LINDA S. LANGMYER

v. Docket No. 94-35-024

OHIO COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Linda Langmyer is employed by Respondent Ohio County Board of Education (OCBE) as a school bus aide or "moni tor" on a handicapped students' bus. This action involves an amendment to W.Va. Code §18A-4-8, effective April 8, 1993. Formerly, the statute required school boards to pay a salary supplement only to custodians who had to work a split schedule; now, certain other service employees, including office workers and certain aides, qualify for the wage enhancement. Grievant, assigned some office duties, claims she is entitled to the salary boost and seeks additional compensation, retroactive to October 1993. OCBE argues that Grievant is not eligible because all of her work is related to the transportation of students. (See footnote 1)

The facts in this case are not in contention. Grievantworks a split schedule as a bus monitor on morning and afternoon bus runs on a daily basis. OCBE's job specification for "Bus Aide" states as a job goal that the worker will "assist in providing safe transportation" for students. Nearly all of the nineteen listed "Duties" relate to tasks performed on a school bus, such as, maintaining discipline, helping disabled students, and assisting with emergency management and evacuation proce dures. Notably, Grievant is required to work an eight-hour day, as are most of OCBE's service personnel.

After the start of the 1993-94 school year, Grievant's work hours fell short by a few minutes per day. In order to cure Grievant's time shortage and bring her overall work hours up to par, Grievant was assigned to perform certain clerical duties in OCBE's transportation office (main bus terminal) after the completion of her morning run. While there, Grievant logged and typed route changes when students moved to a new county location or left the school system, entered data into a computer and performed related clerical chores.

OCBE credited Grievant's travel time between her assigned bus garage and the transportation office and paid gasoline milage for her travel between the two sites. OCBE also accommo dated Grievant's desire to control her own work schedule at the transportation office by allowing her to report for work on whatever days she chose and to extend her work time those days to cover the entire week's shortage. She felt she could satisfy the deficiency and accomplish more by working

longer periods one or two days per week than if she worked just a few minutes everyday of the week. At some point, Grievant filed this claim seeking the salary boost provided by Code §18A-4-8.

As noted previously, this dispute involves the amendment to W.Va. Code §18A-4-8 which increased the classes of service employees who must receive supplemental pay when assigned to perform their duties under a split working schedule. The newly- crafted portion of the statute, with emphasis on the proviso especially pertinent to Grievance, is as follows:

Custodians, aides, maintenance, office and school lunch employees required to work a daily work schedule that is interrupted, that is, who do not work a continuous period in one day, shall be paid additional compensation which shall be equal to at least one eighth of their total salary as provided by their state minimum salary and any county pay supplement, and payable entirely from county funds: **Provided, That when engaged in duties of transporting students exclusively, aides shall not be regarded as working an interrupted schedule**.

In Grievant's view, she qualifies for the salary increment because she is an aide and definitely works an interrupted schedule, and her duties include those other than solely "trans porting" students. Grievant avers that she does not mind working all of the hours required, but that she prefers working directly with students on the bus. (See footnote 2) OCBE's position is that Grievant is not eligible for the salary supplement mentioned in Code §18A-4-8 because her duties in the transportation office are directly related to the process of transporting students and her job description allows for assignment to unspecified "otherduties."

Grievant is entitled to the supplemental wages described in Code §18A-4-8, as amended. The key here is an interpretation of the phrase, "[t]hat when engaged in duties of transporting students exclusively, aides shall not be regarded as working an interrupted schedule," in light of Grievant's particular circum stances.

Generally, aides may be utilized for three separate support functions, instructional, clerical or the transporting of students. In this case, Grievant's duties in the transportation office are unmistakably traditional clerical tasks. Simply because Grievant works in a transportation office with transpor tation-related data does not change the basic nature of the work she does there. Thus, she does not fall under the exception which disqualifies aides who are "engaged in duties of trans porting students exclusively."

In its level four post-hearing brief, OCBE maintains that if Grievant should prevail on her

complaint, her damages must be limited to those days Grievant actually performed clerical duties in the transportation office. According to OCBE, Grievant ceased working in the transportation office on or about March 25, 1994 when Grievant's work hours on the bus were satisfied as the result of the addition of a new student on her bus route. OCBE's assertion that Grievant no longer performs duties in the transportation office is accepted as true, sinceGrievant's counsel has not filed any objections to date. (See footnote 3)

Therefore, all that remains in this case is a determination of what relief Grievant is due in the form of back wages. This brings into question the statutory mandate about how the extra salary for covered split-schedule employees is derived. The statute states that qualifying employees "shall be paid addi tional compensation which shall be equal to at least one eighth of their total salary as provided by their state minimum salary and any county pay supplement."

Notably, the statute does not define "total salary." Given a situation in which the covered worker has a interrupted schedule each and every workday, it would be reasonable to make payments throughout the employment term and to calculate the additional wages on the basis of one-eighth of the employee's annual total salary.

However, where the employee is qualified for only one or two days of the week and excepted for the remainder, it would be equally reasonable to pay the supplement for the qualifying days only, based upon one-eighth of the worker's daily total salary. To find otherwise would be vastly unfair to Grievant's bus aide co-workers who spend five days per week assisting students on a bus over a daily ten-hour span and do not receive the additional compensation. Grievant should not receive the supplement on thedays she performs the same duties as her similarly-situated co- workers and assists with the transporting of students on a full- time basis.

In addition to the foregoing, the following findings of fact and conclusions of law are made.

Findings of Fact

1. Grievant, employed by OCBE as a split-schedule school bus aide (monitor), is required to work eight hours per day.

2. During at least a portion of the 1993-94 school year, Grievant's work time on her designated bus routes fell short of the required eight hours.

3. To cure the work time deficiency, OCBE assigned Grievant to perform clerical duties in the transportation office and permitted her to "make-up" the work on just one or two days per week.

Conclusions of Law

1. "Custodians, aides, maintenance, office and school lunch employees required to work a daily work schedule that is interrupted. . .shall be paid additional compensation which shall be equal to at least one eighth of their total salary. . .Provided, That when engaged in duties of transporting students exclusively, aides shall not be regarded as working an inter rupted schedule." W.Va. Code §18A-4-8 (1993).

2. "The 'one eighth' total salary designation in Code §18A-4-8 (1993) likely relates to an eight-hour work day. Bus operators and school bus aides who work an interrupted work schedule generally do not work an eight-hour day. . .." Gue v.Morgan County Bd. or Educ. Docket No. 93-32-288 (Apr. 8, 1994).

3. Regardless of Grievant's interrupted work schedule or the amount of hours she is required to work, she is specifically excepted from receiving Code §18A-4-8's salary boost when she is "engaged in duties of transporting students" on an exclusive basis; therefore, she bears the burden of proof in demonstrating a violation of the statute. Id.

4. Inasmuch as OCBE assigned Grievant to perform clerical aide duties in the transportation office one or two days a week in order to bring her overall work hours up to the required amount, OCBE violated Code §18A-4-8 (1993) when it refused to pay Grievant the salary supplement in issue on the days when she actually performed the clerical duties.

Accordingly, the grievance is **GRANTED**, and Respondent Ohio County Board of Education is Ordered to pay Grievant back wages for the days in question.

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

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NEDRA KOVAL

Administrative Law Judge

Date: May 24, 1994

Footnote: 1 Grievant did not prevail on her complaint at the lower grievance levels. She thereafter advanced an appeal to four where hearing was conducted on March 23, 1994. Post-hearing fact/law proposals were filed by OCBE and Grievant on May 4, 1994 and May 16, 1994, respectively.

Footnote: 2 Grievant also cited Morgan v. Pizzino, 286 S.E.2d 592 (W.Va. 1979), and argued that the portion of Code §18A-4-8 which provides enhanced economic benefits for certain workers on a split work schedule must be liberally construed in favor of the employees.

Footnote: 3 OCBE attached several documents to its post-hearing brief such as OCBE's Bus Aide job description, already of record, and copies of Grievant's travel expense account submissions and time cards and the milage reimbursement checks which OCBE issued to Grievant. However, the parties did not request that the record be kept open at the conclusion of the level four hearing. Presumably, the items submitted in OCBE's brief were available at the time of the level four hearing.