HOWARD CONNER, et al.,

Grievants,

v. DOCKET NO. 95-01-570

BARBOUR COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievants, Howard Conner, Carl Bolton, and Pamela Bartley, are employed as bus operators by the Barbour County Board of Education (Respondent). Grievants filed this grievance, pursuant to West Virginia Code §§18-29-1, et seq., on October 25, 1995. They "allege that the Respondent violated West Virginia Code §18A-4-5b in maintaining a nonuniform supplement for bus operators performing supplemental assignments. Grievants do not receive compensation, whereas other bus operators making similar assignments are compensated." As relief, "Grievants seek receipt of the supplement with appropriate backpay."

Grievants were denied relief at Level I. On December 6, 1995, a Level II hearing was held, and the grievance was subsequently denied. Pursuant to W. Va. Code §18-29-4(c), Grievants waived the submission of their grievance to Level III, and the Level IIdecision was appealed to Level IV. At Level IV, an evidentiary hearing was held on February 29, 1996. On April 15, 1996, the case became mature upon receipt of Respondent's Level IV post-hearing submission.

DISCUSSION

At the in-service training sessions prior to the start of the 1995-96 school year, Grievants and all other bus operators were given their regular driving assignments for that year. A new transportation plan for the 1995-96 school year was developed because of the need to begin classes at Philip Barbour High School (PBHS) earlier in the day, to balance student-teacher ratios in the county's

schools, and to implement a county-wide 4-year old kindergarten program.

Grievants contend the new transportation plan includes an "express run" (See footnote 1) in their respective bus route in addition to their "regular run". (See footnote 2) Grievants also assert that it is Respondent's practice to pay bus operators extra compensation for express runs. Therefore, Grievants allege that, by failing to compensate them formaking an express run, Respondent is violating W. Va. Code § 18A-4- 5b. That statute provides:

> The county board of education may establish salary schedules which shall be in excess of the state minimums fixed by this article.
>
> These county schedules shall be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation of equipment or other requirements. Further, uniformity shall apply to all salaries, rates of pay benefits, increments or compensation for all persons regularly employed and performing like assignments and duties with the county . . . .

The regular driving assignments for Grievants during the 1995- 96 school year are as follows:

1. Grievant Conner's morning route includes the transportation of some elementary students from Philippi Elementary School (PES), a "transfer station," to the school they attend, Mt. Vernon Elementary School (MVES);

2. Grievant Bolton's morning route includes the transportation of some elementary students from PES, a "transfer station," to the school they attend, Volga-Century Elementary School (VCES);

3. Grievant Bartley's afternoon route includes the transportation of some elementary students from the school they attend, VCES, after the completion of their instructional day, to PES, where they board other buses for transportation to their homes.

Therefore, some of the students who attend MVES and VCES are picked up at their homes by one bus and dropped off at PES. AtPES, these students wait briefly for, or immediately transfer to, another these which transports them to their assigned school. However, some students do not have to change buses at the transfer school, but may remain on the bus that picked them up from home. In no instances do those students receive teaching instruction or participate in any part of their educational programming at PES. Rather, they are at the "transfer school" only briefly and in the process of being transported from their home to school to begin their school day. A similar process occurs in the afternoon which affects Grievant Bartley's route.

Grievants contend that the runs in question are similar to the following assignments for which other bus operators receive extra compensation:

1. Currently, Ken Curtis, a bus operator employed by Respondent, receives extra compensation for transporting students in the health assistants program from the vocational school to various health institutions.

2. In the spring of the 1994-95 school year, Ron Jones, a bus operator employed by Respondent, received extra compensation for making a run nearly identical to the one performed by Mr. Curtis during the 1995-96 school year.

3. During the 1992-93 school year, Grievant Conner received extra compensation for making a run nearly identical to the run Respondent says is part of his regular run.

Respondent asserts that the above runs are distinguishable from Grievants' current runs in the following ways: (1) Grievants'current runs are portions of Grievants' regular, home-to-school or school-to-home, transportation assignments; (2) the students are not receiving any instruction at the transfer school; (3) the Grievants' current runs do not involve the transportation of students from their assigned school to another facility for a part of their instructional day; (4) regular runs do not occur in the middle of the day; and (5) the 1992-93 transportation run came up after the start of the school year, was not included in any bus operator's regular driving assignment, and was posted as an extra-duty assignment to be performed after the completion of regular runs in the morning and prior to regular runs in the afternoon.

Respondent also states that:

> vocational runs (See footnote 3) are not part of the regular assignments for any bus operator in Barbour County and do not involve the transportation of students from their homes to school or from school to their homes. The vocational runs also involve the transportation of a particular class of students whose curriculum entails their time of study or experience at the Broaddus Hospital or Good Samaritan Center. . . .
>
> No Barbour County bus operators, including the grievants, are paid any additional compensation for making their regular runs, even if such regular runs include dropping off and/or picking up students at transfer stations as part of the transportation process in Barbour County of getting students from their homes to school and from school to their homes. The alleged like assignments or duties relied upon by grievants did not entail the transportation of students from homes to school or from school to home. . . .

Respondent's post-hearing submission, at 5-6. Grievants' reliance on the "uniformity" provisions of W. Va. Code § 18A-4-5b is misplaced. Grievants have not shown that their compensation is not

"uniform" with other bus operators as required by the provisions of W. Va. Code § 18A-4-5b. As noted in Fowler v. Mason County Board of Education, Docket No. 94-26-037 (Oct. 6, 1994), W. Va. Code § 18A-4-5b is directed toward employees who perform comparable work but receive dissimilar pay. Grievants have not identified any other employee of Respondent who is currently operating a similar bus run and is receiving a greater amount of pay. Gleason v. Mason County Bd. of Educ., Docket No. 94-26-282 (Dec. 22, 1994). See Harper v. Pendleton County Bd. of Educ., Docket No. 89-36-708 (Aug. 21, 1990).

Two of Grievants' alleged similar or like comparisons are from previous years. Mr. Jones' run occurred during the 1994-95 school year, and Grievant Conner's run occurred during the 1992-93 school year. Furthermore, evidence that an employer has deviated from an established past practice regarding personnel matters is not, in and of itself, sufficient to demonstrate wrongdoing. Fitzwater v. James Rumsey Technical Institute, Docket No. 95-MCVTC-427 (Dec. 29, 1995); Cowger v. Webster County Bd. of Educ., Docket No. 92-51-348 (Mar. 12, 1993).

Grievants only current example is a run Respondent posted during the 1995-96 school year to transport students in the health assistants program. This run is not similar to the regular runs Grievants perform as part of their regular run. The health assistants program run transports students from one instructional setting to another instructional setting in the middle of the school day. Grievants' express runs, which are part of their regular runs, are merely part of the system in transporting students from home to school, and are not runs requiring additional compensation. Furthermore, Respondent does not pay additional compensation to any bus operator for performing their regular run of transporting students from home to school or from school to home. (See footnote 4)

The following Findings of Fact were derived from the record.

FINDINGS OF FACT

1. Grievants are employed by Respondent as bus operators. 2. At the end of the 1994-95 school year, all bus operators, including Grievants, were placed on the transfer list.

3. Respondent added an express run to each Grievant's bus route for the 1995-96 school year.

4. Grievants were informed of the addition of the express run on the first in-service day for 1995-

96 school year, which occurred in August, 1995.

5. All three express runs, addressed in this grievance, involve the transportation of students to and from a "transfer station" school to another facility where they receive instruction.

6. Respondent pays extra compensation to Mr. Curtis, bus operator, for making a health assistant\vocational run.

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

CONCLUSIONS OF LAW

1. In a nondisciplinary action, Grievants have the burden of proving their case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995).

2. W. Va. Code § 18A-4-5b requires that county boards of education maintain uniformity in all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county. Swisher v. Preston County Bd. of Educ., Docket No. 39-81- 266-2 (Apr. 27, 1988).

3. In order to trigger the uniformity requirement, assignments need not be identical but need only be "like." Weimer- Godwin v. Bd. of Educ., 369 S.E.2d 726 (W. Va. 1988).

4. "Regular runs" generally have been defined as the transportation of students from their homes to school and from school to their homes. Roush v. Jackson County Bd. of Educ., Docket No. 95-18-020 (May 25, 1995); Fuchs v. Brooke County Bd. of Educ., Docket No. 92-05-047 (May 19, 1992).

5. Grievants failed to establish by a preponderance of theevidence that the express run which each Grievant performs in addition to their respective regular run is substantially similar to or like the health assistant\vocational run.

6. Grievants failed to show a violation, misapplication or misinterpretation of any statute, policy, rule, or regulation.

Accordingly, the grievance is **DENIED**.

Any party may appeal this DECISION to the Circuit of Kanawha County or to the Circuit Court of Barbour 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. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

DATED: June 28, 1996 _____

JEFFREY N. WEATHERHOLT

ADMINISTRATIVE LAW JUDGE

Footnote: 1

Mersing v. Preston County Bd. of Educ., Docket No. 89-39- 513 (July 12, 1991), defined an "express run" as a run which occurs "immediately before or after the drivers' regular runs and requires that they transport junior high and senior high school students from their "home" or "feeder" schools to their assigned consolidated school and to return them in the afternoon."

Footnote: 2

"Regular runs" generally have been defined as the transportation of students from their homes to school and from school to their homes. Roush v. Jackson County Bd. of Educ., Docket No. 95-18-020 (May 25, 1995); Fuchs v. Brooke County Bd. of Educ., Docket No. 92-05-047 (May 19, 1992).

Footnote: 3

Mersing, supra, defined a "vocational run" as a run which transports "students to and from [a] high school[] to the county vocational school [and] may require two round trips daily for the morning and afternoon sessions."

Footnote: 4

To the extent that Mersing v. Preston County Bd. of Educ., Docket No. 89-39-513 (July 12, 1991), and Mayle v. Barbour County Board of Education, Docket No. 01-86-173-2 (Mar. 3, 1987), are inconsistent with this decision, they are overruled.