CATHY WHITE, et al.,

v. **Docket No. 00-30-279**

MONONGALIA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, employed by the Monongalia County Board of Education (MCBOE) as bus operators, filed a level one grievance on May 19, 2000, in which they alleged a violation of W. Va. Code §18A-4-8b when MCBOE employed bus operators from the Marion County Board of Education to transport students to Charleston. For relief, Grievants request lost wages, benefits, and interest on all monetary sums. (See footnote 1) The record does not indicate a response was issued at level one. The matter was denied at level two, and Grievants 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 August 25, 2000, and an evidentiary hearing was scheduled for October 26, 2000. Prior to the hearing convening, counsel for Grievants, John E. Roush, Esq., of WVSSPA, and for MCBOE, Harry M. Rubenstein, Esq., advised the undersigned that the grievance could be submitted on the record, supplemented with proposed findings of fact and conclusions of law. The matter became mature for decision on December 4, 2000, the due date for final post-hearing submissions.

The following essential findings of fact are undisputed.

Findings of Fact

1. Grievants are employed by MCBOE as service personnel, all holding the classification of bus operator.

2. In late February 2000, Joanne Hines, a seventh grade teacher and GEARUP Site Coordinator at Westwood Middle School, requested three buses for a field trip to Charleston, West Virginia, on April 27 and 28, 2000. (See footnote 2)

3. Teachers from Cheat Lake Elementary School (CLES) had previously requested four buses for a field trip to Pittsburgh, also scheduled on April 27, 2000.

4. As a practice, MCBOE Transportation Department Administrators do not book more than

three or four of the ten buses available for long extracurricular runs on any given day, reserving the remaining buses for athletic events.

5. Ms. Hines' request was denied since four buses had previously been reserved. After efforts by both Ms. Hines and the CLES teachers to reschedule their trips were unsuccessful, Ms. Hines began to search for alternative transportation. When her search in the private sector was unfruitful, she found that the Marion County Board of Education was agreeable to providing the buses and bus operators for the trip, since they were on spring break that week. These arrangements were approved by the MCBOE Superintendent's office, and the costs were covered by the GEARUP program.

6. Grievants were available to make the trip to Charleston. 7. Grievants White, Miller, and Cool were the three bus operators who would have been offered the trip, which was quite lucrative as they would have been compensated for thirty-one hours, plus lodging and meals.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.21 (2000); 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.

Grievants argue that assignments such as the trip to Charleston must be granted to regular employees within the appropriate classification on the basis of seniority, and in rotating order. Any deviation from this procedure must be approved by the board of education and by two-thirds of the regular employees in the affected classification. Because MCBOE has no written policy regarding this type of situation, Grievants conclude that the hiring of bus operators from another county violated W. Va. Code §18A-4-8b. (See footnote 3)

MCBOE asserts that there was no failure to comply with any rules or regulation, it simply did not have the buses available to provide the requested transportation, and Ms. Hines, on her own initiative, arranged the transportation through the Marion County Board of Education. In any event, MCBOE claims that it has the right to contract with a bordering county to provide transportation for field trips when it otherwise does not have busesavailable. Finally, MCBOE argues that it is not obligated to hire out of county drivers to complete regular runs, or make other extraordinary efforts to provide the most lucrative extra-duty or extracurricular assignments to its own employees.

This issue was previously ruled on by the Grievance Board in Moss v. Barbour County Board of Education, Docket No. 89-01-386 (July 26,1990), which presented virtually identical facts, as the Barbour County Board of Education obtained buses and bus operators from the Taylor County Board of Education to provide transportation for students on two field trips. After carefully analyzing W.Va. Code §18-5-13, it was determined that a county board of education does possess the authority to lease buses, with operators, from another board of education to transport students on an extra-duty trip. Specifically persuasive was, W.Va. Code §18-5-13(8), which states in pertinent part, that "if the transportation of pupils be contracted, then the contract therefore shall provide that the contractor shall carry insurance against negligence in such amount that the board shall specify." Absent any changes in this statute, it remains within the discretion of a board of education to determine whether the board will provide transportation by maintaining its own system or let the transportation of pupils out to contract. In the exercise of that discretion, it must consider the duty to provide an adequate and efficient system, as well as the economic feasibility of same. This discretion applies to both regular and extra-duty assignments. Fuchs v. Brooke County Board of Education, Docket No. 05-88-241 (March 31, 1989), also supports this proposition, holding "[a] chartered bus is a reasonable means to transport persons, including students, on lengthy trips or for other special needs and the ... respondent has authority to so contract." MCBOE also did not violate W. Va. Code §18A-4-8b(b), which only requires extra-duty assignments to be rotated among school service employees based upon their seniority. It does not require all such assignments to be performed by a county board of education's own employees. Hence, the statute has no application in this factual situation and it does not conflict with W. Va. Code §18-5-13. In order to accept Grievants contention, one would have to reach the illogical conclusion that W. Va. Code §18A-4-8b(b) implicitly limits the express authority granted county boards of education in W. Va. Code §18-5-13.

While virtually any practice or policy of a board of education may affect personnel, the decision to allocate at least six buses for transportation to athletic events is not a matter requiring the approval of bus operators. It is an administrative determination regarding the allocation of board resources, i.e., buses. The practice is apparently reasonable, as Grievant White testified at level two that she saw the schedule book, and it was full for April 27, 2000. School Bus Supervisor Dwayne Prickett also testified that a number of sports must be accommodated in the spring, and the schedules are not always confirmed in February. It cannot be determined that the practice is improper since a board of

education approves and supports athletic teams, it certainly assumes an obligation to provide transportation to athletic contests. Finally, Grievants have failed to provide any evidence to prove that MCBOE was required to employ bus operators from outside the county to complete their regular and/or extra-duty runs so they might be free to accept a more lucrative assignment.

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

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.21 (2000); 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 §18-5-13 authorizes a county board of education to lease buses, with operators, from another board of education to transport students on an extra-duty trip. Moss v. Barbour County Bd. of Educ., Docket No. 89-01-386 (July 26,1990).

3. Grievants failed to prove a violation of W. Va. Code §18A-4-8b(b), which only requires extra-duty assignments to be rotated among school service employees based upon their seniority, and does not require all such assignments to be performed by a county board of education's own employees.

4. Grievants failed to prove that MCBOE was required to engage in efforts such as employing outside bus operators to cover their regular and/or extra-duty assignments to allow them to accept more lucrative extra-duty assignments.

Accordingly, the grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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 Board with the civil action number so that the record can be prepared and properly transmitted to the

appropriate circuit court.

Date: January 2, 2001 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Grievants include Cathy White, Orville Miller, Sheila Kay Hixenbaugh, Billy Stevens, Dennis Garner, Jack Dumire, Larry Cool, Don Williams, John Carpenter, Elizabeth Panrell, Mary Jane Conley, Bonnie Humberson, James Hicks, Illa Powroznick, Louis Magyorian, Jeanne Strader, Gilbert Wasser, James Slade, William Houdershelt, Larry Rowan, Paul Christopher, James Welton, Charlotte Travis, Ralph Thorn, Mark Myers, Edward Reese, Karen Summers, Karen Dalton, Ed Rice, Fred Eddy, Jack Cale, Wendell Tate, Jacob Tennant, Charlene McMillen, Ida Osecky, Rod Moore, Rhonda Owens, Pat Stiller, and eight other individuals whose signatures were unclear.

Footnote: 2

GEARUP is the acronym for Gaining Early Awareness for Undergraduate Programs, a federally funded college preparatory program for students in lower socio- economic levels.

Footnote: 3

Grievants first raised the issue that a violation of the West Virginia State Board of Education Policy No. 5300, Section 2.8, which requires that all personnel regulations must be in writing to be enforceable, in their proposed findings and conclusions. Issues raised following level four proceedings are not timely made, and will not be considered.