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JACK COLLINS and  
DAN WEBSTER

v.

Docket No. 50-86-368-1

WAYNE COUNTY BOARD OF EDUCATION

DECISION

Grievants, Jack Collins and Dan Webster, are employed by the Wayne County Board of Education as school bus operators. On September 18, 1986, they filed a grievance alleging a violation of W.Va. Code, 18A-8-5b due to the unequal pay of drivers performing certain extra runs to the Northern and Southern Vocational/Technical (Vo-Tec) Centers. A level two hearing was conducted in October and on December 8, 1986, the school board waived participation. A de novo evidentiary hearing was conducted at level four on June 22, 1987.<sup>1</sup>

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<sup>1</sup> Initially four bus operators were involved in this grievance but two of them abandoned it subsequent to level two. The four grievants were not present at the level two hearing but were represented by two members of the Wayne County Bus Drivers Association.

These grievances had their origin in 1980, when the school board built the Wayne County Southern Vo-Tec Center about ten miles from Ft. Gay and ten miles from Crum. This is in a rural area and the roads are difficult to negotiate, especially in the winter. All of the bus operators in the Ft. Gay - Crum area had existing full time regular runs when the school board added two runs from each school to the Vo-Tec Center. Accordingly, the school board encountered problems finding drivers for the Vo-Tec runs and eventually put out bids offering drivers an extra \$8.00 per day (\$160.00 per month) for the Vo-Tec runs.

Approximately a year later the school board opened the Northern Vo-Tec Center in an urban area of the county and this Center served Vinson, Ceredo-Kenova, Buffalo and Wayne High Schools. Vinson, Ceredo-Kenova and Buffalo High Schools are approximately three to four miles from the Center and Wayne High School is eighteen to twenty miles from the Center. Initially the school board operated in the same manner as in the Southern Vo-Tec area and gave the operators extra pay for the Vo-Tec runs. However, the regular runs to the Center became overcrowded and in September 1983 it was decided that additional drivers were needed to take the regular runs. The school board authorized the addition of three bus runs to serve the Wayne, Vinson and Ceredo-Kenova attendance areas and

the Wayne County Vo-Tec Center to relieve the congestion.<sup>2</sup> (Board Exhibit 3). The rationale was that the three additional drivers would have relatively short, regular runs to the High School and would also make the Vo-Tec runs. Theoretically, this would result in all of the drivers spending the same amount of time on their respective runs.<sup>3</sup>

Grievant Webster has been a bus operator for seven years and bid on one of the new positions in September 1983. His run serves the Westmoreland area, which includes Vinson High School, Kellogg Grade School and Westmoreland Middle School; it also includes two runs to the Northern Vo-Tec Center a day. He described his daily runs in detail and acknowledged that at the time he bid upon his present run he was aware that it included two daily trips to the Vo-Tec Center. However, he contends that other drivers are receiving

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<sup>2</sup> Mr. Fulks, the then transportation director, had also recommended that the board consider adding two bus runs to serve the Southern Vo-Tec Center for the 1984-85 school year but this was not done because there was no congestion in the Ft. Gay - Crum area and the board was aware that a consolidated high school would be completed the following year adjacent to the Vo-Tec Center.

<sup>3</sup> Mr. Fulks testified that there were seventy five runs in the county covering three distinct areas (urban, suburban and very, very rural) and it was not possible to chart all runs with precision; that he tried to make it as close as possible.

extra pay for the Vo-Tec runs and since he makes two runs a day to the Center he is entitled to \$16.00 per day or \$320.00 per month retroactive to 1983.<sup>4</sup>

Grievant Collins had been a substitute bus operator when he bid upon and was awarded his present run in September 1983. He serves the Ceredo-Kenova area and also has two daily runs to the Vo-Tec Center; he could not identify the drivers, other than Diane Pyles, receiving extra pay for Vo-Tec runs or the extent of their runs, etc. At the time he bid upon the run he was aware that it included runs to the Vo-Tec Center and was aware that the Southern Vo-Tec drivers received an extra \$160.00 per month for the runs. He also claims entitlement to \$16.00 per day (\$320.00 per month) from October 1983.<sup>5</sup>

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<sup>4</sup> Mr. Webster could not identify the drivers purportedly receiving extra pay for the Northern Vo-Tec runs and did not know the details of their runs. He did, however, testify in some detail about a run from Wayne High School to the Center which had been awarded to Diane Pyles and for which she had received an extra \$8.00 per day.

He stated that he had known since 1983 that the Southern Vo-Tec drivers received an extra \$160.00 per month but did not learn of the Northern Vo-Tec drivers receiving the extra \$160.00 per month until 1985; that he had not filed a grievance at the time because he had to "get up his nerve."

<sup>5</sup> It appears that the back pay portion of these grievances would be barred by the doctrine of laches as enunciated in Maynard v. Wayne County Board of Education, 357 S.E.2d 246 (W.Va. 1987).

Mr. Paul Fulks had been director of transportation during the period in question and testified that grievants were not given extra pay for the Vo-Tec runs because they were given shorter runs initially. He explained the Diane Pyles question by noting that after Alva Marcum was awarded one of the runs in 1983 it became apparent that he could not complete two Vo-Tec runs and his regular run. Accordingly, his run was split whereby he retained the morning Vo-Tec run and the evening Vo-Tec run was put up for bid. Diane Pyles was awarded the run and paid \$8.00 per day because she had a regular run and the extra Vo-Tec run required her to work eighty minutes per day longer than grievants.<sup>6</sup>

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

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<sup>6</sup> It is eighteen to twenty miles from Wayne High School to the Vo-Tec Center and can be driven safely within thirty five to forty minutes one way.

## FINDINGS OF FACT

1. Grievants are employed by the Wayne County Board of Education as school bus operators and both bid upon and were awarded runs in October 1983. The historical background of the necessity for these runs is set out elsewhere in this decision and will not be reiterated.

2. Grievants had bid upon their present runs when they were posted in 1983 and knew at that time that the runs included two trips to the Northern Vo-Tec Center daily. At that time they were aware that drivers in the Ft. Gay - Crum area were given \$8.00 per day for trips to the Southern Vo-Tec Center in addition to their regular runs and were aware that the Alva Marcum run had been split, the p.m. run to the Vo-Tec Center having been awarded to Diane Pyles for an additional \$8.00 per day. They were not aware of the specifics of the other runs involved whereby other drivers were purportedly receiving additional compensation in the Northern Vo-Tec area.

3. There is no probative evidence of "favoritism" in this grievance and grievants were unable to demonstrate that they were performing like assignments and duties with those drivers receiving extra compensation for Vo-Tec runs. Similarly, there has been no showing that the decision to award extra compensation to certain drivers for additional work was arbitrary or capricious.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-5b provides, in pertinent part, that uniformity of pay shall apply to all school service personnel regularly employed and performing like assignments and duties within the county. In a grievance alleging a violation of this section it is incumbent upon the grievant to establish the violation by a preponderance of the evidence. Turner v. Grant County Board of Education, Docket No. 12-86-257-3; Canterbury v. Putnam County Board of Education, Docket No. 40-86-325-1; Wright v. Putnam County Board of Education, Docket No. 40-86-328-1.

2. Grievants failed to prove a violation of W.Va. Code, 18A-4-5b as a matter of law.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or Wayne 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: August 20, 1987