

BEFORE THE ARBITRATOR

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In the Matter of a Dispute Between

**STANLEY-BOYD AREA SCHOOLS BUS DRIVERS,  
GENERAL TEAMSTERS UNION, LOCAL 662**

and

**STANLEY-BOYD AREA SCHOOLS**

Case 75  
No. 61303  
MA-11885

(Jacqueline Brunner Grievance)

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**Appearances:**

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Jill M. Hartley**, 1555 North RiverCenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212-2993, on behalf of the Union.

Weld, Riley, Prenn & Ricci, S.C., by **Attorney Richard J. Ricci**, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, on behalf of the District.

**ARBITRATION AWARD**

At all times pertinent hereto, the Stanley-Boyd Area Schools Bus Drivers, General Teamsters Union, Local 662 (herein the Union) and the Stanley-Boyd Area Schools (herein the District) were parties to a collective bargaining agreement covering the period July 1, 2001, to June 30, 2003, and providing for binding arbitration of certain disputes between the parties. On June 10, 2002, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration regarding the denial of premium pay to Bus Driver Jacqueline Brunner (herein the Grievant), and requested the appointment of a member of the Commission's staff to arbitrate the issue. The undersigned was designated to hear the dispute and a hearing was conducted on January 17, 2003. The proceedings were not transcribed. The parties filed briefs by February 19, 2003, whereupon the record was closed.

**ISSUES**

The parties stipulated to the following framing of the issues:

Did the District violate the collective bargaining agreement by not paying the Handicap Bus Driver premium to the Grievant?

If so, what is the appropriate remedy?

**PERTINENT CONTRACT LANGUAGE**

**STANLEY-BOYD AREA SCHOOLS  
BUS DRIVERS**

**EXHIBIT "A"**

	<u>Effective 7-1-01</u>	<u>Effective 7-1-02</u>
Regular Runs – per trip	\$21.16	\$21.90
Extra Runs – per hour	8.58	8.88
Training/Not driving – Hr	6.18	6.40
<b>VAN DRIVERS</b>		
Regular Runs 1-1 ½ hrs per trip	\$18.40	\$19.04
Regular Runs ½ - 1 hr per trip	\$12.26	\$12.69
Regular Runs Under ½ hr per trip	\$7.97	\$8.25
Extra Runs per hour	\$6.18	\$6.40
<b>HANDICAP BUS DRIVERS</b>		
per trip	\$21.16	\$21.90
Per Trip Premium	\$11.03	\$11.42
<b>CHAPERONE</b>	\$11.79	\$12.20

The District agrees to make the current Health and Welfare Program available to bargaining unit employees. Employees electing to participate may do so on a self-pay basis, if eligible, pursuant to the Plan's participation requirements.

## **BACKGROUND**

The District employs Bus Drivers to pick up and deliver its students to and from school and extra-curricular events. Bus Drivers are paid on a per trip basis according to a schedule appended to the contract as Exhibit "A." Exhibit "A" also includes a per trip premium of \$11.42 to be paid to Handicap Bus Drivers.

The District owns an 11 passenger handicapped-accessible bus with a wheelchair lift, which was used to transport wheelchair bound and other special needs children. Until 2000, this bus was driven by Jerry Manion, and thereafter until May, 2001, by another driver. At that time, the last wheelchair bound student in the District graduated and the bus has not been in use since. Both Manion and the other driver received the trip premium while driving the handicapped-accessible bus, even on days when the wheelchair bound student did not ride.

The Grievant, Jacqueline Brunner, was hired in 1998 as a Special Needs and Preschool Van Driver at the contract rate specified for Van Drivers. In October, 2001, she was assigned to a 30-passenger school bus and her rate of pay was increased to that of a regular Bus Driver. Monday through Thursday she transports 15 students in the morning and 13 in the afternoon, and has a noon run with 9 pickups and drop-offs. On Friday, she transports 7 students. The students range from ages 3 to 16 and include 1 student who suffers from epilepsy, 2 to 3 with seizure disorder, 2 with Down's Syndrome and 5 with autism. These students present a variety of challenges, including inability to communicate, occasionally violent behavior, incontinence, inability to sit up in the bus unaided and inability to get on or off the bus unaided. Her bus is specially equipped with extra seat belts, a CD player and a video monitor to accommodate the special needs of the students that she transports and also to allow her to monitor and control them. In order to qualify for her position, the Grievant has had to go through CPR training, unlike the other Bus Drivers. She is categorized as a Special Education employee for payroll purposes, which entitles the District to a subsidy from the State to pay her wages. The other Bus Drivers drive regular 72-passenger buses and have to transport a few special needs children, as well, but none with as severe difficulties as those assigned to the Grievant.

In April, 2002, the Grievant overheard the Union Steward tell the Union Business Agent that she should be entitled to the Handicap Bus Driver trip premium. Thereafter, she filed the instant grievance in order to seek the premium rate. The District denied the grievance and it was processed according to the contractual grievance procedure, resulting in this arbitration. Additional facts will be referenced, as necessary, in the discussion section of this award.

## **POSITIONS OF THE PARTIES**

### **The Union**

The Grievant's duties entitle her to the handicap driver premium. The contract does not define the term handicap bus driver, but the Grievant is the only driver who exclusively transports disabled or handicapped students on a daily basis. Each of her stops involves a

student with some special need, including autism, epilepsy and Down's syndrome. Because of the needs of these children, the Grievant has had to receive special training not required of the other drivers and has special problems to contend with on her route.

There is no merit to the District's position that she doesn't merit the premium because she doesn't drive the bus equipped with the wheelchair lift. While the District offered third party opinions that a "handicap bus" is equipped with such a lift, there is no evidence that this was the intended meaning of the language in the contract and no evidence of the bargaining history behind the language exists. Her duties, however, clearly show that she is entitled to the premium because the logical interpretation of the language is that the premium should be paid to a driver who transports disabled students.

While her bus doesn't have a wheelchair lift, it does have numerous safety devices specifically designed for special needs students, such a safety harnesses, additional seat belts and car seats. Also, all the students she transports have some form of disability. They have communication problems, behavioral problems and some do not stay seated, requiring her to frequently stop the bus to deal with them. The premium was intended to compensate drivers for just such challenges and is warranted here.

There is no past practice supporting the District's position that only driver's of the lift-equipped bus receive the premium. Jerry Marion received the premium while driving the lift-equipped bus until 2001, when the last handicapped student on his route graduated. He was not told and didn't know why he qualified for the premium. Marion transported 1-2 wheelchair-bound students and several other students who fell into the same categories as those transported by the Grievant. He received the same CPR and first aid training as the Grievant and had the same challenges. The only difference was the presence of the wheelchair-bound students. This, alone, should not disqualify the Grievant from receiving the premium, as shown by the fact that Marion received the premium even for days when the wheelchair-bound students didn't ride. There is no current need for the lift-equipped bus, but special needs students remain and the District should pay the premium to the driver who transports them.

The District cannot rely on the fact that the Grievant did not receive the premium when she first worked for the District and drove a van with special needs students. She now drives a 30-passenger bus, which is an entirely different matter. Her situation is now more analogous to Marion's in that she is the only driver in the District who is exclusively responsible for transporting handicapped students.

There is also no merit to the District's argument that Marion received the premium because his route was longer than the other drivers' and the Grievant's is not. District Administrator Gardner speculated on this point, but was not present when the language was negotiated or the decision made and no evidence supports the contention. The Grievant's routes are also somewhat longer than the other drivers' and includes a mid-day run, which theirs do not. She also makes significantly more stops to pick up and drop off students, as well as stopping en route when problems arise, which is unique to her duties. She thus has more challenges and stresses than the other drivers and should be paid the premium.

## The District

The preschool route and the handicap route are distinct from each other and merit different treatment. Marion was assigned the handicapped route because no one else wanted it. This is because of a number of distinctions, which don't apply to the Grievant's route and which merit different treatment with respect to the premium.

Marion's route took significantly longer. His route took an average of 180 minutes, whereas the other routes, including the preschool route, take between 77 ½ and 132 minutes. It also covered a wider area, even going outside the District, which the preschool route does not. Because the contract pays the same rate for all bus trips, a premium was justified for the longer handicap route.

The handicap bus was specially equipped with a wheelchair lift, for which Marion was specially certified. The Grievant's bus has no such lift and is only a 30-passenger bus, compared to the regular 72-passenger buses of the other drivers. She began driving special needs students in a van and did not receive the premium, which she did not grieve. The only difference now is that she currently drives a bus. This distinction is not meaningful, especially since several other drivers also drive special needs students.

Marion drove a different population of students than the Grievant. All his students had special needs and at least one at any given time required a wheelchair. The needs of his riders necessitated the presence of an aide on the bus to attend to them. The Grievant does not require an aide. Also, she transports young students, hence the designation preschool bus route, whereas Marion transported older students, who sometimes needed transport outside the District. While she does transport students with "special needs," District Administrator Gardner testified that the handicapped designation was specifically intended for the narrower class of "physically handicapped" children. Also, preschool children without special needs are also assigned to the Grievant's bus.

The Grievant has the burden to show that the handicap bus driver designation was intended to cover her route, which she has failed to do. There is no bargaining history showing the designation was ever intended to be broader than that historically applied by the District, or that the premium was ever intended to be paid for the preschool route. There is no support for the argument that just because her students have I.E.P.s, she should receive the premium.

The Arbitrator is asked to reinterpret the contract and create a premium rate for the preschool route which the contract does not provide. This goes beyond the scope of the Arbitrator's authority. By virtue of the fact that she drives three routes per day, the Grievant is already paid more than the other drivers and there is no logic or authority for attaching a premium, as well. If the Grievant wants to obtain additional compensation, this should be bargained for, not sought through arbitration.

## DISCUSSION

The District's argument proceeds from the proposition that the per trip premium for the Handicap Bus Drivers is specifically tied to driving the 11-passenger bus with the hydraulic wheelchair lift. It argues that this is so because the premium has historically only been paid to this driver. The premium was last paid at the end of the 2000-2001 school year when the last wheelchair bound student in the District graduated. The District points out that this driver had a longer route, sometimes out of the District, and drove six hours per day compared to the Grievant's five as further justification for its position. For a variety of reasons, I am not persuaded by the District's position and the grievance is sustained.

At the time the 11-passenger bus was in use, the District did not own the 30-passenger bus. The 11-passenger bus has not been used since May, 2001, whereas the 30-passenger bus was acquired in October, so, at any given time, the District has only had one bus devoted to transporting special needs children. The record is unclear whether the Grievant was unaware of the availability of the premium rate, or whether it did not occur to her that she was entitled to it, but in any event the matter was not grieved until the Union became aware she was not receiving the premium rate several months later. It is also unclear whether the Grievant was aware that the previous driver had been receiving the premium rate. It cannot be said, therefore, that either the Union or the Grievant acquiesced in the lower rate in the months before the grievance was filed.

Nothing in the contract indicates that the Handicap Bus Driver per trip premium is specifically tied to driving the wheelchair accessible bus. There is no bargaining history on the point and none of the witnesses had any independent recall of what the language was intended to mean. Past practice is also of little guidance because the District never owned and operated the 11-passenger and 30-passenger buses at the same time. Therefore, as far as the contract shows, the per trip premium rate was intended to be paid to the driver who primarily transports the District's handicapped children in a bus specially equipped for that purpose. At the present time, that is the Grievant.

I am not persuaded that the premium rate was intended to be tied either to the time or distance of the route, as the District argues. The previous driver had to transport students outside the District and his daily route took an average of six hours. The Grievant does not travel outside the District and her route averages five hours. Yet, these are arbitrary figures governed by the particular needs and places of residence of the students. At any given time, one or more additional students could require the Grievant to travel the same or greater distances and for an equivalent or longer time. The one constant is that the driver is responsible for picking up and delivering a number of students who, due to their special needs, require that the driver be more attentive and specially trained in order to ensure their safety.

The evidence shows that the Grievant transports primarily special needs students and is the only driver to do so. Her riders suffer from a number of conditions that require either special restraints or extra attention from the driver, including epilepsy, autism and Down's

syndrome. At times, she must stop the bus during her run to deal with the students when they have problems or get out of their restraints. She has received special CPR and first aid training not required of the other drivers and drives a specially-equipped 30-passenger bus unlike the larger 72-passenger buses driven by the regular drivers. She is considered to be a special education employee by the District, by virtue of which it receives special funding to fund her position. On the basis of the objective evidence, therefore, I am convinced that the Grievant does qualify as a Handicap Bus Driver and is entitled to the per trip premium.

For the foregoing reasons and based upon the record as a whole I hereby enter the following

**AWARD**

The District violated the collective bargaining agreement by not paying the Handicap Bus Driver premium to the Grievant. Therefore, the District shall make the Grievant whole by paying back wages for each handicap run from October 1, 2001, through the end of the 2001-2002 school year at the rate of \$11.03 per trip and for each handicap run during the 2002-2003 school year at the rate of \$11.42 per trip.

The Arbitrator will retain jurisdiction over this award for a period of sixty days to resolve any issues arising in the implementation of this award.

Dated at Fond du Lac, Wisconsin, this 18<sup>th</sup> day of August, 2003.

John R. Emery /s/

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John R. Emery, Arbitrator