JANET CARSON,

Grievant,

v. **Docket No. 03-50-178**

WAYNE COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

This grievance was filed by Grievant, Janet Carson, against Respondent, Wayne County Board of Education on or about February 6, 2003. The statement of grievance reads:

> Violations of WV Code 18A-4-8b and 18A-4-16 with regard to performing extra trips to the Boys Club after school without compensation.

As relief Grievant seeks "to be compensated for all trips and all benefits." (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.

Findings of Fact

1. Grievant is employed by the Wayne County Board of Education ("WBOE") as a regular bus operator. Her evening run begins at Kellogg Elementary School ("Kellogg"). When she leaves Kellogg her 90 passenger bus is about half full. She then stops at Vinson Middle School, where she picks up approximately 25 to 27 additional passengers, and proceeds along Piedmont Road, passing "Kiddie Corner," a day care center on the corner of Piedmont Road and Vincent Street, as she takes her passengers home.

2. The Boys Club is located about 1½ blocks from "Kiddie Corner," and about 2½ to 3 blocks from Vinson Middle School. The Boys Club is not associated with WBOE. It provides after school programs for children, some or all of whom attend Kellogg and Vinson Middle School.

3. Sometime near the beginning of the 2002-2003 school year, WBOE's Superintendent was

asked if WBOE would provide transportation for children from Kellogg to the Boys Club. The Superintendent asked Doug Ramey, WBOE's Director of Services, to see whether this could be done, and if so, to provide the transportation services.

4. When Mr. Ramey looked into whether the services could be provided, he was told there would be 5 to 10 students needing transportation from Kellogg to the Boys Club. These students would be dropped off at “Kiddie Corner,” a distance of about 6 to 8 blocks from Kellogg, and would walk the remaining distance to the Boys Club. The three bus operators departing from Kellogg when school was first dismissed were Grievant, Richard Elkins, and Dale Stephens. Mr. Stephens' bus was full when he departed Kellogg. Mr. Elkins left Kellogg with 20 to 25 students, but he did not pass “Kiddie Corner” on his first run. Mr. Ramey assigned the duty of transporting the students from Kellogg to “Kiddie Corner” to Grievant.

5. Prior to this assignment, Grievant did not stop at “Kiddie Corner,” although she did drive past it as part of her regular route.

6. Shortly after the beginning of the 2002-2003 school year, Grievant began picking up students at Kellogg and at Vinson Middle School, and dropping them off at “Kiddie Corner.” If these students had been going home after school rather than to theBoys Club, they would not have ridden Grievant's bus. As time went on, additional students at Kellogg and at Vinson Middle School began riding Grievant's bus to go to the Boys Club after school. Grievant's bus became overcrowded. She advised Mr. Ramey of the situation, and it was determined that the Middle School students would walk from Vinson Middle School to the Boys Club, and would not ride Grievant's bus. After the Vinson Middle School students going to the Boys Club quit riding Grievant's bus, her bus was overcrowded on at least two days, although she did not advise Mr. Ramey of this.

7. If Grievant's bus is overcrowded, the principal of Kellogg is to take care of the situation. The back-up plan is for Mr. Elkins to transport the students to “Kiddie Corner” on his second run. However, if there is overcrowding on Grievant's bus, this does not occur until she reaches Vinson Middle School and picks up the students she will transport to their homes. At that point, the back-up plan is not workable.

8. A staff member from the Boys Club is to meet the students at “Kiddie Corner” to walk with them to the Boys Club. Grievant has had to contact the bus garage, and wait for the staff member to arrive on a few occasions. If the staff member is waiting for the students at “Kiddie Corner,” this stop

adds five to seven minutes to Grievant's route time.

9. Grievant has not been provided with the names of the students who will be riding her bus from Kellogg to the Boys Club. WBOE acknowledged it is required to provide a list with the students' names to the bus operator. The principal of Kellogg was supposed to provide this list to Grievant, but she has not done so.

Discussion

The burden of proof is upon Grievant to prove the elements of her grievance by a preponderance of the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95-29- 476 (Mar. 28, 1996). Grievant argued the added stop at “Kiddie Corner” to drop off the students going to the Boys Club is an extracurricular assignment. Respondent pointed out that Grievant's route is not altered in any way, this stop adds very little time to Grievant'sregular route, and the transportation occurs during Grievant's regularly scheduled working hours.

W. Va. Code § 18A-4-16 defines extracurricular assignments, and provides, in pertinent part:

> (1) The assignment of teachers and service personnel to extracurricular assignments shall be made only by mutual agreement of the employee and the superintendent, or designated representative, subject to board approval. Extracurricular duties shall mean, but not be limited to, any activities that occur at times other than regularly scheduled working hours, which include the instructing, coaching, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly scheduled basis: Provided, That all school service personnel assignments shall be considered extracurricular assignments, except such assignments as are considered either regular positions, as provided by section eight of this article, or extra-duty assignments, as provided by section eight-b or this article.

When Grievant stops at “Kiddie Corner” to drop off students going to the Boys Club, which occurs as she is transporting students on her regular bus route, this stop does not meet the definition of “extracurricular assignment,” as it clearly does not occur at a time other than her regularly scheduled working hours, and does not extend her work day. Browning and Bartlett v. Greenbrier County Bd. of Educ., Docket No. 99-13-494 (Feb. 14, 2000).

Grievant did not identify how she believed W. Va. Code § 18A-4-8b was being violated. That Code Section deals with various issues. The only two portions of that Code Section which seem even remotely applicable here are the definition of extra-duty assignments and the requirement that positions be posted. As the undersigned has determined that the stop could be made a part of

Grievant's regular evening run, WBOE was not required to post anything. The portion of this Code Section dealing with extra-duty assignments provides as follows:

> (f) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting service 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 extra-duty assignments, followed by otherfellow 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 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.

The extra stop, every evening, does not meet the definition of an extra-duty assignment, as it is does not occur “periodically or occasionally.” Even if the stop were made on an irregular basis, it still would not be considered extra-duty, as it occurs within Grievant's regular work day, and does not extend her work day beyond eight hours. Corbin, et al., v. Hamphire County Bd. of Educ., Docket No. 02-14-263 (Jan. 22, 2003); Cole v. Putnam County Bd. of Educ., Docket No. 00-40-331 (March 2, 2001); Blankenship v. Mingo County Bd. of Educ., Docket No. 96-29-334 (April 22, 1997).

Grievant has raised two areas of concern with the transportation of the students to “Kiddie Corner” which require the attention of WBOE. WBOE has acknowledged that it is a state requirement that Grievant be provided a list of the students who are riding her bus to “Kiddie Corner,” but no one has taken it upon themselves to assure that this list has been provided to Grievant. Further, Grievant testified that on at least two occasions a few students have had to stand in the bus aisle for the short trip from Vinson Middle School to “Kiddie Corner,” which both parties acknowledged is a violation of state law. It is obvious that the back-up plan for Mr. Elkins to transport the students on his second run if there is overcrowding is not effective in its current form, as the overcrowding does not occur until Grievant reaches Vinson Middle School and the students she is taking home board the bus. At that point, she would have to remove elementary school students from her bus and leave them at Vinson Middle School in order to alleviate the overcrowding. There are various ways to deal with this problem. If there were a list of students, then everyonewould know how many students were traveling from Kellogg to “Kiddie Corner,” and whether there were too many students for Grievant to transport.

Once the list reached the number where the addition of other students would cause Grievant's bus to be overcrowded, the additional students would have to be assigned to ride another bus.

The following Conclusions of Law support the decision reached.

Conclusions of Law

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

2. When Grievant stops at “Kiddie Corner” to drop off students going to the Boys Club, which occurs as she is transporting students on her regular bus route, this stop does not meet the definition of “extracurricular assignment,” as it does not occur at a time other than her regularly scheduled working hours, and does not extend her work day. W. Va. Code § 18A-4-16; Browning and Bartlett v. Greenbrier County Bd. of Educ., Docket No. 99-13-494 (Feb. 14, 2000).

3. Grievant is entitled to a list of the names of the students who ride her bus.

4. Grievant has demonstrated that there is overcrowding on her bus on occasion, and that the plan to alleviate any overcrowding is not effective.

Accordingly, this grievance is **GRANTED IN PART, AND DENIED IN PART**. The Wayne County Board of Education is **ORDERED** to prepare a list of the names of the students who will be riding Grievant's bus from Kellogg to “Kiddie Corner,” within five days of receipt of this Decision. Students may be added to the list, or deleted from it as circumstances change; however, the list shall include no more students than Grievant can transport on her bus without exceeding 90 students, and only students whose names appear on the list are to be placed on Grievant's bus for the trip to “Kiddie Corner.”

Any party may appeal this Decision to the Circuit Court of Wayne County or the Circuit Court of Kanawha 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.

BRENDA L. GOULD

Administrative Law Judge

Dated: September 2, 2003

Footnote: 1

The grievance was denied at Level I on February 6, 2003. Grievant appealed to Level II on February 12, 2003, where a hearing was held on April 3, 2003. The grievance was denied at Level II on June 17, 2003. Grievant appealed to Level IV on June 24, 2003, bypassing Level III. A Level IV hearing was held on August 7, 2003. Grievant was represented by Susan Hubbard, and Respondent was represented by David Lycan, Esquire. This grievance became mature for decision on August 18, 2003, upon receipt of the parties' written arguments.