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PEGGY CAWTHON

v.

DOCKET NO. 21-87-244-2

LEWIS COUNTY BOARD OF EDUCATION

DECISION

Grievant, Peggy Cawthon, is employed by the Lewis County Board of Education as a bus operator. On August 17, 1987 she filed a grievance alleging a violation of W.Va. Code, 18A-4-8b when the board eliminated her position although the "run" itself was not eliminated. Transportation Director Paul Derico denied the matter at level one on the basis that it was untimely filed. The matter was waived at levels two and three and was subsequently appealed to level four on September 22.

By letter dated March 18, 1987 Superintendent Paul Callahan notified the grievant that he was considering her for recommendation to be placed on the transfer list for the 1987-88 school term due to readjustments of bus schedules which might in turn

require personnel changes in the transportation department. She was advised that she could request a hearing before the board regarding this action as required by W.Va. Code, 18A-2-7, however, no such request was made. The grievant was subsequently notified of her placement on the transfer list by certified letter dated May 5, 1987. The grievant bid on the Walkersville Run on July 1, 1987 and was appointed to that position by the board on July 20.

The grievant argues that: (1) W.Va. Code, 18A-4-8b grants service personnel an interest in their position so long as the position is needed by the board and that her former position is still necessary and was not eliminated but was divided among three other employees. ¹

¹During the year 1986-87 the grievant was assigned a route which included U.S. Route 33 from Alum Bridge to Weston, a portion of the Churchville Road and Kitsonville. Two other drivers were assigned the route from Alum Bridge to Camden (approximately halfway between Alum Bridge and Weston) and one other driver was assigned from Camden to Weston, to the Churchville Road and Kitsonville portions of the run. In other words, there was double or triple coverage on all areas of the grievant's route. (Board Ex. No. 2)

The transportation schedule for the 1987-88 school term shows only two bus operators assigned to that portion of the run from Alum Bridge to Camden and from Camden to Weston and only one operator on the Churchville Road and Kitsonville areas. (Board's Ex. No. 3)

(2) Although the board acted in technical compliance with W. Va. Code, 18A-2-7, its purpose was defeated in that the notice of impending transfer was not meaningful. All bus operators were issued the same notice which created a situation that "...would not tend to alert an individual as one would be aware that not all Operators would be transferred." The grievant asserts that her first indication of a change in status did not occur until a meeting held in June 1987.

(3) That the grievance was timely filed as the definition of a grievance stated in W. Va. Code, 18-29-2(a) indicates that the triggering mechanism is not the possibility, but the existence of the grievable circumstance. The effect, the actual driving of another route, did not occur until the beginning of the 1987-88 school year. In the alternative the grievant argues that she had made efforts to resolve the matter informally and formally from the time she learned of the elimination of her run and had made a reasonable attempt to protect her rights.

The board asserts that the grievant was properly placed on the transfer list in compliance with W.Va. Code, 18A-2-7 and that she did not challenge that placement. The grievant was orally advised that her route was to be eliminated on June

11, 1987 and upon the advice of the transportation director she bid on and was awarded the Walkersville run. The board argues that: (1) a bus operator placed on transfer has no vested right to any particular work assignment or run; (2) the number and location of bus runs within a county is a discretionary determination and that the elimination of the grievant's run was a proper exercise of that discretion based on financial considerations and (3) the grievance was not timely filed within the 15 day period.

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

Findings of Fact

1. During the 1986-87 school term the grievant, a bus operator, was assigned a run which included U.S. Route 33 from Alum Bridge to Weston, a portion of the Churchville Road and the Kitsonville areas.

2. A map of the bus runs in this area of Lewis County indicates that all of the grievant's run was duplicated by one or two other bus operators.

3. The grievant was advised by letter of March 18, 1987 that she was being considered for recommendation that she be placed on the transfer list for the 1987-88 school term. The reason given for the recommendation was a readjustment of bus schedules which could require personnel changes.

4. The grievant was advised in the letter of March 18 of her right to a hearing before the board regarding placement on the transfer list, however, she did not request a hearing on this matter.

5. The grievant was notified by letter dated May 5 of the board's approval of the recommendation that she be placed on the transfer list.

6. Transportation Director Paul Derico orally advised the grievant on June 11 that her former position would be eliminated.

7. At a meeting held on June 25 the board approved the elimination of the school bus run from Weston to Alum Bridge for lack of need.

8. The runs of two other drivers in the area were also revised for the 1987-88 school year. Mr. Fox formerly covered the area from Camden to Alum Bridge and now travels in the

opposite direction from Camden to Weston. Ms. Balentine's run was extended from Alum Bridge to Camden. The result of these changes is that the area from Alum Bridge to Camden is served by two bus operators instead of three and the Churchville Road and Kitsonville areas are assigned one bus operator instead of two, eliminating the need for one bus and one operator.

9. The vacant position for the Walkersville Run was posted on June 29. The grievant submitted a bid for this run on July 1 and the board awarded her the position on July 20, 1987.

10. By letter of July 6 the grievant notified Superintendent Joseph Mace and the members of the board of education that she believed the transfer to have been unfair. She had also discussed the matter with the transportation director in June in an apparent attempt to resolve the matter informally.

11. A level one grievance was filed on August 17, 1987.

Conclusions of Law

1. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel so long as it is exercised reasonably

and not in an arbitrary and capricious manner. Dillon v. Board of Education of the County of Wyoming, 351 S.E. 2d 58 (W.Va. 1986); Lafayette v. Randolph County Board of Education, Docket No. 42-87-227-2.

2 An employee has no vested right to any particular assignment within the county school system. State ex rel. Hawkins v. Tyler County Board of Education, 275 S.E. 2d 908 (W.Va. 1980).

3. The grievant was transferred in compliance with W.Va. Code, 18A-2-7.

4. The grievant failed to timely pursue her rights regarding placement on the transfer list which occurred May 4, 1987. 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. Scarberry v. Mason County Board of Education, Docket No. 26-86-291-1; Murphy v. Mingo County Board of Education, Docket No. 29-86-341-4.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lewis 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

February 16, 1988

Sue Keller

SUE KELLER
Hearing Examiner