



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

**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**

GASTON CAPERTON
Governor

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

**DANNY PARSONS
EDWIN G. WOLFORD
NELSON GIBSON
JEFFREY WOLFORD**

Docket No. 06-88-258

v.

CABELL COUNTY BOARD OF EDUCATION

DECISION

Grievants Danny Parsons, Edwin G. (Jerry) Wolford, Nelson Gibson, and Jeffrey Wolford, employed by Respondent Cabell County Board of Education as regular bus operators on 200-day contracts, filed grievances in August 1988 alleging that Respondent illegally denied them summer employment, as follows:

Regular employees feel that they have been denied the opportunity to earn extra income with Board of Education (summer crews were eliminated due to lack of funds) when they were not given first refusal to do work (whatever classifications) during summer months that was performed by substitutes on a day-to-day basis. They want the opportunity to do the work being performed by substitutes and pay that they could have earned.

The grievances were denied at Levels I and II and Respondent waived consideration of the grievances on December 19, 1988. Grievant appealed to Level IV on January 10, 1989, and a

hearing was held March 3, 1989.¹ Proposed findings of fact and conclusions of law were received from Respondent on March 7, 1989.²

All Grievants had worked in Respondent's maintenance department in prior years pursuant to summer contracts. At the Level IV hearing Grievants' counsel conceded that Grievants were not entitled to such contracts in Summer 1988. He further conceded that ordinarily it was proper for Respondent to call out substitute maintenance employees when regular maintenance employees were absent or when a maintenance position was temporarily vacant, as provided by W.Va. Code §18A-4-15. However, Grievants argue that during the summer (when they are not under contract as bus operators) they are entitled to be called rather than substitute maintenance employees. Grievants rely on the following language of Code §18A-4-15:

Substitutes shall be assigned in the following manner: A substitute with the greatest length of service time, that is, from the date he began his assigned duties as a substitute in that particular category of employment, shall be given priority in accepting the assignment throughout the period of the regular employee's absence

¹At the hearing it was agreed by the parties that the transcript of the Level II hearing would be considered evidence in this matter, in addition to the evidence submitted at Level IV.

²The parties agreed that proposed findings of fact and conclusions of law were to be served by March 31, 1989. On April 7, 1989, Grievants' counsel submitted a brief. That brief is not fully considered because it was untimely filed without explanation for such untimeliness. However, it is noted that the brief raises no argument not addressed orally at hearing by Grievants' counsel, discussed herein.

or until the vacancy is filled on a regular basis under the procedures set out in section eight-b [§18A-4-8b] of this article. All substitutes shall be employed on a rotating basis according to the length of their service time until each substitute has had an opportunity to perform similar assignments: Provided, that if there are regular service employees employed in the same building or working station as the absent employee and who are employed in the same classification category or employment, such regular employees shall be first offered the opportunity to fill the position of the absent employee on a rotating and seniority basis with the substitute then filling the regular employee's position. A regular employee assigned to fill the position of an absent employee shall be given the opportunity to hold that position throughout such absence.

Grievants argue that the previous summer work qualifies them as maintenance employees and further maintain that they are "regular service employees employed in the same building or working station" as any absent maintenance employee because "the word work station must refer to the entire county, obviously...."³

Grievants' argument deserves little discussion, for it is devoid of substance. Code §18A-4-15 provides no support for Grievants' argument that they were entitled to

³Grievants' counsel continued to explain at hearing that "the provision in question specifically applies more clearly to situations such as a school where you have a Custodian I and III. When a Custodian III is off, this particular provision gives the Custodian I in the work station in that school to move into the Custodian III's position and you call a substitute to replace the Custodian I." While Counsel used the phrase "work station" in this explanation in the ordinary sense, which is contrary to his argument that it must refer anywhere in the county, he nevertheless argued that the provision applies to the facts of this case.

substitute work in the summer.⁴ Instead, it is clear that Respondent was required by the statute to call in substitutes during the summer in the same way that substitutes are called during the rest of the year.⁵

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

Findings of Fact

1. Grievants Danny Parsons, Edwin G. Wolford, Nelson Gibson, and Jeffrey Wolford are employed by Respondent Cabell County Board of Education as bus operators on 200-day contracts.

2. Respondent had during previous summers employed bus operators for temporary summer work. The bus operators worked under special summer contracts. The operators were part of "summer crews" and worked at maintenance work such as outside painting, blacktopping, and furniture

⁴Grievants' argument also ignores that there was no showing that their classifications in prior summers would have qualified them for the duties performed by the substitutes in the Summer 1988. Clearly they would not have been qualified to do maintenance work such as plumbing.

⁵This decision does not address whether Respondent's methods of assigning substitutes was consistent with W.Va. Code §18A-4-15 other than to hold that it was proper for Respondent not to substitute Grievants for absent regular employees.

refinishing. Respondent had not had a plumbing crew or a stockroom crew.

3. Grievants Danny Parsons and Edwin Wolford had worked in previous years with the classification of furniture refinisher/handyman, and Grievants Jeffrey Wolford and Nelson Gibson had worked on the spray crew, doing spraypainting and some custodial work.

4. Due to lack of funds Respondent decided not to have all the crews in Summer 1988 and only had a furnace crew then.

5. Marvin Simpkins and Larry Ball, two regular employees of Respondent whose job classification was plumber, were absent July 5 through July 8, 1988, and July 6 through July 8, respectively. Respondent called out two substitute custodians, Dewey Rayburn, Jr., and Donald Wray, both of whom had had plumbing experience, to make emergency repairs at three schools--replacement of two gas meters and repairing a gas leak. Mr. Rayburn worked on the days Mr. Simpkins was absent and Mr. Wray worked on the days Mr. Ball was absent.

6. Mr. Harold Rider, a substitute custodian, worked in the stockroom as a clerk/helper from August 10, 1988, through November, 1988, helping to complete orders for supplies and materials and helping load the trucks with supplies for the schools.

7. All of the Grievants went back to work as regular bus operators on August 26, 1988, and were not available for work in the stockroom subsequent to August 26, 1988.

Conclusions of Law

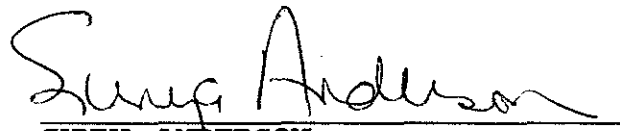
1. W.Va. Code §18A-4-15 did not provide Grievants, regular bus operators employed on 200-day contracts who had in previous summers done maintenance work for Respondent on summer contracts, any right to employment in the maintenance department during the summer (when their regular bus operator contracts were not in effect). Rather, Code 18A-4-15 provides for calling in substitute employees when regular service employees are absent.

2. Grievants would not have been able to fulfill the stockroom duties filled by Mr. Rider since they would not have been available past August 26th, when their bus operator duties began. "A county board of education may establish employment dates consistent with the needs of the school system and employ substitute service personnel employees if regular service personnel employees are unavailable on those dates....Grievants are not entitled to back pay for services performed by temporary or substitute employees for work for which the grievants were unavailable. Norman Lilly, et al. v. Fayette County Board of Education, Docket No. 10-86-110 [April 30, 1986]." O'Neal v. Kanawha Co. Bd. of Educ., Docket Nos. 20-86-239-1, 20-86-238-1,

20-86-237-1 (March 13, 1987). See also Cole v. Putnam Co. Bd. of Educ., Docket No. 40-88-240 (Mar. 17, 1989).

Accordingly, the Grievances are **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Cabell 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.


SUNYA ANDERSON
HEARING EXAMINER

Date: April 18, 1989