

ROBERT L. HART,

Grievant,

v. DOCKET NO. 95-42-583

RANDOLPH COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Mr. Robert L. Hart, Grievant, is employed as a bus operator by the Randolph County Board of Education (Respondent). He filed this grievance, pursuant to W. Va. Code §§18-29-1, et seq., on October 4, 1995. Grievant alleges "that the Respondent violated West Virginia Code § 18A-4-5b in compensating other Bus Operators for making vocational runs, but denying such compensation to him." As relief, "Grievant seeks receipt of the supplement for supplemental runs with backpay."

Grievant was denied relief at Level I. On November 6, 1995, a Level II hearing was held, and the grievance was subsequently denied. Pursuant to W. Va. Code §18-29-4(c), Grievant waived the submission of his grievance to Level III, and the Level II decision was appealed directly to Level IV. At Level IV, on February 27, 1996, the day of the hearing, the parties agreed to submit the case on the record developed at the lower levels of the grievance procedure, with the right to file proposed findings of fact and conclusions of law. On April 12, 1996, the case became mature upon receipt of Respondent's Level IV submission. ([See footnote 1](#))

The following Findings of Fact were derived from the record developed at the lower levels of the grievance procedure.

FINDINGS OF FACT

1. Grievant has been employed by Respondent as a bus operator for over twenty-five years. Tr. 9.

2. During the 1994-1995 school year, Grievant's afternoon bus run included the busing of elementary students from Homestead School (Homestead) to George Ward Elementary School (GWES). Tr. 10-14.
3. Grievant was placed on the transfer list during the spring of 1995. Tr. 18.
4. Tygart Valley High School (TVHS) is located in the same direction or general vicinity as GWES. Tr. 21-22.
5. Grievant's bus route for the 1995-1996 school year did not change from the previous year. However, he was required to transport an additional fifteen to thirty high school students to TVHS. Tr. 21-22.
6. Grievant's daily amount of time worked did not change during the 1995-1996 school year as a result of transporting these additional high school students. Tr. 43-44.

DISCUSSION

Grievant relies on the "uniformity" provisions of W. Va. Code § 18A-4-5b to support his claim in this matter. Grievant contends that he performs the same type of supplemental vo-tech run as other bus operators employed by Respondent and is entitled to additional compensation. Therefore, Grievant alleges that, by failing to pay him for making a supplemental vo-tech run, Respondent is violating W. Va. Code § 18A-4-5b. That statute provides:

The county board of education may establish salary schedules which shall be in excess of the state minimums fixed by this article.

These county schedules shall be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation of equipment or other requirements. Further, uniformity shall apply to all salaries, rates of pay benefits, increments or compensation for all persons regularly employed and performing like assignments and duties with the county

Respondent argues that Grievant does not have and is not making a vo-tech run, but has exactly the same bus route as the previous year. Mr. Clifford Wilmoth, Administrative Assistant for Auxiliary Services for Randolph County Schools, testified that "I don't think Mr. Hart's bus run was adjusted in any way. The only thing he had to do was to haul an additional 30 kids from Homestead to Mill Creek." Tr. 30.

This fact is not in issue. The Level II transcript contains the following colloquy:

Grievant's Counsel: Now , these students who go to the vo-tech and ride to Tygart Valley, are they, in fact - - were they on your run last year?

Grievant: Huh-uh. No, they weren't.

Grievant's Counsel: Now, just to make certain, when they get on your bus, would you be going to Tygart Valley anyway?

Grievant: Uh-huh. Yeah.

Grievant's Counsel: So, part of your grievance - - Your grievance isn't related to an addition in your schedule with regard to miles, but the fact that these kids are on your bus from Mr. Williams' bus, correct?

Grievant: Right.

Tr. at 14. Therefore, it appears Grievant desires additional compensation because more students are on his bus. This fact alone does not justify the relief Grievant seeks. Nor does it warrant the granting of his grievance for additional compensation.

Grievant's reliance on the "uniformity" provisions of W. Va. Code § 18A-4-5b is misplaced. Grievant's run is still a single run, and his bus route has not changed. Furthermore, Mr. Robert Phares, Director of Transportation for Randolph County Schools, testified that Grievant's daily amount of time worked did not change during the 1995-1996 school year as a result of transporting these additional high school students. Tr. 43-44.

Grievant has not shown that his compensation is not "uniform" to other bus operators as required by the provisions of W. Va. Code § 18A-4-5b. As noted in Fowler v. Mason County Board of Education, Docket No. 94-26-037 (Oct. 6, 1994), W. Va. Code § 18A-4-5b is directed toward employees who perform comparable work but receive dissimilar pay. Grievant has not identified any other employee of Respondent who is currently

operating a similar bus run and is receiving a greater amount of pay. Gleason v. Mason County Bd. of Educ., Docket No. 94-26-282 (Dec. 22, 1994). See, Harper v. Pendleton County Bd. of Educ., Docket No. 89-36-708 (Aug. 21, 1990).

Furthermore, Grievant was the only bus operator whose route included TVHS and had available seating capacity. Tr. 42. Therefore, Grievant should not receive additional compensation merely because his bus was not full or because he initially transported less students than other bus operators. Furthermore, "[a] board of education is not prohibited from combining what was once previously designated as a shuttle run with other duties to create a regular, full-time position." Farley v. Mason County Bd. of Educ., Docket No. 94-26-243 (Dec. 14, 1994); Conner v. Barbour County Bd. of Educ., Docket No. 92-01-191 (Feb. 26, 1993). Respondent was merely acting in the best interest of the its school system by making efficient use of existing schedules. Grievant failed to prove by a preponderance of the evidence that it violated any statute, rule, regulation, or policy.

In addition to the foregoing findings of fact and narration, it is appropriate to make the following conclusions of law. **CONCLUSIONS OF LAW**

1. In a nondisciplinary action, Grievant has the burden of proving his case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995). 2. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel; nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, in a manner which is not arbitrary and capricious. Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W.Va. 1986); Webster County Bd. of Educ. v. Johns, 447 S.E.2d 599 (W.Va. 1994).

3. A county board of education must, at least between school terms, have freedom to make reasonable, small changes to a bus operator's daily work schedule, within the parameters of his\her 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. Slight alterations of a bus operator's driving schedule during a school year may be necessary due to need. Connor v. Barbour County Bd. of Educ., Docket No. 94-01-1100 (Aug. 2, 1995); Smith v. Lewis County Bd. of Educ., Docket No. 21-88-43-4 (Dec. 30, 1988). The addition of more students to a bus operators route does not equal a change in schedule. Furthermore, transporting additional students from one school to another school, during a bus operators normal run without a change in

schedule, is not a vocational run. 5. W. Va. Code § 18A-4-5b requires boards of education to provide uniform compensation and benefits to similarly-situated service employees, that is, to employees with like classifications, ranks, assignments, duties and actual working hours. Stanley v. Hancock County Bd. of Educ., Docket No. 95-15-217 (Sept. 29, 1995); Allman v. Harrison County Bd. of Educ., Docket No. 89-17-215 (June 29, 1990).

6. Grievant failed to prove his grievance by a preponderance of the evidence.

7. Grievant failed to show a violation, misapplication or misinterpretation of any statute, policy, rule, or regulation.

Accordingly, the grievance is be DENIED.

Any party may appeal this DECISION to the Circuit of Kanawha County or to the Circuit Court of Randolph 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.

DATED: May 30, 1996

JEFFREY N. WEATHERHOLT
ADMINISTRATIVE LAW JUDGE

Footnote: 1 The record in this case consists of the following: (1) grievance forms from Levels I, II, and IV; (2) Level I and II decisions; (3) the Level II transcript; (4) Respondent's three exhibits admitted at Level II; and (5) briefs filed by Grievant and Respondent. The Undersigned considered all matters of record.