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STATE EMPLOYEES GRIEVANCE BOARD**

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NANCY HARRIS

and

WILLIAM TACKETT

Docket No. 89-22-49

v.

LINCOLN COUNTY BOARD OF EDUCATION

DECISION

Nancy Harris and William Tackett, bus operators for Respondent Lincoln County Board of Education, grieve Respondent's failure to pay them for library runs made between 9:00 a.m. and 2:00 p.m. The grievance alleges that they "just became aware of the violation from other bus drivers who previously grieved." Grievants request back pay.

Grievants propose the following findings of fact:

1. The Grievant, Nancy Harris, is employed by the Lincoln County Board of Education as a bus driver.
2. The Grievant, William Tackett, was employed by the Lincoln County Board of Education as a bus driver.
3. The Grievants had been required to make "library trips" between 9:00 a.m. through 2:00 p.m. on school days.
4. Neither Grievant was contacted by their organization in regard to filing the original grievance.
5. Both Grievants became aware of the violation and due compensation when the other bus drivers informed them of the grievance decision on December 21, 1988.

Grievants also submitted these suggested conclusions of law:

1. Library runs are "extra-duty assignments" within the meaning of West Virginia Code 18A-4-8b(b). Lucian Isaacs, et al. v. Lincoln County Board of Education, Docket No. 22-88-122 [(September 28, 1988)].

2. West Virginia Code 18-29-4(a)(1) states in part that before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant."<sup>1</sup>

Respondent Lincoln County Board of Education does not dispute that Grievants made the library runs in school year 1987-88 which were found violative of W.Va. Code §18A-4-8b(b) in Isaacs.<sup>2</sup> However, Respondent has contended throughout these proceedings that the grievance was not timely filed in accordance with the requirements of W.Va. Code §18-29-4(a)(1).

The record provided the undersigned does not actually establish the date the grievance was filed. However, in that the grievance was appealed to Level II on January 10,

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Under W.Va. Code §18-29-4(a)(1) a grievance is also timely filed if filed "within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance[.]"

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In Isaacs v. Lincoln Co. Bd. of Educ., Docket No. 22-88-122 (Sept. 28, 1988), it was found that Respondent discontinued its practice of not supplementally paying the operators for making the library runs by changing its policy on August 16, 1988. Accordingly, all library runs violative of W.Va. Code §18A-4-8b(b) occurred prior to the 1988-89 school year.

1989,<sup>3</sup> it was filed at some point between December 21, 1988, and that date.

While Grievants properly quote W.Va. Code 18-29-4(a)(1), they err in arguing that the grievance was timely filed because it was filed within fifteen days of the date when the bus drivers became aware that the library runs had been violative of Section 18A-4-8b(b). The date when an action or practice is determined to be violative of the Code is not the crucial date for timely filing of a grievance. See Ryan v. Berkeley Co. Bd. of Educ., Docket No. 02-88-060 (Sept. 29, 1988); Scarberry v. Mason Co. Bd. of Educ., Docket No. 26-86-291-1 (Mar. 26, 1987). The latest possible "event upon which the grievance is based" or "the most recent occurrence of a continuing practice giving rise to a grievance" in this case would be when Grievants made the library runs without supplemental pay. The "date on which the event became known to the grievant," W.Va. Code §18-29-4(a)(1), could not apply to this case since of course Grievants were aware that they were making the library runs without supplemental pay. Accordingly, the latest possible

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The grievance was denied at Level II on January 20, 1989, after hearing on January 17, 1989, on a determination that the grievance was untimely filed. The Respondent Board of Education waived a Level III hearing on January 31, 1989, and the Level IV appeal was filed February 6, 1989, which stated that the decision could be made on the evidence presented at Level II. Proposed findings of fact and conclusions of law from both parties were received February 27, 1989.

date on which Grievants could have timely filed was fifteen days after the last library runs they made in the 1987-88 school year. Since Grievants did not file until late December 1988 or January 1989, their grievance was untimely filed.

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

#### FINDINGS OF FACT

1. Grievants, bus operators for Respondent, made library runs in the 1987-88 school year which were found violative of W.Va. Code §18A-4-8b(b) in Isaacs v. Lincoln Co. Bd. of Educ., Docket No. 22-88-122 (Sept. 28, 1988).

2. Grievants did not file a grievance until they learned in December 1988 that the bus runs had been declared violative of the Code in Isaacs.

#### CONCLUSIONS OF LAW

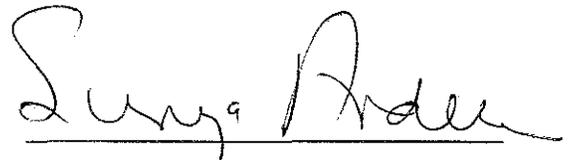
1. Under W.Va. Code §18-29-4(c)(1) the date a Grievant finds out an event or continuing practice was illegal is not the date for determining whether his grievance is timely filed. Instead, if he knows of the event or practice, he must file within fifteen days of the event or an occurrence of the practice. See Ryan v. Berkeley Co. Bd. of Educ.,

Docket No. 02-88-060 (Sept. 29, 1988); Scarberry v. Mason Co. Bd. of Educ., Docket No. 26-86-291-1 (Mar. 26, 1987).

2. In that Grievants did not file within 15 days of the last library run violative of W.Va. Code §18A-4-8b(b), their grievance was not timely filed.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln County and such appeal must be filed within thirty (30) days of receipt of this decision. See 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.



**SUNYA ANDERSON  
HEARING EXAMINER**

Dated: March 23, 1989