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EMPLOYEES GRIEVANCE BOARD**

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NORMAN LILLY, GEORGE OILER,
MICHAEL HOLSTINE, JULIAN G. SETTLE, JR.,
and BILL MOORE

vs.

DOCKET NO. 10-86-110

FAYETTE COUNTY BOARD OF EDUCATION

DECISION

These five grievants are all employed as school bus operators by the Fayette County Board of Education on a ten month basis, i.e., from late August until early June. Their grievance is that after school started on August 26, 1985 a painting crew was assembled consisting of professional and substitute employees and that these jobs should have been posted and awarded to school service personnel employees. A level two hearing was conducted on January 8, 1986 and the grievance was submitted to the hearing examiner on the record made at that hearing.

The lead grievant, Norman Lilly, had worked the previous three summers as foreman of the grass crew through the Governor's Summer Youth Program and in May, 1985, when a posting was made for summer painters, he applied.¹ He was advised that he would

¹ The notice was dated May 7, 1985 for approximately 40 painters for summer work only for the period June 17 to August 23, contingent upon available funds and needs. A painting test was required if the applicant had not painted for the board before and the notice stated that applicants would be considered in accordance with Code, 18A-4-8b. (Joint Exhibit 1)

have to take a paint test but was unable to do so because of a wrist splint he was wearing due to an injury. He requested another test date but in the meantime he was offered the position of foreman on the summer grass crew and accepted.² He worked that job until August 16, 1985 and resumed his duties as bus driver sometime prior to August 26, 1985, the first day of school. He operated out of the Fayetteville bus center and his school run finished about 3:45 p.m., at which time he was required to clean his bus and report any mechanical problems, etc., to the mechanic.

Grievant Lilly learned that a paint crew was painting after school hours and on Saturday and that those positions had not been posted in the normal places a posting would have been made. He testified that he would have bid on the painting job had it been posted.

Grievant Moore worked as a painter in the summer of 1985 and had been told that there would be some work after school hours and on Saturdays but was not called out after August 26, 1985. He testified that he did not see a posting for the after-hours work and would have bid on it had it been posted.³

² He had applied for the painting job because at the time he didn't know if there was going to be a grass crew; he applied for the grass crew job first and knew he would get the foreman's job if the crew did materialize.

³ The other three grievants did not testify because their testimony would have been repetitive of Messrs. Lilly and Moore. However, it was established that grievant Settle could not perform the painting chores because of an allergic reaction to the paint and/or chemicals.

The grievants are requesting that they be given back pay amounting to that which was paid the persons who did the work.

The director of services and transportation, Wayne Wriston, testified that after the grass crew job was completed he asked grievant Lilly if he would be interested in additional work and Lilly responded that he was going to take some time off.⁴ He stated that the painting assignments which were to be accomplished by the temporary painting crews necessitated extending the duration of the terms of the crews beyond the anticipated date of August 23, 1985 and that certain members were required to work the after-hours shifts. He added that none of the grievants would have been available to paint on the after-hours crew until after 4:00 p.m. on school days after the commencement of school on August 26 and that the crews commenced work between 3:00 and 3:30 p.m. on those days.

In addition to the foregoing, the following specific findings and conclusions are made.

FINDINGS OF FACT

1. One of the requirements contained in the notice was that anyone who had not previously painted for the board of education must take a timed test. Grievant Lilly did not take the test or otherwise apply for the temporary painting position.

2. Grievant Settle was reassigned from the temporary paint crew because of allergic reaction to the paint and/or chemicals and was not available for a painting job.

⁴ Similar offers had been made to grievant Lilly the previous two summers and he had declined the offers.

3. None of the grievants would have been available to work on the temporary paint crews after they resumed their duties as bus operators for the 1985 school year and were therefore not available for the temporary painting positions.

CONCLUSIONS OF LAW

1. The after-hours paint assignments on August 26 through October 29, 1985 were a continuation of the initial posting of May 7, 1985 and were in compliance with Code, 18A-4-8(b).

2. These grievants are not entitled to the back pay for services performed by temporary employees lawfully employed in accordance with Code, 18A-4-8(b) and for work for which the grievants were not available.

It is therefore the decision of the hearing examiner that the grievance is without merit and is denied.

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


HEARING EXAMINER

Dated: April 30, 1986