THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

ROSCOE W. SKAGGS, JR.,
Grievant,

v. **DOCKET NO. 2014-0516-RitED**

RITCHIE COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

Grievant, Roscoe W. Skaggs, Jr., filed a grievance against his employer, the Ritchie County Board of Education, on October 28, 2013. The statement of grievance reads: "Grievant's bus schedule was changed significantly during the school year without his consent in violation of W. Va. Code 18A-4-8a. This action resulted from elimination of a bus route from the previous school year and failure to adequately devise new schedules for the 2013-2014 school year." As relief Grievant sought, "compensation for the additional time worked as a result of the change and for the additional time required for more frequent fueling of his bus resulting from the change in his schedule with interest." Grievant had originally requested that his bus route be revised so that it mirrored his route at the beginning of the 2013-2014 school year, but by the time of the level three hearing, his bus route had been revised for the new school year, and he was satisfied with his bus route.

A conference was held at level one on December 4, 2013, and a decision denying the grievance was issued on December 20, 2013. Grievant appealed to level two on January 6, 2014, and a mediation session was held on April 4, 2014. Grievant appealed to level three on April 14, 2014, and a level three hearing was held before the undersigned

Administrative Law Judge on September 3, 2014, at the Grievance Board's Westover, West Virginia, office. Grievant was represented by John Everett Roush, Esquire, West Virginia School Service Personnel Association, and Respondent was represented by Denise M. Spatafore, Esquire, Dinsmore & Shohl, LLP. This matter became mature for decision on October 6, 2014, on receipt of the last of the parties' Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant is employed by Respondent as a Bus Operator. He argued that Respondent could not legally make the changes it made to his bus route after the beginning of the 2013-2014 school year. By the time of the level three hearing, the 2014-2015 school year had begun, and Grievant's route had been revised to his satisfaction. Grievant, however, argued that he should receive additional compensation for the additional time it took him to complete his route and fuel his bus during the 2013-2014 school year as a direct result of the changes made to his bus route. Grievant did not demonstrate that the changes to his bus route were in violation of the applicable statutory provisions.

The following Findings of Fact are properly made from the record developed at level three.

Findings of Fact

1. Grievant has been employed by the Ritchie County Board of Education ("RBOE") for 15 years, and is a full-time, regular Bus Operator.

2. Grievant was placed on transfer in the Spring of 2013, as were several other Bus Operators employed by RBOE. One Bus Operator retired at the end of the 2012-2013 school year, and one Bus Operator position was eliminated. Several bus routes were reconfigured as a result of the elimination of this position.

3. At the beginning of the 2013-2014 school year, Grievant's regular morning bus run encompassed approximately 45 miles, and it took him 1 hour and 16 minutes to complete his morning run. Grievant's afternoon bus run encompassed approximately 52 miles, and it took him 1 hour and 23 minutes to complete. He drove the bus for a total of 2 hours and 39 minutes a day, plus the time it took him to drive to the fueling area once a week.

4. Shortly after the beginning of the 2013-2014 school year, the parents of young children residing close to Smithville Elementary School complained to Respondent's personnel because, as a result of the route changes that had been made, their children were on the school bus for over an hour, while their home was only about four miles from the elementary school the children attended. RBOE Superintendent Edward Tomas responded to the complaint by riding the school bus himself, and looking for other options to resolve this issue. Grievant was the only other Bus Operator transporting students in the area.

5. In an effort to shorten the time these young children were riding the school bus, changes were made to Grievant's bus route on October 8, 2014, extending his route in an easterly direction so that he would pick up these children. About a week later his route was also changed to shorten the distance he had been traveling to the south, due to the elimination of a bus stop in that area when the children changed school districts.

Also, around this time another narrow road was eliminated from Grievant's route when the parents agreed to bring the children to another location for pick-up. Grievant did not agree to the changes to his bus route.

6. These changes to Grievant's bus route added an additional 11 miles to Grievant's route in the morning, which added 23 minutes of driving time to his route. These changes added an additional 3 miles to Grievant's afternoon bus route, and 4 minutes of driving time. The total time Grievant spent driving a bus after the changes were made to his route was 3 hours and 6 minutes. Grievant also had to fuel his bus twice a week after the changes were made to his route, which added 13 miles of driving time to his work day, as he had previously fueled his bus only once a week.

7. The record does not reflect how much time Grievant spent each day prepping his bus, cleaning his bus, fueling his bus, or performing any duties other than driving the bus.

8. Full-time Bus Operators employed by RBOE are not paid by the hour, nor are their work hours set. They are paid an annual salary, and the normal work day is three to three and a half hours.

9. Grievant drove this modified bus route through the end of the 2013-2014 school year. Grievant's bus route for the 2014-2015 school year has been revised again, and now mirrors the route he had at the beginning of the 2013-2014 school year. As of the level three hearing, Grievant had no complaint with his bus route for the 2014-2015 school year.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *See also 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). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievant argued that his work schedule had been modified after the beginning of the school year, without his consent, in violation of WEST VIRGINIA CODE § 18A-4-8a(j), which provides as follows:

> A service person may not have his or her daily work schedule changed during the school year without the employee's written consent and the person's required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

As Respondent points out, this statute has been interpreted to allow a board of education "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." *Bucher v. Wetzel County Bd. of Educ.,* Docket No. 03-52-051 (June 18, 2003). Whether the changes are reasonable involves a case-by-case, fact-specific inquiry. *McClain v. Hancock County Bd. of Educ.,* Docket No. 96-15-114 (June 27, 1996).

Minor alterations to a route, which cannot be anticipated prior to the beginning of the school year, may be made after the school year begins; for example, if a child moves into an area, or to alleviate "overloading." *See McClain, supra.* In *Bucher supra.,* the grievant's route was extended by four miles which added approximately fifteen minutes to the time required to complete his run. The Administrative Law Judge concluded that this "addition does not require Grievant to work more hours each day than provided by his contract," and accordingly, that the respondent had "not changed Grievant's work schedule in violation of W. VA. CODE §18A-4-8a. *See Stover [v. Mason County Bd. of Educ.,* Docket No. 96-26-048 (Nov. 27, 1996)]; *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 [v. Mingo County Bd. of Educ.,* Docket No. 95-29-487 (Mar. 27, 1996)]; *Conner v. Barbour County Bd. of Educ.*, Docket No. 94-01-1100 (Aug. 2, 1995)." The Administrative Law Judge further noted that, "because [Respondent] 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 this case, the elimination of one Bus Operator position at the end of the 2012-2013 school year required the reconfiguration of bus routes. As a result, some young students were on one of the school buses for over an hour, even though they lived very close to their school. When Respondent received parental complaints, and investigated the situation, it determined that if changes were made to Grievant's route, these young

students would no longer have to ride the bus for such a long period of time. No other Bus Operator served this area of the county, leaving changes to Grievant's route as the only solution. While one could argue that Respondent's personnel should have known that if the routes were configured as they were at the beginning of the school year, these young students would be riding the bus for an inordinately long period of time, the former Transportation Supervisor was not called to explain her reasoning in setting the routes, and any such conclusions would be speculation. The changes to Grievant's evening bus route were clearly minimal. The changes to his morning bus route added only 23 minutes and 11 miles to Grievant's short workday, all in an effort to reduce the travel time for young students to less than an hour. Grievant did not indicate that his contract states the number of hours he will work, or that he worked in excess of his contract terms. The undersigned concludes that the changes made to Grievant's route were reasonable changes, which were not anticipated at the beginning of the school year, and which did not extend his work day in violation of his contract terms.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *See also 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). "The preponderance standard

generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. WEST VIRGINIA CODE § 18A-4-8a(j) precludes a county board of education from making changes to the daily work schedule of service personnel during the school year without the employee's written consent. However, this statute has been interpreted to allow a board of education "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." *Bucher v. Wetzel County Bd. of Educ.,* Docket No. 03-52-051 (June 18, 2003).

3. Whether the changes to the employee's schedule are reasonable involves a case-by-case, fact-specific inquiry. *McClain v. Hancock County Bd. of Educ.,* Docket No. 96-15-114 (June 27, 1996). Minor alterations to a route, which cannot be anticipated prior to the beginning of the school year, may be made after the school year begins; for example, if a child moves into an area, or to alleviate "overloading." *See McClain, supra.*

4. The changes made to Grievant's bus route after the beginning of the school year were reasonable changes, which were not anticipated at the beginning of the school year, and which did not extend his work day in violation of his contract terms. The changes made to Grievant's bus route did not violate WEST VIRGINIA CODE § 18A-4-8a(j).

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public 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 certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. *See also* 156 C.S.R. 1 § 6.20 (2008).

BRENDA L. GOULD
Administrative Law Judge

Date: October 31, 2014