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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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JOHN H. COOPER

v.

DOCKET NO. 13-86-192-4

GREENBRIER COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a level three hearing and decision rendered on May 16, 1986.¹ Thereafter, the appeal was misdirected to the State Superintendent of Schools and ultimately filed with this board on June 6, 1986. The grievance was assigned to John M. Richardson, Hearing Examiner, and was twice scheduled for hearing and continued by the grievant's representative upon showing good cause therefor. On November 13, 1986, the grievant waived, in writing, a level four evidentiary hearing and the parties agreed to submit the matter upon the record following an oral argument which was presented on December 5, 1986. The parties filed proposed findings of fact and conclusions of law which were considered in arriving at this decision.

¹The decision was not accompanied by findings of fact or conclusions of law as required by WV Code §18-29-6.

The record reveals that the grievant, John H. Cooper, is a bus operator regularly employed by the respondent, the Greenbrier County Board of Education. The grievant complains that he and other regularly employed bus operators were denied the opportunity of driving student members of the Future Farmers of America (FFA) to their national convention in Kansas City, Missouri. The grievant further complains that this assignment was given to a professional educator who drove the students in a board-owned van.

The facts were generally uncontested and it was the consensus of the parties that this grievance revolves around the application and interpretation of the pertinent statutes.

The respondent concedes it did not offer the driving assignment to any regular school bus operators and that a Vo-Ag teacher drove the FFA members/students to a board approved activity, namely, the FFA national convention in Kansas City, Missouri. The Vo-Ag teacher was a certified bus operator and properly licensed to drive.²

The vehicle driven was a GMC van with no remarkable insignia, lettering or colors. The van had no distinguishing bus lights or school stop signals.

Additionally, the GMC van had been purchased with money raised by the FFA and was then given to the respondent. Thereafter, the respondent had the vehicle titled, licensed, insured and maintained. On the subject trip to Kansas City, the van carried less than ten students.

² The Vo-Ag teacher had undergone the thirty or more hours of training, taken and passed the written test and had satisfactorily undergone a physical examination in order to be certified as a bus operator.

The respondent asserts the GMC van is not a school bus and that its actions in the matter arose out of its reliance on two interpretations rendered by the State Superintendent of Schools on January 9, 1985 and June 9, 1986.

The grievant argues that the clear meaning of WV Code §18-5-13, read in pari materia with WV Code §18A-4-8 and WV Code §18A-4-8b, reveals that the respondent's actions were wrong and that the interpretations of the State Superintendent of Schools are contrary to the provisions in those statutes and should not be accorded their usual weight.³

There can be no doubt that the State Superintendent of Schools is charged with the responsibility of interpreting school law or rules of the State Board of Education in as much as WV Code §18-3-6 provides:

At the request in writing of any citizen, teacher, school official, county or state officer, the state superintendent of schools shall give his interpretation of the meaning of any part of the school law or the rules of the state board of education.

The pertinent portion of the interpretation of the State Superintendent of Schools of January 9, 1985, states as follows:

. . . Thus, all buses must be driven by employees who are licensed, certified and classified as bus operators before they can be used to transport children. County-owned vans which are used to carry less than 10 students to an activity for which a school bus is unnecessary must be operated by a board employee certified as a bus operator. County-owned cars which are used to carry students to an activity must be

³In the case of Smith v. The Board of Education of the County of Logan, 341 S.E.2d 685 (W.Va. 1985), the Court stated in syllabus point 3 that: "Interpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous." See also Hurt v. Raleigh County Board of Education, Docket No. 41-86-166-1.

driven by a properly licensed employee of the board. Thus, a coach can use a county-owned van to transport less than 10 students and their equipment to a competition site, consistent with county policies, if the coach is certified as a bus operator. Similarly, a vocational teacher may use a van to transport less than 10 students to a house construction site from school, and back again, if the board deems such use of the vehicle to be appropriate and efficient, and if the teacher is certified as a bus operator. .

The second interpretation upon which the respondent relied is dated June 9, 1986, and in pertinent part, states as follows:

It continues to be my interpretation that only school bus operators can drive school buses, although other school personnel who are certified to drive a school bus--whether they are service or professional personnel--can drive a van carrying less than ten students . . .

(Emphasis added)

In considering these interpretations it is easily seen why the respondent has taken the position that its actions were proper; however, the grievant argues that the clear meaning of WV Code §18-5-13, read in pari materia with WV Code §18A-4-8b, prohibits the assignment of driving students to professional educators in board owned vehicles, before first offering those assignments to regularly employed bus operators.

WV Code §18-5-13 and, more particularly, WV Code §18-5-13

(6) (a) provides that:

The boards, subject to the provisions of this chapter and the rules and regulations of the state board, shall have authority:

(6) (a) . . . to provide at public expense and according to such regulations as the board may establish, adequate means of transportation for school children participating in board-approved curricular and extra-curricular activities; . . . Provided, however, That in all cases the buses or other transportation

facilities owned by the board of education shall be driven or operated only by drivers regularly employed by the board of education: Provided further, That buses shall be used for extra-curricular activities as herein provided only when the insurance provided for by this section shall have been effected; . .

In addition, WV Code §18A-4-8, in pertinent part, provides:

"Bus operator" means personnel employed to operate school buses and other school transportation vehicles as provided by the state board of education.

Finally, WV Code §18A-4-8b, in pertinent part, provides:

(b) A county board of education shall make decisions affecting . . jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight [§18A-4-8], article four of this chapter, on the basis of seniority, qualifications and evaluation of past service . .

Notwithstanding any other provisions of this chapter to the contrary, decisions affecting such personnel with respect to extra-duty assignments shall be made in the following manner: An employee with the greatest length of service time in a particular category of employment shall be given priority in accepting such assignments, followed by other fellow employees on a rotating basis according to the length of their service time until all such employees have had an opportunity to perform similar assignment. . for the purpose of this section, extra-duty assignments are defined as irregular jobs that occur periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips. .

It is clear that these statutes need no interpretation. In unequivocal language the statute requires that in all cases buses and other transportation facilities shall be driven only by drivers regularly employed by the board. No exception is provided for vans or other vehicles or whether they carry more or less than ten students.

This leaves only the matter of determining the meaning of "drivers regularly employed" as it is used in WV Code §18-5-13 (6) (a).⁴ This may be determined in two ways, either of which leaves no room for interpretation.

The first way requires looking no further than WV Code §18-5-13(6) (a), supra, in that the language specifically requires that "in all cases" buses, etc., be driven only by drivers regularly employed. Thus, it follows as the Superintendent's interpretations concede, that only bus operators may drive school buses; therefore, in all cases only bus operators may drive other transportation facilities which include GMC vans.

The second way of determining that it is clear that only bus operators may drive board-owned transportation facilities is by reading WV Code §18A-1-1(a), which defines and separates "school personnel" into two categories, namely, "professional personnel" and "service personnel". Following, thereafter, WV Code §18A-1-1(e) provides:

(e) "Service personnel" shall mean those who service the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch and as aides.⁵

The Legislature then provided in WV Code §18A-4-8, supra, a breakdown into their respective class/job titles and job definitions. The job/class of "bus operators" is the only class/job title

⁴The respondent maintains that such "drivers" may include professional employees who are regularly employed and properly licensed and certified as bus operators.

⁵Professional personnel includes professional educators and other professional employees. Neither of these categories provides a class of persons who are to operate buses or other transportation vehicles.

which provides a class of persons whose job it is to operate buses and other transportation vehicles.

In the grievance of Jefferies v. Boone County Board of Education, Docket No. 03-86-187-1, the board held that where the provisions of the West Virginia Code are clear and unambiguous, they will be applied. This conforms with the holding in Lavender, et al. v. McDowell County Board of Education, 327 S.E.2d 691 (W.Va. 1984) wherein the Court held that:

A statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect.

In as much as the respondent concedes that it did not offer the driving assignment to any of the regularly employed bus operators, the requirements of WV Code §18A-4-8b(b), supra, were not met.

In addition to the foregoing, the following findings of fact and conclusions of law are incorporated herein.

FINDINGS OF FACT

1. The grievant, John H. Cooper, is regularly employed by the respondent, the Greenbrier County Board of Education as a bus operator.
2. During the spring of 1986, the respondent approved a trip to Kansas City, Missouri, for those students who were members of the Future Farmers of America (FFA).
3. The FFA members/students travelled to Kansas City, Missouri, in a board-owned GMC van driven by a V_O-Ag teacher who was licensed and certified to operate a school bus.

4. The respondent did not offer, post or otherwise provide any opportunity for its regularly employed bus operators to be assigned to drive the FFA students to Kansas City, Missouri.

5. Less than ten FFA members/students went on the trip to Kansas City, Missouri.

6. The GMC van in which the FFA members/students were driven bore no markings or had any distinguishing characteristics which would make it recognizable as a school bus.

7. The GMC van was titled, insured, licensed, inspected and maintained by the respondent.

8. The grievant does not seek any monetary award.

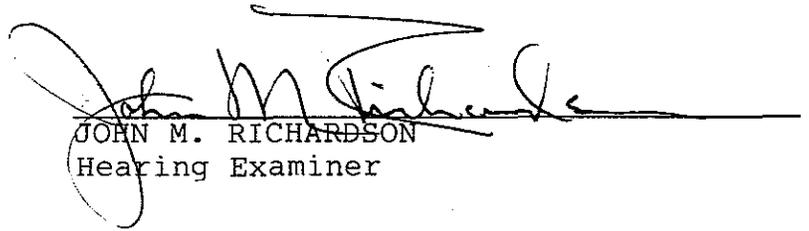
CONCLUSIONS OF LAW

1. WV Code §18-5-13 is clear and unambiguous in that it provides that in all cases, buses and other transportation facilities owned by the Board of Education shall be driven only by drivers regularly employed by the Board of Education.

2. Where a statute is clear and unambiguous, it will be applied and not interpreted. Lavender v. McDowell County Board of Education, 327 S.E.2d 691 (W.Va. 1984) and Jefferies v. Boone County Board of Education, Docket No. 03-86-187-1.

For all of the foregoing reasons, the grievance is GRANTED.

Either party may appeal this decision to the Circuit Court of Greenbrier County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (WV 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.


JOHN M. RICHARDSON
Hearing Examiner

DATED: March 5, 1987