



Members
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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

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DAVID C. WHITE

vs.

DOCKET NO. 04-86-093

BRAXTON COUNTY BOARD OF EDUCATION

DECISION

David C. White, grievant, has been employed by the Braxton County Board of Education as a substitute bus operator for the past ten years. Three years ago the grievant was assigned the duties of Gerald Knicely, a regular bus driver who had been granted a medical leave of absence. At that point it was expected that Mr. Knicely would return to his position within a limited period of time; however, complications in his recovery has forced him to request an extension of his leave of absence several times spanning a period of three years. The grievant has continued to substitute for Mr. Knicely throughout this time.

At the end of the 1984-85 school year the board of education determined that this situation should not be maintained indefinitely and, with Mr. Knicely's approval, transferred him to a multi-classified, unassigned position. This allowed the board to fill the position of regular, full-time bus operator yet maintain a position for Mr. Knicely to return to work when his health permitted.

The position formerly held by Mr. Knicely and for which

the grievant had acted as substitute for three years was posted and filled by another regular driver who requested the transfer.

It is the position of the grievant that Mr. Knicely's run was improperly posted and filled and that he, the grievant, should be allowed to continue as substitute in this position until Mr. Knicely returns to work or resigns. The grievant alleges the county has acted in violation of W.Va. Code, 18A-4-15, 18A-4-8 and 18A-4-8b.

FINDINGS OF FACT

1. That David C. White, grievant, has been employed by the Braxton County Board of Education as a substitute bus operator for ten years.

2. That in June, 1982 the grievant was assigned to substitute for Gerald Knicely and continued in this position for three years.

3. Mr. Knicely was transferred, with his approval, from the position of bus operator to a multi-classified unassigned position at the end of the 1984-85 school year.

4. That Mr. Knicely's position was advertised and filled by another regular driver.

5. That the grievant does not contend that he is entitled to the position formerly held by Mr. Knicely, but rather that the position was improperly vacated and that he should be permitted to continue as substitute until Mr. Knicely returns or resigns.

Prior to transferring Mr. Knicely, the board requested an opinion regarding this situation from Roy Truby, then State Superintendent of Schools (Board Exhibit #3). Superintendent Truby advised that a transfer during a leave of absence was permissible.

CONCLUSIONS OF LAW

1. The county board shall employ substitute service personnel to fill the position of a regular service employee on leave of absence. The substitute shall hold such position and regular employee status (if the leave extends beyond thirty days) only until the regular employee returns. The substitute shall be accorded all rights, privileges and benefits pertaining to the position. W.Va.Code, 18A-4-15.

2. A board of education may not reclassify an employee without his written consent. W.Va. Code, 18A-4-8.

3. Subject to the approval of the board the superintendent shall have the authority to transfer school personnel subject to the guidelines set forth in W.Va. Code, 18A-2-7.

It appears that the board properly followed statutory procedures in the transfer of Mr. Knicely and in the filling of the position of bus operator. The grievant is not entitled to any rights or privileges beyond those of the individual for who he was substituting; therefore, when Mr. Knicely was transferred to an unassigned position the grievant's assignment as substitute bus operator was terminated. As grievant has failed to show any misapplication of statutory guidelines this grievance must be denied.

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

HEARING EXAMINER

DATED: 4/15/86