ORVAL L. MILLER, et al.,

Grievants,

v. Docket No. 99-30-223

MONONGALIA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, fifty individuals employed by the Monongalia County Board of Education (Respondent) as bus operators, allege violations of W. Va. Code §§18A-4-8b and 18A-4- 15, as well as Respondent's own practice and policy, when it assigned substitute employees to extracurricular assignments held by absent, regular employees. Grievants request that Respondent discontinue the practice, and that they be awarded retroactive wages, with interest, and benefits for the assignments they were entitled to have received. The grievance was filed at level one on or about September 9, 1998; however, the record does not reflect that a decision was issued by Grievants' immediate supervisor. A level two hearing was conducted on December 10, 1998, and a decision was never issued at that level. Appeal was made to level four on June 1, 1999. An evidentiary hearing was convened on August 12, 1999, at which time a number of Grievants were present and represented by John E. Roush, Esq., of the West Virginia School Service Personnel Association. Respondent was represented by Kelly Kimble, Esq.

The essential facts of this matter are undisputed and may be set forth as the following findings of fact.

Findings of Fact

1. Grievants are all employed by Respondent on a regular, full-time basis as bus operators.
2. For purposes of the Transportation Department, Respondent divides the county into two areas, Morgantown and Blacksville.
3. Prior to 1997, Respondent allowed bus operators to “step up” into extracurricular assignments held by regular bus operators who were absent.
4. During the 1997-98 school year, Respondent changed its practice, and no longer allowed

Grievants to “step up”, but, hired substitute employees as needed.

Discussion

Respondent initially made a Motion To Dismiss this matter, stating that this issue had been ruled upon a number of times by the Grievance Board. Counsel offered a number of decisions issued at level four in which it had been held that, unlike other service personnel, regularly-employed bus operators are not entitled to “step up” into vacancies created by the absence of another employee in that classification because they do not share a workstation.

Grievants argue that the cases cited by Respondent are currently on appeal in circuit court, and note that other cases, involving transportation aides, have held they are entitled to “step up”. Grievants assert that the decisions may be inconsistent, particularly when compared to other issues in which it has been held that all the roads and byways constitute a bus operator's workstation. Grievants request the issue be reconsidered, and the recent line of cases reversed, to allow them the relief which they claim.

This grievance arises from a provision in W. Va. Code §18A-4-15, addressing theemployment of service personnel substitutes. After listing a number of instances in which it is appropriate to assign substitute service personnel, it provides, “[t]hat 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.”

This particular provision has been addressed by the Grievance Board on a number of occasions. In Willcoxen v. Mason County Bd. of Educ., Docket No. 26-88-231 (Jan. 10, 1989), it was determined that a board of education could separate extracurricular duties from regular duties of an absent bus operator and allow other individuals in that classification to “step up”, or assume that assignment during the period of the operator's absence. However, in Terek v. Ohio County Bd. of Educ., Docket No. 91-35-366 (Mar. 6, 1992), the Grievance Board took a closer look at what actually constitutes a bus operator's working station, and determined that employees in that particular classification do not share a common work station or building, and “the proviso for job swaps is not triggered to compel the offer of such job swaps for them.” The ALJ noted that while a board of education is not statutorily required to allow the “step up” or job swap, neither was it precluded from offering the option to its bus

operators as a matter of practice or policy.

The Grievance Board has continued to rule that "[r]egularly hired bus operators have no 'right' to substitute for an absent driver or to drive any part of the ongoing driving assignments or routes of absent regularly-employed bus operators" in Messer v. MingoCounty Bd. of Educ., Docket No. 96-29-513 (July 31, 1997); and Vincent v. Marion County Bd. of Educ., Docket No. 93-24-077 (Oct. 18, 1993).

Recently, in Costello v. Monongalia County Bd. of Educ., Docket No. 98-33-388 (Jan. 22, 1999), it was determined that transportation aides also do not share a common work site and are not eligible to "step up" into another assignment. In Costello, as in the present matter, grievant argued that Willcoxen was supportive of her claim. Finding Willcoxen inconsistent with Terek, supra, and its progeny, Willcoxen was expressly overruled. Thus, the Grievance Board has established a line of cases consistently holding that bus operators and transportation aides do not share a work site with other employees in their classification, and are not entitled to "step up" into a position created by an absence of another employee.

The Grievance Board adheres to the doctrine of stare decisis in adjudicating grievances that come before it. Chafin v. W. Va. Dept. of Health & Human Resources, Docket No. 92-HHR-132 (July 24, 1992), citing Dailey v. Bechtel Corp., 157 W. Va. 1023, 207 S.E.2d 169 (1974). This consistent application of principles of law to cases where the facts are substantially the same is founded upon a determination that the employees and employers whose relationships are regulated by this agency are best guided in their actions by a system that provides for predictability, while retaining the discretion necessary to effectuate the purposes of the statutes applied. Consistent with this approach, the Grievance Board follows precedents established by the Supreme Court of Appeals of West Virginia as the law of this jurisdiction. Likewise, prior decisions of the Grievance Board are followed unless a reasoned determination is made that the prior decision was clearly inerror. Grievants have made no persuasive argument that the prior decisions rendered on this issue were in error, and there is no reason to revisit an issue which has clearly been decided.

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

Conclusions of Law

1. Regularly employed bus operators and transportation aides have no "right" to substitute for

an absent driver or to drive any part of the ongoing driving assignments or routes of absent regularly-employed bus operators. Costello v. Monongalia County Bd. of Educ., Docket No. 98-33-388 (Jan. 22, 1999); Messer v. Mingo County Bd. of Educ., Docket No. 96-29-513 (July 31, 1997) ; Vincent v. Marion County Bd. of Educ., Docket No. 93-24-077 (Oct. 18, 1993); Terek v. Ohio County Bd. of Educ., Docket No. 91-35-366 (Mar. 6, 1992).

2. The Grievance Board adheres to the doctrine of stare decisis in adjudicating grievances that come before it. Chafin v. W. Va. Dept. of Health & Human Resources, Docket No. 92-HHR-132 (July 24, 1992), citing Dailey v. Bechtel Corp., 157 W. Va. 1023, 207 S.E.2d 169 (1974). This adherence to consistently applying principles of law to cases where the facts are substantially the same is founded upon a determination that the employees and employers whose relationships are regulated by this agency are best guided in their actions by a system that provides for predictability, while retaining the discretion necessary to effectuate the purposes of the statutes applied. Consistent with this approach, the Grievance Board follows precedents established by the Supreme Courtof Appeals of West Virginia as the law of this jurisdiction. Likewise, prior decisions of the Grievance Board are followed unless a reasoned determination is made that the prior decision was clearly in error. Berry v. Logan County Bd. of Educ., Docket No. 95-23-421 (Mar. 29, 1996); Belcher v. W. Va. Dept. of Transp., Docket No. 94-DOH-341 (Apr. 27, 1995).

3. Because Grievants do not share a common working station with other bus operators they are not entitled, under W. Va. Code §18A-4-15, to “step up”, or assume any part of an ongoing assignment held by an absent, regularly-employed bus operator.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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. 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 record can be prepared and properly transmitted to the appropriate circuit court.

Date: September 29, 1999 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE