



Members
James Paul Geary
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone 348-3361

ELIZABETH O'NEAL, et al.

v.

Docket No. 20-86-239-1
20-86-238-1
20-86-237-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

- Grievants are regularly employed 200 day school bus operators assigned to the East Bank and Elkview terminals. In June, 1986, grievants filed a grievance alleging that the board of education had hired substitute bus drivers for summer work and bypassed regular service employees who had applied for summer employment. A level two hearing was held on June 30, 1986, and the decision appealed to level four on August 4, 1986. A hearing was conducted at level four on January 6, 1987.¹

¹ The transcript of evidence at the level two hearing was filed in the office of the Education Employees Grievance Board on October 23, 1986, and the grievances were consolidated by the hearing examiner without objection. The grievances were submitted on the transcript of evidence of the level two hearing (T. __) and oral argument of counsel on January 6, 1987; no evidence was taken at that time.

The last day of the 1985-86 employment term for regular school bus operators was June 13, 1986, and the first day of the 1986-87 employment term was August 25, 1986. (T. 37). At some unstated time, presumably prior to May 5, 1986, Kanawha County Schools posted the following administrative memorandum:

The following summer maintenance positions are available for Kanawha County Schools regular service employees. Summer employment begins July 1 and ends August 29, 1986. If you have any questions please contact Garth Bostic 348-6627.

- 6 workers for unit ventilators
- 4 workers for forced air furnaces
- 4 workers for forced air furnaces (cleaning ducts)
- 2 workers for boiler renovation
- 3 workers for outside bleachers
- 2 workers for inside bleachers
- 6 workers for gym floor renovation
- 3 workers for plumbing
- 4 workers for outside painting (buildings)
- 3 workers for outside painting (playground equipment, fences)

Also needed: four people to start on summer grass crew
May 5, 1986.
four people to work as warehouse clerks - Begin
June 2, 1986 through late September or early
October
(Employer's Exhibit 1)

Grievants applied for various summer positions but were not selected for the summer grass crew or Crede warehouse positions because they were not available on the employment dates set forth in the job posting. Instead, substitute service personnel were employed on the summer grass crew and Crede warehouse positions

and grievants filed a grievance.²

Counsel for grievants contends that the board of education manipulated the employment dates in order to circumvent the provisions of W.Va. Code, 18A-4-8b and that the board should have put substitutes in these positions until the regular employees completed their employment terms and then awarded the jobs to grievants.³

Counsel for the board of education contends that the sole question involved in these grievances is the unavailability of grievants on the dates contained in the posting and that W.Va. Code, 18A-4-8b does not place any requirement on the board to establish seasonal employment in a manner to accomodate grievants rather than in response to the needs of the school system.⁴

² However, not all of the grievants wanted these positions and others did, in fact, get other summer jobs. More specifically, Freddie Boyd got a summer job as painter, (T. 9), Clyde Breeding as a mechanic's helper, (T. 10), Wesley Wills had a summer job the day following the level two hearing (T. 14), etc.; others did not want the summer grass crew, i.e., Mary Searls, Loretta Cabell and Harry Lynn (T. 19, 20, 24); Elizabeth O'Neal would not have been available until July 22 due to minor surgery (T. 16, 17), etc.

Many of the grievants participated in a show of solidarity to encourage the board of education to reconsider starting the jobs before expiration of grievant's regular employment terms. Counsel for grievants was to submit a list of those grievants who had a summer job and were therefore not entitled to back pay in his findings of fact and conclusions of law to be filed on January 21, 1987, but it was not filed at the time of this decision.

³ Grievants do not contend that the board engaged in "favoritism" or "discrimination" in the employees selected but that there were several ways the board could have worked this problem out other than in this manner.

⁴ There was no evidence as to the reason the dates were established as they were but there was some evidence that the grass crews started work before the end of the regular employment term the previous year. (T. 15).

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

FINDINGS OF FACT

1. Grievants are regular employed 200 day school bus operators assigned to the East Bank and Elkview terminals.

2. The last day of the 1985-86 employment term for regular school bus operators was June 13, 1986, and the first day of the 1986-87 employment term was August 25, 1986.

3. Kanawha County Schools posted a notice of available summer positions for grass crew and warehouse positions commencing on May 5, 1986, and June 2, 1986, respectively, and ending on August 29, 1986, and September 15, 1986, respectively.

4. Grievants applied for various summer positions and were refused because they were not available on the employment dates set out in the posting; substitute service personnel were employed in the positions.

5. There was no evidence of "favoritism" or "discrimination" or that Kanawha County Schools acted in an arbitrary manner in the selection of the dates for the commencement and end of the summer jobs.

CONCLUSIONS OF LAW

1. A county board of education may establish employment dates consistent with the needs of the school system and employ substitute service personnel employees if regular service personnel employees are unavailable on those dates in absence of a showing that the selection of dates was as a result of "favoritism" or "discrimination" or otherwise an arbitrary act.

2. Grievants are not entitled to back pay for services performed by temporary or substitute employees for work for which the grievants were unavailable. Norman Lilly, et al. v. Fayette County Board of Education, Docket No. 10-86-110.

Accordingly, the grievances are DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha 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: March 13, 1987