WENDELL TATE, et al.,

Grievant,

v. **Docket No. 02-30-318D**

MONONGALIA COUNTY
BOARD OF EDUCATION,

Respondent.

DECISION

Grievants, (See footnote 1) bus operators employed by Respondent Monongalia County Board of Education ("MCBOE"), initiated this proceeding on an unspecified date in the summer of 2002, alleging Respondent did not follow the extra-duty policy in awarding a bus trip on June 24. They seek as relief to each receive compensation for the extra-duty trip. Subsequently, Grievants alleged a default had occurred, and this matter proceeded to level four on August 8, 2002, pursuant to MCBOE's request for a hearing regarding the default issue. Respondently subsequently conceded that a default occurred, and a hearing was held in the Grievance Board's office in Westover, West Virginia, on November 18, 2002, for the purpose of determining whether the Grievants' requested remedy is contrary to law or clearly wrong. Grievants were represented by counsel, John E. Roush, and Respondent was represented by counsel, Kelly J. Kimble. This matter became mature for consideration upon receipt of the parties' fact/law proposals on December 19, 2002. The following findings of fact are made based upon a preponderance of the credible evidence of record.

Findings of Fact

1. Grievants are regularly employed as bus operators.

2. On June 24, 2002, a bus was needed to transport a group of students to the Pittsburgh International Airport, where they would be departing by plane for an extracurricular activity in another state. The school officials who arranged the trip requested one bus from the transportation

department.

3. Pursuant to MCBOE's extra-duty bus run policy, these assignments are made on a rotating basis according to seniority. Emergency situations are handled by the transportation supervisor and are not defined in the policy.

4. The June 24, 2002, trip was assigned pursuant to the extra-duty policy.

5. Just prior to departure, it became evident that, because of the large amount of luggage brought by the students, all of the students and luggage would not fit on the bus.

6. The driver called Mr. Schetzner, Director of Transportation, on the radio, advising him of the situation. In turn, Mr. Schetzner called the bus garage to find out if any drivers were immediately available to drive another bus to Pittsburgh.

7. The only driver available at the garage, Grievant Statler, was not interested in taking the trip.

8. No other drivers were at the bus garage when Mr. Schetzner called. However, Walter Flint, a mechanic employed by MCBOE who has a commercial driver'slicense, was at the garage and agreed to drive a bus to Pittsburgh. Due to the urgency of the situation and the possibility of the students missing their flight, no contact with any other drivers was attempted.

9. The bus driven by Mr. Flint to Pittsburgh contained only luggage.

Discussion

Because Grievants are presumed to have prevailed by default, the burden of proof is upon Respondent to prove by clear and convincing evidence that the relief requested by Grievants is clearly wrong or contrary to law. This standard requires the party with the burden of proof to produce evidence substantially more than a preponderance of the evidence, but less than that required to prove the matter beyond a reasonable doubt. Lohr v. Div. of Corrections, Docket No. 99-CORR-157D (Nov. 15, 1999).

Respondent contends that payment of each Grievant for the trip in question is both illegal and unreasonable. This was clearly an emergency situation, so its handling was within the discretion of Mr. Schetzner, who “grabbed” the first person he could find to drive a bus to Pittsburgh on extremely short notice. Conversely, Grievants believe that this was not an emergency and that the transportation department should have arranged for two buses in the first place. They contend that,

just because the school made a mistake when it requested only one bus, Grievants should not have been disadvantaged by being passed over in the extra duty rotation.

A very similar situation was previously addressed by this Grievance Board in Sizemore/Lemley v. Monongalia County Board of Education, Docket No. 98-30-428 (Jan. 26, 1998). In that case, it was held that, so long as the supervisor's decision isreasonable, handling of emergency bus runs is clearly within his discretion, as set forth in MCBOE's policy. Respondent has demonstrated in the instant case that Mr. Schetzner was clearly presented with a dire emergency, because the students were in danger of missing their flight if departure was delayed any further. Upon calling the bus garage and discovering that an employee with a commercial driver's license was immediately available and willing to drive a bus full of luggage, Mr. Schetzner made a quick, logical decision. His decision not to begin calling other drivers until one was found--which could have taken some time--was a reasonable one under the circumstances.

Moreover, as was the case in Sizemore, supra, the evidence does not indicate that any of Grievants would necessarily have received the run in question under the regular rotation, a prerequisite to relief in this type of case. On MCBOE's extra-duty trip roster, the names of at least nine other drivers appear between the name of the last driver to receive a trip and the name of any Grievant. It is unknown, but entirely possible, that one of these individuals may have taken the Pittsburgh trip if asked, before Grievants would have had the opportunity to take or refuse it. Nevertheless, as Respondent correctly points out, Grievants' requested relief of having all of them be paid for a trip only one person could have taken is both absurd and unreasonable. "When the relief sought by a [g]rievant is speculative or premature, or otherwise legally insufficient, [the] claim must be denied." Lyons v. Wood County Bd. of Educ., Docket No. 89-54-601 (Feb. 28, 1990); See Clark v. Putnam County Bd. of Educ., Docket No. 97-40-313 (April 30, 1998).

Accordingly, Respondent has met its burden of proving by clear and convincing evidence that Grievants' requested is clearly wrong and contrary to law, because MCBOE's extra duty policy was followed in this case and the requested relief would be inappropriate.

Consistent with the foregoing, the following conclusions of law are made.

Conclusions of Law

1. Once it has been determined that a default has occurred, the burden of proof is upon

Respondent to prove by clear and convincing evidence that the relief requested by Grievant is clearly wrong or contrary to law. Lohr v. Div. of Corrections, Docket No. 99-CORR-157D (Nov. 15, 1999).

2. "When the relief sought by a [g]rievant is speculative or premature, or otherwise legally insufficient, [the] claim must be denied." Lyons v. Wood County Bd. of Educ., Docket No. 89-54-601 (Feb. 28, 1990); See Clark v. Putnam County Bd. of Educ., Docket No. 97-40-313 (April 30, 1998).

2. Respondent has proven by clear and convincing evidence that the trip in question was properly handled as an emergency, and Grievants are not entitled to payment for this extra-duty bus run, which would be contrary to law and clearly wrong.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Monongalia County, and such appeal must be filed within thirty (30) daysof 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 8, 2003 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

The named Grievants are Elizabeth Snyder, John Snyder, Elaine Prickett, Larry Rowan, Randy Yost, Kenneth C. Statler, Ronald Friend, Illa Powroznik-Hess, Daryl M. White, Dave Gerard, and Larry Cool.