



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

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

**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

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

IVA LOU BEDDOW, et al.

v.

DOCKET NO. 32-88-149-2

MORGAN COUNTY BOARD OF EDUCATION

DECISION

Grievants, Ida Lou Beddow, Barbara Roach, Nelson Keesucker, Doug Munson, Irene Bailey, Ella Mae Neeley, Donna Swain and Mary Etta Youngblood, are employed by the Morgan County Board of Education (Board) as bus operators. The grievants filed a level one grievance on June 20, 1988 in which they alleged violations of W.Va. Code §18A-4-8 and §18-3-6 when they were required to wax their buses. A level four appeal was filed on August 9, a hearing was held on September 13 and proposed findings of fact and conclusions of law were submitted by October 11, 1988.

The facts in this matter are undisputed. In 1981 the board approved as part of its policy DLB the requirement that bus operators wash and wax their school buses at the end of the school term for two days of in-service credit. The grievants complied with that policy until 1988, when they advised Superintendent Dwight D. Dials that they would not wax the buses. Ms. Beddow filed a petition for a permanent injunction against the board in the Circuit Court of Morgan County. In an Order dated June 17, 1988 Judge Thomas W. Steptoe, Jr. determined that injunctive intervention was improper at that time due to the availability of an adequate remedy provided by the grievance system which was specifically created by statute to deal with such issues.

The grievants argue that the board cannot require that they wax the buses as it is not a part of the job description for the position of bus operator.¹ The grievants cite three sources of authority in support of their argument: first, W.Va. Code §18A-4-8, which defines bus operators as personnel employed to operate school buses and other transportation vehicles; second,

¹At the level four hearing Ms. Beddow stated that she wanted the duty to be discretionary with the individual. This request was disallowed as it concerns employee classification which must be applied uniformly.

"The W.Va. School Transportation Regulations" which provide that bus operators engage in the cleaning of buses but do not require waxing; third, an interpretation of the State Superintendent of Schools dated June 26, 1987. In response to an inquiry of who should be required to wax school buses, Superintendent Tom McNeel replied that personnel classified as handyman or general maintenance would be most appropriate as their class titles are broad enough to permit such assignments while the other classifications mentioned in the letter (including bus operators) would seem to exclude the activity.

The board of education argues that requiring the grievants to wax the buses is within its authority as an employer. Superintendent Dials testified that he believed the waxing to be reasonable extension of the grievants' cleaning responsibilities and stressed the importance of waxing in the preservation of the buses. The board notes the June 1987 interpretation of the State Superintendent states that the waxing appeared to be more appropriately assigned to employees other than bus operators but the Superintendent also acknowledged that the duty was not contained in the definition or classification for any employee. The board compares this situation with that addressed by the

State Superintendent on June 6, 1984, in which he determined that the changing of tires on the buses was not statutorily assigned to any particular classification and suggested that the county board adopt a written policy to provide for the duty. The board concludes this argument by proposing that the legislature could not anticipate and provide for each and every duty that would arise within the school system and delegated such control to the local board of education as provided in W.Va. Code §18-5-1.

The board's second argument is that the grievants waived any complaints when they freely entered into an employment contract for work or services the board deemed necessary to be undertaken. The board asserts that the existence of such an employment agreement is substantiated by the grievants' continued acceptance of employment and their performance of the duty since the policy was adopted in 1981. Finally, the board argues that the grievance is unfounded or premature as no disciplinary action was taken against those bus operators who did not wax their buses in 1988.

While the board's reason for waxing the buses is prudent and the assignment of that duty to the bus operators may have been the most efficient use of personnel to accomplish the objective, the practice is in violation of what may be required of the grievants. The statutory definition of bus operator

is very restrictive, referring only to the operation of the vehicle. In the promulgation of "The W.Va. School Transportation Regulations" the State Board of Education has expanded the duties of a bus operator to include certain cleaning duties: mopping the bus floor; cleaning the upholstery with a damp cloth; and washing the exterior of the bus. It is clear from the testimony that the primary purpose of the waxing is to preserve and prolong the life of the bus. As such, waxing may not be considered a part of the cleaning process but is non-mechanical maintenance for which the grievants are not responsible.

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

Findings of Fact

1. Grievants are employed as bus operators by the Morgan County Board of Education.
2. In 1981 the board adopted a policy which requires that bus operators wax their bus at the end of the school term. Two days in-service credit is awarded for the waxing.
3. The grievants complied with the policy until the spring of 1988, when several refused to wax the buses and attended in-service seminars for the two days credit.

4. No disciplinary action was taken against the grievants who did not wax their buses.

5. The waxing is required as a measure of preventative maintenance in the preservation of the vehicle and is not included as part of the cleaning duties listed in "The W.Va. School Transportation Regulations".

Conclusions of Law

1. The statutory definition of bus operator does not require that personnel employed in that classification perform duties relating to the maintenance of the vehicle. See W. Va. Code §18A-4-8.

2. The waxing of school buses is generally considered to be a part of the maintenance of the vehicle.

3. That portion of the Morgan County Board of Education Policy DLB which requires bus operators to wax their school buses as a requirement of employment is contrary to law and unenforceable.

Accordingly, the grievance is **GRANTED** and the Board is hereby **Ordered** to discontinue the assignment of waxing buses to bus operators.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Morgan County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code §18-29-7) Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

DATED:

November 15, 1988

Sue Keller

SUE KELLER

HEARING EXAMINER