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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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HAROLD MILLER

v.

Docket No. 20-86-351-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Harold Miller, is employed by the Kanawha County Board of Education as a 200 day school bus operator assigned to the Elkview terminal. He filed a grievance alleging that he had been deprived of an opportunity to bid upon a new special education bus run in the summer of 1985 because it had not been posted. A level two hearing was conducted on August 12, 1985 and appealed to the Education Employees Grievance Board on December 10, 1985.¹

Grievant had been employed by the Kanawha County Board of Education for approximately fifteen years at the time of

¹ This was one of numerous grievances appealed by John E. Roush, Esquire, legal representative of the West Virginia School Service Personnel Association, by letter dated December 10, 1985, during the implementation period of W.Va. Code, 18-29-1, et seq. The grievance was submitted to the hearing examiner on the transcript of evidence of the level two hearing, which was filed in this office on December 11, 1986, and legal argument of the parties.

the grievance and had worked as a summer school bus operator previously. He testified that in the summer of 1984 he substituted for Ilene Melton on a bus run which went through the Pinch area, down route 14 into Crede and on to Owens School. He contends that the run which should have been posted in 1985 and which is driven by Geraldine Mace is the same run that Ilene Melton had in the summer of 1984. Grievant contends that the change in destination in 1985 from Shawnee Hills to Owens School constituted a new run notwithstanding that the students being transported were in the same program; that, accordingly, the run was required to be posted pursuant to W.Va. Code, 18A-4-8b. In the event the job is posted and he is the successful bidder, grievant requests back pay for the summer of 1985.

Mr. James Simmons, associate superintendent of pupil support services for Kanawha County Schools, explained that in 1984 a summer program for special education students was conducted at the Shawnee Hills facility at Institute and in 1985 it was conducted at the Owens School, which is near the Crede facility. Other than the change in location, it was the same program providing the same services to the same students.²

² Clifford Myers, terminal supervisor at Elkview, stated that these runs were identified by the names of the drivers and that the only differences in the Gerry Mace bus run between 1984 and 1985 was that she went through Pinch instead of Little Sandy and the destination -- from Shawnee Hills to Owens. (T. 24, 25, 30).

George Beckett, director of pupil transportation for Kanawha County Schools, testified that the change in location of the program from Shawnee Hills to Owens had no effect upon any of the bus operators that were providing transportation services for the extended school year and that a slight change in route did not automatically mean that it was a new run required to be posted. To constitute a new run would require a change in the program or a change in the terminal location serving that program. (T. 34). He added that the two buses that served in the summer of 1984 were still covering the same areas and that a two-fold test is applied to determine whether the run is the same, namely, whether his office continues to provide services for the same area to the same program. If a new program is added for which he did not have transportation arrangements, he would post it and receive bids as required by law.

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

FINDINGS OF FACT

1. Grievant is employed by the Kanawha County Board of Education as a 200 day school bus operator assigned to the Elkview terminal.

2. In 1984 a summer special education program was conducted at Shawnee Hills in Institute and in the summer of 1985 this program was conducted at the Owens School near Crede.

3. The special education students were transported to the programs in 1984 and 1985 by two buses, one of which was driven by Geraldine Mace. Both of the buses originated from the Elkview terminal in 1984 and 1985.

4. Other than the change in the location of the facility conducting the program it was the same program in 1985 that was conducted in 1984, providing the same services to the same students. The two buses that served the program in 1984 continued to serve the same areas.

5. Kanawha County school officials do not consider a change of destination of a school bus run as the determinative factor in the decision to post a bus run as a new position; in the event a new program is added for which there are no existing transportation arrangements it is considered a new run to be posted.

6. This practice has been consistently followed throughout Kanawha County throughout all the terminals and applied to all summer programs.

CONCLUSIONS OF LAW

1. In a grievance instituted pursuant to W.Va. Code, 18-29-1, et seq., it is incumbent upon a grievant to prove the essential elements of the grievance by a preponderance of the evidence.

2. Grievant has failed to demonstrate that there was a violation of W.Va. Code, 18A-4-8b as a matter of law.

It is accordingly ORDERED that 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. (W.Va. 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, reading "Leo Catsonis", is written over a horizontal line.

LEO CATSONIS

Chief Hearing Examiner

Dated: December 18, 1986