



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

**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
GASTON CAPERTON
Governor

REPLY TO:
407 Neville Street, Suite 120
Beckley, WV 25801
Telephone: 256-6855
ON NET: 557-6855

Offices
240 Capitol Street
Suite 515
Charleston, WV 25301
Telephone 348-3361

DANIEL LAMBERT

v.

Docket No. 89-22-188

LINCOLN COUNTY BOARD OF EDUCATION

DECISION

Grievant, Daniel Lambert, is employed by the Lincoln County Board of Education (Board) as a bus operator. On April 28, 1989, he filed an appeal of the Board's decision to accept Superintendent of Schools Stephen Priestley's recommendation that he be suspended for four days without pay for willful neglect of duty.¹ A Level IV hearing was held May 11, 1989 and proposed findings of fact and conclusions of law were submitted by June 15, 1989.

The events which led to Mr. Priestley's recommendation began March 27, 1989. The Board, on that dated, voted to eliminate a number of bus operator positions, including grievant's, in a reduction of force. Grievant was to lose his job at the end of

¹Grievant was afforded a hearing before the Board prior to its decision. The transcript of that hearing was admitted into evidence at Level IV as Joint Exhibit No.1.

the 1988-89 school term and at least part of his designated run was to be eliminated. The Board meeting was apparently attended by parents angry over the changes and at least three appeared at Guyan Valley High School (GVHS) the morning of March 29, 1989 to continue their protest. Grievant's run that morning entailed loading students in the Ten Mile area and travelling north on State Route 10 to GVHS where they were to disembark. Normal procedures required grievant to drive slightly past GVHS, which is situated on the righthand side of Route 10, and make a right turn onto a gravel road which ultimately led to the rear of the school, where students left the bus. On the morning in question, the protestors had stopped the buses of Mr. Charles Brunty and Mr. Willis Roy just as they had completed their turns onto the gravel road. Both were off Route 10. Grievant approached the road but was unable to make the same turn. Traffic began to back up in the direction of the school and grievant used his flashers to stop oncoming traffic in the opposite lane. For reasons hereinafter discussed, it is necessary only to state that grievant subsequently turned off his flashers, drove further along Route 10, turned around at some point, returned south and delivered the students to their homes. This trip prevented grievant from making his regularly scheduled second run to West Hamlin Elementary School.

The Board contends grievant's actions were unwarranted and constituted willful neglect of duty and/or insubordination.² Grievant maintains his decision to return the students home was made in their best interest and was not, in view of the circumstances, an improper one. He also asserts that the Board engaged in favoritism as another driver, who returned his students home that same day, was not treated similarly. Grievant contends, in the alternative, that, pursuant to Board policy in effect at the time, he should have received only a warning letter for his conduct. Because the grievant is correct in this last assertion, the sufficiency of the Board's evidence and the charge of favoritism need not be addressed.

The Board's transportation policy is comprehensive and provides in some detail the duties of bus operators. It also sets forth the consequences for failures to perform certain duties and specifically provides at page 17,

Failure to complete run or other assignment for any reason:

- First Offense: warning
- Second Offense: subject to suspension
- Third Offense: subject to termination

(Employee's Exhibit No.4, attachment to transcript of Board hearing)

It is undisputed that grievant has never failed to complete an assigned run during his tenure with the Board and that he

²As noted, Mr. Priestley's recommendation concerned only willful neglect of duty. The Board apparently concluded, after the hearing, that grievant's actions were also insubordinate.

It is undisputed that grievant has never failed to complete an assigned run during his tenure with the Board and that he received no authorization to return his students home on the morning in question.

The Board's response to grievant's assertion concerning the applicability of these provisions is difficult to discern. Its proposed conclusions of law allude to policy provisions authorizing termination for certain conduct involving insubordination but a review of the policy reveals no such provisions. Accordingly, it must be assumed the above-cited portion is controlling and the Board was bound to adhere and provide grievant a warning rather than a suspension. See Powell v. Brown, 238 S.E.2d 220 (W.Va. 1977).

Although the policy is clear in its pronouncement that an employee is to receive a warning for failure to complete a run for any reason and insubordination would fall within its scope, the issue requires a brief discussion. Throughout the proceedings before the Board and at Level IV, it became abundantly clear that school principals had no authority to give orders to bus operators either pursuant to past practice or Board policy. That policy specifically provides:

12.04.00 PERSONNEL RESPONSIBILITIES

A. [Bus Operators] work under the direct supervision of the Director of Transportation or his designee. He shall be held directly responsible for the safe and efficient operation and care of the vehicle to which he is assigned.

B. [Bus Operators] agree to recognize the Director of Transportation as his immediate supervisor.

The Board's description for bus operators additionally provides:

. . . .

B. Relationship to Others:

1. Works under the direct supervision of the Transportation Director.
2. Works in cooperation with the school principals and area supervisors to provide the most efficient transportation system possible in their assigned attendance area.

(Emphasis added)

Insubordination has been defined as the refusal or failure to carry out an order from a person authorized to give such. Webb v. Mason County Board of Education, Docket No. 89-26-56 (May 1, 1989). Since grievant received no orders on the morning in question from persons authorized to do so, he could not have been insubordinate.

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

FINDINGS OF FACT

1. On the morning of March 29, 1989 at least three persons appeared at GVHS for the purpose of staging a protest over the reduction in force of bus operators.

2. Grievant, one of the bus operators whose positions had been affected, was unable to unload his students at GVHS in the normal manner due to the presence of the protestors. Grievant's bus was effectively stalled on Route 10.

3. After approximately fifteen minutes, grievant proceeded north on Route 10, turned around and headed south and returned his students to their homes.

CONCLUSIONS OF LAW

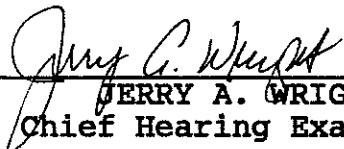
1. A county board of education may, pursuant to legally adopted policy, bestow upon its employees greater rights than those afforded by statute and it must abide by said policy. Powell v. Brown, 238 S.E.2d 220 (W.Va. 1977).

2. The transportation policies for bus operators of the Lincoln County Board of Education specifically provides that the penalty for a first offense of failing to complete a bus run is a warning.

3. The Board's action in suspending grievant for his first offense was in direct contravention of its own policy.

Accordingly, the grievance is **GRANTED** and the Lincoln County Board of Education is hereby **ORDERED** to compensate grievant for any loss of wages he may have incurred as a result of the improper suspension and remove from his personnel file any and all documents, letters, memoranda or other references to said suspension. The Board may, in its discretion, provide grievant a warning letter for his actions.

Either party may appeal this decision to the Circuit Court of Lincoln 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.


JERRY A. WRIGHT
Chief Hearing Examiner

Dated: October 30, 1989