CHARD FRYE, et al.,

Grievants,

v. **Docket No. 02-35-337**

OHIO COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Richard L. Frye, employed by the Ohio County Board of Education (OCBE or Respondent) as a Mechanic, filed a level one grievance on September 4, 2002, in which he alleged a violation of W. Va. Code §18A-4-5b. For relief, he requested to be paid "equal to Ohio County Schools hourly wage for bus operator with the same year's experience." James Freeland, Administrator for Transportation, lacked authority to grant the requested relief at level one. The grievance was denied at levels two and three, and advanced to level four on October 16, 2002. Michael Adam Grimes, Arlie R. McCardle, Jr., and Derrick Lee Ullom were joined as parties at level four, at their request, and with no objection by Respondent. A level four hearing was conducted on December 17, 2002, at the Grievance Board's Wheeling office. Grievants were represented by Lawrence L. Manypenny, Esq., and OCBE was represented by Kathy M. Finsley, Esq. The matter became mature for decision upon receipt of proposed findings of fact and conclusions of law submitted by the parties on or before January 21, 2003.

The following facts of this matter are derived from the record, including that developed at the lower levels.

Findings of Fact

1. Grievants Richard Frye and Michael Grimes are employed by OCBE as Mechanics. Grievant Derrick Ullom holds the multiclassification of Handyman/Mechanic,and Grievant Arlie McCardle is the Coordinator of Vehicle Maintenance. Grievants are required to hold CDL licenses to perform the duties of Mechanics, but do not hold certifications to be bus operators.

2. Grievants are employed eight hours per day under 261 day contracts, accrue vacation, and do not have a disrupted work schedule. Mechanics are paid at salary schedule F, and the Coordinator of Vehicle Maintenance is paid at salary schedule H.

3. Bus operators are employed six hours per day, 200 days per year, do not accrue vacation, and work a disrupted schedule. They are compensated at salary schedule D.

4. On an irregular basis, Grievants drive empty busses to bus operators experiencing mechanical difficulty. They also road test buses and drive them to repair shops.

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 assert that they perform many of the same duties, and are entitled to the same hourly wage as bus operators under the uniformity provision of W. Va. Code §18A-4- 5b. Grievants calculate that bus operators earn, on average, $5.39 more per hour than Mechanics. OCBE argues that Grievants are not bus operators, but even if they should be so multi-classified, the proper relief would be the salary of the highest classification,which is what they now earn.

W. Va. Code §18A-4-5b provides that "[u]niformity shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county".

W. Va. Code §18A-4-8 defines "Bus operator" as "personnel employed to operate school buses and other school transportation vehicles as provided by the state board". "Mechanic" is defined as "personnel employed who can independently perform skilled duties in the maintenance and repair of automobiles, school buses and other mechanical mobile equipment to use in a county school system."

Grievants do not perform assignments and duties of bus operators. Grievants do not transport students. (See footnote 1) While the operation of buses is a necessary element of the work performed by Mechanics, simply being required to undertake some responsibilities normally associated with another classification, even regularly, does not render a grievant misclassified, per se. Whittington v. Putnam County Bd. of Educ., Docket No. 02-40-035 (Mar. 4, 2002); Hamilton v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991).

Even if Grievants should be entitled to multiclassification, W. Va. Code §18A-4-8(61) provides

that “the minimum salary scale shall be the higher pay grade of the class titles involved.” W. Va. Code §18A-4-8a sets forth the minimum monthly pay scales with pay grades for each class title. Grievants are currently compensated at a higher rate than bus operators. School service personnel are not paid hourly wages, and it would be improperto award relief based on such calculations.

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 § 18A-4-5b requires that county boards of education uniformly compensate employees who perform like assignments and duties.

3. Grievants failed to prove by a preponderance of the evidence that they perform assignments and duties of bus operators.

4. Grievants have failed to prove a violation of W. Va. Code § 18A-4-5b.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to theCircuit Court of Ohio 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. 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 31, 2003 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Grievant Frye testified that sometime in the late 1970's he transported students after a bus accident when the substitute bus operator was too upset to complete the run.