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ERNEST FUCHS/NORA JOHNSON

v.

Docket No. 05-88-241

BROOKE COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants Ernest Fuchs and Nora Johnson are employed as school bus operators by respondent Brooke County Board of Education. On October 13, 1988, they¹ filed a grievance complaint that respondent's use of chartered buses to transport students to extracurricular activities had deprived them of work and income. Denied at level one on October 13, 1988, level two, November 27, 1988, and waived at level three November 21, 1988, the level four appeal was filed December 19, 1988. A hearing scheduled for January 30, 1989, was continued to February 14,

¹The level one form was signed by 30 other bus drivers. At the level two hearing, November 10, 1988, Superintendent Whitehead, examiner, acknowledged that grievants herein represented the other employees (T2.2).

1989, by mutual agreement, and the parties submitted proposed findings of fact and conclusions of law March 9 and 16, 1989.

At level four, grievant Fuchs testified² that bus operators became concerned four or five years ago when, due to extra seating need, respondent's use of chartered buses to transport students to out of town school activities and events began to escalate. After a time, the operators believed if respondent acted to purchase larger capacity school buses the problem would be corrected, but it did not, despite the purchase of new buses, according to greivant. He stated that principals and coaches exercised too much authority on decisions affecting students' transportation for they could order up chartered buses at whim, and trips that were designated for the drivers' extra-driving roster were often pulled just prior to posting.

Grievant Fuchs stated that county school bus operators had come to depend on wages derived from extra-duty, extracurricular driving to augment and supplement regular wages. He asserted

²Ms. Johnson did not appear at the level two or level four hearings and a question was raised by respondent's counsel whether the drivers who signed the level one filing were still involved; he also stated that the decision on the grievance would impact on all of the drivers but he had objection that the level four proceedings include personnel who made no appearance. A ruling was not required because the parties generally agreed with counsel's statement that the decision herein would affect all drivers. See also, Note 1, supra.

the decrease in extra duty driving assignments had caused his wages to decline.³

Grievants argue that the operators' negotiation of a "Trip Policy," a procedure to allocate driving runs among those who wish to participate in extra driving work, made extra duty driving assignments "part of their contract," and respondent's use of charter buses relegates the bus operators who sign up for extra-duty driving to loss of work and wages and is contrary to W.Va. Code §18A-4-8.⁴

Grievants also argue that chartered bus drivers are unqualified to drive public school children since they have not been certified by the Department of Public Safety and the State Department of Education.

Superintendent Richard Whitehead denied that the use of chartered buses had escalated, generally. During 1987-88, charter buses were contracted for 26 occasions while thus far in 1988-89, as of date of hearing, on only ten occasions, according to him. He stated that chartered buses were more comfortable, with reclining bucket-type seats and rest rooms, ensuring that students who have traveled a great distance will be rested and

³Grievant did not support this assertion with any showing of a wage decrease.

⁴W.Va. Code §18A-4-8 states in pertinent part: "No service employee, without his written consent, may be reclassified by class title, 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...."

better able to perform their activity.⁵ Mr. Whitehead testified that decisions to use a charter bus follow a line of authority, from perhaps a parent Booster group, coach or teacher sponsor to principal, from principal to superintendent, superintendent to school board, and the board gives ultimate approval to pay the bills. According to Whitehead, the board rarely incurred extra cost because the parents' organization would either pay all of the fee or the portion which exceeded that which would be paid if respondent's drivers and buses were utilized.

Respondent argues it has the statutory authority to contract the use of charter buses and depends on W.Va. Code §18-5-5, which provides in part, as follows:

The county board of education shall be a corporation by the name of "The board of education of the county of...", and as such may sue and be sued, plead and be impleaded, contract and be contracted with.

It also relies on W.Va. Code §18-5-13(8) which authorizes it, to provide at public expense for insurance against the negligence of the drivers of school buses, trucks or other vehicles operated by the board; and if the transportation of pupils be contracted, then the contract therefor shall provide that the contractor shall carry insurance against negligence in such an amount as the board shall specify.

⁵Grievant stated that the students were young and healthy and it should not hurt them to ride the school bus to their activities. However, administrative notice can be taken that the long-standing purpose and function of the school bus has been to deliver students over rural roads or city streets to their schoolhouse. School buses are not designed or built to accommodate the needs and comfort of passengers traveling hours and miles to distant sites, regardless of the passengers' ages.

Lastly, respondent depends upon a February 6, 1986 interpretation of the State Superintendent of Schools which affirms the authority of a board of education to lease a private charter bus.

On his covering letter for filing proposals in this grievance matter, grievant's representative announced:

There was a mistake at the relief requested at the Level IV hearing by grievant's counsel. After re-examining the grievance, the relief sought is to stop all chartered related trips to school related activities. Also, to reimburse all drivers on the extra-trip list an equal share of monies lost for use of chartered buses.

Respondent objected to the requested modification as grievant's representative had stated on the record that the bus operators were not requesting monetary relief.⁶

FINDINGS OF FACT

1. Grievants Fuchs and Johnson are regularly employed bus operators of respondent board and bring a grievance to level four on their behalf and on the behalf of other designated bus operators as found by respondent at level two.

⁶Due to the ultimate disposition of this grievance, the request is of no import herein. However, parties are advised that issues not fairly raised or pursued at level four will not be considered by the West Virginia Education and State Employees Grievance Board.

2. Bus operators have a negotiated agreement about the allocation of extra-duty driving assignments for those drivers who express interest in accepting such assignments pursuant to W.Va. Code §18A-4-8b.

3. Respondent contracts for charter buses for certain of its transport of students. No specific evidence was offered by grievants that the number of chartered trips was escalating and respondent's figures for 1987-88 and 1988-89 which show a decline of such activity was not contested by grievants.

4. A chartered bus is a reasonable means to transport persons, including students, on lengthy trips or for other special needs and the evidence preponderates that respondent has authority to so contract.

CONCLUSIONS OF LAW

1. Extra-duty assignments pursuant to W.Va. Code §18A-4-8b(b) are irregular jobs that occur periodically and do not become part of a service employees regular contract of employment regardless of how the employee and employer agree to allocate said assignments.

2. Respondent's dispensation of extra-duty driving assignments and its use of chartered buses on occasion does not change the condition of the operators' regular employment as

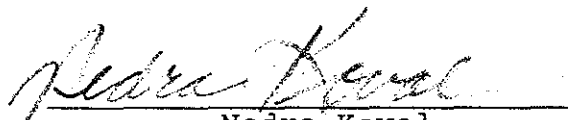
anticipated by W.Va. Code §18A-4-8. See McDiffitt v. Preston County Board of Education, Docket No. 39-88-142 (October 31, 1988).

3. It is incumbent upon a grievant seeking relief pursuant to W.Va. Code §18-29-1, et seq. to prove all of the allegations constituting the grievance by a preponderance of the evidence. McDiffitt.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Brooke 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: *March 31, 1989*


Nedra Koval
Hearing Examiner