EARL ADKINS,

Grievant,

v.

DOCKET NO. 97-10-544

FAYETTE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Earl Adkins, filed this grievance on or about November 5, 1997, alleging that Fayette County Board of Education ("Board") violated state law in the following manner:

> West Virginia School Law's 18A-4-8a, changing daily work schedule without written consent, and 18-29-2. Showing favoritism to other drivers. Making bus cross Rt. 19 two times a day with students needlessly in heavy traffic, at bad intersection.
>
> Relief sought: Stop all favoritism and let bus run it's schedule through Greenstown Road for the safety of the students.

The grievance was denied at level one, and a level two hearing was held on November 18, 1997. Following denial of the grievance by decision dated December 10, 1997, Grievant appealed to level four on December 15, 1997. The parties agreed to submit the matter on the record, which consists of the level two transcript, proposed findings of fact and conclusions of law filed at that level, and the level two decision.

SUMMARY OF EVIDENCE

Joint Exhibits

Ex. 1 -

Grievance documents

Ex. 2 -

February 4, 1997 letter from S. Galen Horrocks to Earl Adkins

Grievant's Exhibits

Ex. 1 -

Map of bus route

Ex. 2 -

Videotape of Grievant's bus route

Respondent's Exhibits

Ex. 1 -

Bus schedule for Harold Treadway

Ex. 2 -

Bus schedule for Earl Adkins

Ex. 3 -

State of West Virginia School Transportation Regulations

Ex. 4 -

Fayette County Board of Education Policy: Bus Scheduling, Routes, and Stops, adopted December 14, 1982

Testimony

Grievant testified in his own behalf, and presented the testimony of Diane Kay Muncy, Vincent R. Yarber, Alton Jarman, and Mark Aliff. The Board presented the testimony of Galen Horrocks and Bill

Staples.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts.

1. Grievant has been employed by the Board as a bus operator for 15 years.

2. In or about February 1997, Grievant bid on a vacancy for Bus No. 935, formerly driven by Harold Treadwell.

3. A substitute had been driving Bus No. 935 for approximately 1 month prior to Grievant filling the position.

4. When Grievant arrived the first morning to drive Bus No. 935, there was no written bus schedule inside the bus. He asked the substitute to describe the route, and he began driving that route. 5. Subsequently, in September 1997, Grievant wrote up his bus schedule and presented it to his supervisor, as required.

6. His supervisor discovered at that time that Grievant had not been driving the established route for Bus No. 935.

7. Galen Horrocks, Supervisor of Transportation, advised Grievant he was going to check out the route Grievant had been driving, and told Grievant to continue driving that route until he had an opportunity to do so.

8. Mr. Horrocks advised Grievant on October 16, 1997, to discontinue running the route he had been driving, and to start driving the route as established by the written schedule for Bus No. 935. See R. Ex. 1.

DISCUSSION

Grievant alleges the Board violated W. Va. Code § 18A-4-8a by changing his daily work schedule without his consent. Grievant's allegations must fail. There simply is no evidence that the Board changed Grievant's schedule for Bus No. 935. Rather, the evidence clearly indicates that Grievant is the one who changed the written schedule for Bus No. 935 (see R. Exs. 1 and 2). Grievant admits he relied solely on the substitute's directions on how to run the route for Bus No. 935. Despite his 15 years of experience as a bus operator, Grievant never went to his supervisor or the principal of the school he served to obtain a copy of the written schedule for Bus No. 935.

Grievant also alleges that the established written route for Bus No. 935 is unsafe as it causes him to cross Route 19 at a dangerous place. Even if this allegation is true, Grievant presented limited evidence on this subject, in the form of a videotape of the bus route, and his own descriptions. The evidence shows that Grievant discussed this matterwith the Director of Transportation, and, apparently, he did not concur with Grievant's assessment. Given that, I must defer to the judgment of the Board in this regard. See Stover v. Mason County Bd. of Educ., Docket No. 96-26-048 (Nov. 27, 1996).

CONCLUSION OF LAW

Grievant has failed to prove by a preponderance of the evidence that the Board violated W. Va. Code § 18A-4-8a, or any other rule, regulation or policy governing the establishment of bus routes.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Fayette 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: January 28, 1998