JOHNNY C. SARGENT,

Grievant,

v. **Docket No. 99-40-020**

PUTNAM COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Johnny C. Sargent, employed by the Putnam County Board of Education (PCBE) as a bus operator, filed a level one grievance on September 28, 1998, in which he alleged a violation of W. Va. Code §18A-4-8b when a new bus run was created but not posted. Grievant requests that the position be posted, and, if he is the successful applicant, all back pay and benefits. The grievance was denied at levels one and two, and Grievant elected to bypass consideration at level three, as is permitted by W. Va. Code §18-29-4(c). Appeal was made to level four on January 20, 1999, at which time the parties agreed that a decision could be made based upon the lower level record. The matter became mature for decision with the submission of proposed findings of fact and conclusions of law by the parties on or before February 17, 1999. (See footnote 1)

The facts of this matter are undisputed and may be set forth as follows:

Findings of Fact

1. Grievant has been employed by the Putnam County Board of Education for seven years, and holds the classification title of bus operator.

2. Beginning the 1998-99 school year, bus operator Mamie Crouch was assigned to transport a student from the Forrest Burdette United Methodist Church toHurricane High School.

3. Ms. Crouch holds an extra-duty run in which she transports students to and from the vocational-technical center to Hurricane High School. As part of this run, she delivers and collects students who participate in a school-to-work program at a number of businesses in the Hurricane/Teays Valley area.

4. The student collected at the church is not specifically enrolled in the school- to-work program, but is working at the church day-care center, in a community based work exploration program for students with disabilities.

5. The student is transported to the church in the morning by her parents, and PCBE transports her from that point to HHS, as her schedule requires. If the parents did not transport the student to the church, it would be PCBE's obligation to do so.

6. It is approximately one-half mile from the church to HHS.

7. Ms. Crouch has not complained or expressed any concern that she has been assigned to transport this student to HHS.

8. Ms. Crouch does not receive additional compensation for transporting the student.

Discussion

Grievant argues that the transportation of this child was not part of the run that Ms. Crouch bid on and accepted, i.e., the school-to-work program runs. He notes that Ms. Crouch must return to the high school fifteen minutes early to enable her to go to the church, pick up the student, and return to the school by 10:00 a.m. He states that the first class must be shortened by fifteen minutes to accommodate this schedule. Finally,Grievant asserts that because this student is not enrolled in Ms. McKay's school-to-work class, her transportation has created a separate run which must be posted and filled.

PCBE's position, as set forth in the level two decision, is that Ms. Crouch's assignment includes the transportation of all students who are obtaining community based work exploration experience in the HHS vicinity, to and from work sites. Therefore, the transportation of the student in question is covered by the assignment awarded to Ms. Crouch, and no new position or vacancy has been created to be filled.

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of his grievance 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); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ. Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6. Grievant has failed to meet this burden.

As cited by Grievant, W. Va. Code §18A-4-8b states: “[b]oards shall be required to post and date notices of all job vacancies of established existing or newly created positions in conspicuous working places for all school service employees to observe for at least five working days. . . .” However, there has been no newly created position in this case. The posting for the assignment held by Ms. Crouch

described the run as “Morning runs-the driver picks up high school [sic] at Hurricane High and takes them to Hurricane and Teays Valley work sites. At approximately 11:30 a.m., the same students are returned to Hurricane High School. Students may also need to be shuttled between Hurricane High and work sites at approximately 10:00 a.m. (Two Runs)”.

The posting does not limit the students to any particular class, and is worded in sucha fashion as to include the student in question. The Grievance Board has held in a number of decisions that minor changes in the number of students transported, and/or the distance traveled, does not result in the creation of a new assignment. Marshall v. Harrison County Bd. of Educ., Docket No. 98-17-262 (Nov. 18, 1998); Tibbs v. Hancock County Bd. of Educ., Docket No. 98-15-016 (June 16, 1998); Dillon/Vance v. Cabell County Bd. of Educ., Docket No. 97-06-570 (May 29, 1998); Stover v. Mason County Bd. of Educ., Docket No. 96-26-048 (Nov. 27, 1996). In this particular instance, the distance traveled, and the time required, for Ms. Crouch to transport the child are minimal, and the addition is consistent with the purpose of the run. No new run has been created.

In addition to the foregoing findings of fact and narration it is appropriate to make the following conclusions of law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of his grievance 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); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ. Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6.

2. W. Va. Code §18A-4-8b states: “[b]oards shall be required to post and date notices of all job vacancies of established existing or newly created positions in conspicuous working places for all school service employees to observe for at least five working days. . . .”

3. Grievant has failed to prove that a new run was created which would requireposting and filling pursuant to Code §18A-4-8b.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Putnam 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: February 26, 1999 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Grievant was represented by Susan Hubbard of WVEA, and PCBE was represented by John Grafton, Esq.