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**SANDRA SUE DINGESS and
JOYCE ELAINE WELCH**

v.

Docket No. 20-86-011

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievants, Sandra Sue Dingess and Joyce Elaine Welch, are employed by Kanawha County Board of Education as 200 day school bus operators. On July 18, 1985 they filed a grievance alleging that a new summer bus operator position had been filled contrary to Code, 18A-4-8b and a level two hearing was conducted on August 26, 1985. The board of education waived participation and the grievance was filed in this office on January 8, 1986 and a hearing conducted on September 30, 1986.¹

Grievant Dingess contends that on June 18, 1985 Jerome Lewis, supervisor of the St. Albans bus terminal, telephoned her at home inquiring if she wanted to work the following day

¹ In March, 1986 a level four hearing was continued on the motion of counsel for the grievants due to the unavailability of one of the grievants. A level four evidentiary hearing was waived on September 30, 1986 and the grievance was submitted to the hearing examiner on the record made at level two and the legal arguments of counsel for the parties. Findings of fact and conclusions of law were submitted on October 15, 1986.

on a new special education run which had not been posted; that if she accepted it would be for one day because the run was going to be rotated among the substitutes. Grievant was to go on vacation to Texas with Ms. Welch on June 20 and declined the run on the basis of Mr. Lewis' representations. She stated, however, that she would not have gone on vacation if she had known the run would have been awarded to her. The run was awarded to a less senior driver, Pauline Warden, and grievant seeks to be awarded the run plus pay for the period she was deprived of the run.²

Grievant Welch contends that Mr. Lewis telephoned her at home in the evening of June 18 and inquired if she wanted to work the following day on a new summer run which had not been posted. She inquired if it would be hers if she did and Lewis responded in the negative, stating that it would go to the next substitute driver when she went on vacation and would be rotated around the substitutes. She declined, observing that she would accept if she could also have the job when she returned from vacation. She contends that the run should be posted and bid upon and that she should be paid

² Mrs. Dingess had thirteen years seniority at the time and Ms. Warden slightly less. Grievants also complained about the award of another position while they were on vacation but did not develop sufficient evidence to render a decision thereon. It is therefore assumed that grievants abandoned that portion of their grievance. State ex rel. Hawkins v. Tyler County Board of Education 275 S.E.2d 908, 916 (W.Va. 1980).

for the days she did not work that summer.³

Jerome Lewis, transportation supervisor, testified that on June 12, 1985 he met with the school bus drivers about the summer substitute list and explained the procedure to be used in the event additional work were added during the summer, i.e., drivers would be called from the substitute list on the basis of seniority (T. 38). On June 17 it was brought to his attention that a special ed student needed transportation to the Owens Center and the decision was made on June 18 to add a bus from the St. Albans terminal. Lewis went to the seniority list and called down the list, starting at the most senior driver and the second call was to Ms. Dingess, who inquired specifically if she took the run on June 19 it would be hers when she returned from vacation. He replied in the negative and she told him to get someone else because she had a lot of things to do to prepare for her vacation (T. 41). He denied advising her that the run would be rotated among the substitutes because it was common knowledge that a substitute that was called stayed on the run; that "...that is basic procedure throughout the county."⁴

³ On cross-examination she admitted inquiring of Mr. Lewis whether she could work the next day, go on vacation and have the run for the remainder of the summer upon her return and that he refused. (T. 17,18). She acknowledged that she could not recall any other occasion where a new run was rotated around during the summer between substitutes as opposed to being awarded to one driver (T. 18).

⁴ Mr. Lewis testified that the substitute list was "rotated" by going through the seniority list from top to bottom and then starting over again. This may have

(footnote continued)

Mr. Lewis then called Ms. Welch and gave her the same information that he had given to Ms. Dingess. She advised him that she and Ms. Dingess were going to Texas on vacation and that she did not want the run.⁵ After his discussion with Ms. Welch he called the next most senior driver, Pauline Warden, and she accepted.

Grievants contend that this position should have been posted and, in the alternative, that the misrepresentation by Mr. Lewis as to the term of employment impaired their ability to exercise their seniority rights in bidding on the informal, constructive telephonic posting. Counsel for the board of education contends that there were not misrepresentations made and the procedure utilized was included in the Kanawha County Transportation Manual, of which grievants were aware.

Code, 18A-4-8b requires boards of education to post and date notices of all service personnel job vacancies for at least five working days. There is no requirement therein that this posting should occur only within the contract term. Accordingly, all vacancies should be posted. After the five day minimum posting period all vacancies must be filled within

(footnote continued)

been the source of some confusion; however, he specifically stated that "We never take a person off a run just to rotate or to give somebody under them the work." (T.42).

⁵ Mr. Lewis had heard grievants talking at the terminal and knew they were going to Texas. He did not recall either grievant offering to forego their vacation to take the run and they were aware that had they stayed and taken the run it would have been theirs for "when a sub is called its their run." (T.44). See, Shirley Mullins v. Kanawha County Board of Education, Docket No. 20-86-222-1.

twenty working days from the posting date. Code, 18A-4-15 authorizes boards of education to employ substitute service personnel on the basis of seniority to perform certain enumerated duties but before any substitute service employee enters upon their duties a contract must be executed in accordance with Code, 18A-2-5. It would appear that compliance with these provisions would minimize the instances of confusion created by the procedure utilized herein and similar instances in filling new positions after the contract term has expired.⁶

In addition to the foregoing the following specific findings of fact and conclusions of law are appropriate.

FINDINGS OF FACT

1. Grievants are employed by the Kanawha County Board of Education as 200 day school bus operators assigned to the St. Albans bus terminal.

⁶ In Shirley Mullins v. Kanawha County Board of Education, supra, footnote 5, the grievant alleged that she had been misinformed by a bus terminal supervisor as to the term of the summer work. The alleged misrepresentation, however, was not the determinative factor as there grievant worked the job and obtained it by operation of law. As to the requirement of posting see Helen Yeager v. Nicholas County Board of Education, Docket No. 34-86-229-4. For a factually similar grievance see Joann Hammond v. Logan County Board of Education, Docket No. 23-86-023.

2. On June 18, 1985 a decision was made to add a special education bus run from the St. Albans terminal and Jerome Lewis, terminal supervisor, began calling the employees on the summer substitute list on a seniority basis.

3. Mr. Lewis first called Roy Day but he was on vacation; he then called grievant Dingess and offered her the new run. Ms. Dingess declined because she was preparing to go on vacation on June 20.

4. Mr. Lewis contacted the next most senior summer substitute, grievant Welch, and offered her the run. Ms. Welch was going on vacation with Ms. Dingess on June 20 and declined the run.

5. Mr. Lewis contacted the fourth most senior summer substitute, Pauline Warden, and she accepted the run.

6. The established procedure for filling an additional run in Kanawha County is contained in a Transportation Manual and does not permit the "rotation" of a run among summer substitutes. Grievants knew or should have known of this provision.

CONCLUSIONS OF LAW

1. Code, 18A-4-8b requires boards of education to post and date notices of all job vacancies for at least five working days. The notice must include the job description, the period of employment, the amount of pay and benefits and other information that is helpful to the employees to understand the particulars of the job. This posting must be done for all positions, including those arising after the contract term.

2. In the event telephone contact is used to notify the service employees of the vacancy the employee must be advised that the vacancy has been posted and the contents thereof read to the employee.

3. After the expiration of the five day minimum posting period all vacancies shall be filled within twenty working days from the posting date of any job vacancies of established existing or newly created positions. Code, 18A-4-8b.

4. Grievants have failed to prove that they were misled by the terminal supervisor or that they would have accepted the position as offered.

For the foregoing reasons the grievance is denied.

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty 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.

A handwritten signature in cursive script, appearing to read "Leo Catsonis", is written over a horizontal line.

LEO CATSONIS

Chief Hearing Examiner

Dated: November 13, 1986