



REPLY TO:
101 Harper Park Drive
Suite D
Beckley, WV 25801
Telephone: 255-6155

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

REGENNOL PIERCY

v.

DOCKET NO. 33-87-076

MCDOWELL COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Regennol Piercy, was hired by the McDowell County Board of Education as a substitute bus driver at the beginning of the 1985-86 school year. He signed a regular probationary service personnel contract with the Board on August 27, 1986. In December 1986 the Board posted a route in the Iaeger area, Bus 190, as vacant and accepted bids for it. Grievant and Paul Kennedy both applied and Mr. Kennedy was awarded the job. Grievant claims he has more seniority than Mr. Kennedy and should have received the bus route and the Board's actions violate W.Va. Code, 18A-4-8 and W.Va. Code, 18A-4-8b. Mr. Piercy's grievance was denied at Levels I, II and III and the parties agreed to waive a Level IV evidentiary hearing and submit the case for decision on briefs and the record.

The parties of this grievance basically agree on the sequence of events of the case but cannot concur on the issue of when Mr. Kennedy acquired regular bus driver status. The grievant argues he was a regular bus driver and had three months experience as such and Mr. Kennedy was only a substitute driver when the Bus 190 route was posted. Documents presented as evidence indicate the following:

1. By memorandum dated April 24, 1986 grievant was informed his employment status was changed from rotating substitute bus driver to temporary bus driver effective April 4, 1987. (Administration's Exhibit No. 1)
2. Grievant was "appointed" to the position of substitute bus driver with the additional description (temporary position) added. This change was dated May 5, 1986 and the effective date was listed as 86-87. (Administration's Exhibit No. 1)
3. By memorandum dated August 27, 1987 grievant was informed he was transferred from substitute in temporary position at Iaeger area to regular bus driver at Welch area effective 86-87 term. (Administration's Exhibit No. 1)
4. By memorandum dated December 12, 1985 Mr. Kennedy was informed he was transferred from substitute bus driver to regular bus driver (temporary position) effective December 16, 1986. (Administration's Exhibit No. 2)
5. By memorandum dated May 7, 1986 Mr. Kennedy was informed he was appointed to the position of bus driver (temporary) in the Iaeger area effective 86-87. (Administration's Exhibit No. 2)
6. By memorandum dated December 3, 1986 Mr. Kennedy was informed his assignment had been changed from temporary bus driver to regular bus driver effective December 3, 1986. (Administration's Exhibit No. 2)

The grievant contends Mr. Kennedy was not a regular bus driver when the contested position was posted in December 1986 and at that time he was merely a substitute serving in a temporary capacity in a newly created position.¹ He further argues he was entitled to the position since W.Va. Code, 18A-4-8b(b) requires applicants for service personnel positions to be considered in a certain order with regularly employed service personnel given top priority. Unfortunately, the W.Va. Code does not define the terms "temporary employee" or "temporary position" and the Board offered little if any explanation for their use in referring to the status of Mr. Kennedy's employment. However, it must be noted that the last memorandum received by Mr. Kennedy which placed him in the Bus 190 route position referred to his status as temporary bus driver. Absent any further indication from the Board concerning this designation, it must be assumed he was something other than a regularly employed bus driver and W.Va. Code, 18A-4-8b(b) is

¹Mr. Cortellesi, Personnel Director, stated at the Level II hearing that Mr. Kennedy was a substitute serving in a newly created position, namely, Bus Route 69 and appeared to interpret W.Va. Code, 18A-4-15 as requiring the Board to grant him all rights and privileges of a regularly employed bus driver including preference in the hiring process. (T.24)

clear on the order in which applicants for service personnel positions are to be considered.²

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

FINDINGS OF FACT

1. Grievant began his employment with the McDowell County Board of Education during the 1985-86 school term as a substitute bus driver.

2. Grievant acquired regular employee status on August 27, 1986 as a bus driver.

3. Paul Kennedy was a substitute bus driver in a newly created temporary position, namely, the Bus 69 route during the 1985-86 school term was rehired to serve in the same position at the beginning of the 1986-87 school term and was serving in that capacity when the Bus 190 route was posted in December 1987.

²Although the Board indicated by letter dated May 5, 1987 from Jim Jones, Assistant Superintendent, that they intended to submit an explanatory brief along with the transcript of the Level II hearing, no such brief was received and the Board's position in this matter must be determined from that transcript and the documents heretofore mentioned as Administration's Exhibits 1 and 2.

4. Both the grievant and Mr. Kennedy applied for the Bus 190 route in December 1986 and Mr. Kennedy was awarded the position.

CONCLUSIONS OF LAW

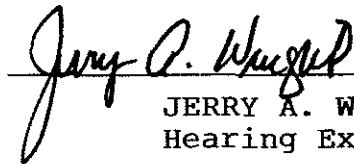
1. W.Va. Code, 18A-4-8b(b) requires a county school board to give first opportunity to applicants holding classification title in his or her category of employment when promotions are granted or vacancies filled in service personnel positions.

2. W.Va. Code, 18A-4-8b(b) also requires a county school board to consider regularly employed school employees first for those promotions or vacant positions.

3. The McDowell County Board of Education violated W.Va. Code, 18A-4-8b(b) in granting Mr. Kennedy, a substitute bus driver, the Bus 190 route position when the grievant, a regularly employed bus driver, had applied for the job.

Accordingly, the grievance is **GRANTED** and the McDowell County Board of Education is hereby **ORDERED** to make adjustments in the personnel records of the grievant, Regennol Piercy, and Paul Kennedy to reflect their seniority in accordance and consistent with this decision.

Either party may appeal this decision to the Circuit Court of McDowell County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code, 18-28-7). 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: January 6, 1981