ROGER HANNER, et al.,

Grievants,

v. DOCKET NO. 95-10-288

FAYETTE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants (See footnote 1), all regularly employed as mechanics in the Fayette County bus garage, filed this grievance on June 2, 1995, alleging a violation of W. Va. Code § 18A-4-15 regarding the rotation of substitutes. Following adverse decisions at the lower levels, Grievants appealed to level four on July 7, 1995. Hearing was set and continued for good cause, at which time the parties agreed to submit the matter on the record. This case became mature for decision on September 15, 1995, the date for filing proposed findings of fact and conclusions of law.

The facts of this case are not in dispute. David Clagg, Director of Transportation, was off work due to an injury. Galen Horrocks, Shop Foreman, properly filled in as a substitute for Mr. Clagg. Paul Sutton, a mechanic, was next in line on the seniorityrotation roster and was offered the opportunity to substitute for Mr. Horrocks' position as Shop Foreman, which he accepted.

Mr. Sutton took a vacation day on May 1, 1995, and resumed his substitute position as Shop Foreman on May 2, 1995. Grievants filed this grievance contending that the vacation day taken by Sutton on May 1, 1995, resulted in a break in his turn as substitute, and the next mechanic in line should have been offered the opportunity to substitute for Horrocks on May 1, 1995, and should have continued in that position until Horrocks' return or until that employee missed a day of work.

The Board responds that a vacation day, sick day, OSE day, or snow day, does not serve to break an employee's service in an otherwise properly awarded substitute position, relying on the applicable statute and a State Superintendent's opinion directly on point dated February 16, 1984.

W. Va. Code § 18A-4-15 states, in pertinent part:

> Substitutes shall be assigned in the following manner: A substitute with the greatest length of service time, that is, from the date he began his assigned duties as a substitute in that particular category of employment, shall be given priority in accepting the assignment throughout the period of the regular employee's absence or until the vacancy is filled on a regular basis under the procedures set out in 18A-4-8b. All substitutes shall be employed on a rotating basis according to the length of their service time until each substitute has had an opportunity to perform similar assignments: Provided, That if there are regular service employees employed in the same building or working station as the absent employee and who are employed in the same classification category of employment, such regular employees shall be first offered the opportunity to fill the position of the absent employee on a rotating and seniority basis with the substitute then filling the regular employee's position. A regular employee assigned to fill the position of an absent employee shall be giventhe opportunity to hold that position throughout such absence. (Emphasis added)

Relying on the above portion of the statute, in particular the highlighted portion, the State Superintendent of Schools issued an opinion on February 16, 1984, stating that a service substitute must be permitted to return to an assignment after having a break in that assignment due to, for example, illness or day off, and that such a day off does not serve to sever the substitute's service in that position.

Likewise, the first proviso of that Code section explicitly states that "[a] regular employee assigned to fill the position of an absent employee shall be given the opportunity to hold that position throughout such absence." Thus, it appears that regular employees, such as Grievants, are extended the same opportunities as substitute employees in filling an absent employee's position, including the opportunity to remain in that position throughout the absence.

Interpretations by the State Superintendent of Schools of statutes affecting education personnel are to be accorded great weight unless clearly erroneous. Smith v. Greenbrier County Bd. of Educ., 452 S.E.2d 412 (W. Va. 1994); Bennett v. Fayette County Bd. of Educ., Docket No. 95-20-256 (Aug. 31, 1995). In the instant case, Grievants have presented, and the undersigned finds, no evidence or law which would support concluding the February 16, 1984, State Superintendent's opinion on this issue to be clearly erroneous, or not applicable in some way to regular employees, as opposed to substitute employees.

Conclusions of Law

1. In order to prevail, Grievants must establish the truth of their allegations by a preponderance of the evidence. Black v. Cabell County Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989).

2. Interpretations by the State Superintendent of Schools of statutes affecting education personnel are to be accorded great weight unless clearly erroneous. Smith v. Greenbrier County Bd. of Educ., 452 S.E.2d 412 (W. Va. 1994); Bennett v. Fayette County Bd. of Educ., Docket No. 95-20-256 (Aug. 31, 1995).

3. A regular employee properly assigned to fill the position of an absent employee on a substitute basis shall hold that position throughout the period of the regular employee's absence. W. Va. Code § 18A-4-15.

4. A vacation day, sick day, OSE day, or snow day, shall not be interpreted as a "break" in the substitute's period of service under Code § 18A-4-15, which would require the next employee on the substitute or seniority roster to be given the opportunity to rotate into the position. State Superintendent's Opinion (February 16, 1984).

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Fayette 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.

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MARY JO SWARTZ

Administrative Law Judge

Dated: October 12, 1995

Footnote: 1 *Roger Hanner, George Oiler, James Bennett, Michael Holstine, Bill Hewitt, Leon Shrewsberry, and Gary Hornsby.*