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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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ALICE BENGEY

V:

DOCKET NO: 45-86-056

SUMMERS COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board following a decision by the Summers County Board of Education affirming the decision of Demetrius E. Tassos, Superintendent. Thereafter, the grievant, Alice Benghey, appealed to the West Virginia Education Employees Grievance Board and after both parties waived, in writing, an evidentiary hearing, the matter was submitted on the accumulated record for a decision.

The grievant, an Aide III/Bus Monitor, complains that she works 3 hours and 20 minutes and is paid as a one half time employee, whereas two other employees who perform similar duties, are being paid full time wages. The grievant requests that she be given back pay and designated as a full time employee.

The record reveals that the grievant has a continuing contract as an Aide III/Special Education Bus Monitor for the Avis School. At 7:00 o'clock a.m., the grievant catches a ride on a

school bus to her place of work which requires approximately 20 minutes of travel time. Apparently, when the grievant first brought this matter to the attention of her Supervisor, Don Kessler, Transportation Director, he concluded that she was including the time for transportation to work as part of her regular work day. Thereafter, the Transportation Director prepared a document dated November 29, 1984, for the grievant's signature, which contained provisions explaining to the grievant that her transportation time to work on a school bus was not part of her regular work day.¹ The grievant signed the document. While there was some question as to the voluntariness of the grievant's signing of the document, it only involved 20 minutes of travel time. However, it was uncontested that the grievant spent at least 3 hours as her regular work day and should the travel time be included, it would make that total 3 hours and 20

¹The document as signed by the grievant and dated November 29, 1984, in pertinent part provides:

This is to verify our discussion regarding the Special Education bus picking you up at your home address rather than you driving to Jumping Branch to start your work day. This was brought to my attention when you indicated to me that your work day was consistently exceeding 3 hours and 20 minutes by about 15 minutes. Since the additional 15 minutes is a result of the bus furnishing you transportation to work, I could not justify continuing this practice if it meant changing your employment from half time to full time.

However, at your request, I do not object to the bus providing you transportation as long as you acknowledge that your work day starts and finishes at the Jumping Branch School.

minutes. The other two employees, Vivian Atwell and Ann Stokes, who were similarly situated, i.e., bus monitors, worked 4 hours and 3 hours 45 minutes, respectively. The grievant argues that while those employees may work slightly longer, they are compensated on a full time salary scale, and that such compensation should be uniformly applied to her as required by WV Code §18A-4-8, which in pertinent part provides:

The county board of education may establish salary schedules which shall be in excess of the state minimum fixed by this article, these county schedules to be uniform throughout the county with regard to any training classification, experience, years of employment responsibility, duties, pupil participation, pupil enrollment, size of building, operation of equipment or other requirements. Further, uniformity shall apply to all salaries, rates of pay, benefits, increments of compensation for all persons regularly employed and performing like assignments and duties within the county.

The Board of Education, on the other hand, contends that the 20 minutes of travel time should not be included in the grievant's regular work day and, further, that she still works less than 3½ hours, which according to WV Code §18A-4-8a requires the Board of Education to pay one half of the state minimum pay scale. WV Code §18A-4-8a, which was in effect when this grievance arose, in pertinent part provides:

On and after the first day of July, one thousand nine hundred seventy-nine, the minimum pay for each service employee whose employment is for a period of more than three and one half hours a day shall be at least the amounts indicated in the "state minimum pay scale" as

set forth in this section, and the minimum monthly pay for each service employee whose employment is for a period of three and one half hours or less a day shall be at least one half the amount in the "state minimum pay scale" set forth in this section.²

No question was raised by the record as to whether or not any employee working less than 3½ hours was being paid as a full time employee. Further, it appears that all employees working less than 3½ hours per day are being paid in accordance with WV Code §18A-4-8a. There was no issue concerning whether or not the county board of education had established salary schedules in excess of the state minimum which were not uniform throughout the county.

While at first blush there might seem to be a conflict between WV Code §18A-4-8a and WV Code §18A-4-8 under the existing facts, however, this disappears under close scrutinization. The grievant's assignment and duties were for less than 3½ hours while Atwell's and Stoke's assignments were for more than 3½ hours. Even though the period of time would appear to be a small difference, the Legislature has chosen to make it significant by requiring that any employee working more than 3½ hours per day be paid the minimum amount for a full day as provided on the scale. The county could elect to pay more and if it chooses to do so then such amount must be uniformly applied in accordance with WV Code §18A-4-8.

²WV Code §18A-4-8a was amended in 1986. This amendment changes the above quoted text by changing the date of July 1, 1979, to July 1, 1986.

In as much as the record does not reflect that the county is not uniformly applying any excess it may have established in addition to the state minimum salary, the grievant's complaint must fail. The facts are uncontested that grievant works less than 3½ hours and works less time than Atwell and Stokes and this Board will not require a county board of education to provide a sum of money to establish a salary scale in excess of the state minimum scale where the establishment of such an excess scale lies in the discretion of the county board of education.

In addition to the foregoing, the following findings of fact and conclusions of law are incorporated herein.

FINDINGS OF FACT

1. The grievant, Alice Benguey, was employed as a one half time Aide III/Special Education Bus Monitor by the Summers County Board of Education.

2. Grievant rode to work on a school bus with the permission of the Transportation Director.

3. The grievant's work day began at 7:20 a.m. when she arrived at her starting work place, i.e., Jumping Branch School.

4. The grievant worked approximately 3 hours per day and never more than 3½ hours per day.

5. Vivian Atwell and Ann Stokes consistently worked more than 3½ hours per day and were assigned as full time Aides/Bus Monitors.

CONCLUSIONS OF LAW

1. An assignment as a half time Aide/Bus Monitor who works less than 3½ hours per day is not a "like" assignment, as contemplated by WV Code §18A-4-8, when compared to a full time Aide/Bus Monitor who works more than 3½ hours per day. (Emphasis added)

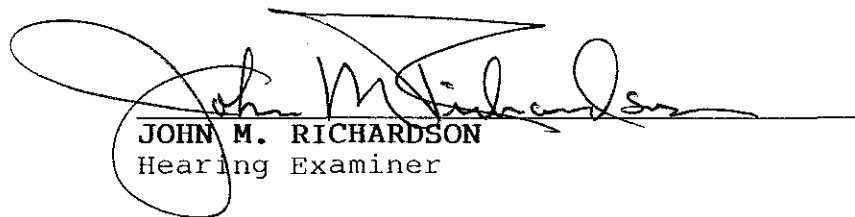
2. WV Code §18A-4-8 requires, inter alia, uniformity in pay for service employees performing "like" assignments and duties. (Emphasis added)

3. WV Code §18A-4-8a requires, inter alia, that service employees who work for 3½ hours per day be paid the full amount indicated on the state minimum pay scale.

4. It is within the discretion of the county board of education to pay any amounts in excess of the state minimum pay scale and in the event that the county board of education decides to appropriate monies for additional salary increments, then such salary increments shall be uniformly applied in conformity with WV Code §18A-4-8.

In view of the matters contained herein, the grievance is denied.

Either party may appeal this decision to the Circuit Court of Summers County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (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. 7, 1986