**DOUGLAS A. BUCHER,**

**Grievant,**

**v. Docket No. 03-52-051**

**WETZEL COUNTY BOARD OF EDUCATION,**

**Respondent.**

## D E C I S I O N

**Douglas A. Bucher (Grievant) employed by the Wetzel County Board of Education (WCBE) as a bus operator, filed a level one grievance on November 14, 2002, in which he alleged that his daily work schedule had been altered without his consent, in violation of W. Va. Code §§ 18A-2-7, 18A-4-8a, and 18A-4-8b. For relief, Grievant requests reinstatement of his original work schedule and compensation for the additional time worked as a result of the alteration to his schedule. The record does not include a level one decision. The grievance was denied at levels two and three, and appeal was made to level four on February 18, 2003. A hearing to supplement the record was conducted at level four on May 5, 2003, at which time Grievant was represented by John E. Roush, Esq., of the West Virginia School Service Personnel Association, and WCBE was represented by Whitney G. Clegg, Esq., of Jackson & Kelly, P.L.L.C. The matter became mature for decision upon receipt of proposed findings of fact and conclusions of law submitted by the parties on May 20, 2003.**

**The essential facts of this matter are undisputed, and may be set forth as the following findings of fact.**

## Findings of Fact

**1. Grievant has been employed by WCBE as a bus operator since 1995. 2. WCBE's postings for bus operator positions specifically provide that "[s]tops may be added and/or deleted due to changes in student's needs."**

**3. During the 2002-2003 school year Grievant was assigned to the Shortline/Valley High School area, and included Chiselfinger Ridge, Fluharty Run, and Porter Falls.**

**4. On October 15, 2002, Jay Yeager, Administrator of Ancillary Services for WCBE, received a request from parents to extend bus service to State Run Road, an offshoot of**

**Chiselfinger Ridge.**

**5. After conducting feasibility and safety studies, Mr. Yeager, and Dr. Paul E. Barcus, Jr., Superintendent, recommended that Grievant's bus route be extended two miles onto State Run Road to pick up the students, pursuant to the request. WCBE approved the recommendation on November 12, 2002, and the change became effective November 18, 2002.**

**6. Because the addition to Grievant's run lacks an outlet, he must double back to return to Chiselfinger Ridge. This addition has extended his run by four miles, and requires fifteen to twenty additional minutes to complete.**

**7. WCBE pays bus operators to work eight hours per day, even though their actual duties may require significantly less time to complete.**

**8. Grievant's actual driving time, including the State Run Road extension, is less than three hours per day. With all other duties considered, Grievant works far less than eight hours per day.**

## Discussion

**As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his claim 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.**

**W. Va. Code 18A-4-8a, provides:**

**No service employee shall have his or her daily work schedule changed during the school year without such employee's written consent, and such employee's required daily work hours shall not be changed to prevent the payment of time and one-half wages or the employment of another employee.**

**W. Va. Code § 18A-2-7 provides in pertinent part:**

**An employee shall be notified in writing by the superintendent on or before the first Monday in April if he is being considered for transfer or to be transferred.** (See footnote 1)

**Grievant argues that WCBE violated the above-quoted provision, and the transfer procedure set forth in W. Va. Code §18A-2-7, when it required him to collect the students from**

**their homes on State Run Road without his consent or by transfer. (See footnote 2) WCBE asserts that because the change made to Grievant's run was minimal, was based upon the legitimate needs of the students living in his assigned geographical area, and remained within the parameters of his contractual work day, there was no statutory violation. This particular issue has been addressed by the Grievance Board a number of times; however,because there are differing facts and circumstances surrounding each change of this nature, these claims are decided on a case by case, fact-specific basis. Stover v. Mason County Bd. of Educ., Docket No. 96-26-048 (Nov. 27, 1996); Sipple v. Mingo County Bd. of Educ., Docket No. 95-23-541 (Mar. 27, 1996); and Conner v. Barbour County Bd. of Educ., Docket Nos. 93-01-543/544 (Jan. 31, 1995).**

**As noted in Froats v. Hancock County Board of Education, Docket No. 89-15-414 (Dec. 18, 1989), a strict, literal interpretation of W. Va. Code § 18A-4-8a would preclude a school board from ever changing a service employee's schedule, even slightly, as one school year technically ends on June 30 and a new school year begins each July 1. Such a literal interpretation would produce an absurd result, inconsistent with the apparent legislative intent of protecting school service employees from involuntary changes in their shift assignments. See State ex rel. Frazier v. Meadows, 193 W. Va. 20, 454 S.E.2d 65 (1994). Thus, this Grievance Board recognized in Froats and Conner that county boards of education must have freedom to make reasonable changes in a service employee's schedule, so long as the alterations do not extend the employee's workday beyond the parameters of his or her current contract. Conner, supra, at 15.**

**In this instance, Grievant's route was extended by four miles which added approximately fifteen minutes to the time required to complete his run. The addition does not require Grievant to work more hours each day than provided by his contract. Therefore, WCBE has not changed Grievant's work schedule in violation of W. Va. Code §18A-4-8a. See Stover supra; Cook v. Mason County Bd. of Educ., Docket No. 96-26-105 (Aug. 19, 1996); Teller v. Hancock County Bd. of Educ., Docket No. 96-15-188 (June 28, 1996); Sipple, supra; Conner v. Barbour County Bd. of Educ., Docket No. 94-01-1100(Aug. 2, 1995). Moreover, because WCBE determined that the children who reside on State Run Road should be transported from their homes, pursuant to citizens' requests, a reasonable basis existed for making the change to**

**Grievant's assigned bus route. See Roberts v. Lincoln County Bd. of Educ., Docket No. 92-22-131 (Aug. 31, 1992).**

**In addition to the foregoing discussion, the following Conclusions of Law are appropriate in this matter.**

## Conclusions of Law

**1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his claim 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. Grievances contending an employee's schedule has been changed in violation of W. Va. Code 18A-4-8a, which limits changes in a school service employee's daily work schedule during the school year to those which are consented to in writing by the employee, must be decided on a case-by-case, fact-specific basis. Sipple v. Mingo County Bd. of Educ., Docket No. 95-23-421 (Mar. 27, 1996). See Conner v. Barbour County Bd. of Educ., Docket Nos. 93-01-543/544 (Jan. 31, 1995); Roberts v. Lincoln County Bd. of Educ., Docket No. 92-22-131 (Aug. 31, 1992).**

**3. Courts may venture beyond the plain meaning of a statute in those instances where a literal application would produce an absurd result. State ex rel. Frazier v. Meadows, 193 W. Va. 20, 454 S.E.2d 65 (1994). 4. Notwithstanding the language in W. Va. Code 18A-4-8a, restricting changes in a service employee's daily work schedule, a county board of education must have freedom to make reasonable changes to a service employee's daily work schedule, within the parameters of his contract, some of which cannot reasonably be effected until shortly after school starts. See Conner, supra; Froats v. Hancock County Bd. of Educ., Docket No. 89-15-414 (Dec. 18, 1989).**

**5. Grievant failed to prove by a preponderance of the evidence that his schedule had been changed in violation of W. Va. Code § 18A-4-8b, or that he had been transferred in violation of W. Va. Code § 18A-2-7.**

**Accordingly, this grievance is DENIED.**

**Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Wetzel 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 tosuch 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: JUNE 18, 2003** _____

**SUE KELLER**

**SENIOR ADMINISTRATIVE LAW JUDGE**

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***Footnote: 1*** ***Grievant did not address the alleged violation of W. Va. Code § 18A-4-8b at level four, and that claim is deemed abandoned.***

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***Footnote: 2*** ***The students had previously been required to travel to the intersection of State Run Road and Chiselfinger Ridge to board the bus.***