WILLIAM STOVER,

Grievant,

v. **Docket No. 96-26-048**

MASON COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

William Stover (Grievant) is employed by Respondent Mason County Board of Education (MCBE) as a Bus Operator. He filed this grievance on September 28, 1995, contending that MCBE violated W. Va. Code § 18A-4-8a by changing his bus route without his consent during the 1995-96 school year. Grievant further contends that MCBE is violating its internal school attendance policy by permitting certain students to attend a school other than the school nearest their residence. Grievant's immediate supervisor denied the grievance at Level I, and Grievant agreed to waive a hearing at Level II. A Level III hearing was conducted before MCBE on January 22, 1996. The grievance was again denied on January 24, 1996, and Grievant appealed to Level IV on February 1, 1996. Following a series of continuances, each of which was granted for good cause, a Level IV hearing was conducted in this Board's office in Charleston, West Virginia, on July 25, 1996. This matter became mature for decision upon receipt of the parties' written arguments on August 30, 1996. All facts which are essential to resolution of this grievance are essentially undisputed. Therefore, the following Findings of Fact are made from the record, including the transcript of the Level III hearing, and the testimony presented before the undersigned at Level IV.

FINDINGS OF FACT

1. Grievant is employed by the Mason County Board of Education (MCBE) as a regular Bus Operator, a school service personnel position.

2. Grievant's bus route for the 1994-95 and 1995-96 school years included transporting students residing along West Virginia Route 2 to and from Roosevelt Elementary School (Roosevelt).

3. After the beginning of the 1994-95 school year, a family moved into a home along Grievant's established bus route. The children, whose last name was Black, had been attending MCBE's Central Elementary School (Central).

4. Initially, the Black children continued to attend Central with the approval of the school principal, the parents providing transportation to and from school.

5. Grievant approached one of the children's parents in February 1995 and offered to transport the Black children to Roosevelt on his bus, further explaining that the children could transfer to another bus at Roosevelt which would transport them to Central. This route would be reversed in the afternoon. (See footnote 1)

6. Grievant discussed this proposal with his supervisor, Mr. Gandee. Grievant agreed to transport the Black children for the remainder of the 1994-95 school year.

7. At the beginning of the 1995-96 school year, Grievant resumed transporting the Black children to Roosevelt where they transferred to Central via another bus, as in the previous year.

8. In October of 1995, Grievant was directed to transport two Shirley children, who were already riding Grievant's bus to Roosevelt, on to North Point Elementary School (North Point). This directive resulted from MCBE's decision on October 24, 1995, to grant a Citizen's Appeal submitted by the Shirley family. R Ex 2.

9. Transporting the Shirley children to North Point required Grievant to deviate approximately two city blocks from his prior bus route. Due to traffic congestion around North Point, this deviation added approximately five minutes to Grievant's driving time during his morning run. In order to pick up the Shirley children at North Point, Grievant began his afternoon bus run approximately 20 minutes earlier.

10. At all times pertinent to this grievance, MCBE had in effect a Policy 1201 (R Ex 1) regarding "School Transportation" which included the following:

> G. No new bus routes will be established unless approved by the Board of Education. . . .
>
> I. Principals shall not enroll pupils who have been transported past another school

> offering the same grade level unless they provide [their] own transportation to school or bus pick-up in zone desiring to attend.

11. Roosevelt is the nearest school to the Shirley and Black children offering their appropriate grade levels.

12. Shortly after the beginning of the 1995-96 school year, Grievant began transporting another student on his route to Roosevelt, where that child transferred to another bus to attend Central. This student is in a "split" kindergarten/first grade class taught at Central but not at Roosevelt.

13. On approximately five or six occasions each year during the 1994-95 and 1995-96 school years, Grievant transported the Black children (and the child described in Finding of Fact Number 12) to Central, when the transfer bus was not available at Roosevelt.

14. Except for those occasions described in Finding of Fact Number 13, Grievant did not deviate from the bus route he was driving at the beginning of the 1994-95 school year in order to transport the Black children to and from school.

15. MCBE bus operators are compensated based upon an eight-hour day, even if they do not work the entire eight hours to complete their duties. Grievant has not been required to work more than eight hours per day in order to complete his assigned duties.

DISCUSSION

In a grievance that does not involve a disciplinary matter, Grievant has the burden of proving the allegations in his complaint by a preponderance of the evidence. Weaver v. Mason County Bd. of Educ., Docket No. 94-26-129 (Nov. 22, 1994); Runyon v. Mingo County Bd. of Educ., Docket No. 93-29-481 (Apr. 4, 1994). See W. Va. Code § 18-29-6.

W. Va. Code § 18A-4-8a(7), provides:

> No service employee shall have his or her daily work schedule changed during the school year without such employee's written consent, and such employee's required daily work hours shall not be changed to prevent the payment of time and one-half wages or the employment of another employee.

Grievant contends that MCBE violated the above-quoted provision of § 18A-4-8a when it required him to transport the Shirley children to North Point without his consent. This particular claim is controlled by this Grievance Board's prior decisions in Sipple v. Mingo County Board of Education, Docket No. 95-23-541 (Mar. 27, 1996), and Conner v. Barbour County Board of Education, Docket

Nos. 93-01-543/544 (Jan. 31, 1995). In Conner, § 18A-4-8a was applied in the context of changes to a bus operator's route to correct an "overload" situation on another driver's route. These changes, which transpired after the second or third week of school, lengthened the operator's route and increased her driving time by 10 to 15 minutes on both her morning and afternoon runs.

As noted in Froats v. Hancock County Board of Education, Docket No. 89-15-414 (Dec. 18, 1989), a strict, literal interpretation of § 18A-4-8a would preclude a school board from ever changing a service employee's schedule, even slightly, as one school year technically ends on June 30 and a new school year begins each July 1. Froats, supra, at 8 n. 20. Such a literal interpretation would produce an absurd result, inconsis tent with the apparent legislative intent of protecting school service employees from involuntary changes in their shift assignments. See State ex rel. Frazier v. Meadows, 193 W. Va. 20, 454 S.E.2d 65 (1994). Thus, this Grievance Board recognized in Froats and Conner that county boards of education must have freedom to make reasonable changes in a service employee's schedule, so long as the alterations do not extend the employee's workday beyond the parameters of his or her current contract. Conner, supra, at 15. However, because there are differing facts and circumstances surrounding each change of this nature, these claims are decided on a case by case, fact-specific basis. Sipple, supra.

In this instance, Grievant's morning route was extended by approximately five minutes and his afternoon route by twenty minutes to transport the Shirley children to and from North Point, but this extension does not require Grievant to work more hours each day than provided by his contract. Accordingly, MCBE has not changed Grievant's work schedule in violation of W. Va. Code § 18A-4-8a. See Teller v. Hancock County Bd. of Educ., Docket No. 96-15-188 (June 28, 1996); Sipple, supra; Conner v. Barbour County Bd. of Educ., Docket No. 94-01-1100 (Aug. 2, 1995). Moreover, because MCBE determined that the Shirley children should be allowed to attend North Point under the citizen's appeal procedures authorized by West Virginia Board of Education Policy 7211, 126 C.S.R. 188 (1983), MCBE demonstrated a reasonable basis for making these changes to Grievant's assigned bus route. See Roberts v. Lincoln County Bd. of Educ., Docket No. 92-22-131 (Aug. 31, 1992).

Grievant also sought as relief that he not be required to transport the Black children on his bus to Roosevelt for subsequent transfer to Central on another bus. MCBE argues that Grievant does not have standing to complain that its decision to transport the Black children to Roosevelt is in violation

of MCBE Policy 1201.

W. Va. Code § 18-29-2(a) defines a "grievance" as:

> any claim by one or more affected employees of the governing boards of higher education, state board of education, county boards of education, regional educational service agencies and multi-county vocational centers alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules, regulations or written agreements under which such employees work, including any violation, misapplication or misinterpretation regarding hours, terms and conditions of employment, employment status or discrimination; any discriminatory or otherwise aggrieved application of unwritten policies or practices of the board; any specifically identified incident of harassment or favoritism; or any action, policy or practice constituting a detriment to or interference with effective classroom instruction, job performance or the health and safety of students or employees.

MCBE Policy 1201 is not a policy under which Grievant works within the intent of W. Va. Code § 18-29-2(a). Further, Grievant is not claiming that transporting the Black children is detrimental to the health and safety of students or employees, or has more than a de minimis impact on his working conditions as a bus operator. (See footnote 2) Moreover, Policy 1201 is not a policy which was enacted primarily for the benefit of MCBE's employees. (See footnote 3) Therefore, this policy does not need to be construed in Grievant's favor. See Morgan v. Pizzino, 256 S.E.2d 592 (W. Va. 1979).

This Grievance Board has previously declared that de minimis relief is not available through the grievance procedure for education employees. Jones v. Summers County Bd. of Educ., Docket No. 94-45-153 (Nov. 16, 1994); Payton v. Lincoln County Bd. of Educ., Docket No. 89-22-653 (Feb. 16, 1990). See Beddow v. Morgan County Bd. of Educ., Docket No. 91-22-217 (Mar. 16, 1992). The Black children are eligible to ride Grievant's bus to Roosevelt under Policy 1201. Grievant contends these children should either attend Roosevelt or provide their own transportation to Central. Excluding the Black children from riding Grievant's bus, under these circumstances, would not meaningfully change the terms and conditions of Grievant's employment. Transporting these children to Central, on the four or five occasions each year when they miss their transfer bus at Roosevelt, does not create an undue hardship for Grievant. Accordingly, such relief is hereby denied as being de minimis. See Payton, supra.

In addition to the foregoing discussion, the following Conclusions of Law are appropriate in this matter.

CONCLUSIONS OF LAW

1. Grievant has the burden of proving the allegations in his complaint by a preponderance of the evidence. Weaver v. Mason County Bd. of Educ., Docket No. 94- 26-129 (Nov. 22, 1994); Runyon v. Mingo County Bd. of Educ., Docket No. 93-29-481 (Apr. 4, 1994). See W. Va. Code § 18-29-6.

2. Grievances contending an employee's schedule has been changed in violation of W. Va. Code § 18A-4-8a, which limits changes in a school service employee's daily work schedule during the school year to those which are consented to in writing by the employee, must be decided on a case-by-case, fact-specific basis. Sipple v. Mingo County Bd. of Educ., Docket No. 95-23-421 (Mar. 27, 1996). See Conner v. Barbour County Bd. of Educ., Docket Nos. 93-01-543/544 (Jan. 31, 1995); Roberts v. Lincoln County Bd. of Educ., Docket No. 92-22-131 (Aug. 31, 1992).

3. Courts may venture beyond the plain meaning of a statute in those instances where a literal application would produce an absurd result. State ex rel. Frazier v. Meadows, 193 W. Va. 20, 454 S.E.2d 65 (1994).

4. Notwithstanding the language in W. Va. Code § 18A-4-8a, restricting changes in a service employee's daily work schedule, a county board of education must have freedom to make reasonable changes to a service employee's daily work schedule, within the parameters of his contract, some of which cannot reasonably be effected until shortly after school starts. See Conner, supra; Froats v. Hancock County Bd. of Educ., Docket No. 89-15-414 (Dec. 18, 1989). Accord, Conner v. Barbour County Bd. of Educ., Docket No. 94-01-1100 (Aug. 2, 1995).

5. When MCBE directed Grievant to transport two students to North Point, based upon its formal adjudication of a citizen's complaint pursuant to State Board of Education Policy 7211, 126 C.S.R. 188 (1983), MCBE demonstrated a reasonable basis for making changes to Grievant's assigned bus route. See Roberts v. Lincoln County Bd. of Educ., Docket No. 92-22-131 (Aug. 31, 1992). See also Tolliver v. Mingo County Bd. of Educ., Docket No. 95-29-475 (May 31, 1996); Mullins v. Logan County Bd. of Educ., 94-23-383 (Sept. 25, 1995).

6. De minimis relief is unavailable from the West Virginia Education and State Employees Grievance Board. Payton v. Lincoln County Bd. of Educ., Docket No. 89-22- 653 (Feb. 16, 1990). See Carney v. W. Va. Div. of Rehabilitation Services, Docket No. VR-88-055 (Mar. 28, 1989).

7. Because the Black children were entitled to transportation to Roosevelt on Grievant's bus, Grievant's request to order MCBE to require the Black children to provide their own transportation to Central in accordance with MCBE Policy 1201, rather than being allowed to transfer to another bus to

attend Central, involves a request for de minimis relief which is not available from this Grievance Board. See Payton, supra.

Accordingly, this Grievance is **DENIED**.

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.

LEWIS G. BREWER

ADMINISTRATIVE LAW JUDGE

Dated: November 27, 1996

Footnote: 1 There is some dispute between the parties as to whether Grievant initiated this arrangement for humanitarian and altruistic reasons, or whether he was simply seeking to increase the headcount on his bus so that MCBE would provide him with a larger (new) bus. Deciding this question is not necessary to resolution of the merits of this grievance.

Footnote: 2 For example, the Black children result in three more passengers on Grievant's bus. There is no claim that this results in overloading of the bus based on seating capacity. Indeed, it appears that Grievant was assigned a larger bus after the Black children were added to his route, and he is not seeking to go back to a smaller bus.

Footnote: 3 Indeed, Policy 1201 indicates that it was adopted in accordance with W. Va. Code § 18-5-13(6), which provides authority to school boards to transport pupils at public expense.