

DWIGHT BLAKE, et al.,

Grievants,

v.

Docket No. 95-06-338

CABELL COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievants in this case are all Cabell County Board of Education ("CCBOE") bus operators. This grievance has a long and somewhat convoluted procedural history. Originally, the grievance filed on September 16, 1993, stated:

Violation of WV Code 18-29-2, section a; regarding a misapplication or misinterpretation of compensation hours, terms, and conditions of employment being the travel time to and from point of storage until return to the point of storage of students involved in supplemental bus runs. Violation of Fair Labor Standards, Subpart B-Section 785.9 Statutory Exceptions (a) The Portal-to-Portal Act and Minimum Wage-Maximum Hours Law Regulation 4- Principles of Hours Worked, Section 400-1, 400-3, 400-5, and 400-10. Time was removed from the employees time sheets. Relief sought is payment of wages due and back wages due.

On December 13, 1993, the parties agreed, at Level II, to continue the grievance "generally" until Grievants decided "to bring it back to the Level II grievance forum." Ltr. from R. J. Brewster, Level II Hrg. Ex. dated Feb. 22, 1994. [\(See footnote 1\)](#) In March 1994, Grievants requested their case be placed "back on the active grievance docket." Subsequently, on March 21, 1994, Hearing Examiner Brewster granted CCBOE's Motion to Dismiss, based on his lacking "authority to hear, interpret, and grant or deny relief on Federally created laws." Ltr. from Hrg. Ex. Brewster dated March 21, 1994. Grievants then appealed to Level IV. On April 4, 1994, the undersigned dismissed the grievance based on the lack of jurisdiction of Federal wage and hour law claims. See Campbell v. W. Va. Dept. of Commerce/Div. of Natural Resources and W. Va. Dept. of Admin./Div. of Personnel, Docket Nos. 90-DNR-081/179 (Aug. 30, 1991). Shortly thereafter Grievants filed a Motion to Reconsider. Because

the Procedural Rules of the Grievance Board do not provide for reconsideration, the motion was denied, and Grievants were directed to appeal the Order if they so chose. On July 5, 1994, Grievants' appealed this Dismissal Order to the Kanawha County Circuit Court. On September 2, 1994, Judge Irene Berger remanded this grievance to the Grievance Board and stated this Board had "jurisdiction to consider [the] claims." The Grievance Board received no notice of this ruling until Grievants requested a Level IV hearing on July 25, 1995. Subsequently, CCBOE moved to dismiss the remanded action for failure to seek timely relief. This Motion was denied.

Level IV hearings were held on October 10, 1995, and December 4, 1995. During the course of those hearings, Grievants dropped both their Federal and State Wage and Hour Claims. This action resulted in the only issue before this Board being whether CCBOE violated W. Va. Code §18-29-2(a). This case became mature for decision on December 18, 1995.

At the first hearing, CCBOE made multiple motions. Respondent's Motion to Remand for a Level II hearing was denied because so much time had passed between the filing of the grievance and the hearing date. Respondent's Motion to Dismiss for failure to file timely at Level IV, after the Circuit Court Order, was again denied. Respondent also requested the grievance be dismissed for failure to state a cause of action. This Motion was denied, as Grievants did further clarify their Statement of Grievance. [\(See footnote 2\)](#) Respondent's Motion to Dismiss because of failure to present evidence of a violation of the Federal Wage and Hour laws was held in abeyance and was resolved by Grievants dropping that portion of their claim. [\(See footnote 3\)](#) Respondent also argued Grievants had changed their Statement of Grievance, and thus this action should be remanded to Level II. The undersigned did not find Grievants had changed their Statement of Grievance, and denied this Motion as well.

Motions by both sides to add and delete Grievants were made. Mr. Chester Mayes' name was added to the list of Grievants after testimony at the first Level IV hearing. Mr. Sherill Midkiff's name was deleted from the grievance based on information from the parties.

Issue

The only remaining issue to resolve is whether CCBOE violated W. Va. Code §18-29-2(a) by following its long-established practice on payment for extra-duty, extracurricular, and supplemental runs. Grievants cited no other statutory violation. CCBOE pays drivers for their time from the point of pick-up of students to the time of discharge of these students, plus one hour. The additional hour

includes pre- and post-trip duties plus travel time to and from the point of origin. Grievants wish to be paid from the time they start driving the bus to the time they stop driving the bus, plus one hour for pre- and post-trip duties. ([See footnote 4](#))

After reviewing all evidence of record the undersigned makes the following Findings of Fact.

Findings of Fact

1. Since 1982, CCBOE has followed the practice of paying bus operators for their time from the point of pick-up to the point of discharge, plus one hour for pre- and post- trip duties and travel time, on extra-duty, extracurricular, and supplemental runs.

2. In 1987, CCBOE purchased a computer program to coordinate and track the Transportation Department's expenses, including extra-duty, extracurricular, and supplemental runs. With this change, bus operators were required to complete a special form detailing needed information including pick-up and discharge times.

3. All extra-duty, extracurricular, and supplemental runs are voluntary and no bus driver is required to take any of these runs.

4. Although the exact amount of time to "pre-trip" a bus may vary, the usual amount is approximately ten minutes. If a driver has been using his vehicle during the day, he often does not pre-trip a bus before he begins his extra-duty, extracurricular, or supplemental run.

5. Although the exact amount of time necessary to "post-trip" a bus may vary, the usual amount of time is ten to fifteen minutes. If a bus is especially dirty, a bus operator may be paid additional money for the extra time needed to clean the bus.

6. Several years ago, before consolidation, the bus operators were assigned to areas, and the amount of travel time to pick-up points could be negligible or very limited. With consolidation and the demise of area assignments, all bus operators could apply for all county runs and the amount of travel time for a particular driver, from his particular location to a particular pick-up point and return, plus the pre- and post-trip duties, may at times, exceed the additional, allotted hour. In other instances, these duties and travel time do not take the full one hour.

7. When a bus operator did not fill in the proper designated pick-up time on the computer forms, this time was changed by the supervisor to reflect the correct pick-up time.

Discussion

Grievants do not allege any violation of any specific Code section, and only allege generally “a violation, misapplication or a misinterpretation of the statutes, policies, rules, regulations or written agreement under which [Grievants] work.” W. Va. Code §18-29-2(a). Basically, Grievants allege CCBOE has improperly compensated them for extra-duty, extra curricular, and supplemental runs since 1987 or 1988. No change in policy occurred in 1987 or 1988, but the new computer forms were introduced during this time. [\(See footnote 5\)](#)

It is Grievants' burden to prove this case by a preponderance of the evidence. Napier v. Logan County Bd. of Educ., Docket No. 94-23-541 (Apr. 25, 1995). Here, Grievants have failed to demonstrate any violation of any statute, policy, rule, regulation, or written agreement in regard to their extra-duty, extracurricular, or supplemental pay. No busoperator is required to take any of these runs and if, after reviewing a run and the time it would take to complete it, a bus operator does not think it would be worth his while, he has merely to refuse the assignment without any fear of reprisal. As the testimony indicated, sometimes the duties take an hour, sometimes they take less, and occasionally they take more. CCBOE's bus operators appear more frequently enriched by this procedure than harmed, as they are not required to take these assignments. CCBOE's pay policy appears to be reasonable and has not been shown to violate any statute governing the compensation of school service personnel. Thus, Grievants have not demonstrated any violation of W. Va. Code §18-29-2(a).

The above discussion will be supplemented by the following conclusions of law.

Conclusions of Law

1. Grievants have the duty of proving this case by a preponderance of the evidence. Napier v. Logan County Bd. of Educ., Docket No. 94-23-541 (Apr. 25, 1995).
2. Grievants have failed to demonstrate CCBOE's extra-duty, extracurricular, and supplemental run pay policy violates any statute, policy, rule, regulation, policy, or written agreement. See W. Va. Code §18-29-2(a).

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court

of Cabell 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.

JANIS I. REYNOLDS
Administrative Law Judge

Dated: March 29, 1996

[Footnote: 1](#)

Apparently, the Grievants planned to pursue the matter in another venue.

[Footnote: 2](#)

As the Statement of Grievance was unartfully pled, Grievants were allowed to clarify the issues as stated above.

[Footnote: 3](#)

Respondent also objected stating these proceedings did not allow them the right to a jury trial. This Motion was denied.

[Footnote: 4](#)

Some Grievants park their buses at home, others park their buses at the bus garage.

[Footnote: 5](#)

The issue of whether Grievants were improperly filling out the prior form and were receiving pay for travel as well as one full hour for pre- and post-trip duties, although briefly discussed in testimony, is not before the undersigned.