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**HOWARD BUTCHER and CHARLES BRANIM**

v.

Docket No. 89-23-229

**LOGAN COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Howard Butcher, is employed by the Logan County Board of Education (Board) as a Transportation Supervisor assigned to the Chapmanville Bus Garage. Grievant, Charles Branim, is employed by the Board as a Shop Foreman assigned to the Mann Garage. They initiated grievances at Level I on or about December 9, 1988, alleging they were assigned duties over and above their present classifications without their consent or sufficient compensation. Grievants' supervisor, Mr. Willie Akers, Assistant Superintendent of Schools, in his response at that level, essentially concurred with their assertions but made no decision to either deny or grant the grievance.<sup>1</sup> After a Level II hearing

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<sup>1</sup>Mr. Akers' response is rather ambiguous but it appears  
(Footnote Continued)

held March 8, 1989,<sup>2</sup> Mr. Jack D. Garrett, Associate Superintendent, also did not grant or deny the grievance but simply noted in his response that he was "[without] the authority to change employee classifications or raise salaries". The Board waived Level III proceedings May 25, 1989 and grievants' appeal was made to Level IV May 26, 1989. Hearings were scheduled for June 14 and 30, 1989 but continued for cause. By July 14, 1989, the parties agreed that a decision could be rendered on the record. Grievants submitted proposed findings of fact and conclusions of law July 20, 1989. None have been submitted by the Board although the parties were notified of an August 1, 1989 deadline.

There is essentially no dispute over the relevant facts of the grievances and, while certain aspects of each are similar, others require that they be discussed separately. Grievant Butcher, who had previously worked as a mechanic, was promoted to Transportation Supervisor of the Chapmanville garage in 1983. At that time there were the additional positions of Parts Manager and Shop Foreman. It is not clear from the record precisely what duties or responsibilities were assigned to the positions but apparently each had distinct functions. At some point Mr. Jack Hager assumed the duties of both the Shop Foreman and Parts Manager positions although it is not clear when or why this

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(Footnote Continued)

from statements made therein that he felt grievants had been given ample compensation for their extra duties.

<sup>2</sup>The record does not reflect the reason for the delay between the Level I response and the Level II hearing.

action was taken. Mr. Hager retired in July 1987 and his duties were then assumed by Mr. Butcher, who also retained the responsibilities of his Supervisor position. Shortly thereafter, he received a \$1,200.00 per year raise. It was grievant Butcher's unrefuted testimony that he had made it clear to his then supervisor, Mr. Otis Ferguson, that he accepted this increase only after Mr. Ferguson promised to seek a greater sum when the Board considered budget proposals during the 1988-89 school term. In subsequent discussions with Mr. Akers, Mr. Butcher was informed that no increase could be made during that term and that a similar request would be made during the 1989-90 school term. The grievance was apparently filed after the last such discussion.

In the spring of 1987, Mr. Joe Clark, the Transportation Supervisor in the Man garage, became ill and grievant Branim, Shop Foreman at the time, assumed his duties. Mr. Clark died in June 1987 and Mr. Branim continued his duties. He also received the \$1,200.00 per year raise which, according to his testimony, was the result of a grievance filed by a Mr. McCleese, Shop Foreman at the Logan garage. There is no evidence of record that Mr. Branim accepted the increase in salary on the condition that greater compensation would be forthcoming.

The respective positions of the parties are difficult to discern. Grievants assert the following provisions of W.Va. Code §18A-4-5b:

These county schedules shall be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil

enrollment, size of buildings, operation of equipment or other requirements. Further, uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county.

Grievants then conclude that "[I]f employees performing similar assignments must receive uniform compensation, then employees with greater responsibilities than fellow employees should receive greater compensation" (Grievant's Proposed Conclusion of Law No.3). As relief grievants request "that they be granted additional compensation commensurate with their duties."

The Board's position can only be gleaned from counsel's closing remarks during the Level II hearing in which he asserted the grievances were untimely as the additional duties had been imposed in 1987. Counsel made no contention that grievants were not entitled to more compensation.<sup>3</sup>

The timeliness assertion is without merit and must be rejected. In Herrald v. WV Department of Highways, Docket No. DOH-88-062 (June 13, 1989), it was held that the imposition of duties upon an employee which were outside his or her

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<sup>3</sup>Except for Mr. Akers, representatives for the Board, including counsel, were conciliatory throughout the proceedings and essentially conceded extra compensation might be in order. All cited budget restraints as the reason raises could not be given. Counsel even voiced a reluctance to raise the timeliness issue.

Mr. Akers, through his testimony, adopted the position that grievants understood the \$1,200.00 increase was to be the only additional compensation they would receive for assuming the extra duties. While this assertion might have some merit in regard to grievant Branin, it is totally unfounded with respect to grievant Butcher. In any event, it need not be addressed due to the outcome herein.

classification constituted a grievable "continuing practice" under W.Va. Code §18-29-4(a)(1). While grievants claims might be characterized slightly differently than "misclassifications", they fall squarely within this pronouncement.

Grievant's reliance on the uniformity-in-pay provisions of W.Va. Code §18A-4-5b is misplaced. The applicable statute is W.Va. Code §18A-4-8, which in pertinent part provides:

No service employee, without his written consent, may be reclassified by class title, nor may a service employee, without his written consent, be relegated to any condition of employment which would result in a reduction of his salary, rate of pay, compensation or benefits earned during the current fiscal year or which would result in a reduction of his salary, rate of pay, compensation or benefits for which he would qualify by continuing in the same job position and classification held during said fiscal year and subsequent years.

Grievant Butcher has obviously been reclassified from Transportation Supervisor to the multiclassification Transportation Supervisor/Shop Foreman/Parts Manager.<sup>4</sup> Grievant Branim has similarly been reclassified to Shop Foreman/Transportation Supervisor. W.Va. Code §18A-4-8 provides for the rate of compensation in such situations as follows:

"Multi-classification" means personnel employed to perform tasks that involve the combination of two or more class titles in this section or as created by the West Virginia Board of Education. In such instances the minimum salary scale shall be the higher pay grade of the class tables involved.

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<sup>4</sup>While Shop Foreman and Parts Manager are not among the class titles enumerated in W.Va. Code §18A-4-8, they are parallel to Foreman and Inventory Supervisor which are contained therein.

It is clear from these provisions that grievant Butcher is only entitled to compensation at the highest pay grade of three class titles which he, in essence, holds. The further provisions of W.Va. Code §18A-4-8 places the Supervisor of Transportation in pay grade H, the highest grade possible and it is at that grade that Mr. Butcher should be compensated. Grievant Branin's assumption of the Transportation Supervisor duties likewise entitles him to a salary based on that grade. As the record does not reveal either's current salary, it cannot be determined that grievants are not being compensated in accordance with the above-cited statutory provisions.<sup>5</sup>

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

#### FINDINGS OF FACT

1. During the 1987-88 school term, grievants assumed duties outside their classifications. Grievant Butcher, a Transportation Supervisor, assumed the duties of Shop Foreman and Parts Manager in the Chapmanville garage. Grievant Branin, Shop Foreman, assumed the duties of Transportation Supervisor in the Man garage.

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<sup>5</sup>It is noted that the difference between grade A and H is only \$310.00 for employees with five years of employment and the \$1,200.00 increase in all probability corrected any deficiency.

2. After unsuccessful attempts to secure greater increases, the grievants initiated grievance proceedings at Level I on or about December 9, 1988.

#### CONCLUSIONS OF LAW


1. The imposition of duties on employees' classification constitutes a grievable "continuous practice" as defined in W.Va. Code §18-29-4(a)(1). The grievants timely filed pursuant to those provisions. Herrald v. WV Department of Highways, Docket No. DOH-88-062 (June 13, 1989).

2. W.Va. Code §18A-4-8 requires a county board of education to compensate multiclassified employees at the highest pay grade among the various titles involved.

3. Grievants are entitled to base salaries computed on pay grade H, the grade designated in W.Va. Code §18A-4-8 for Supervisor of Transportation, plus any county supplements.

Accordingly, the grievance is **GRANTED** to the extent that the Logan County Board of Education is hereby **ORDERED** to place grievants within pay grade H if their current salaries are based on a lesser grade. The Board is further **ORDERED** to compensate grievants for any loss of pay from the date of the Level I grievance filing if it is determined that their salaries have been based on a lower pay grade since that date.

Either party may appeal this decision to the Circuit Court of Logan 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 §18-29-7. 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.

  
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JERRY A. WRIGHT  
Chief Hearing Examiner

Dated: November 20, 1989