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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

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BILLIE J. BLACK, VIRGINIA KIRK

and DAVID POWELL

v.

Docket No. 06-87-165-1

CABELL COUNTY BOARD OF EDUCATION

**DECISION**

Grievants are employed by Cabell County Schools as school bus operators and filed grievances alleging they were entitled to twelve month contracts instead of ten month contracts. Because of the common issues of law a consolidated level two evidentiary hearing was conducted on May 14, 1987; grievants appealed to the Education Employees Grievance Board and an evidentiary hearing was conducted on September 25, 1987.<sup>1</sup>

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<sup>1</sup> At the level four hearing the parties submitted the transcript of evidence of the level two hearing (T.\_\_\_\_) and offered the brief testimony of grievant Black to correct two errors in the findings of fact set out in the level two decision. The grievance was submitted to the hearing examiner on that record and the findings of fact and conclusions of law submitted on October 13, 1987.

Grievant, Billie J. Black, has been employed as a school bus operator by Cabell County Schools for thirteen years and bid upon and was awarded his present run in October 1986 upon the death of the regular driver, Mr. Yates (T.7,9). Mr. Yates had been employed on a twelve month basis and had driven that run for many years (T.13). At the time he bid upon the run grievant was of the opinion that he would receive a twelve month run but learned later that he had received a ten month run (T.14).<sup>2</sup>

Grievant, David Powell, has been a school bus operator for seven years and bid upon and was awarded his bus run four years ago (T.30,31). Ostensibly, prior to the time the run had been posted it had been considered a twelve month run and grievant alleges that it was wrongfully changed to a ten month run by separating it into a regular and a summer run (T.31). Although grievant had pondered this matter for four years he did not decide to file a grievance until March 1987 (T.37).

Grievant, Virginia Kirk, has been employed by Cabell County Schools for eight years and driving her present run for seven years (T.41). At the time she was awarded the run in 1981 she knew it

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<sup>2</sup> Mr. Black did not receive a new contract after commencing the run and testified that he learned of the ten month feature after a "couple of months" on the run when he was told that the two month summer portion of the run worked by Mr. Yates would be put up for bid separately (T.14, 19).

was a twelve month run but that she could drive it only ten months (T.44).<sup>3</sup>

Gregory Porter, transportation director of Cabell County Schools, testified that Mr. Black's run had not been a twelve month run but that Mr. Yates had been a twelve month employee (T.51); that the school board previously had a policy to give employees an opportunity to become twelve month employees but since 1981 the practice has been to no longer employ bus operators on a twelve month basis (T.62,71,74). However, ten month bus operators were offered the prospect of extending their terms for extended employment should the need arise (T.63).

Counsel for the grievants contends that the school board is prohibited from dividing a bus operator's position into a regular and a supplemental position and that equity would demand that a school bus operator who drives a route throughout the school term should continue to drive this route during the summer.

Counsel for the school board contends that a bus operator has no inherent right to prohibit the changing of bus runs when the change is made to increase the efficiency of the school

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<sup>3</sup> She testified that the run was posted as a twelve month run but that none of the twelve month drivers wanted it (T.46). She did not offer an explanation for the lapse of six years in filing a grievance other than to note that she was encouraged to file when the other two grievants filed (T.48).

transportation system and that the grievances are untimely.<sup>4</sup>

In addition to the foregoing factual recitation the following specific findings of fact are made a part of this decision.

#### FINDINGS OF FACT

1. Grievant, Billie J. Black, was awarded a run in October 1986 and filed a grievance on March 3, 1987 alleging that the school board had denied him the opportunity to advance from a ten month to a twelve month employee by reducing the employment term of the run.

2. Grievant, David Powell, was awarded his run four years ago and although he considered the action of the school board in separating the run into a ten month regular run and a two month summer run to be contrary to law he did not file a grievance until March 1987.

3. Grievant, Virginia Kirk, felt aggrieved at the time she was awarded her run in 1981 but did not file a grievance until March 1987.

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<sup>4</sup> The level two grievance evaluator found that all three positions had been posted as ten month jobs and that all three drivers were ten month employees; that there had been no twelve month operators hired by the school board in the past five-eight years and that the runs had been divided into regular and summer runs. Additionally, the evaluator found that all three grievants had waited months and years before filing grievances and that the grievances were untimely. (Level two decision, page two).

CONCLUSIONS OF LAW

1. Where the legislature has prescribed time limitations upon the filing of an appeal these time limitations are jurisdictional and will be applied in absence of a showing that the limitation should be tolled. Dept. of Energy v. Hobet Mining Co., 358 S.E. 2d 823 (W.Va. 1987).

2. The grievances were untimely as a matter of law. John H. Earls, Jr. v. Cabell County Board of Education, Docket No. 06-86-360-1.

Accordingly, the grievances are Denied.

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



LEO CATSONIS  
Chief Hearing Examiner

Dated: December 24, 1987