NORMAN LILLY, VINCE YARBER

and CARL MOTEN,

Grievants,

v. **Docket No. 95-10-114**

FAYETTE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, Norman Lilly, Vince Yarber, and Carl Moten, argue the Fayette County Board of Education ("FCBOE") violated W. Va. Code §§18-29-2(m) and 18A-4-5b when some bus operators were required to work on faculty senate days and others were not. (See footnote 1) Grievants seek "equal time of[f] with pay[,] or day for day compensation for days they worked and . . . others did not." This grievance was denied at Levels I and II and FCBOE waived participation at Level III. The parties agreed to submit the case on the record, and this grievance became mature for decision on May 17, 1995, after the submission of proposed findings of fact and conclusions of law.

The facts of this case are not in dispute.

Findings of Fact

1. Grievants are employed on a regular, full-time basis as bus operators for FCBOE.

2. During the 1993-94 school year, Respondent gave individual schools the option of having all day faculty senate meetings instead of half day meetings.

3. Over the course of the 1993-94 school year, several schools requested and received permission for all day faculty senates, thus these schools did not need bus transportation for students on those days.

4. Grievants' schools still had half day faculty senates, and Grievants were required to provide transportation to students, albeit on a shorter schedule.

5. Apparently, during the 1993-94 school year, bus operators whose schools had all day

faculty senates did not have to work those days. The last faculty senate day of that school year was June 9, 1994, and this was the last day Grievants worked while some bus operators did not.

6. On September 13, 1994, prior to any 1994-95 faculty senate days, Mr. R. D. Clagg, Transportation Coordinator for FCBOE, sent a memo to the all day faculty senate bus drivers. This memo required these drivers to report on faculty senate days to clean and service their buses. This time was "to serve in lieu of a.m. and p.m. runs," and the time was to be recorded on the time sheets. Resp. Exh. #1.

7. On November 14, 1994, this memo was reissued to include all drivers whose schools had been granted all day faculty senate status since September 13, 1994.

8. On December 20, 1994, FCBOE opted to extend all day faculty senates county-wide.

9. This grievance was filed on November 14, 1994.

Issues

Grievants make two arguments. One, they have been discriminated against, as they were treated differently from other drivers, and two, FCBOE violated the uniformity of pay requirement listed in W. Va. Code §18A-4-5b. Respondent argued, as it argued at Level II, that this grievance was untimely filed. Respondent also argued W. Va. Code §18-5A-3 grants local school improvement councils the authority to request waivers, such as all day faculty senates, from the school board to meet certain local school needs and circumstances.

Discussion

W. Va. Code §18-29-4(a) requires a grievance to be instituted "within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance." The last occurrence of this continuing practice, some bus operators having to work while others did not, was on June 9, 1994. Additionally, Grievants' testimony indicated they were aware of this practice during the 1993-94 school year.

Accordingly, this grievance was untimely filed. This grievance was filed on November 14, 1994, and counting days pursuant to W. Va. Code §18-29-2(b) (See footnote 2), this grievance was filed approximately fifty-eight days after the last occurrence of a continuing practice. (See footnote 3)

In addition to the foregoing discussion, the following conclusions of law are made.

Conclusions of Law

1. A grievance must be initiated within fifteen days of the most recent occurrence. W. Va. Code §18-29-4; Mahon v. Mingo County Bd. of Educ., Docket No. 94-29-425 (Feb. 28, 1995).

2. This grievance was filed approximately fifty-eight days after the last occurrence of the event, thus it is untimely. See W. Va. Code §18-29-2(b).

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Fayette 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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JANIS I. REYNOLDS

Administrative Law Judge

Dated: June 29, 1995

Footnote: 1When filed at Level I, this grievance had two issues. The other issue was resolved below and is not considered as part of the appeal to Level IV.

Footnote: 2W. Va. Code §18-29-2(b) states:

"Days" means days of the employee's employment term or prior to or subsequent to such employment term exclusive of Saturday, Sunday, official holidays or school closings in accordance with section two [§ 18A-5-2], article five, chapter eighteen a of this code.

Footnote: 3Since this grievance is found to be untimely, the other issues raised by the parties need not be addressed.