DIANNA STURGILL,

Grievant,

v.

DOCKET NO. 98-50-054

WAYNE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Dianna Sturgill, filed the following grievance on September 10, 1997, stating:

> Violation of WV Code 18A-4-8b, 18A-4-16, and 18A-2-8. Further violations of 18A-2-2 in regard to her contract of employment for grievant's extracurricular bus run. There is still a need for the run. Direct violations of her contract have occurred with regard to proper notification and procedure. Relief sought is to be reinstated to the run and compensation for all wages and benefits due.

Following adverse decisions at the lower levels, Grievant appealed to Level IV in February 1998. This case was submitted on the record and became mature for decision on March 30, 1998, the deadline for the parties' submission of proposed findings of fact and conclusions of law. (See footnote 1)

FINDINGS OF FACT

1. Grievant has been employed by the Wayne County Board of Education ("WCBOE") as a Bus Operator for eight years.

2. On March 30, 1995, Grievant and WCBOE entered into a contract of employment for an extracurricular assignment which provides, among other things, that WCBOE is permitted to terminate the extracurricular assignment and its compensation, with ten days written notice, if "the need for the services to be provided by this extracurricular assignment no longer exists . . . ," or "the

funding for the position is no longer available." (See footnote 2) R. Ex. B

3. Grievant's extracurricular assignment is as follows: takes Pre-School Special Education students from Fort Gay Elementary to the Thompson Center and later makes the return trip.

4. Grievant was informed verbally, shortly before the start of school, that she would no longer be making her extracurricular run. On or about September 10, 1997, Grievant received a written notice dated August 25, 1997, which informed her that her extracurricular assignment had been terminated due to lack of need.

5. In a Level I response to this grievance, Mr. King Queen, the Transportation Director, indicated Grievant had not been able to get her passengers to the school at the correct time. This statement was incorrect. In fact, Grievant had been told she was arriving too early and to please delay her arrival time for approximately twenty minutes. 6. During the 1996-1997 school year, Mr. Windel Chaffin's bus run consisted of transporting two Special Education students. WCBOE knew before the start of the 1997-1998 school year that one student was to be removed from this run and assigned to a regular bus. At the first of the 1987-1998 school year, WCBOE learned the second student had moved. This series of events left Mr. Chaffin without a regular bus run. (See footnote 3)

7. At the start of the 1997-1998 school year, Grievant's students and students from two other extracurricular assignments were assigned to Mr. Chaffin as part of his regular bus assignment. (See footnote 4)

DISCUSSION

It is well settled that the procedural requirements of W. Va. Code § 18A-2-7,of notice and an opportunity to be heard, must be complied with in order for a county board of education to terminate an extracurricular contract. Smith v. Bd. of Educ., 341 S.E.2d 685 (W. Va. 1985); Doss v. Mason County Bd. of Educ., Docket No. 96-26-108 (Sept. 30, 1996). However, the contract itself may specify other terms and conditions under which it may be terminated. Ramey v. Lincoln County Bd. of Educ., Docket No. 94-02-002 (June 3, 1994).

In this case, Grievant argues that neither of the conditions present in her extracurricular contract of employment were present when her contract was terminatedby WCBOE. Although WCBOE presented some evidence that organizing the runs in this manner would result in a savings of money,

there was no indication there was a “lack of funds.”

Thus, this case turns on the second condition listed in Grievant's contract, whether there was a “need” for the extracurricular contract. Grievant argues that, because the run is still being performed by Mr. Chaffin as part of his regular run, there is still clearly a need. WCBOE argued that because it could condense three extracurricular assignments into one regular bus run in the Fall of 1997, it no longer “needed” the extracurricular bus run driven by Grievant, and thus, she was properly terminated under the terms of the contract.

The outcome of this grievance hinges on the wording of the contract, which contains the following pertinent terms and conditions:

> 1. This is not a continuing contract nor is it a yearly renewable contract. It is an assignment of indefinite duration which is based solely upon the anticipated needs of the Wayne County School System for a bus operator to transport students to and from multilocations for curricular or educational purposes, other than the regular runs required of a bus operator in the pickup and delivery of students to and from school.
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> 2. The Employee specifically agrees that the Board may terminate this assignment at any time upon ten (10) days written notice in the event (1) that the need for the services to be provided by this extracurricular assignment no longer exists, in the opinion of both the Director of Transportation and the County Superintendent of Schools, or (2) that the funding for this position is no longer available. The Employee may give up this assignment upon five (5) days written notice to the Director of Transportation.

R. Ex. 2. It is clear from the evidence presented in this case that the “need for the services to be provided by this extracurricular assignment” continued to exist at the time Grievant's contract was terminated, and still continues to exist.

Basically, WCBOE's argument is that because another bus operator's regular run fell through, and he no longer had any students to transport, it was cost efficient to remove the other three bus operators including Grievant from their extracurricular runs and place Mr. Chaffin in one regular run made from these three. However, none of these reasons was expressed to Grievant in her termination letter. The only explanation given to Grievant was that there was a “lack of need.” Certainly this was not the case. Students who had ridden on Grievant's bus still needed to be transported to the school, and her run was still being made.

The undersigned Administrative Law Judge does not find WCBOE's explanations convincing: a need still existed, funds were still available, and Grievant's students had been arriving on time. If WCBOE is concerned about rerouting bus schedules in the Fall, it must follow the same statutory

requirements as every other board of education, and put potentially affected bus operators on notice in the Spring that their extracurricular runs may be terminated. This Grievance Board has upheld the termination of an extracurricular contract when there truly was no “need” for the contract. See Ramey, supra. In Ramey, there was no need for the bus run as the student, who made up the entire extracurricular bus run, no longer rode the bus. Further, Ms. Ramey's contract specifically stated the terms of the extracurricular bus run were conditioned upon the student's IEP, and in that case, the IEP changed to the extent the student no longer required transportation. The above-discussion will be supplemented by the following Conclusions of Law.

CONCLUSIONS OF LAW

1. The procedural requirements of W. Va. Code § 18A-2-7, of notice and an opportunity to be heard, must be complied with, in order for a county board of education to terminate an extracurricular contract. Smith v. Bd. of Educ., 341 S.E.2d 685 (W. Va. 1985); Doss v. Mason County Bd. of Educ., Docket No. 96-26-108 (Sept. 30, 1996). WCBOE did not comply with these provisions.

2. A contract itself may specify terms and conditions under which it may be terminated. Ramey v. Lincoln County Bd. of Educ., Docket No. 94-02-002 (June 3, 1994); See Doss, supra.

3. Grievant has proven by a preponderance of the evidence that there was still a need for her extracurricular bus run, and that WCBOE violated the terms of her contract when it terminated Grievant's extracurricular bus run in August 1997.

Accordingly, this grievance is **GRANTED**. WCBOE is **ORDERED** to reinstate Grievant to her extracurricular bus run, and to compensate her with back pay, plus interest, in the amount she would have made had her contract not been terminated. The ten days of pay Grievant received as a result of the contract's terms should be deducted from this award.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wayne 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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JANIS I. REYNOLDS

Administrative Law Judge

Dated: April 30, 1998

Footnote: 1

At Level II, Grievant was represented by Ms. Susan Hubbard, and the Wayne County Board of Education ("WCBOE") was represented by Superintendent Wilts Salmon.

Footnote: 2

This contract was signed by Grievant on April 26, 1995.

Footnote: 3

Apparently at some point in time, Mr. Chaffin was temporarily assigned to another run, that would soon be vacant, and Mr. Chaffin could then apply for that position. Mr. Chaffin did not like this run and refused to continue making it.

Footnote: 4

Although not stated as facts in this case, a companion case, Dyer v. Wayne County Bd. of Educ., Docket No. 97-50-510 (Mar. 18, 1998), indicates that at some point Mr. Chaffin was unable to complete this new run in a timely manner, and another run was "spun off " of his new run. Grievant did not receive this run. Id.