



REPLY TO:
401 Davis Avenue
Suite 315
Elkins, WV 26241
Telephone: 636-1123

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

ROBERT RUSSELL, et al.

v.

Docket No. 26-86-335-1

MASON COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants Robert Russell, Worthy Jefferson, Arnold Allison, Darrell Gandee and Ralph Green are regularly employed as bus operators by the Mason County Board of Education. They filed a level one grievance on September 10, 1986 in which they alleged a violation of W.Va. Code, 18A-4-8b and an interpretation of the State Superintendent of Schools when summer work which they had previously performed was contracted out and assigned to other individuals.

Grievants Mark Holley, Billy Murphy, James Kapp, Karen Cook, Judy Barnett, Roy Martin, Charles Willet, Gari Worley and Betty Lynch are employed by the board of education as service personnel assigned as custodians, bus operators and aides. They filed a level one grievance on October 1, 1986 alleging that they had been deprived of summer employment assigned to other individuals in violation of W.Va. Code, 18A-4-8b.

Both grievances were denied by Superintendent William Barker at level two and consolidated on appeal to level four. Oral closing statements were heard on April 24, 1987 and proposed findings of fact and conclusions of law were received by May 20, 1987.

All of the grievants are employed as service personnel during the regular school year. They have all additionally been employed during the summer months as assistant mechanics or painters. The summer employment had been advertised and awarded on a year to year basis under a separate employment contract. None of the grievants were hired in the summer of 1986 and they argue that the work was improperly assigned to participants in the Governor's Summer Youth Program, an individual from the CWEP program and to an outside contractor.

The board of education argues that summer work is not guaranteed but filled on an "as - needed" basis and that due to financial considerations none was offered in 1986. The GSYP program had assigned individuals to the board of education in previous summers and the CWEP employee, who had been assigned to the board since January, 1986 had been used to supplement the work force and were not used to replace the board employees. The board also noted that repair work on bus seating had been contracted out to private industry in prior years.

The board additionally argues that the grievances were not timely filed as the grievants were aware they would not be employed during the summer before the end of the school term in June yet did not file a grievance until after the beginning of the following school year.

In addition to the foregoing it is appropriate to make the following specific findings of fact and conclusions of law.

Findings of Fact

1. Grievants are all employed as service personnel by the Mason County Board of Education. In addition to their assignments during the regular school term they have each been awarded summer employment in prior years.

2. In the summer of 1986 the board of education did not post openings of summer positions and did not employ any additional summer help.

3. Participants in the Governor's Summer Youth Program and the CWEP program were assigned to the board of education during the summer of 1986.

4. Testimony indicates that participants in these programs had been assigned to the board of education prior to the summer

of 1986 and supplemented the regular work force.

5. Testimony offered by both parties indicates that seat repair had been either partially or completely awarded to a private contractor in the past. It appears that some contracting was undertaken as the repair could not be completed by the board employees.

6. Grievants were aware prior to the end of the 1985-86 school term in June that there would be no summer employment for them. Several grievants testified that they had visited the bus garage during the summer and were aware of the individuals who were working at that time, yet the grievances were not filed until September and October.

Conclusions of Law

1. Grievants have failed to show that employees from outside funded programs were used by the board of education to fill positions which they had held in previous summers.

2. W. Va. Code, 18A-4-8 does not include a classification title of seat repairman, thus this service may be procured at the lowest cost to the board of education. There are no restrictions against the use of private contractors for work which cannot be performed by board employees.

3. It is incumbent upon an employee to timely pursue their rights through the grievance process and when timeliness is questioned to demonstrate the reason for the delay and/or the applicability of W.Va. Code, 18-29-4(a)(1). Wanda Scarberry v. Mason County Board of Education, Docket No. 26-86-291-1; Joseph Badgley v. Parkersburg Community College, Docket No. 54-86-64; Raymond Dunleavy v. Kanawha County Board of Education, Docket No. 20-86-024-1.

4. The grievance was not timely filed as a matter of law.

Accordingly, the grievance is DENIED.

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

DATED June 26, 1987

Sue Keller

SUE KELLER

Hearing Examiner