KAREN SUE CONNER

v. **Docket No. 92-01-457**

BARBOUR COUNTY BOARD OF EDUCATION

D E C I S I O N

This grievance primarily involves the extent of a school bus operator's authority to determine student seating assignments. Karen Sue Conner (hereinafter Grievant), a bus operator employed by the Barbour County Board of Education (hereinafter BOE), asserts that she has the sole and exclusive authority to establish seating assignments on her school bus. The BOE disputes that contention and argues that its Director of Transportation has the discretionary authority to change student seating arrangements made by a bus operator.

The grievance form filed at level four on November 23, 1992, contains the following statement of grievance: (See footnote 1)

> Grievant threatened with suspension by person not having authority to do so. Grievant foundto be in error without being given benefit of due process. Dispute over discipline authority on a school bus. Reprisal; harassment; retaliation.

The grievance evaluator at level two concluded that the transportation director's decision regarding student seating arrangements appeared to have been based upon recommendations made by school personnel and did not appear to have been rendered in reprisal for Grievant's filing previous grievances.

A short time prior to the events that prompted this grievance, Mr. R. Edward Larry, the Director of Transportation, contacted Grievant by telephone to discuss the possibility of Grievant making an additional bus stop to pick up and drop off a student directly in front of her home. Grievant testified that during that conversation she explained to Mr. Larry that the student only had to walk a short distance from her house to the current bus stop, and Mr. Larry had remarked that making an

additional stop seemed ridiculous. To Grievant's surprise, however, the student involved told Grievant when she boarded the school bus that afternoon that Grievant would have to stop the bus in front of her house the next morning. This resulted in a brief verbal clash between Grievant and the student about where the student would be picked up the next morning.

About two days later, Mr. Larry informed Grievant that she was to commence picking up and dropping off the student in front of her house. Significantly, Grievant testified that when she discussed the matter with Mr. Larry at that time he explained the change had been recommended by school counselors who were concerned that thestudent might otherwise drop out of school again (Level Two Tr. at 5).

Following this discussion, Grievant and the student had another argument on the school bus concerning the reason Mr. Larry had required Grievant to stop the bus directly in front of the student's home. Because the student had spoken to Grievant in a rude and disrespectful manner on two occasions, Grievant reassigned her to seat near the front of the bus. This grievance was filed after Mr. Larry directed Grievant to return the student to her original seating assignment in the back of the bus. When Grievant objected to Mr. Larry's seating directive and asserted that she had the right to determine student seating assignments, he advised her that she would be suspended if she did not comply.

After the foregoing events occurred, Grievant initiated the grievance process by requesting a conference with Mr. Larry. At the conference Grievant complained that she was not consulted by Mr. Larry prior to the time the decision was made to return the student to her original seating assignment. As a result of this complaint, Mr. Larry wrote a letter to Grievant explaining that if a similar situation should occur again he would try to call her or put a note on her bus about the change. He further stated in the letter that the seating assignment matter was an administrative decision he made in the interest of the student.

Findings of Fact

Based upon all the evidence, the undersigned makes the following Findings of Fact.

1. Grievant has been employed as a bus operator by the BOE since 1976.

2. Mr. Larry, as the Director of Transportation, had direct supervisory authority over the grievant and other bus operators (BOE Exh. B).

3. There is no evidence that Mr. Larry's actions in requiring an additional bus stop and in changing a student's seating assignment were taken in retaliation or reprisal for Grievant having filed previous grievances against the BOE. (See footnote 2) Likewise, there is no evidence that Mr. Larry's actions were designed or intended to harass Grievant.

4. To the contrary, the testimony reveals that Mr. Larry, after discussions with professional personnel and the parents of a student, issued his directives to Grievant for the legitimate purpose of attempting to keep a student from dropping out of school a second time.

Conclusions of Law

Based upon all matters of record, the undersigned reaches the following Conclusions of Law.

1. W. Va. Code, 18A-5-1 [1983], provides, in pertinent part, that a school bus driver stands in the place of the parent orguardian and "shall exercise authority and control over the children while they are in transit to and from the school." This section of the law does not provide and was not intended to provide bus operators with the sole and exclusive authority to discipline students for improper conduct on a school bus and/or to determine student seating assignments.

2. The documentary evidence introduced does not establish that Grievant has the sole and exclusive authority to assign seats on school buses. In this case the Director of Transportation had a rational basis for rescinding Grievant's directive that moved the student to a seat near the front of the bus.

3. Grievant has not established a case of reprisal as defined in W. Va. Code, 18-29-2(p). Grievant did not introduce evidence establishing a causal connection between the protected activity and the conduct complained of in this case. Furthermore, the BOE has presented evidence of legitimate, nondiscriminatory reasons for its actions, which Grievant has not disproved or shown to be pretextual in nature.

Accordingly, this grievance is **DENIED.**

Either party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Barbour 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 Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate court.

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RONALD WRIGHT

Administrative Law Judge

Date: March 15, 1994

Footnote: 1 After denials at levels one and two, the BOE waived participation at level three. Grievant appealed and a level four hearing was held in Elkins on September 27, 1993. Both Grievant and the BOE introduced four exhibits at that hearing.

Footnote: 2 Whether Mr. Larry's actions were in retaliation for Grievant's filing a prior Human Rights Commission complaint is an issue more properly decided by that agency. In Norton v. W. Va. Northern Community College, Docket No. 89-BOR-503 (Apr. 28, 1993), it was concluded that the Legislature did not intend to vest the Grievance Board's hearing examiners with authority to adjudicate violations of the West Virginia Human Rights Act, W. Va. Code, 5-11-1 et seq.