WILLIAM K. DOSS,

Grievant,

v. Docket No. 96-26-108

MASON COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, William K. Doss, is a bus operator for Mason County Board of Education ("MCBOE"). He alleges MCBOE failed to follow proper procedures and violated W. Va. Code §§18A-2-6, 18A-2-7, and 18A-4-16 when his preschool, special education run was abolished. He requests as relief to receive payment for the run he no longer makes for the remainder of the 1995-1996 school year. This grievance was denied at Levels I and II, and waived at Level III. A Level IV hearing was held on May 22, 1996, and this case became mature for decision on June 26, 1996, the deadline for the parties' proposed findings of fact and conclusions of law.

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

Findings of Fact

1. Grievant has been employed as a bus operator with MCBOE for sixteen years, and had a mid-day assignment for thirteen years. 2. The first years of this mid-day assignment, Grievant transported half-day Kindergarten students. Prior to the start of the 1993-1994 school year, MCBOE instituted all day Kindergarten, and no longer needed this type of mid-day run. Approximately seventeen bus operators lost their extra-curricular runs at that time. Only two bus operators continued to have a mid-day run. At the end of the 1994-1995 school year, MCBOE changed one of the special education preschool programs to two full days, eliminating one of the two remaining mid-day runs, leaving only Grievant with this type of mid-day run.

3. Because Grievant had transported special education, pre-school students with his Kindergarten students during the 1992-1993 school year, and these special education

students were still in a half-day program and needing transportation, Grievant continued to make this mid-day run. (See footnote 1) This run consisted of taking the morning students home and delivering the afternoon students to the school, Monday through Thursday.

4. The last contract Grievant had with MCBOE for this extracurricular run was for the 1992-1993 school year. The contract identified the run as a "Kindergarten run." (See footnote 2)

5. Even though Grievant did not have a current contract for the subsequent years, Grievant continued to make the run, and MCBOE continued to pay him. 6. Grievant knew the students he transported were special education students, and their Individual Education Plans ("IEP's") controlled all aspects of their education, including their transportation.

7. At the beginning of the 1995-1996 school year, MCBOE's special education preschool program at Ashton, where Grievant made his mid-day run, was four half day sessions each week.

8. In approximately November 1995, MCBOE discovered it was out of compliance with state mandated caseloads at Ashton, and close to being out of compliance in another special education preschool program. Policy 2419, Regulations for Exceptional Children specifies required caseloads.

9. To resolve this problem in the most cost effective manner, MCBOE decided to hire one teacher to work at both schools, two full days each week. This resolution of the caseload problem required the students to attend school two full days each week, instead of four, half days each week. This resolution negated the need for any mid-day transportation.

10. No testimony revealed that MCBOE was aware, prior to the Fall of 1995, that a case load problem existed, or would exist.

Issues

Grievant argues MCBOE was required by W. Va. Code §§18A-2-6 and 18A-2-7 to give him notice of his termination in the Spring of the previous year, and MCBOE's failure to provide such notice entitles him to payment for the remainder of the year. MCBOE makes several arguments. First, MCBOE argues Grievant is not entitled to relief becausethe transported students were special education students, whose transportation needs changed as a result of

a change in their IEP's. MCBOE notes Grievant was aware that the students he transported were Special Education and thus, knew adjustments were likely to occur. Second, MCBOE argues that because Grievant did not have a written contract to make the mid-day run, it had no obligation to pay him after he no longer made the run.

Discussion

The undersigned finds MCBOE's arguments to be without merit. W. Va. Code § 18A-2-7 requires that "an employee shall be notified in writing by the superintendent on or before the first Monday in April if he is being considered for transfer . . . . Any teacher or employee who desires to protest such a proposed transfer may request in writing a statement of the reason for the proposed transfer [and] . . . . [w]ithin ten days of the receipt of the statement of the reasons, the teacher or employee may make a written demand upon the superintendent for a hearing . . . . (See footnote 3) "

In Smith v. Board of Education, 341 S.E.2d 685, 690 (W. Va. 1985), the West Virginia Supreme Court held that contracts entered into pursuant to W. Va. Code §18A-4- 16 were not exempt from procedural requirements of notice and hearing. The Court stated that "[n]o part of W. Va. Code §18A-4-16 indicated the legislature intended to exempt extracurricular activities from the protections generally attached to all other school personnel positions." Smith at 688. See also Ramey v. Lincoln County Bd. ofEduc., Docket No. 94-02-002 (June 3, 1994); Garvin v. Webster County Bd. of Educ., Docket No. 92-51-407 (Jan. 7, 1993); Lambert v. Logan County Bd. of Educ., Docket No. 91-23-199 (June 24, 1991).

W. Va. Code §18A-4-16 requires "[t]he terms and conditions of the [extracurricular] agreement between the employee and the board of education shall be in writing and signed by both parties." A county board of education is responsible for using of properly worded contracts to its employees. W. Va. Code §18A-2-5.

The fact that Respondent had not issued a written contract for Grievant since the 1992-1993 school year does not alter Grievant's rights to have such a contract, and the rights he would have had under this contract if it had been issued properly. See Bonnell v. Carr, 294 S.E.2d 910 (W. Va. 1982). Further, it must be noted that if Grievant was aware that his run consisted of special education students, and their status was subject to change; then MCBOE

must also have been aware, and thus, was required to issue a new contract with specific terms which incorporated the possible change in students' IEP's and the resulting effect it would have on Grievant's contract.

Such changes have been incorporated into a bus operator's contract and have been upheld by this Board. In Ramey, supra, the bus operator's contract specified the assignment "shall be 1992-1993 school year or as long as required by IEP." Since a board of education is the party charged with preparing an employee's contract, and since MCBOE did not do so, even though it was aware of the change in Grievant's run, Grievant cannot now be held responsible for MCBOE's failure to correct and clarify his situation with appropriate contract language. W. Va. Code §18A-2-5. The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. The termination of an extracurricular contract requires "a county board of education . . . to abide by the same procedural strictures applicable to regular contracts . . . ." Lambert v. Logan County Bd. of Educ., Docket No. 91-23-199 (June 24, 1991).

2. A county board of education is responsible for the issuing of properly worded contracts to its employees. W. Va. Code 18A-2-5.

3. Because Grievant had no contract for the 1995-1996 school year reflecting his current duties as a special education bus operator, and the only recent contract concerning Grievant's mid-day run included no special language regarding termination or transfer, MCBOE is prevented from terminating Grievant's mid-day contract without following the procedures outlined in W. Va. Code §18A-2-7.

Accordingly, this grievance is GRANTED, and MCBOE is directed to pay Grievant for the rest of the 1995-1996 school year. It is noted that Grievant's mid-day run did not run on Fridays, and the parties are to keep this fact in mind when calculating the amount due Grievant.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mason 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: September 30, 1996

Footnote: 1

No testimony was elicited as to why this run was not reposted after the changes from 1992-1993 to 1993-1994.

Footnote: 2

The parties did not explain why Grievant did not receive a new contract for the 1993- 1994 school year, noting the change in his duties. Grievant did not file a grievance over this matter, and probably was not concerned over this issue as he continued to receive payment for the run.

Footnote: 3

Refusal to renew an extracurricular contract is considered a transfer. Smith v. Bd. of Educ., 341 S.E.2d 685, 689.