REX TONEY,

Grievant,

v.

DOCKET NO. 95-22-099R

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Rex Toney, originally filed this grievance on or about September 14, 1994, alleging violations of W. Va. Code §§ 18A-4-8a and 18-29-2, in regard to the addition of miles and work time to his regular bus run for school year 1994-95. Grievant seeks compensation for the additional time and/or return to the contractual terms of the regular run. Following adverse decisions at the lower levels, Grievant appealed to level four on March 6, 1995, submitting the case on the record developed below. The case became mature for decision on March 20, 1995, the deadline for the submission of proposed findings of fact and conclusions of law. The undersigned issued a decision denying the grievance on March 31, 1995, which was appealed by Grievant to the Circuit Court of Kanawha County on or about May 19, 1995. The Circuit Court, the Honorable Andrew McQueen, issued a Remand Order on January 7, 1997, directing the undersigned to make a finding of fact regarding the closing time of Ferrellsburg Elementary School, and toreconsider her decision in light of that finding. The parties stipulated that the Ferrellsburg Elementary School closed at 2:05 p.m. during the 1994-95 school year, the period relevant to this decision. Based upon the stipulation of fact and a review of the record, the following findings of fact are appropriately made.

Findings of Fact

1. Grievant has been employed by Respondent as a bus operator for seventeen years.

2. Grievant is assigned to the Harts High School bus transportation area, which includes the Ferrellsburg Elementary School.

3. Most of the bus runs in the county consist of two (2) morning runs, a high school run and an elementary run, and one (1) evening run, which includes both schools, or vice versa.

4. Grievant had one run in the morning and one run in the evening, both including the high school and the elementary school.

5. Respondent's philosophy is to configure the bus routes to accommodate changes in the opening and closing times of its schools.

6. Consistent with that philosophy, and in an attempt to create some flexibility in the transportation system, the bus operators and Respondent entered into a written agreement approximately three years ago, which in essence allowed the bus operators to keep their existing runs from year to year without the need for posting every year. In return, the agreement allowed Respondent the flexibility to make necessary changes in the bus routes to meet the needs of the students of Lincoln County. The agreement allotteda thirty minute extension of time to the drivers' regular routes to accommodate these necessary changes. Tr., pp. 12-13. (See footnote 1)

7. The bus operators, including Grievant, signed the agreement. Tr., p. 22.

8. Shortly before the beginning of the 1994-95 school year, Johnny Adkins, Transportation Director, was notified that the Ferrellsburg Elementary School had requested that its closing time be changed. Tr., p. 6.

9. Initially, the requested closing time would require the drivers who picked up the elementary school children to take them to the high school and wait approximately 20 minutes on the bus for the high school to dismiss, otherwise, there would not be enough time for the drivers to take the elementary children home and get back to the high school by dismissal time. Tr., p. 6.

10. After some discussion, it was agreed that Ferrellsburg Elementary would close at approximately 2:05 p.m. in order for the bus operators to take the children home and be back at the high school by dismissal time. Tr., p. 6.

11. A meeting was held with the drivers to discuss how they would accommodate the Ferrellsburg Elementary school children as a result of the altered closing time. Tr., p. 7.

12. Grievant's afternoon run, prior to the subject change, consisted of driving from his home, past Ferrellsburg Elementary, to Harts High School to pick up the high school students from

approximately 3:15 to 3:30 p.m. (Grievant's home is approximately5 miles from Ferrellsburg Elementary. Tr., p. 18.) From the high school, Grievant proceeded back to Ferrellsburg, picked up the elementary school children, and then proceeded to drop off all of the students. It appears Grievant returned home from his afternoon run at approximately 4:45 or 5:00 p.m. Tr., p. 14-15.

13. As a result of the change in schedule, Grievant left his home and proceeded directly to Ferrellsburg Elementary to pick up the children at approximately 2:05 p.m. Grievant took the elementary children home and was back at Harts High School between 3:15 and 3:30 p.m. Grievant picked up the high school students, took them home, and was back at Harts High by 4:15 or 4:30 p.m., in order to make an extracurricular run at 4:30. Grievant testified he got home about one-half hour earlier than he did before the change. Tr., pp. 14-15.

14. Grievant's regularly scheduled work hours in the morning were from 6:30 a.m. to 9:00 a.m. Grievant's morning bus run began at 6:30 a.m. and ended at 7:50, a total of 1 hour and 20 minutes.

15. Grievant's regularly scheduled work hours in the afternoon were from 2:00 p.m. to 5:00 p.m. Grievant's afternoon run prior to the subject change, began at approximately 3:15 p.m. and ended at approximately 5:00 p.m., a total of 1 hour and 45 minutes.

16. Following the change at issue, Grievant's afternoon run began at 2:05 p.m. and ended at approximately 4:30 p.m., a total of 2 hours and 25 minutes.

17. It is unclear from the record when the change in Grievant's schedule actually occurred, except that the change occurred sometime shortly after the beginning of the school year. 18. Grievant's driving time under his newly configured run in the afternoon was approximately 40 minutes longer than before the change. However, the route still fell within his three hour afternoon work schedule.

Discussion

Grievant alleged Respondent violated W. Va. Code § 18A-4-8a which states, in pertinent part:

> No service employee shall have his or her daily work schedule changed during the school year without such employee's written consent. . . .

Grievant alleged that the addition of the elementary school run to his regular route constituted an unlawful change in this daily work schedule and violated the terms of the agreement with

Respondent, that the drivers' would agree to slight alterations to their bus routes from year to year as long as that alteration did not extend beyond 30 minutes of their regular route.

Respondent's interpretation of that agreement was that a driver's route would not be extended 30 minutes beyond his regular route, and that Grievant's afternoon run is still his regular route, just in a different order. Because the agreement itself was not entered into evidence it is impossible for the undersigned to make a determination as to the actual content of that agreement. The undersigned does not find Respondent's argument convincing.

It is true that Grievant did not have an elementary run added to his regular afternoon route. Grievant always was responsible for picking up the Ferrellsburg Elementary School children and taking them home in the afternoon. The change at issue merely dictated that he take those children home first before going back to pick up the high school students. However, it is also true that the change extended his total driving time by more than 30 minutes.

Respondent entered into a written contract with the bus operators which specifically prohibited Respondent from changing the bus operators' routes in a manner which extend their routes by more than 30 minutes. No reason was advanced by Respondent why the contract should not be honored in this instance and Grievant is entitled to compensation for the time in excess of that contemplated by the contract.

Conclusions of Law

1. In order to prevail, a grievant must establish the truth of his allegations by a preponderance of the evidence. Black v. Cabell County Bd. of Educ., Docket No. 06-88- 238 (Jan. 31, 1989).

2. The bus operators, including Grievant, and Respondent entered into a written agreement which allowed Respondent some flexibility in configuring bus routes from year to year without violating the provisions of W. Va. Code § 18A-4-8a. In exchange, Respondent agreed that whatever changes were made would not extend the bus operator's routes by more than 30 minutes.

3. Grievant has proven by a preponderance of the evidence that Respondent altered his route for the 1994-95 school year in a manner which resulted in an extension of his route by more than 30 minutes.

Accordingly, this grievance is **GRANTED** and Respondent is hereby **ORDERED** to compensate Grievant for the additional 10 minutes per day for each day he drove the subject route during the

1994-95 school year. Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln 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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MARY JO SWARTZ

Administrative Law Judge

Dated: April 30, 1997

Footnote: 1

The actual agreement was not originally entered into evidence. Upon remand, the undersigned requested that the parties supply a copy of the agreement for consideration. The parties were unable to locate the agreement.