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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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JOE JUNIOR GARVIN

vs.

DOCKET No. 51-86-060

WEBSTER COUNTY BOARD OF EDUCATION

DECISION

Joe Junior Garvin, the grievant, is employed as a bus operator by the Webster County Board of Education. For the first three years of his employment the grievant had also been awarded one of four extracurricular activity runs which consisted of transporting students from Webster County High School to their homes in the Birch River area on those days when an after-school activity was held.

Beginning with the 1985-86 school term this activity run was abolished and combined with another run thereby reducing the number of extracurricular runs to three. As Mr. Garvin had the least seniority, he was not granted an extracurricular run that school term.

The grievant alleges a violation of W. Va. Code, 18A-2-8a and/or Code, 18A-2-6 in that he was not properly

notified of the termination or given an opportunity for a hearing prior to the board's action. His request for relief includes reinstatement to his activity run and compensation for wages lost during the 1985-86 school year.

The board of education argues that extracurricular contracts are for a period of one year only, therefore Mr. Garvin was not terminated from a position as his extracurricular contract simply was not renewed and he retained his regular run. Further, the grievant was notified of the nonrenewal of his extracurricular contract by letter dated March 20, 1985, and signed by Martha Dean, Superintendent. Finally, the board states the grievance was not filed in a timely manner as the level one form was not submitted until October 1, 1985.

W. Va. Code, 18A-2-6 provides that after three years of acceptable employment, a service personnel employee shall be granted continuing contract status when he enters a new contract of employment. This continuing contract shall remain in full force and effect except as modified or until termination.

W. Va. Code, 18A-2-8a requires that on or before the first Monday in May of each year the county board of education must act upon the retention of probationary employees. Any probationary employee who is not rehired

or recommended for rehiring must be so notified within ten days following the board meeting. The employee may then request a statement of reasons for not having been rehired and may request a hearing before the board.

The facts indicate this is not a situation of a tenured employee being dismissed or a probationary employee who was not recommended for rehiring, therefore neither of these statutes are controlling. Mr. Garvin has been involved in a reduction of work force and therefore W. Va. Code, 18A-4-8b (b) sets forth specific guidelines which a board must follow in this instance as well as certain protections for the affected employee.

When a county finds it to be necessary to reduce the number of service personnel the employee with the least amount of seniority within that classification must be released. This individual shall be placed upon a preferred recall list and be reemployed by the county board on the basis of seniority. It appears the board has complied with this statute in that Mr. Garvin was the driver with the least seniority.

FINDINGS OF FACT

1. The grievant is employed by the Webster County Board of Education as a bus operator.

2. For the first three years of his employment the grievant was awarded one of four extracurricular

activity contracts.

3. In March, 1985 Superintendent Martha Dean sent letters to all four activity drivers informing them the extracurricular contracts would not be renewed at that time pending the outcome of an evaluation of the activity runs.

4. The grievant states he did not receive, or does not remember receiving, this letter.

5. Prior to the 1985-86 school term it was determined that two runs could effectively be combined, reducing the number of extracurricular assignments to three.

6. As the driver with the least seniority, the grievant was not awarded an extracurricular contract.

CONCLUSIONS OF LAW

1. W. Va. Code, 18A-4-8b requires that decisions concerning a reduction of work force of service personnel shall be made on the basis of seniority.

2. The grievant shall be placed on a preferred recall list and reemployed for an extracurricular run on the basis of seniority.

For the foregoing reasons the grievant's request for reinstatement and back pay are at this time denied, however, the grievant shall be placed on a preferred recall list and offered reemployment as an extracurricular activity driver on the basis of seniority.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Webster 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.

DATED: August 21, 1986

Sue Keller

SUE KELLER
Hearing Examiner