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**WEST VIRGINIA EDUCATION AND
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ROYDICE HILKEY

v.

Docket Nos. 43-88-123

89-43-074

RITCHIE COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Roydice Hilkey is a maintenance worker employed by respondent Ritchie County Board of Education; he was classified as a Truck Driver, salary rate "D," until action by respondent to terminate the truck driver position in Spring 1988. Grievant filed a grievance on the matter on May 2, 1988. The record is not entirely clear about lower level proceedings, but the grievance was advanced to level four in June 1988, and subsequently remanded for procedural compliance by Order entered July 20, 1988. Grievant filed a second complaint when he learned other service employees not classified as Truck Drivers were driving trucks for respondent. The second grievance was acknowledged at level four late February 1989. After delay due to scheduling problems for both parties, hearing was conducted on both grievances May 31, 1989. Respondent submitted a letter-brief by June 13 and grievant's proposed findings of fact and conclusions of law were received June 26, 1989.

During school year 1987-88, grievant held a 261-day continuing contract. Grievant was notified by respondent's then-Superintendent, Dixon Law, on March 11, 1988, that he would be terminated in a Reduction-in-Force (RIF) action and the matter would be considered by respondent at its meeting of March 24, 1988. No action was taken, but the board reconvened March 28, 1988, and voted to "terminate" a Maintenance/Truck Driver position with no mention of grievant by name.

Superintendent Law notified grievant by letter dated March 29, 1989, that he, grievant, could be heard on April 11, 1988, with regard to Law's recommendation that he be placed on a transfer list. Grievant received a further correspondence from Superintendent Law, dated April 8, 1988, which stated that the school board approved a service personnel RIF by "terminating positions" and that grievant's "job classification" seniority as "General Maintenance/Truck Driver" caused him to be placed on a transfer list for school year 1988-89.

"Transfer" hearings for grievant and another employee, David Williams,¹ were conducted by respondent on April 11, 1988, in closed session. No action ensued on the matter until April 19, 1989, when respondent voted to transfer grievant from the General Maintenance, Truck Driver classification to General Maintenance, Custodian III, Groundsman, "to be subsequently assigned."

¹Mr. Williams prevailed in a grievance on nearly identical issues and circumstances. See Williams v. Ritchie Co. Bd. of Educ., Docket Nos. 43-88-246/247 (March 31, 1989).

On July 5, 1988, respondent voted that grievant be employed for 220 days for the 1988-89 school year as Custodian, Groundsman and General Maintenance.

At level three grievant testified that his 1987-88 maintenance/truck driver duties included working at various schools on repair projects and driving a truck for pick-up, delivery and distribution of supplies and commodities to various sites. He testified that after the 1988-89 school year began, Barney King, a substitute employee, drove a truck to pick up and deliver commodities to a school. Grievant also claimed that at least three bus operators were driving trucks to haul gravel and other materials, work that he, grievant, had performed the previous year, 1987-88.

At level four, Earl Flesher, a bus operator/bus aide, testified that he had been assigned to drive a dump truck to haul gravel to a school site. He said that he did not bid on the duty but that he received extra compensation for the hours he worked.

Grievant asserts that there was need for his former position as a truck driver since other employees not so classified were assigned to perform necessary truck driving duties. He argues that his transfer was violative of statutory provisions governing employment and relegation matters. Grievant cites Williams v. Ritchie Co. Bd. of Educ., Docket Nos. 43-88-246/247 (March 31, 1989), and urges that the West Virginia Education and Employees Grievance Board to observe the doctrine of stare decisis.

Respondent did not comment on the alleged improprieties of grievant's termination, transfer and subsequent assignment. It claims the truck driver position was not needed because the previous year's construction projects were completed and limited driving for the present year was handled by other maintenance employees who had performed such driving in the past.

Williams is controlling in this matter and, whether the truck driver classified position is needed or not, respondent should not confound an employee with numerous pronouncements about the employee's status or otherwise ignore the procedural requirements which govern an employee's continuing contract, employment term and salary status.²

The remainder of this decision in the following findings of facts and conclusions of law is set forth.

FINDINGS OF FACT

1. In 1987-88 grievant was classified as Maintenance/Truck Driver, salary rate D, and he held a continuing 261-day contract of employment with respondent.

² Respondent cannot have it both ways. When a board of education creates multi-classified positions in order to have service personnel who can perform a myriad of duties, it cannot eliminate one of the classified positions the employee holds as a means to simply alter the employee's term and salary rank and then distribute the eliminated position's duties to several personnel not holding the position classification.

2. At various times in March and April 1988, grievant was notified of contemplated and actual changes in his employment status, i.e., that his employment would be terminated in a RIF action; that the "position" of truck driver was terminated in a RIF action; and, later, that he was transferred to another position, salary rate C, to be "subsequently assigned." The notices and actions were confusing and unclear, but grievant's continuing contractual status was not addressed throughout that time and his employment was never terminated.

3. In July 1988, without grievant's written consent, the board "employed" grievant as maintenance/custodian/groundsman and reduced his contractual term of employment from 261 to 220 days, effective the 1988-89 school year.

4. Respondent did not provide grievant an opportunity to be heard on the issue of a reduced employment term and benefit reduction before it made its determinations in July 1988.

5. During school year 1988-89 grievant, as a 220-day maintenance employee/custodian, performed work similar to that he performed in former years except he did not drive a truck.

6. Several service employees not classified as truck driver were assigned to drive a supply truck or a dump truck for deliveries of commodities and materials. At least one employee

received extra pay for the driving assignment and the duty was not posted for the consideration of all maintenance employees.

CONCLUSIONS OF LAW

1. "'Truck driver' means personnel employed to operate light or heavy duty gasoline and diesel-powered vehicles." W.Va. Code §18A-4-8. The statute requires a system of service employee classification and it necessarily follows that the grievant in this case, who holds or held truck driver classification, is entitled to a truck driver position where the need for a truck driver is shown. Grievant herein met that burden.

2. While W.Va. Code §18A-2-7 permits a board of education to reclassify and reassign its service personnel, timely procedural requirements of notice and hearing must also be met for contract termination or modification pursuant to W.Va. Code §18A-2-6. Bd. of Educ. of Co. of Fayette v. Huntley, 288 S.E.2d 524 (W.Va. 1982); Williams v. Ritchie Co. Bd. of Educ., Docket Nos. 43-88-246/247 (March 31, 1989).


3. A reduction of force occurs when a board of education reduces the number of its personnel. See McCann v. Lincoln Co. Bd. of Educ., Docket No. 22-88-202 (June 12, 1989). When a service position is to be eliminated, but the staff member retained under different contractual terms, the board of education must first terminate the employee. Williams.

4. Respondent's July 1988 action to reduce the continuing employment term and benefits of grievant herein without his express agreement relegated him to lesser wages and benefits and was violative of W.Va. Code §§18A-4-8, 18A-2-6 as a matter of law. See Williams.

Accordingly, the grievance is **GRANTED** and respondent is Ordered to restore grievant to his 261-day contract term and benefits, effective the 1988-89 school year, and pay him back wages for Truck Driver for the 1988-89 school year.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Ritchie 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: August 31, 1989


Nedra Koval
Hearing Examiner