BARNEY RUNYON and DOUG SKEENS,

Grievants,

v.

DOCKET NO. 97-22-479

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, Barney Runyon and Doug Skeens, are regular bus operators for the Lincoln County Board of Education ("Board"). They filed the following grievance on September 24, 1997:

> Violations of WV Code 18A-4-8a and 18-29-2(a) in regard to a change in [their] bus run schedule and route that had been established. Further violation of WV Code 18A-2-7.
>
> Relief sought is to be compensated for the additional time and returned to run as it was previous school year.

Following adverse decisions at the lower levels, Grievants appealed to level four on October 30, 1997. Hearing was held in the Grievance Board's Charleston, West Virginia office on January 12, 1998, at which time this case became mature for decision. The record consists of the level two transcripts and decisions, and the testimony taken at level four.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts. 1. Grievant Skeens bid on bus run No. 45, which transports both special education and regular students. Prior to the 1997-98 school year, Grievant Skeens' morning run began at 6:05 a.m. and ended at 7:30 a.m. Grievant Skeens' afternoon run began at 1:50 p.m. and ended at 5:00 p.m.

2. After the start of the 1997-98 school year, Grievant Skeens' bus run was changed, so that

his morning run now begins at 5:55 a.m. and ends at 8:30 a.m. His afternoon run begins at 1:35 p.m. and ends at 5:00 p.m.

3. The changes which occurred on Grievant Skeens' bus after the start of the 1997-98 school year added 21 miles, and 45 minutes driving time to his schedule.

4. Grievant Runyon bid on bus run No. 37. Prior to the 1997-98 school year, Grievant Runyon's morning run began at 6:30 a.m. and ended at 8:10 a.m. His afternoon run began at 2:00 p.m. and ended at 4:15 p.m.

5. After the start of the 1997-98 school year, Grievant Runyon's bus run was changed, so that his morning run now begins at 5:10 a.m. and ends at 8:15 a.m. His afternoon run begins at 2:00 p.m. and ends at 4:45 p.m.

6. The changes which occurred on Grievant Runyon's bus after the start of the 1997-98 school year added 56 miles, and 1 hour and 45 minutes driving time.

7. Neither Grievant agreed to the changes in their bus runs in writing, although they have performed their assignments as requested during the 1997-98 school year.

DISCUSSION

W. Va. Code § 18A-4-8a provides, in pertinent part:

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

Slight alterations of a bus operator's driving schedule during a school year may be necessary due to need. Smith v. Lewis County Bd. of Educ., Docket No. 21-88-043-3 (Dec. 30, 1988). Such alterations are not per se violations of Code § 18A-4-8a; such alterations must be analyzed on a case by case basis. Roberts v. Lincoln County Bd. of Educ., Docket No. 92-22-131 (Aug. 31, 1992). A county board of education must have freedom to make at least reasonable, small changes to a bus operator's daily work schedule within the parameters of his contract, many of which cannot reasonably be effected until shortly before school starts for pupils in any given year, at the earliest. Froats v. Hancock County Bd. of Educ., Docket No. 89-15-414 (Dec. 18, 1989).

In the instant case, it cannot be found that an addition of 21 miles and 45 minutes to Grievant Skeen's bus route, and an addition of 56 miles and 1-1/2 hours to Grievant Runyon's bus route are “slight alterations” which would except them from the prohibition against change set forth in W. Va.

Code § 18A-4-8a. It also must be noted that even though Grievants relied upon an agreement allegedly entered between the bus operators and the Board which prohibited the Board from changing any bus routes in excess of 30 minutes each school year, no documentary evidence of that agreement was offered. However, given the magnitude of the changes in these bus operators' assignments, it is unnecessary to address the existence of such a document.

CONCLUSIONS OF LAW

1. W. Va. Code § 18A-4-8a provides, in pertinent part:

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

2. Slight alterations of a bus operator's driving schedule during a school year may be necessary due to need. Smith v. Lewis County Bd. of Educ., Docket No. 21-88- 043-3 (Dec. 30, 1988). Such alterations are not per se violations of Code § 18A-4-8a; such alterations must be analyzed on a case by case basis. Roberts v. Lincoln County Bd. of Educ., Docket No. 92-22-131 (Aug. 31, 1992).

3. A county board of education must have freedom to make at least reasonable, small changes to a bus operator's daily work schedule within the parameters of his contract, many of which cannot reasonably be effected until shortly before school starts for pupils in any given year, at the earliest. Froats v. Hancock County Bd. of Educ., Docket No. 89-15-414 (Dec. 18, 1989).

4. Grievants have proven by a preponderance of the evidence that the Board violated W. Va. Code § 18A-4-8a when it added 21 miles and 45 minutes to Grievant Skeens' bus route, and 56 miles and 1-1/2 hours to Grievant Runyon's bus route.

Accordingly, this grievance is **GRANTED**. The Board is hereby **ORDERED** to compensate Grievants for the additional time spent driving their bus routes, and to reinstate the Grievants' bus routes as they existed prior to the 1997-98 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: February 6, 1998