HARRY BRYANT,

Grievant,

v. **DOCKET NOS. 96-41-451/452**

RALEIGH COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant Harry Bryant filed two grievances against Respondent Raleigh County Board of Education in September of 1996, which were consolidated at Level IV for decision. The first grievance, filed on September 12, 1996, challenged Respondent's action in altering his bus schedule to add 55 minutes to his route, so that he transported students from the "alternative school," all in violation of W. Va. Code §§ 18A-4-8a and 18A-4-8b. Grievant initially sought removal of the addition to his route; however, as he was placed on transfer at the end of the 1996-97 school year, and this grievance had not been resolved at that time, he sought compensation for driving this addition during the 1996-97 school year. The second grievance was also filed on September 12, 1996, and challenged Respondent's elimination of the bus route Grievant had driven during the 1995- 96 school year, alleging this action was arbitrary and capricious, and not in the best interests of the school system, in that the large number of students on the route did not justify elimination of the run. Grievant sought reinstatement to the old route. (See footnote 1) The following Findings of Fact are made based upon the evidence presented at Levels II and IV.

Findings of Fact

1. Grievant has been a bus operator for Raleigh County Board of Education ("RBOE") for eight years.

2. In the Spring of 1996, Grievant was given notice that he had been recommended for transfer. RBOE later approved his placement on the transfer list. Grievant did not grieve his transfer.

3. RBOE eliminated four bus operator positions after the 1995-96 school year, and

reconfigured many routes. The route Grievant had driven during 1995-96 was split among several bus operators.

4. In July of 1996, seven bus operator positions were posted. Due to his seniority, Grievant had his choice of six of the routes, if he chose to bid on them. Grievant obtained the designated route assigned to the posted position which would drive bus number 238, and checked with the Transportation Director, Arnold Ryan, to make sure that information was correct. Grievant had heard a rumor that the Alternative School (See footnote 2) would be added to this route, and asked Mr. Ryan ifthis was true. Mr. Ryan responded that the Alternative School would not be added to this route for the 1996-97 school year. Grievant bid on the route for bus number 238, and was awarded that route. Grievant did not want this route if it included shuttling students from the Alternative School, because those students present severe disciplinary problems.

5. When Grievant reported to work on August 21, 1996, he learned the Alternative School had been added to his afternoon run.

6. When Grievant began his afternoon run during the 1996-97 school year, he drove from the bus garage to the Alternative School. He made five to six stops between the Alternative School and Woodrow Wilson High School, to drop Alternative School students at their homes or regular bus stops. The remaining students were dropped at Woodrow Wilson to be transferred to their regular buses. Grievant picked up other students at Woodrow Wilson. The Alternative School stop added about an hour to Grievant's afternoon bus run.

Discussion

The burden of proof is upon Grievant to prove the elements of his grievances by a preponderance of the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95-29-476 (March 28, 1996). In support of his assertion that RBOE should not have split the bus route he drove during 1995-96 among several bus drivers, Grievant stated only that there were enough students on the route to fill a bus, and gave his opinion that the route should have been left as it was. RBOE changed a number of routes in connection with a reduction in force, as it has the discretion to do, and, having placed Grievant on transfer, was under no obligation to maintain Grievant's old route intact while it reconfigured routes to accommodate the reduction in personnel. Grievant failed in meeting his burden of proof on this grievance. As to his second grievance, RBOE argued Grievant had been

transferred, and that drivers on transfer may have their schedules changed up to the first day of school. While this may be true, Grievant is not in the same position as other drivers who have been placed on the transfer list and are awaiting their assignments. Grievant bid into a posted position in July of 1996. According to the posting, that position had been assigned a particular route: "Town/MacArthur Area **(Bus #238, Old #186)**." Grievant obtained the route information for bus 186, and was told this would be the route for bus 238. When he bid on this position, and accepted it, he was assigned a particular route and was no longer on the transfer list. Thus, RBOE's argument simply is not applicable to this situation.

The question presented in this case is whether RBOE could add the Alternative School to Grievant's assigned route without his consent. W. Va. Code § 18A-4-8a provides, in pertinent part, that, "[n]o service employee may have his or her daily work schedule changed during the school year without the employee's written consent . . .." How this provision applies to changes in a bus operator's route has been addressed by this Grievance Board on numerous occasions, and involves a case-by-case, fact-specific inquiry. McClain v. Hancock County Bd. of Educ., Docket No. 96-15- 114 (June 27, 1996). "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 her contract, some of which cannot reasonably be effected until shortly after school starts." Sipple v. Mingo County Bd. of Educ., Docket No. 95-29-487 (Mar. 27, 1996). Minor alterations to a route, which cannot be anticipated prior to the beginning of the school year, may be made after the school year begins; for example, if a child moves into an area, or to alleviate "overloading." See McClain,supra.

RBOE pointed out that it spent all summer reconfiguring routes to eliminate four positions. However, RBOE offered no explanation for its failure to note in the posting that the Alternative School might be included with this route, nor did it explain why it was reasonable to assign this route to Grievant, rather than to some other route.

The undersigned finds that, under all the facts of this case, Grievant's route was altered in violation of W. Va. Code § 18A-4-8a. The run was posted in July 1996, just a month before school started, without the Alternative School run noted as part of the posting. Grievant specifically asked whether the Alternative School would be added to the run and was told it would not be added. When

he reported to work, the route was the same as he had been told it would be when he bid on it in July, except for the addition of the Alternative School, and an elementary school. Grievant consented to the addition of the elementary school. The run from the bus garage to the Alternative School and then to Woodrow Wilson High School added about an hour to Grievant's evening run. Finally, Grievant explained that the Alternative School run is an undesirable run, which no one would take willingly, and RBOE did not dispute this. The addition of this extra undesirable run under these circumstances, adding nearly an hour to Grievant's schedule, was a substantial alteration of Grievant's route, and was an arbitrary and capricious act. (See footnote 3) See Harper v. Jackson County Bd. of Educ., Docket No. 92-18-071 (June 9, 1992).

As the 1996-97 school year has ended, and Grievant has been placed on transfer, thisgrievance cannot be resolved by simply removing the Alternative School run from Grievant's route. RBOE pointed out that Grievant was offered another bus run in August of 1996, and refused it. Grievant stated that this other run was less desirable to him than his run if the Alternative School run were removed from it. Grievant did not believe he should have to accept a less desirable run as a result of RBOE's action. The undersigned agrees. Further, had Grievant accepted this other run, his grievance may have been rendered moot. Grievant suggested he be paid for driving the Alternative School run as though it were an extra duty run, at the rate of 1/7 of his daily rate as provided by W. Va. Code § 18A-4-8a, except for the five month period of time during the 1996-97 school year when he drove another bus route. This seems a reasonable and equitable way to compensate Grievant.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. The burden of proof is upon Grievant to prove the elements of his grievances by a preponderance of the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95-29-476 (March 28, 1996).

2. "County boards of education have broad discretion in personnel matters, including transfers, but must exercise that discretion in a manner which is not arbitrary or capricious." Dodson v. McDowell County Bd. of Educ., Docket No. 93-33-243 (Feb. 15, 1994). See Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W. Va. 1986).

3. W. Va. Code § 18A-4-8a precludes a county board of education from making significant

changes to the daily work schedule of persons employed as service personnel, during the school year, without the employee's written consent. Whether a change in a bus operator's schedule violates this Code Section involves a case by case, fact-specific inquiry. McClain v. HancockCounty Bd. of Educ., Docket No. 96-15-114 (June 27, 1996).

4. Grievant failed to prove that the Raleigh County Board of Education abused its broad discretion or acted in an arbitrary and capricious manner when it split his 1995-96 bus run among several other drivers in connection with a reduction in force.

5. Grievant proved that the addition of the Alternative School to the route he had bid upon for the 1996-97 school year, without his consent, adding nearly an hour to his evening schedule, violated W. Va. Code § 18A-4-8a under the circumstances presented.

Accordingly, this grievance is **GRANTED IN PART AND DENIED IN PART**. The Raleigh County Board of Education is **ORDERED** to compensate Grievant for the days he drove the Alternative School run, at the rate of 1/7 of his daily rate.

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

BRENDA L. GOULD

Administrative Law Judge

Dated: December 2, 1997

Footnote: 1

Both grievances were denied at Level I on September 12, 1996. Grievant appealed both to Level II, and after hearings were held on September 20, 1996, both were denied on October 7, 1996. Respondent waived consideration at Level III on October 14, 1996, and Grievant appealed to Level IV on October 31, 1996. After several continuances for good cause, a Level IV hearing was held on the first grievance before Administrative Law Judge Jerry A. Wright on May 6, 1997. The second grievance was submitted on the record developed at Level II. These matters became mature for decision upon

receipt of the last of the parties' post-hearing written submissions on June 10, 1997. This matter was subsequently reassigned to the undersigned Administrative Law Judge for administrative reasons on October 23, 1997. Neither party wished to supplement the record after this matter was reassigned.

Footnote: 2

The Alternative School provides education for students in junior high and high school who present severe disciplinary problems.

Footnote: 3

Grievance Board cases on this issue note that the alterations have not extended the employee's work day beyond his contracted work hours. See Stover v. Mason County Bd. of Educ., Docket No. 96-26-048 (Nov. 27, 1996). No evidence was presented on this issue in this case. Assuming the alteration did not extend Grievant's work day, the outcome is the same.