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PAUL A. METZGAR

vs.

DOCKET NO. 21-86-105

LEWIS COUNTY BOARD OF EDUCATION

DECISION

Paul A. Metzgar, also referred to as the grievant, began employment with the Lewis County Board of Education as a full time bus operator beginning with the 1981-82 school year. Mr. Metzgar was hired to drive a new "special education bus" which transported physically and mentally handicapped students to their assigned schools. Denton King, Director of Special Education and Tom Miles, Transportation Director, met with the grievant prior to the beginning of the school term to discuss the special requirements of this position, particularly the extra responsibilities associated with the children he would be transporting and the variance in scheduling created by the identification and location of special education students.

In December, 1984, Mr. Metzgar filed a grievance in which he alleged a violation of state and county policies which require uniformity of salary for similarly situated personnel and grants extra pay to those drivers assigned additional duties. This grievance was denied without a hearing at levels one through three. Following the grievant's untimely demise

Margaret E. Metzgar, his widow, appealed the level three decision to the State Superintendent of Schools. As the grievance procedure set forth in W. Va. Code, Chapter 18, Article 29 was then in effect, the Superintendent declined to hear the appeal. A level four hearing was held May 23, 1986.

The board of education has made a motion to dismiss this grievance based on the death of Mr. Metzgar. Mrs. Metzgar argues the grievance arises from a contractual dispute involving remuneration for services previously rendered and, as such, the action survives. Having reviewed the facts of this matter and available legal authority, the board's motion will be overruled and a decision rendered on the merits of the case.

The grievant contends the duties of a bus operator consist of morning and afternoon runs and that shuttle or extracurricular runs entitle an operator to additional compensation. Mr. Metzgar claims to have been assigned a midday run for which he was not compensated. When another driver assumed part of this run he received an additional contract and salary. The grievant requests that he be paid for the midday run beginning with the 1981-82 school year until the time he was forced to leave his position.

Sharon Bleigh and Wanda Hardman had both served as aides on Mr. Metzgar's bus and testified the run included the delivery of children to various schools as recited in grievant's Exhibit #3. Clyde Gidley had assumed a part of the grievant's run, from Central to Peterson and Buckhannon, during the 1982-83 and 1983-84 school terms and testified that he had been given a separate contract and additional compensation for that run. Other drivers also testified to similar arrangements for midday vocational runs.¹

¹Mr. Gidley and the other drivers were responsible for a.m. and p.m. runs which fulfilled their contractual obligations. Midday travel to the vocational school or special education runs were additional to their regular duties and required a separate contract and compensation.

In consideration of the evidence presented, it appears Mr. Metzgar's position was substantially different from other bus operators, particularly in that his run was determined not by geographic area but by the residences and assigned schools of a specifically identified group of children. Mr. Metzgar was given a bus equipped with a chair lift for handicapped students and was provided an aide to assist him in meeting the special needs of these children. Because of the unique nature of this position it is not comparable to other drivers who are responsible for delivery of children from a limited geographic area to one school.²

This holding is consistent with an opinion issued by State Superintendent Roy Truby regarding this question. Superintendent Truby defined a regular school bus run as the trip made daily along normally established routes and may, but often does not, include midday trips. The grievant was assigned a run which was very different from other bus drivers, but did not include any extra duties, therefore this portion of the grievance is denied.

During the 1984-85 school year the grievant was required to transport a student from Peterson School to the county line two times per week. Grievance responses filed by both Mr. Miles, Transportation Director and Dr. Smith, Superintendent, indicate this to be a midday run warranting additional compensation. The board of education of Lewis County is hereby directed to compensate Margaret Metzgar for the amount earned by the grievant during the period of his assignment to this additional run.

²A second special education run with an extended time schedule and covering a wide geographic area, similar to that of the grievant, was put into service for the 1982-83 school year.

FINDINGS OF FACTS

1. Paul A. Metzgar was employed by the Lewis County Board of Education in 1981 as a bus operator assigned to transport special education students throughout the county.

2. Mr. Metzgar was provided a bus equipped with special features such as a chair lift and was assigned an aide to assist with the children.

3. The grievant's time schedule and itinerary were determined by the residences and assigned schools of the students.

4. Mr. Metzgar was aware of the unique duties and responsibilities of the position at the time he accepted employment.

5. Mr. Metzgar claims he was assigned a midday run for which he was not compensated.

6. When a portion of the grievant's run was assigned to another driver, Mr. Gidley, he was given an additional contract and salary.

7. Other drivers assigned to midday runs receive additional compensation.

8. At no time did the grievant receive an additional contract or salary.

CONCLUSION OF LAW

A bus operator is entitled to a separate contract and salary for any assignment additional to his regularly scheduled run which fulfills his duties as a full time employee.

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

Sue Keller

SUE KELLER

Hearing Examiner

DATED: *July 8, 1986*