CHARLES M. SMITH,

Grievant,

v. Docket No. 99-40-058

PUTNAM COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

This grievance was filed by Grievant Charles M. Smith against Respondent Putnam County Board of Education, on or about October 2, 1998. Grievant alleged in his statement of grievance, "[v]iolations of WV Code 18A-4-8b in regard to the assigning of extra-duty bus runs per county policy." As relief, Grievant sought compensation for a 7 1/2 hour extra-curricular bus trip to Ravenswood on September 24, 1998, amounting to about $97.00, which had been assigned to him and then given to another bus operator. (See footnote 1) The following Findings of Fact necessary to the decision reached, are made based upon the evidence presented at Levels II and IV. (See footnote 2)

Findings of Fact

1. Grievant has been employed by the Putnam County Board of Education ("PBOE") as a bus operator for 12 years.

2. Putnam County's bus operators have adopted a procedure for assigning extra-curricular bus runs, which has been approved by PBOE. Under this procedure, when a bus operator makes an extra-curricular bus run, he records the number of hours worked in making the run. The next extra-curricular bus run is assigned to the bus operator with the least number of recorded extra-curricular hours, who is available to make the run.

3. On August 31, 1998, the Winfield Middle School Fall 1998 football schedule was submitted to Cecil Dolin, Transportation Director, by the Assistant Principal of Winfield Middle School. It showed the dates of the games, and the time of departure for each away game. It is up to those requesting

the bus to determine what size bus is needed. A 90 passenger bus was requested for each away football game. The departure time for the September 24, 1998, football game at Ravenswood was listed as 4:30 p.m. 4. On September 3, 1998, a revised football schedule for Winfield Middle School was submitted to Mr. Dolin's office. One of the changes was the departure time on September 24, 1998, from 4:30 p.m. to 4:15 p.m.

5. Debbie Scott, who assigns extra-curricular runs, asked Grievant if he could transport the Winfield Middle School football team to Ravenswood on September 24, 1998. She did not tell him he would need a 90 passenger bus. Grievant drives a 77 passenger bus on his regular bus run, and would need to change buses with another driver in order to make the trip to Ravenswood.

6. Only Grievant and two other bus operators finish their regular runs early enough to make extra-curricular runs which depart from Winfield Middle School at 4:15 p.m., and are the only bus operators eligible to make these early trips.

7. Grievant was not aware that a 90 passenger bus had been requested until mid-afternoon on September 24, 1998.

8. Ms. Scott called Mr. Dolin after 2:00 p.m. on September 24, 1998, and asked if Grievant could switch buses with Alice Bailey, so he would have a 90 passenger bus to make the trip to Ravenswood. She had not discussed this with Grievant. By this time, school had already been dismissed for the day, and the buses were at the schools preparing to board the students. Mr. Dolin denied this request as he believed it was too late in the day, too close to the time students were to board the buses, and would be disruptive to student transportation. He was afraid the change could not be passed on to the students in time to assure they would understand what bus they were to board. 9. Bus operators are routinely allowed to switch buses before their routes or at the end of their routes, when a bus operator needs a larger bus than he normally drives for the purpose of making an extra-curricular trip.

10. The departure time for the trip was changed back to 4:30 p.m., and more bus operators were eligible to make the trip. The extra-curricular bus trip to Ravenswood was assigned to Alice Bailey. At the time she was assigned to make this trip, Ms. Bailey had fewer recorded extra-curricular trip hours than Grievant. Thus, had the 4:30 p.m. departure time remained all along, she would have been offered the trip before Grievant, in accordance with the policy adopted by the bus operators for assigning extra-curricular bus runs.

11. Ms. Bailey made the trip to Ravenswood, and recorded 7 1/2 hours for this extra-curricular bus trip.

12. Grievant has received other extra-curricular assignments since the Ravenswood trip, both due to the number of accumulated hours, and due to his ability to make trips at 4:15 p.m. As of the date of the Level IV hearing he had earned 99 3/4 hours in extra-curricular assignments.

13. PBOE policy is to compensate bus operators for two hours of time when an extra-curricular trip to which they have been assigned is canceled without notification to the driver. This policy is not applicable when the bus operator assignment must be changed.

Discussion

The burden of proof is upon Grievant to prove the elements of his grievance bya preponderance of the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95-29-476 (Mar. 28, 1996). Grievant argued the change in the time of the run occurred under strange circumstances. He noted that only 58 passengers made the trip. Grievant also argued that he should have been allowed to switch buses, as this was a common practice, and he believed he had not been treated fairly. Grievant argued PBOE had violated W. Va. Code § 18A-4-8b, which provides in regard to extra-curricular runs:

> Notwithstanding any other provisions of this chapter to the contrary, decisions affecting such personnel with respect to extra-duty assignments shall be made in the following manner: An employee with the greatest length of service time in a particular category of employment shall be given priority in accepting such assignments, followed by other fellow employees on a rotating basis according to the length of their service time until all such employees have had an opportunity to perform similar assignments. The cycle then shall be repeated: **Provided,** That an alternative procedure for making extra-duty assignments within a particular classification category of employment may be utilized if the alternative procedure is approved both by the county board of education and by an affirmative vote of two thirds of the employees within that classification category of employment. For the purpose of this section, extra-duty assignments are defined as irregular jobs that occur periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

PBOE pointed out that although there were only 58 passengers on the bus trip, the football team also took a lot of equipment on the bus, which is likely the reason a 90 passenger bus was requested. Mr. Dolin testified the decision as to what size bus is needed is made by the school requesting the bus, and he does not question these decisions. Neither party presented any witnesses with direct knowledge of the reason a 90 passenger bus was requested. PBOE denied that Grievant had

been singled out. Mr. Dolin stated he certainly would have allowed Grievant to switch buses had the arrangements been made in advance, but that by the time he was asked about this, the school day had ended and the children had been released and were waiting to be transported home. He envisioned much student confusion at this late point in the day, and reasonably decided the buses should not be switched at that time.

Grievant's argument that he was treated unfairly may properly be reviewed by examining whether the action taken by PBOE personnel was arbitrary and capricious. Generally, an action is arbitrary and capricious if factors intended to be considered were not relied upon, important aspects of the problem were entirely ignored, the decision was explained in a manner contrary to the evidence before the decision maker, or the decision reached was so implausible that it cannot be ascribed to a difference of view. Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985).

The undersigned finds no violation of W. Va. Code § 18A-4-8b, or any evidence that PBOE acted in an arbitrary and capricious manner. It would seem to be the prerogative of those in charge of arranging extra-curricular runs to determine the time of departure and the size of the bus needed, and to make changes in departure time as needs dictate, even if that means a change on the day of the run. The decision that a 90 passenger bus was needed for 58 football players and their equipment does not seem unreasonable. Further, this decision was made long before the run was assigned to Grievant. It's purpose obviously was to accommodate the perceived needs of thefootball team for all of their games, not to impose a hardship upon Grievant or any other bus operator.

Mr. Dolin's decision that Grievant not be allowed to switch buses so late in the day was a reasonable decision, also not designed to impose a hardship upon Grievant or any other bus operator, but designed to take care of the business at hand - to get the students on the right buses and to transport them to their homes. While it would have been ideal had everyone planned ahead better and communicated better, this does not make the action arbitrary and capricious. It appears to be a simple matter of either Mr. Dolin's office not making Ms. Scott aware that a 90 passenger bus would be needed for football games, or Ms. Scott forgetting to check with Mr. Dolin's office to see what size bus was needed, or forgetting that Grievant drove a smaller bus.

Significantly, Grievant would never have gotten this run in the first place had it not been scheduled for an early departure, as he was not lowest in hours already earned. He has a significant advantage

over those bus operators who are lower than him in hours, but are not eligible for early runs. Further, PBOE's system of assigning extra-curricular runs is designed so that each bus operator earns approximately the same number of hours by the end of the school year. Grievant lost no money by not making this particular run, as he has made many other extra-curricular runs since September 1998, and is entitled to no relief.

Grievant did not specifically claim discrimination, but were the undersigned to analyze this grievance as a discrimination claim, Grievant was not discriminated against. Mr. Dolin had a good job-related reason for denying the request to switchbuses.

As to PBOE's policy of compensating bus operators for two hours when a run is canceled at the last minute, this policy has not been applied by PBOE in situations such as this one, and Grievant did not argue it should be. The policy itself was not made a part of the record.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. Grievant bears the burden of proving the elements of his grievance by a preponderance of the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95- 29-476 (Mar. 28, 1996).

2. The Putnam County Board of Education violated no statute, rule, regulation, or policy when Grievant was not allowed to make an extra-curricular bus run to Ravenswood on September 24, 1998.

3. Cecil Dolin, Transportation Director, acted in a reasonable manner in denying the request to allow Grievant to switch buses after school had already been dismissed for the day.

4. Grievant was not harmed in any way when he was not allowed to make the extra-curricular bus trip to Ravenswood.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Putnam County. Any 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal

petition upon the Grievance Board. The appealing party must also provide the Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

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BRENDA L. GOULD

Administrative Law Judge

Dated: April 2, 1999

Footnote: 1

The grievance was denied at Level I on October 21, 1998, and Grievant appealed to Level II on October 22, 1998. A Level II hearing was held on October 30, 1998, and the grievance was denied at Level II on December 11, 1998. Grievant appealed to Level III on December 18, 1998, where a hearing was held, and the grievance was denied on February 3, 1999. Grievant then appealed to Level IV on February 9, 1999. A Level IV hearing was held before the undersigned Administrative Law Judge on March 23, 1999. Grievant was represented by Susan Hubbard, and Respondent was represented by John A. Grafton, Esquire. This matter became mature for decision at the conclusion of the Level IV hearing.

Footnote: 2

Although a hearing was held at Level III by the Putnam County Board of Education, Harold Hatfield, Putnam County's Assistant Superintendent of Schools, reported at the Level IV hearing that the recording was of poor quality and had not been transcribed. The parties agreed to proceed as though there was no Level III hearing, and to supplement the Level II record at Level IV, and they agreed that the Level III hearing would not be a part of the record in this case.