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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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MICHAEL DINGER

VS:

DOCKET NO: 27-86-032

MERCER COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from the election of the Mercer County Board of Education to waive consideration of a level two decision hearing. Pursuant to notice, a level four hearing was held before John M. Richardson, Hearing Examiner, at Beckley, West Virginia. The grievant appeared in person and by his representative, Laurence Smith; the Mercer County Board of Education was represented by Dr. Deborah Akers, Administrative Assistant. Following the hearing, the parties filed proposed findings of fact and conclusions of law which were considered together with the matters presented at the level four hearing in arriving at this decision.

The grievant, Michael Dinger, complains that in 1979 he agreed, in addition to transporting his regular students, to also transport vocational students while carrying out his regular duties. It is uncontested that the grievant performed these services without compensation and that the matter of compensation did not

arise until the grievant learned that at least one other bus driver, whom he believed is performing a similar duty, was receiving an additional "supplemental" sum of \$150.00 per month. The grievant now seeks back pay for those services rendered over a five year period.¹

The record reveals that the grievant originally agreed to pick up the additional vocational students without the expectation of additional pay. The picking up of additional vocational students did not entail any change in the bus route; however, after the closing of Park School in 1980, it did require approximately thirty minutes of additional time. This additional time occurred as a result of having to wait for another bus to arrive and pick up the vocational students. This extra waiting time still does not exceed the grievant's duty time as established by Mercer County Board of Education Policy #E.E.A.

The Mercer County Board of Education contends that the grievant's continuing contract covers the services rendered by the grievant as being part of his regular "duty time." Mercer County Board of Education Policy #E.E.A. establishes that the "duty time" of all bus drivers begins at 6:30 a.m. to 9:00 a.m. and from 2:30 p.m. to 5:00 p.m., and therefore, the grievant who admittedly did not perform any services outside of those regular duty runs is not entitled to supplemental compensation.² Further, the Board

¹In addition, the grievant seeks reinstatement with pay, to the assignment of transporting the vocational students.

²Only those drivers performing services outside of their regular "duty runs" receive supplemental compensation. The Board also provided evidence which established that all of its bus drivers that performed supplemental runs, are provided a written contract and are paid uniformly for those services.

contends throughout the period in question, the grievant agreed to perform the service without pay, and shortly thereafter, the grievant made the request for pay, another bus driver volunteered to perform the service without charge.

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

FINDINGS OF FACT

1. The grievant is a regular school bus operator for the Mercer County Board of Education and has been so employed since 1976.

2. The grievant agreed to pick up vocational students on his regular route without compensation in 1976, and continued to do so until the 1985-86 school year.

3. The grievant did not make his request for compensation until after the beginning of the 1985-86 school year, and shortly after learning of the request, was relieved of the responsibility of transporting the vocational students and another driver agreed to perform those duties without compensation.

4. The closing of Park School in 1980, resulted in the grievant having to wait an additional one-half hour in performing the duty of transporting vocational students.

5. The grievant did not perform any service outside of his regular duty run which began at 6:30 a.m. to 9:00 a.m., and from 2:30 p.m. to 5:00 p.m.

6. The agreement made by the grievant and school authorities was a mutual agreement which was renewed, without objection or comment, over a five year period.

7. The grievant's regular and supplemental pay was not affected by his being relieved of transporting the vocational students.

8. The grievant's request for back pay occurred some five years after he had agreed to perform the services without charge.

9. The grievant is being paid uniformly under the current and regular supplemental contracts.

10. The bus drivers to whom grievant compared himself, as performing a similar assignment, is in fact, not performing a similar assignment.

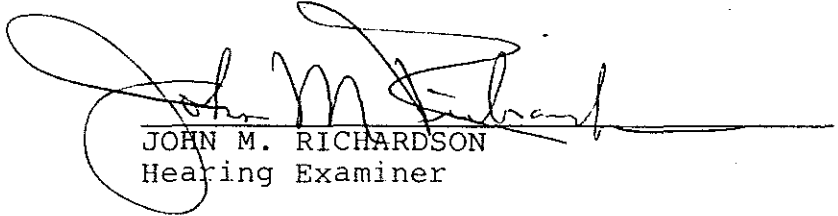
CONCLUSIONS OF LAW

1. The requirement of WV Code §18A-4-5b relating to uniformity in pay for performing like assignment, is not being violated herein.

2. The lapse of five years, from the date of the closing of Park School and the alleged increase of one-half hour working time, both of which were within the knowledge of the grievant at the time they occurred, causes this grievance to be untimely as provided in WV Code §18-29-4(a)(1).

For all of the foregoing reasons, the grievance is denied.

Either party may appeal this decision to the Circuit Court of Mercer 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:

Nov 3, 1986