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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
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ROBERT MELBA

v.

DOCKET NO. 06-87-137

CABELL COUNTY BOARD OF EDUCATION

DECISION

Grievant, Robert Melba, is employed as a 261 day school bus operator and filed several grievances commencing in August, 1986 alleging that the school board was wrongfully awarding summer extra duty bus runs to ten month drivers (2 grievances) and that the school board wrongfully required that he undergo his bi-annual physical examination at the Marshall Medical Clinic or to pay the difference between the \$20.00 the board pays the clinic and the charges of a private practitioner. The grievances were consolidated at a level two evidentiary hearing and a level four hearing was conducted on September 28, 1987.¹

The level two grievance evaluator denied three of the grievances but ordered that one day sick time grievant was required to take for the physical examination be reinstated to grievant.

At the level four hearing the parties tendered the transcript of evidence of the level two hearing (footnote continued)

The Extra Duty Bus Runs.

The majority of the summer trips occur during regular working hours and since it was not financially advantageous for 261 day bus operators to accept these trips the transportation officials encountered great difficulty in obtaining drivers for these trips. Accordingly, in August, 1985 a meeting of the eighty (80) bus operators employed by Cabell County Schools was held and with the exception of one vote the drivers voted to allow the ten month drivers to make summer runs.²

In the summer grievant works as a mechanic in the bus garage at the same rate of pay as a driver (T.12) and contends that it is unfair that during the winter months he would lose a day to take a run and during the summer the ten month employees were included in the rotation list. (T.20). Grievant was unable to attend the meeting at which the procedure had been changed by the overwhelming vote of the drivers but was the only bus operator to complain of the change. (T.37,38).

(footnote continued)

(T.____) and additional testimony was adduced from grievant and Gregory Porter, transportation director; findings of fact and conclusions of law were submitted by counsel for the board on September 30, 1987 and grievant elected not to file.

² The policy had been that 261 day drivers would either have to take a personal day or be docked because a driver could not receive regular pay and extra duty pay for the same day. Accordingly, a majority of the 261 day drivers, including grievant, would not accept the trip and would thereby accumulate several trips which would be used during the regular school year for preferred extra duty trips such as football games, etc. After the vote drivers could no longer accumulate trips.

Counsel for the school board contends that W.Va. Code, 18A-4-8(b)³ requires that the assignment of extracurricular runs be done in accordance with the procedures agreed upon by a two-thirds majority of all of the full time bus operators and that this was done at a regular in-service meeting in August 1985 and August 1986; that at both meetings the procedure which is presently utilized in Cabell County was voted upon and was unanimous save one; that this was done at the instance of the drivers, not the administration, is not arbitrary or capricious and is binding on grievant.

Payment of Cost of Medical Examination.

By law, all school bus operators are required to take an annual or semi-annual physical examination (over age 50) and the school board has arranged with the Marshall Medical Clinic to perform these examinations cost free to the board employee. If the employee elects to have a private physician perform the examination the school board will pay \$20.00 upon presentation of a paid receipt. (T.34).

³ W.Va.Code, 18A-4-8(b) provides that an alternative procedure for making extra-duty assignments within a particular classification category of employment may be utilized if the alternative procedure is approved both by the county board of education and by an affirmative vote of two-thirds of the employees within that classification category of employment.

Grievant testified that due to his concern about the potential for contracting a communicable disease, especially AIDS, at the Marshall Medical Clinic he elected to have his physical examination performed by his personal physician, Dr. Sadler, who charged \$34.00 for the service. (T.24). During his ten years of employment with the board he had been to the Clinic for the physical on only one occasion and was apparently dissatisfied with the service. (T.27). Grievant also contends that he should not be required to pay his private physician before being reimbursed by the board and that the board should pay upon presentation of a bill, not a paid receipt. (T.29).

Counsel for the school board contends that school law requires only that grievant be reimbursed for the cost of the physical examination and that grievant presented no evidence that the failure of the board to reimburse grievant the \$14.00 additional cost to have Dr. Sadler perform the physical examination was arbitrary or capricious.⁴

⁴ W.Va. Code, 18A-2-10 provides that in case a physical examination is required the cost shall be paid in full by the employer.

Except for this arrangement the school board has with Marshall Medical Clinic it is highly unlikely that \$20.00 would be considered as a reasonable amount to anticipate for a physical examination. However, it cannot be said that the Policy is arbitrary per se.

In addition to the foregoing factual recitation the following specific findings of fact are appropriate.

FINDINGS OF FACT

1. Grievant is employed as a school bus operator and has a 261 day contract of employment. During the summer he works as a mechanic in the bus garage.

2. Sometime in August 1985 and ostensibly again in August 1986 the school bus operators employed by Cabell County Schools voted at an in-service training session to change the procedure in regard to rotation of ten month bus operators for regular extra-curricular runs and summer extracurricular runs, such amendment(s) being by unanimous, save one, vote, grievant being the lone dissenter.

3. The policy as amended and adopted by the drivers was valid and is binding upon the grievant herein.

4. The policy of the Cabell County school board of requiring school bus operators to have physical examinations performed by specified health care providers or, in the alternative, of reimbursing an employee of up to \$20.00 for services of a non-participating physician, albeit unrealistic, is not arbitrary per se.

CONCLUSIONS OF LAW

1. In the grievance procedure it is incumbent upon the grievant to prove the essential elements of the grievance by a preponderance of the evidence.

2. Grievant has failed to prove that the policies utilized by the school board were either contrary to law or arbitrary as a matter of law.

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 31, 1987