operators driving similar mid-day vocational runs were only required to drive for forty minutes, one hour and twenty minutes and one hour and fifty minutes, while receiving the same rate of pay. Miller, supra, at 7. The grievant in Miller was determined to be receiving uniform pay in accordance with W. Va. Code § 18A-4-5b. Grievants here attempt to distinguish Miller on the basis that the disparity between their hours worked and the hours worked by their colleagues performing like duties is greater. Notwithstanding this factual distinction, the undersigned finds that the Grievants' situation is controlled by this Board's holding in Miller.

Grievants are receiving the same rate of pay as other employees in their classification performing like, though not identical, work. W. Va. Code § 18A-4-5b is directed toward employees who perform comparable work but receive dissimilar pay. Grievants here are receiving equal pay but are being required to perform a greater amount of comparable work. Grievants have not identified any bus operators performing similar work but receiving greater pay. While Morgan v. Pizzino (See footnote 2) requires school laws to be construed in favor of the employees it was designed to protect, itdoes not require reversing the direction of a remedial statute to attain the result Grievants are seeking. Thus, Grievants have not demonstrated a violation of § 18A-4-5b nor have they presented any other viable theory to support the additional compensation they request.

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, Grievants must establish the 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. The only MCBE Bus Operators who are similarly situated to Grievants are receiving the same pay for their supplemental runs, i.e., one-half day's regular pay, in compliance with W. Va. Code § 18A-4-5b. Miller v. Lincoln County Bd. of Educ., Docket No. 89-22-654 (June 28, 1990). See McCarty v. Pocahontas County Bd. of Educ., Docket No. 92-38-425 (Dec. 31, 1992).

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: October 6, 1994

Footnote: 1Docket No. 89-22-654 (June 28, 1990).

Footnote: 2256 S.E.2d 592 (W. Va. 1979).