

**REPLY TO:**

111 - 19th Street  
Wheeling, WV 26003  
Telephone: 233-4484

**Offices**

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

**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

**ARCH A. MOORE, JR.**  
Governor

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

ARNOLD ALLISON, et al.

v.

Docket No. 26-87-243

MASON COUNTY BOARD OF EDUCATION

DECISION

Grievants herein, Arnold Allison, Worthy Jeffers, Robert Russell, Darrell Gandee and Ralph Greene are employed by the Mason County Board of Education as bus operators on 200 day contracts. On July 27, 1987 they filed a level one grievance alleging the school board had wrongfully denied them summer employment as assistant mechanics for the school year just ended and had instead hired outside contractors to perform reupholstery and repairs on school bus seats. The grievance was denied at levels one and two, waived by the board at level three and submitted to level four for decision based upon the existing record and supplementary briefs.<sup>1</sup>

---

<sup>1</sup>A level two hearing was conducted August 12, 1987; briefs for the level four appeal were filed on October 19, 1987 and November 17, 1987.

From various times in the 1970s and until the end of the 1984-85 school year grievants herein had been employed as assistant mechanics during the summer months. After several weeks steaming bus engines the major work of at least two drivers would be to repair the upholstery on the school buses. With respect to their non-employment during the summer following the 1985-86 school year, grievants had previously filed a grievance similar to the instant grievance, Russell, et al. v. Mason County Board of Education, Docket No. 26-86-335-1. The West Virginia Education Employees Grievance Board denied the grievance on the merits of the case and also on the issue of timeliness. Subsequently, the case was appealed to the Circuit Court on both issues.

Counsel for grievants has indicated that the purpose of the instant grievance is to preserve the grievants' rights should they prevail on the merits of the case pending in the Circuit Court but fail on the issue of timeliness. However, it seems evident that the instant grievance has, in addition, an altogether different issue, that being whether, notwithstanding the upholstery work, grievants are entitled to summer employment to assist the regularly employed mechanics with mechanical work.

The respondent board of education maintains that grievants are not entitled to perform upholstery work during the summer as there is no classification title of upholsterer and it further contends that service employees have no "right" to summer employment as the board is only required to hire employees on a needs basis and no employment was available to grievants during the summer of 1987.

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

#### FINDINGS OF FACT

1. Grievants herein are employed as 200 day school bus operators and prior to the end of the 1985-86 school year had been employed as assistant mechanics for a number of years during the summer months.

2. During their summer employment the grievants would work under the direction of the board's four regular mechanics and would steam bus engines and assist with other mechanical and maintenance tasks on the buses and other school vehicles. After several weeks at least two of the five grievants would focus primarily on seat repair work and the others would assist when needed.

3. During all of those years an outside contractor was utilized for upholstery work that could not be performed by the bus operators.

4. With respect to the summer of 1986 the board determined that budgetary constraints precluded the board from employing the five grievants as assistant mechanics. All bus seat repair was let out to an independent contractor.

5. In 1986 grievants protested their non-employment on the basis that a school board may not hire outside contractors to undertake work board employees had previously performed, namely bus seat repair and upholstery. The West Virginia Education Employees Grievance Board denied the grievance on the basis of it not being timely filed. Additionally, the merits of the grievance issue was reached and the hearing examiner determined that as there was no statutory classification of upholsterer, the board could procure those services by competitive bids from private contractors. The grievants appealed the decision on both issues to an unnamed Circuit Court where it is presently pending. See, Russell, et al. v. Mason County Board of Education, supra.

6. In 1987 the five grievants herein were again not employed for summer work as assistant mechanics and the board again represents that this was due to financial constraints.

7. In July 1987 the grievants timely filed grievances protesting their non-employment as assistant mechanics for the summer months following the 1986-87 school year. With respect to upholstery work, grievants request that the board refrain from contracting work out which has been previously performed by board employees. Additionally, they seek reimbursement for eight weeks lost wages during the summer of 1987 and future employment during the summer months.

8. The evidence in the instant grievance indicates that in the past only two of the five grievants worked primarily on seat repair (T.16). During the summer of 1987 a contracting firm who had previously been utilized for some seat repair work that grievants could not perform was given the entirety of the work (100%).

9. At the level two hearing one of the grievants advanced a theory that the school board did not save money in 1986 by contracting out seat work and conceded that money was saved in 1987 but as a result of their non-employment, non-safety related mechanical work was "shorted" (T.20-21). This witness also indicated that "...we aren't hollering so much on seat repair as the idea of summer...assistant mechanics not being hired, and it's work we did or at least assisted in doing in years past" (T.23).

10. At the level two hearing grievants presented no evidence that their services as assistant mechanics to perform mechanical work on vehicles was needed by the board during the summer of 1987. Grievants have not shown by a preponderance of the probative evidence that they were entitled to summer employment of eight weeks duration in any capacity for the summer of 1987 or otherwise proven a basis for the monetary or other relief they request.

#### CONCLUSIONS OF LAW

1. Service personnel employed by a board of education as a mechanic apprentice and helper are classified as Mechanic Assistant. W.Va. Code, 18A-4-8.

2. Boards of Education are authorized to employ such service personnel, including on a temporary, summer basis, as are necessary to meet the needs of the school system. W.Va. Code, 18A-2-5.

3. Grievants herein have failed to establish their services were needed to assist the board's regular mechanics with mechanical vehicle maintenance during the summer of 1987 and have thus failed to establish entitlement to monetary relief on that basis and they have failed to prove that such job opportunities will be available at any future time.

Accordingly, this 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: January 29, 1988

A handwritten signature in cursive script, reading "Nedra Koval", is written over a horizontal line.

NEDRA KOVAL  
Hearing Examiner