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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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DAVID L. BAYS

VS:

DOCKET NO: 10-86-005

FAYETTE COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board following a decision by the Fayette County Board of Education which affirmed the decision of the level two grievance evaluator.

In his grievance, the grievant, David L. Bays, complains that his extracurricular assignment was terminated, without notice to him, as provided for in WV Code §18A-2-7. The Fayette County Board of Education, on the other hand, contends that the provisions of WV Code §18A-2-7 do not apply and that the grievant's assignment was eliminated by virtue of a reduced vocational school enrollment requiring that the number of extracurricular assignments be reduced from 4 to 3. The remaining assignments were given to the bus operators with the greatest seniority.

The factual circumstances as portrayed in the record were not contested by the parties, and therein, it is revealed that the assignment in question was originally made to the grievant in March,

1984, on a substitute basis.¹ The grievant performed this assignment throughout the remainder of the school year and continued as a substitute at the beginning of the 1984-85 school year. On September 11, 1984, Melvin Kincaid resigned and shortly thereafter (September 25, 1984), the Fayette County Board of Education converted the grievant's assignment from a substitute to a regular assignment.²

In August, 1985, the principal of Midland Trail High School announced at a meeting of the bus operators assigned to Midland Trail Center, that only 3 extracurricular assignments would be required for the 1985-86 school year. The 3 bus drivers with the greatest seniority were Joseph Crookshanks, Benjamin Miller, and Judy Kessler. They expressed a desire to be assigned the extracurricular bus run and thereafter, all 3 were assigned for the 1985-86 school year.

¹Melvin Kincaid was the bus operator who had the original regular assignment for the 1983-84 school year, but was suspended in March, 1984. At that time, those bus drivers with the most seniority declined to accept the vacant extracurricular bus run. As a result, the grievant was offered and he accepted the assignment on a substitute basis.

²The extracurricular assignment involving the grievant required the services of 4 bus operators, namely, Benjamin Miller, Judy Kessler, Joseph Crookshanks, and David Bays (the grievant), during the 1984-85 school year.

The problem presented is whether or not the grievant's extracurricular assignment is subject to the due process requirements of WV Code §18A-2-7 which is applicable to contracts arising out of WV Code §18A-4-16.

The West Virginia Supreme Court of Appeals in the case of Smith v. Board of Education of the County of Logan, etc., et al., __W.Va.__, 341 S.E.2d 685, (1985), set forth in syllabus point 2, that:

The procedural requirements mandated under West Virginia Code §18A-2-7 (1984 Replacement Vol.) and West Virginia Code §18A-2-8 (Supp. 1985), clearly apply, by the unqualified terms used therein, to all school personnel positions. Accordingly, it follows that school board actions relating to contracts entered into pursuant to West Virginia Code §18A-4-16 (1984 Replacement Vol.) are not exempt from such requirements.

It is noted that in the Smith case, supra, wherein the Court recited, inter alia, as part of the material facts that appellant, Lacy Smith, Head Football Coach, had no written contract for four of the five years relating to his coaching duties and that no prior notice was given to the appellant concerning the nonrenewal of his coaching position. (Emphasis added)

The factual situation in Smith, supra, is analogous to the present grievance, in that, the grievant had no written contract nor was he given any notice until the August, 1985, meeting at which time his extracurricular contract had been terminated/eliminated.³

³The record indicates that the decision to terminate/eliminate grievant's extracurricular assignment was made as early as May, 1985, but was not communicated to the grievant until August, 1985.

Additionally, the Supreme Court of Appeals of West Virginia on July 8, 1986, reaffirmed its position set out in the Smith case, supra, in its decision of Hosaflook v. Nestor, __W.Va.__, 346 S.E.2d, 798 (1986), wherein the Court in its syllabus point 1, stated:

The procedural requirements mandated under West Virginia Code §18A-2-7 (1984 Replacement Vol.) and West Virginia Code §18A-2-8 (Supp. 1985), clearly apply, by the unqualified terms used therein, to all school personnel positions. Accordingly, it follows that school board actions relating to contracts entered into pursuant to West Virginia Code §18A-4-16 (1984 Replacement Vol.) are not exempt from such requirements.

Thus, if the grievant's extracurricular assignment falls under the provisions of WV Code §18A-4-16, relating to extracurricular activities, then the procedure employed by the Fayette County Board of Education was improper in that it afforded none of the due process protections required by WV Code §18A-2-7. There was no disagreement by the Fayette County Board of Education that this was a contract governed by WV Code §18A-4-16, which was made apparent in paragraph 4 of the Board's level three decision, which provided:

(4) The prior assignment of David Bays, to an extra duty assignment as a vocational run driver was an agreement separate from his employment contract with the Fayette County Board of Education as required by West Virginia Code §18A-4-16.⁴

⁴The Fayette County Board of Education recognized that grievant's assignment fell under the provisions of WV Code §18A-4-16, even though it refers to the assignment as being an "extra duty assignment" which is defined by WV Code §18A-4-8b. (Emphasis added)

In as much as it is clear that the provisions of WV Code §18A-4-16 apply to the extracurricular assignment of the grievant, it also follows that the provisions of WV Code §18A-2-7, apply.⁵

FINDINGS OF FACT

1. The grievant, David L. Bays, was assigned an extra-curricular assignment for the school year 1984-85 in September, 1985.
2. Without written notice, the grievant's extracurricular assignment was eliminated.
3. The decision to eliminate the grievant's extracurricular assignment was made in May, 1985, and was not communicated to the grievant until August, 1985, at which time it was orally announced to the bus operators in a meeting at Midland Trail Center.

CONCLUSIONS OF LAW

1. Contracts arising out of WV Code §18A-4-16, are subject to the due process mandates contained in WV Code ,18A-2-7 and WV Code §18A-2-8.
2. WV Code §18A-4-16 requires that an extracurricular assignment be made the subject of a written contract containing the specific provisions thereof.
3. A county board of education has the affirmative duty to provide a written contract for an employee assigned any extra-curricular assignment, containing the mutually agreed upon terms and conditions.
4. Failure to follows the due process requirements of


⁵See Smith and Honaflook, supra.

WV Code §18A-2-7 will result in action which is null and void.

5. The removal of the grievant from his extracurricular assignment without timely written notice was improper and null and void.

For all of the foregoing reasons, the grievance is granted. Accordingly, the Fayette County Board of Education is **ORDERED** to reinstate the grievant to his extracurricular assignment together with back pay and all the benefits, privileges, and rights thereunto appertaining.

Either party may appeal this decision to the Circuit Court of Fayette County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (WV Code §18-29-7) Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



JOHN M. RICHARDSON
Hearing Examiner

DATED: Oct 23, 1986