

**DONALD RAY SCOTT, et al.,**

**Grievant,**

**v.**

**Docket No. 95-50-566**

**WAYNE COUNTY BOARD OF EDUCATION,**

**Respondent.**

### **DECISION**

Grievants ([See footnote 1](#)) are bus operators for the Wayne County Board of Education ("WCBOE"). They are grieving a change in the way they receive their additional pay checks, and allege this change violates an Agreement signed by them and WCBOE. They request as relief that WCBOE be required to return to the former system of issuing a separate, monthly paycheck for their extra-duty and extra-curricular runs. This grievance was denied at Levels I and II, and waived by WCBOE at Level III. The grievance was then appealed to Level IV, where the parties agreed to submit the case on the record. This case became mature for decision on April 12, 1996, the deadline for the proposed findings of fact and conclusions of law.

The facts in this case are not in dispute and will be set out below.

#### Findings of Fact

1. Grievants are all bus operators for WCBOE.

2. In July 1993, WCBOE and the Wayne County Bus Drivers Association entered into a Memorandum of Agreement ("Agreement") which incorporated multiple understandings between the parties.

3. Item H under the subject of "Extra Trips" states that bus operators are to be paid for these trips on the 30th of each month by a separate check.

4. WCBOE complied with this portion of the Agreement until July 1, 1995, when a new payroll

system, mandated by the Legislature, was put into effect. Currently, Grievants receive two paychecks a month instead of the previous three. The pay for the additional trips is included in these two checks.

5. During the 1994 regular session of the Legislature, W. Va. Code §18-2-26 was amended to require all counties to join the uniform integrated regional computer information system ("WVEIS") by July 1, 1994. WCBOE began using this system on July 1, 1995.

6. Claude Smith, Treasurer for WCBOE, testified at Level II that the new system was not designed for the issuance of separate checks. Counties must use this payroll software and cannot use other programs.

7. All taxes within this program are designed to be computed on a semi-monthly basis, and are in compliance with the guidelines mandated by the Internal Revenue Service. Level II hrg., Mr. Smith.

8. In a memo from Kim Harvey, Consultant for WVEIS, she detailed why the issuing of separate checks was not feasible. This memo was in response to a request from Mr. Smith about issuing separate checks. She stated that the tax rate on these checks would be dramatically higher, twenty-eight percent, and the system is not designed for the issuance of extra checks issued at this flat tax rate. She clarified this statement by saying that the payroll department would have to change the tax table before every payroll, the withholding table for semimonthly pay from Circular E would have to be entered every month, all tax lines on the tax table would have to be deleted each time and a new table to withhold the flat tax rate reentered, and all these changes would increase the possibility of error and the work load of the payroll department. Additionally, any error could result in serious legal complications. Exh. D.

9. It would not be illegal for WCBOE to issue separate checks.

10. On June 15, 1995, along with the paychecks, Mr. Smith sent all extended contract employees, including the bus operators, a memo explaining that WCBOE would no longer be issuing the separate checks, and why this change had been implemented. Mr. Smith had no knowledge of the Agreement between the operators and WCBOE.

11. No affected employees objected to this new pay process until a grievance was finally filed in early November 1995.

12. In the Agreement, Item C of the "Miscellaneous" section, states "[a]ll present practices shall continue in effect unless circumstances require changes for the effective operation of the school system. If such changes occur the School Board agrees to meet with and consult with the Association

prior to finalizing said changes."

13. This Agreement also states that any issue that is not addressed in the agreement "shall be determined by (1) past practice, (2) W. Va. State Code . . . ". 14. WCBOE did not schedule a meeting with the bus operators prior to the change in the payroll procedure.

15. Grievants were unable to state clearly how they were harmed by the change in payment.

### Discussion

Grievants basically wish that a third pay check be issued in the same manner as before, even though the State Legislature has mandated change, and they have failed to demonstrate any reason to continue such a difficult and complex practice. Further, to accede to their wishes would interfere with "the effective operation of the school system", and would be contradictory to the terms of the Agreement. Agreement at 10. Thus, Grievants' arguments are without merit. Although WCBOE technically violated the Agreement when they did not meet with the bus operators, WCBOE did send them a memo prior to the change explaining it. As no response was received, WCBOE had no reason to suspect that there was any problem with the change, and a meeting was needed. Additionally, a meeting would not have prevented the outcome required by W. Va. Code §18-2-26.

It is important to note that the Agreement between the parties is superseded by W. Va. Code §18-2-26 which mandated the changes carried out by WCBOE. The agreement indicates also that unaddressed issues would be determined either by past practice or appropriate Code Sections. The agreement did not address what the parties should do if the Legislature required a change in any of the past practices. Thus, in this instance, W. Va. Code §18-2-26 controls the method of payment for the operators' additional checks.

The above-discussion will be supplemented by the following Conclusions of Law.

### Conclusions of Law

1. In a non-disciplinary grievance, Grievants have the burden of proving their case by a preponderance of the evidence. Napier v. Logan County Bd. of Educ., Docket No. 94-23-541 (Apr. 25, 1995).

2. When the Legislature mandated a change in WCBOE's payroll system, Grievants' former

method of payment interfered with the effective operation of the school system, and thus, pursuant to the Agreement, permitted a changed in a past practice. See W. Va. Code §18-2-26.

3. Grievants failed to prove any violation of the Agreement, as statutory law governs when answers are needed to unaddressed issues.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wayne 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: May 31, 1996**

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[Footnote: 1](#)

Grievants are Donald Scott, Jerry Damron, Roger Maynard, Howard Meddings, Howie Damron, Richard Wall, Sandy Maynard, Robert Robertson, James Brooks, Arnold Justice, Glen Fuller, Diana Ramey, James Dyer, Willis Marcum, Charles Smith, Kevin Bradshaw, Paul McComas, Carroll Adkins, Karen Thompson, Arlene Runyon, Cliff Maynard, Robert Noble, and Billy Adkins.