



**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

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BILLY A. MOORE

vs.

DOCKET NO. 10-86-137-1

FAYETTE COUNTY BOARD OF EDUCATION

DECISION

Grievant, Billy A. Moore, has been employed by the Fayette County Board of Education for six years as a school bus operator. During the 1977-78 school year he was employed in that capacity until January 19, 1978 when he became a substitute for the remainder of the year at a different school center. During the 1978-79 school year he was also employed as a substitute; he became a regular employee in the 1981-82 school term.

In January, 1986 he became aware that he was not receiving credit for a year of experience for the 1977-78 school term and after taking his pay checks to the bus garage he was advised by letter dated January 20, 1986 that his current annual salary was being adjusted to reflect credit for the additional one year of experience.¹ On January 27 grievant

¹ The director of personnel researched grievant's records and found that grievant worked 132 days during the 1977-78 school term but that by adding grievant's substitute work he became eligible for the additional year of experience. He was given \$90.00, which was the amount due for the first four and one-half months of the current school term.

filed a grievance alleging that he was entitled to additional back pay from 1977-78. The grievance was denied on the basis of interpretations of the State Superintendent of Schools that where an employee has caused an unreasonable delay in notifying the board of education of information that would entitle the employee to an increase in pay, the employee becomes entitled to payment on the date the employee notified the board rather than the date of qualification.²

A level two evidentiary hearing was conducted on February 18, 1986 at which the grievance evaluator found that grievant was given an additional year of experience effective for the 1985-86 school term but had not notified the board of education until January 6, 1986 that prior to his regular employment with the board during the 1977-78 school term he had served as a substitute bus operator. It was concluded that an employee becomes entitled to back-pay increment for unverified, prior experience effective only with the school year in which it is applied for and that when an employee has caused an unreasonable delay in seeking a salary adjustment the adjustment will be made as of the date of notification of eligibility. Accordingly, the request for back pay was denied.³ On March 14, 1986 the Fayette County Board of Education affirmed the decision of the grievance evaluator.

² Superintendent interpretations dated February 19, 1976 and February 10, 1981 were attached to the decision at levels one and two.

³ Also attached to the level two transcript is a copy of a decision of State Superintendent Truby, dated November 16, 1983 in the case of Stoneking v. Board of Education of Wetzel County, wherein it was held that the employee was entitled
(footnote continued)

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

FINDINGS OF FACT

1. Grievant was employed as a regular bus operator for 132 days during the 1977-78 school term and also worked as a substitute.

2. He had not been credited with experience credit for pay purposes for that school year because he was required to work 133 days for such credit.

3. On January 6, 1986 grievant notified the board of education of his work as a substitute bus operator for the 1977-78 school term and he was given an additional year of experience effective for the 1985-86 school term.

CONCLUSIONS OF LAW

1. An interpretation of school laws by the State Superintendent of School is accorded considerable weight and will

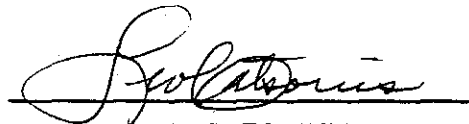
(footnote continued)

to incremental pay beginning with the 1982-83 school year but not to back pay prior to 1982-83. Grievant's counsel herein cited a decision from Marion County which involved misclassification rather than increment years and took the position that it was the board's duty to assure the records are accurate.

be approved unless clearly erroneous.⁴

It is therefore ordered that the decision of the grievance evaluator is affirmed and the grievance 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.



LEO CATSONIS
HEARING EXAMINER

DATED: April 30, 1986

⁴ In Smith v. Logan County Board of Education, No. 16761, decided by the West Virginia Supreme Court on December 17, 1985, Justices Neely and Brotherton dissenting, the Court noted that although Code, 18-29-1 (1985 Supp.) had extricated the State Superintendent from general employee - local board disputes, opinions rendered by the Superintendent prior to this new procedure nevertheless remained as persuasive authority.