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BUREN PAYNE, NORMAN LILLY, NICHOLAS
STAWYCHEY, VINCENT YARBER, EARL
ADKINS, ROBERT GODDARD, and CARL MOTEN

v.

Docket No. 10-87-319-4

FAYETTE COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants, Buren Payne, Norman Lilly, Vincent Yarber, Earl Adkins, Robert Goddard and Carl Moten, are bus operators and Nicholas Stawychey is an approved bus operator substitute and all are employed by the Fayette County Board of Education. They filed the present grievance when Mr. Bill Aliff was awarded a position of bus operator at Gauley Bridge. A Level II decision was adverse to grievants and the Board waived participation at Level III. A Level IV evidentiary hearing was held on January 6, 1988.¹

¹Neither party presented evidence at this hearing and basically made only legal arguments. Counsel for the grievant and Board did stipulate during the course
(footnote cont.)

There is no factual dispute and the events leading to the grievance are as follows:

1. In January 1986 the Board posted five vacancies for painter/general maintenance personnel.
2. Mr. Bill Aliff applied for and received one of these positions.
3. Shortly thereafter, two regularly employed bus operators, Michael Holstine and Vincent Yarber, and one custodian, Michael Brubaker, filed a grievance alleging the positions had been filled in violation of a requirement of W.Va. Code, 18A-4-8b that positions be filled within twenty days of the date of posting.
4. In a decision rendered February 11, 1987 the West Virginia Education Employees Grievance Board ordered the Fayette County Board of Education to repost the positions and fill them in accordance with W.Va. Code, 18A-4-8b. Holstine, Brubaker and Yarber v. Fayette County Board of Education, Docket No. 10-86-253-4.
5. The Board appealed the decision to the Circuit Court of Fayette County but requested no stay of the decision.
6. While the case was pending in that Court the Board voted to terminate all permanent painter positions.
7. Mr. Bill Aliff, having had prior experience as a bus operator with the Fayette County Board of Education, was then transferred to the position of bus operator unassigned.

(footnote cont.)

of the hearing that Carl Moten was not a grievant in this matter and was acting as a representative at the Level II hearing. The parties also submitted certain other written stipulations and where relevant are addressed herein.

8. Some time after June 30, 1987 the position of bus operator at Gauley Bridge was posted and Mr. Aliff and grievant herein, Nicholas Stawychy, made application and Mr. Aliff was awarded the position.²

The grievants' contend Mr. Aliff was improperly hired as determined by the West Virginia Education Employees Grievance Board and therefore could not be considered a regular employee and could not have been transferred to the position of bus operator unassigned and he would have been unable to apply for the Gauley Bridge position. The grievants agreed to forego immediate enforcement of the February 11, 1987 decision while the appeal was pending in Circuit Court but apparently filed the present grievance because a great deal of time had elapsed since the appeal and Mr. Aliff was still accorded regular employee bus operator status and affecting their seniority status with the Board. After the Level IV hearing the Circuit Court of Fayette County issued an Order dated January 26, 1988 which reversed

² It was stipulated that a number of substitute bus operators did apply for the job and grievant, Nicholas Stawychy, was not the most senior of those applicants and would not be entitled to the position as relief in the present grievance. It should also be noted none of the other grievants applied for the position and they merely joined the grievance because of the effect of Mr. Aliff's continued employment has upon their own positions as far as the overall seniority of county bus operators is determined. Therefore, the only relief requested is a reposting of the Gauley Bridge position.

and vacated the decision of the West Virginia Education Employees Grievance Board dated February 11, 1987. The order finds the original hiring of Mr. Aliff as a painter/general maintenance employee to be proper and in compliance with the W.Va. Code, as amended, and therefore renders the present grievance moot.

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

FINDINGS OF FACT

1. Mr. Bill Aliff was hired by the Fayette County Board of Education as a painter/general maintenance employee in May 1986 and was previously employed by the Board as a bus operator and accrued approximately twelve (12) years seniority in that position.

2. The Fayette County Board of Education voted to eliminate all permanent painter positions and accordingly, transferred Mr. Aliff to the position of bus operator unassigned pursuant to the provisions of W.Va. Code, 18A-4-8b(b) relating to the reduction in force of school service personnel.

3. Mr. Aliff was also granted seniority as a bus operator he accrued in his previous employment with the Board.

4. Mr. Aliff subsequently applied for and received the

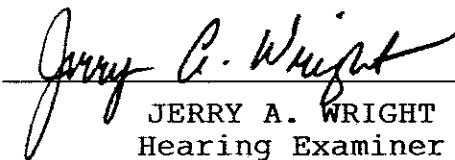
posted position of bus operator at Gauley Bridge.

CONCLUSIONS OF LAW

1. The order of the Circuit Court of Fayette County issued January 26, 1988 vacating and reversing the decision in Holstine, Brubaker and Yarber v. Fayette County Board of Education, Docket No. 10-86-263-4 issued February 11, 1987 by the West Virginia Education Employees Grievance Board renders the present grievance moot since any further determination rendered would have no practical effect on the grievants or the Fayette County Board of Education.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Fayette County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of said decision. (W.Va. Code, 18-29-7) Please inform this office of your intent to do so in order that the record can be prepared and transmitted to the Court.


JERRY A. WRIGHT
Hearing Examiner

DATED: March 23, 1988