REX TONEY,

Grievant,

v. DOCKET NO. 95-22-099

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Rex Toney, filed this grievance on or about September 14, 1994, alleging violations of W. Va. Code §§ 18A-4-8a and 18-29-2, the grievance statute, in regard to the addition of miles and work time to his regular bus run for school year 1994-95. Grievant seeks compensation for the additional time and/or return to the contractual terms of the regular run. Following adverse decisions at the lower levels, Grievant perfected an appeal to Level IV on March 6, 1995, and requested that a decision be rendered on the lower level record. The parties had the option of filing proposed findings of fact and conclusions of law by March 20, 1995. Grievant timely filed his proposals; no proposals were received from the Respondent, and this case became mature for decision on March 20, 1995.

It must be noted that the lower level record is somewhat sparse; nevertheless, the following findings of fact have been properly deduced.

Findings of Fact

1. Grievant has been employed by Respondent as a bus operator for seventeen years.

2. Grievant is assigned to the Harts High School bus transportation area, which includes the Ferrellsburg Elementary School.

3. Most of the bus runs in the county consist of two (2) morning runs, a high school run and an elementary run, and one (1) evening run, which includes both schools, or vice versa.

4. Grievant had one run in the morning and one run in the evening, both including the high school and the elementary school. 5. Respondent's philosophy is to configure the bus routes to accommodate changes in the opening and closing times of its schools.

6. Consistent with that philosophy, and in an attempt to create some flexibility in the transportation system, the bus operators in Lincoln County and Respondent entered into a written agreement approximately three years ago, which in essence allowed the bus operators to keep their existing runs from year to year without the need for posting every year. In return, the agreement allowed Respondent the flexibility to make necessary changes in the bus routes to meet the needs of the students of Lincoln County. The agreement allotted a thirty minute extension of time to thedrivers' regular routes to accommodate these necessary changes. Tr., pp. 12-13. (See footnote 1)

7. The bus operators, including Grievant, signed the agreement. Tr., p. 22.

8. Shortly before the beginning of the 1994-95 school year, Johnny Adkins, Transportation Director for Lincoln County Schools, was notified that the Ferrellsburg Elementary School had requested that its closing time be changed. Tr., p. 6.

9. Initially, the requested closing time would require the drivers who picked up the elementary school children to take them to the high school and wait approximately 20 minutes on the bus for the high school to dismiss, otherwise, there would not be enough time for the drivers to take the elementary children home and get back to the high school by dismissal time. Tr., p. 6.

10. After some discussion, it was agreed that Ferrellsburg Elementary would close at approximately 2:50 p.m. in order for the bus operators to take the children home and be back at the high school by dismissal time. Tr. p. 6.

11. A meeting was held with the drivers to discuss how they would accommodate the Ferrellsburg Elementary school children as a result of the altered closing time. Tr., p. 7.

12. Grievant's afternoon run, prior to the subject change, consisted of driving from his home, past Ferrellsburg Elementary School, to Harts High School to pick up the high school studentsfrom approximately 3:15 to 3:30 p.m. (Grievant's home is approximately 5 miles from Ferrellsburg Elementary School. Tr., p. 18.) From the high school, Grievant proceeded to Ferrellsburg Elementary School, picked up the elementary school children, and then proceeded to drop off all the students. Although not specifically testified to, it appears that Grievant returned home from his afternoon run at approximately 4:45 or 5:00 p.m. Tr., pp. 14-15.

13. As a result of the change in schedule, Grievant now leaves his home and proceeds to Ferrellsburg Elementary School first to pick up the children at approximately 2:50 p.m. Grievant takes the elementary children home and is back at Harts High School between 3:15 and 3:30 p.m. Grievant picks up the high school students, takes them home, and is back at Harts High by 4:15 or 4:30 p.m., in order to make an extracurricular run at 4:30. Grievant testified that he gets home about one half hour earlier than he did before the change. Tr., pp. 14-15.

14. Grievant's regularly scheduled work hours in the morning are from 6:30 a.m. to 9:00 a.m. Grievant's morning bus run begins at 6:30 a.m. and ends at 7:50, a total of 1 hour and 20 minutes.

15. Grievant's regularly scheduled work hours in the afternoon are from 2:00 p.m. to 5:00 p.m. Grievant's afternoon run now begins at 2:50 p.m. and ends at approximately 4:30 p.m., a total of 1 hour and 40 minutes.

16. It is unclear from the record when the change in Grievant's schedule actually occurred, except that the change occurred sometime shortly after the beginning of the school year.

17. The additional run to Ferrellsburg Elementary in the evening fell within his three hour afternoon work schedule.

Discussion

Grievant alleges Respondent violated W. Va. Code § 18A-4-8a which states, in pertinent part:

> No service employee shall have his or her daily work schedule changed during the school year without such employee's written consent. . . .

Grievant alleges that the addition of the elementary school run to his regular route constitutes an unlawful change in his daily work schedule and violated the terms of the agreement with Respondent. (See footnote 2)

Respondent argues that no violation occurred; that historically, bus schedules reflect the changes of the schools in regard to starting and stopping times and there have been adjustments periodically as well as yearly. These adjustments reflect either two runs in the morning or one in the evening. The bus operators agree to this change because it stays within the constraints of the work day and permits them to retain the same bus routes year after year without the necessity of posting.

Grievant alleges it takes an additional one and a half (1-1/2) hours and 32 miles to make the

"additional" run. The undersigned administrative law judge finds it impossible to determine how Grievant arrived at those figures. Grievant's morning run, which includes both Harts High School and Ferrellsburg Elementary School, takes a total of 1 hour and 20 minutes. Assuming, for the purpose of argument, that Grievant's previous afternoon run was a mirror image of the morning run, then that run also took approximately 1 hour and 20 minutes. Grievant's afternoon run now takes 1 hour and 40 minutes. Thus, there is at most a difference in driving time of 20 minutes between Grievant's prior run and his current run.

In addition, Grievant picks up the Ferrellsburg Elementary children at 2:50, takes them home, and is back at Harts High School by at least 3:30 p.m. Therefore, it must take approximately 15 minutes each way to complete the elementary school run. Grievant contends that the "new" run adds 32 miles to his route, which given the above calculation, would mean approximately 16 miles each way for the elementary school run. Again, the undersigned finds it difficult to calculate how Grievant could travel 16 miles each way, with stops, in 15 minutes, and still stay within the legal speed limit.

It appears from all the undersigned can deduce from the record that the maximum time added to Grievant's run as a result of the change in his schedule is 20 minutes, well within the 30 minute extension allowed for in the agreement.

Moreover, slight alterations of a bus operator's driving schedule during a school year may be necessary due to need. Smith v. Lewis County Bd. of Educ., Docket No. 21-88-043-3 (Dec. 30, 1988). Such alternations are not per se violations of Code § 18A-4-8a; such alterations must be analyzed on a case by case basis. Roberts v. Lincoln County Bd. of Educ., Docket No. 92-22-131 (Aug. 31, 1992).

A county board of education must have freedom to make at least reasonable, small changes to a bus operator's daily work schedule within the parameters of his contract, many of which cannot reasonably be effected until shortly before school starts for pupils in any given year, at the earliest. Froats v. Hancock County Bd. of Educ., Docket No. 89-15-414 (Dec. 18, 1989). In the instant case, Respondent discovered that Ferrellsburg Elementary was changing its closing time the Thursday before school started. The Transportation Director worked with the Principal at Ferrellsburg to make the change as reasonable as possible, and in a manner which would be least cumbersome for students and drivers. It appears that the actual change in schedule occurred shortly after the school year began, and was done in a reasonable manner.

The record indicates that the changes were made for proper and rational reasons at the earliest practicable point in the new school year. Moreover, this alteration in Grievant's bus route did not extend his workday beyond the parameters of his current contract. See Conner v. Barbour County Bd. of Educ., Docket No. 93-01-543/544 (Jan. 31, 1995).

Conclusions of Law

1. In order to prevail, a grievant must establish the truth of his allegations by a preponderance of the evidence. Black v. Cabell County Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989).

2. Grievances contending that a bus operator's route has been changed in violation of W. Va. Code § 18A-4-8a, must be decided on a case-by-case, fact specific basis. Roberts v. Lincoln County Bd. of Educ., Docket No. 92-22-131 (Aug. 31, 1992).

3. Notwithstanding the language in W. Va. Code § 18A-4-8a restricting changes in a service employee's daily work schedule, "a county board of education must, at least between school terms, have freedom to make at least reasonable, small changes to a bus operator's daily work schedule, within the parameters of his contract, many of which cannot reasonably be effected until shortly before school starts for pupils in any given year." Froats v. Hancock County Bd. of Educ., Docket No. 89-15-414 (Dec. 18, 1989).

4. Where, as here, alterations in a bus route are made shortly after the beginning of the school year based upon factors largely beyond the school board's control, such as an elementary school changing its closing time; the schedule in question is basically the same schedule the operator had before, albeit in different order; the actual "daily work schedule" for which the employee is compensated has not been exceeded; and the extension falls within the specified terms of a signed written agreement between the bus operators and the school board, such alterations do not violate W. Va. Code § 18A-4-8a.

Accordingly, this Grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln 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: March 31, 1995

Footnote: 1 *The actual agreement was not entered into evidence at the lower level hearing.*

Footnote: 2 *Grievant also started picking up one high school student from Boone County in the morning and taking her home in the evening, adding a total of four miles and fifteen minutes to his run. Although not clear whether this change is also the subject of this grievance, no mention is made of it in Grievant's proposed findings of facts and conclusions of law, nor in Grievant's representative's argument on the record. Therefore, it is assumed that this change is not a part of the instant grievance.*