

**STATE OF WEST VIRGINIA  
SUPREME COURT OF APPEALS**

**Elaine Prickett,  
Petitioner Below, Petitioner**

v.) **No. 101484** (Kanawha County 10-AA-4)

**The Board of Education of  
The County of Monongalia,  
Respondent Below, Respondent**

**FILED**  
April 1, 2011  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Petitioner Elaine Prickett appeals the circuit court's June 25, 2010, order affirming the decision of the West Virginia Public Employees Grievance Board denying petitioner's employment grievance. Her employer, the Respondent Board of Education of the County of Monongalia, filed a response to this petition or appeal.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

Petitioner is a full-time school bus operator who has been employed by respondent for nineteen years. Respondent pays its full-time bus operators for six hours of work per day. If a bus operator exceeds six hours per day, he is paid for each additional hour at "straight" time until he reaches forty hours for the week, when he is thereafter paid overtime rates for each additional hour worked. If he works fewer than six hours per day, he is still paid for six hours. During the 2007-2008 school year, petitioner's regular route required her to work at least 6.75 hours per day. For the 2008-2009 school year, her route was changed and she worked an average of one hour less each day. Although her rate of pay did not change, this reduction in the number of hours worked resulted in a decrease in petitioner's extra straight time and overtime pay.

Petitioner asserts that during the 2008-2009 school year, less senior bus operators who drive in the immediate vicinity of her route were given longer routes and more hours than she was. Petitioner argues that as the more senior employee, she should be given the more financially lucrative route. She filed a grievance asserting violations of the discrimination, favoritism, and/or harassment statutes. W.Va. Code §§ 18A-4-5b, 6C-2-2(d), 6C-2-2(h), and 6C-2-2(l). Respondent denied the alleged violations and asserted that petitioner's route was changed because of the needs of the school system. One of the schools to which she transports students was moved to a new building in a different location in the city, and the start times for both of the schools to which she transports students were changed. Respondent also argues that one of the persons to whom petitioner compares herself received his route by successfully bidding on it, but petitioner chose not to bid on that route.

The Grievance Board held that petitioner did not prove her grievance. Petitioner appealed to the circuit court, which affirmed. This Court reviews appeals from the Public Employees Grievance Board under West Virginia Code § 6C-2-5, which is the same standard used by the circuit court: a court may set aside the decision of the administrative law judge if it is arbitrary, capricious, an abuse of discretion, or contrary to law. *Martin v. Randolph County Board of Education*, 195 W.Va. 297, 304, 465 S.E.2d 399, 406 (1995) (addressing W.Va. Code § 18-29-7, which has since been superceded by the similarly worded W.Va. Code § 6C-2-5).

“County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious.” Syl. Pt. 3, *Dillon v. Board of Education of the County of Wyoming*, 177 W.Va. 145, 351 S.E.2d 58 (1986); Syl. Pt. 3, *Cahill v. Mercer County Board of Education*, 208 W.Va. 177, 539 S.E.2d 437 (2000). Moreover, West Virginia Code § 18A-2-7 gives a county superintendent and board of education authority to transfer school personnel. This statute requires that the employee be given prior written notice and the opportunity to protest, both of which were given to petitioner.

The circuit court found that employees have no right to be assigned to a particular position and the law does not require a board of education to guarantee overtime work. The circuit court found that petitioner made only blanket allegations with “absolutely no specific evidence to support her claims of discrimination, favoritism, and/or harassment.” The circuit court found that petitioner cannot demonstrate that respondent's assignment of the 2008-2009 bus routes was arbitrary and capricious, and that the evidence “undeniably supports that the decision was made in the best interests of the schools.”

Upon a review and consideration of the record and arguments of counsel, we agree with the circuit court's conclusion that the Grievance Board's decision was not clearly wrong, arbitrary, capricious, or an abuse of discretion. Accordingly, we affirm.

Affirmed.

**ISSUED:** April 1, 2011

**CONCURRED IN BY:**

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh

Chief Justice Margaret L. Workman, disqualified.