LARRY PIERSON, et al.,

Grievants,

v. **Docket No. 98-43-006**

RITCHIE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, twenty-four (24) service personnel employed as bus operators by the Ritchie County Board of Education (RCBE), filed a level one grievance on November 13, 1997, stating, "Ritchie County bus operators want all multi-classified jobs/extra assignments posted separately from the bus runs in order to be able to change routes without the added multi-classified job/assignments, as stated under W. Va. Law, Section 18A-4-8b." At level four the statement of grievance was amended to include the following: "Bus operators want all extra duty assignments to be posted separately in order to be bid on by senior drivers and salary compensation according to state law."

Grievants' immediate supervisor, Transportation Supervisor James Goff, lacked authority to grant the requested relief. Following an evidentiary hearing, the grievance was denied by Superintendent G. A. McClung at level two. RCBE waived consideration at level three, and the complaint was advanced to level four on January 20, 1998. A hearing was conducted on March 13, 1998, to supplement the lower-level record, and the grievance became mature for decision with the submission of proposed findings of fact and conclusions of law by the parties on or before April 16, 1998. (See footnote 1)

The following findings of fact are based upon the evidence presented at levels twoand four.

Findings of Fact

1. Grievants are twenty-four (24) employees of RCBE classified as bus operators.

2. Following the resignations of two (2) full-time bus operators, RCBE posted a Multi-Class E Mechanic's Assistant/Bus Operator position on August 5, 1997, and a Bus Operator/Custodian/Maintenance/Groundsman position on September 29, 1997.

3. Employees holding these multi-classified positions work approximately three (3) additional

hours per day; however, the time is flexible so as to not interfere with the bus runs.

4. Neither of the multi-classified employees works in excess of eight (8) hours per day.

5. The multi-classified employees' salaries are determined by the highest position classification held. Both employees receive additional compensation for working a split shift.

Argument

Grievants argue that RCBE's practice of posting bus runs as multi-classified positions deprives them of the ability to secure the most favored runs, which are typically acquired through transfer. Grievants further complain that the multi-classified positions interfere with their ability to perform extra-duty runs during the work day, and require the sacrifice of extra-curricular runs, such as the vocational runs. They assert that they are already required to perform bus operator duties between runs, including filing reports,cleaning and washing the bus, inspecting the bus, attending disciplinary hearings for students, and other maintenance duties. Grievants must also complete eighteen (18) hours of inservice and staff development training each year, and do not want this requirement increased.

Citing Morgan v. Pizzino, 256 S.E.2d 592 (W. Va. 1979), that school service personnel laws and regulations must be strictly construed in favor of the employees they were designed to protect, Grievants rely on the following provisions to support their claim. W. Va. Code §18A-4-8 which provides, “[n]o service employee, without his or her written consent, may be reclassified by class title. . . ”, and, W. Va. Code §18A-4-8b, which provides that extra-duty assignments are to be assigned to regular employees in rotating order on the basis of seniority.

Grievants suggest that future bus operator vacancies be posted separately to allow them the opportunity to transfer without assuming the additional classifications. When the regular employees have concluded their transfer activity, a new employee could be assigned the multi-classified position. As a second suggestion, Grievants propose that the additional duties which lead to the multi-classified positions be posted separately to allow employees the opportunity to voluntarily apply for them while retaining their current runs.

RCBE argues that the posting of two service personnel positions as multi-classified does not constitute a practice, and that it does not have a policy regarding future postings. Because present plans are to review each vacancy on a case-by-case basis, RCBE asserts that Grievants' arguments

are speculative in nature. At level two, Assistant Superintendent Mitchell Been testified that the positions were enlarged and multi-classified in an effort to continue to provide services while reducing their staff through attrition, andthat no current bus operator will be compelled to accept other duties.

RCBE notes that by Grievants' own admission, accommodations have been twice made to allow multi-classified employees to accept extra-duty runs, and that the flexible schedules provide the employees adequate time to complete the non-driving duties of a bus operator. Objections were made to the issues of extra-curricular assignments and inservice time being raised at level four, because they had not previously been addressed. RCBE contends there is no prohibition against restructuring vacant bus operator positions so that they become multi-classified assignments, and that W. Va. Code §18A-4-8b does not provide for two postings of a vacant position, one for regular employees and one for new employees, as Grievants suggest.

Discussion

Because this matter is not disciplinary in nature, Grievants must prove their allegations by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.19 (1996); Canterbury v. Putnam County Bd. of Educ., Docket No. 40-86-325-1 (Jan. 28, 1987). See W. Va. Code §18-29-6. The statutory provisions cited by Grievants do not support their claim that assignments as bus operators must be posted separately, and not as part of a multi- classified position. It is understandable that Grievants may desire a certain run without additional assignments; however, such positions will not be forced upon them, and it is entirely within their discretion whether they will apply for any vacancy. It also seems likely that an employee with an eight (8) hour, multi-classified position will not be able to obtain an extra-curricular position; however, the employee must balance the financial and other considerations of both assignments and determine which he or she prefers. At this point, concerns regarding extra-curricular and extra-duty assignments, as well as staff development training, are speculative in nature because none of the Grievants have been adversely affected in these areas due to the postings. The Grievance Board does not render opinions which are speculative or advisory in nature. Lovejoy-Clayton v. Lincoln County Bd. of Educ., Docket No. 97-22-040 (Aug. 29, 1997); Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd., 156 C.S.R. 1 §4.20 (1996). Multiclassification is specifically permitted by W. Va. Code §18A-4-8, and Grievants have failed to establish that RCBE improperly posted the two positions in question, or may not do so in the future.

Conclusions of Law

1. Because this matter is not disciplinary in nature, Grievants must prove their allegations by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.19 (1996); Canterbury v. Putnam County Bd. of Educ., Docket No. 40-86-325-1 (Jan. 28, 1987). See W. Va. Code §18-29-6. 2. W. Va. Code §18A-4-8 specifically provides for multi-classified employees, defining them as "personnel employed to perform tasks that involve the combination of two or more class titles in this section. In such instances the minimum salary scale shall be the higher pay grade of the class titles involved."

3. The language of W. Va. Code §18A-4-8b cannot be interpreted to prohibit a board of education from posting a bus operator position as part of a multi-classified position.

Accordingly, the grievance is **DENIED**.

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

Date: May 29, 1998 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

At level four, Grievants were represented by John E. Roush, Esq., RCBE was represented by Howard Seufer, Esq.