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

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DONALD PAYTON

v.

Docket No. 89-22-653

LINCOLN COUNTY BOARD OF EDUCATION

DECISION

Donald Payton, a bus driver employed by Respondent Lincoln County Board of Education,

alleges that the exchange of two bus operators' positions violates. . .[W.Va. Code] §18A-4-8b(b). . .[and] requests posting of these positions in accordance with. . .[W.Va. Code] §18A-4-8b(b).

After denials of this grievance at Levels I and II¹ and waiver at Level III, Grievant advanced the same to Level IV on November 13, 1989, where a hearing was held January 29, 1990.² With the submission of fact-law proposals by Grievant on February 15, 1990, the case is mature for disposition.³

¹ The Level II hearing transcript, with attendant exhibits, and decision are of record at Level IV.

² An earlier-scheduled hearing was continued to January 29 upon joint motion of the parties.

³ Respondent waived such submission.

With only minimal exception, the facts surrounding this controversy are for practical purposes stipulated. Respondent, due to enrollment decline and monetary constraint, was forced to eliminate five bus operator positions effective school term 1989-90. In response to this, it abolished all 1988-89 bus runs and established completely-revised ones for the next year. These were posted as service personnel vacancies; all remaining drivers were placed on administrative transfer and given leave to bid on the new routes.⁴

Drivers Lucian Isaacs and Terry Toney each were awarded runs in the general geographic area of the other's residence. They agreed between themselves to switch assignments if permitted by Respondent and approached Lincoln County Transportation Director Johnie Adkins with the proposal. Mr. Adkins, in conjunction with Respondent's unwritten "policy," investigated whether any driver in the affected transportation area⁵ had any objection; upon learning none did, he approved the change. At Level IV, Mr. Adkins advised that if even one driver had registered a complaint to the move, it would have been disallowed.⁶

⁴ Certain of this information was gleaned from the January 29, 1990, hearing in a separate grievance, Payton v. Lincoln Co. Bd. of Educ., Docket No. 89-22-649 (Feb. 16, 1990).

⁵ Lincoln County is divided into "transportation areas" for purposes of bus routes.

⁶ Although Grievant did not clearly identify himself as
(Footnote Continued)

Grievant's position is that bus-run switching cannot be accomplished without violating Code §18A-4-8b(b). Grievant's argument is that when Messrs. Isaacs and Toney left the specific jobs for which they had been hired, each became vacant and subject to the posting requirements of the statute. Respondent countered generally that its "policy" is reasonable and responsive to the needs of its drivers and the fluid nature of bus routes, and that it has been applied consistently and successfully over a several-year period of time.

The issue of the legality of switching need not be reached. The only remedy Grievant seeks herein is the reposting of the bus routes now held, albeit conversely from the original setup, by Messrs. Isaacs and Toney. Grievant candidly admitted, though, that he has no interest in either job, and that offhand he knows of no one who currently does aside from the two assignees. His attorney argued that Grievant nonetheless had a right to the opportunity to bid on the posts and therefore had standing to pursue this claim. However, Grievant stated unequivocally that he did not desire that opportunity; he merely thought that other employees had not been allowed to switch runs in similar circumstances and that Messrs. Isaacs and Toney should not be allowed to do what others could not.

(Footnote Continued)

a driver "in the affected transportation area," he claims not to have been contacted with the Isaacs-Toney proposal.

Grievant does not request any tangible relief, at least as it relates to him. The record reflects that a total of five other individuals besides Messrs. Isaacs and Toney originally applied for one or both of the runs in question, Grievant not being among that number. According to Respondent, none of those five has seen fit to file a grievance; only one, whose bid was invalid because late, ever expressed any concern over the change, but her individual situation was resolved to her satisfaction through informal conversation outside the grievance procedure.

The remainder of this Decision will be presented as formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Two bus drivers in Respondent's employ, Lucian Isaacs and Terry Toney, agreed to switch bus runs. Respondent allowed this, in accordance with an unwritten "policy" and attendant procedure.

2. Grievant, who admittedly has interest neither in either job nor in the opportunity to bid thereon, filed this claim, seeking only that the two jobs be posted as vacancies. The remedy Grievant seeks would thus have no practical effect on him or his work situation.

CONCLUSIONS OF LAW

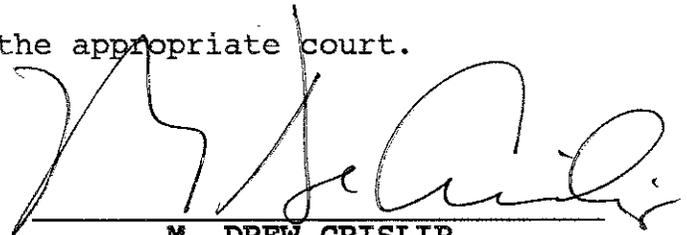
1. When the only relief sought by a grievant would, if granted, have no or only insignificant effect with respect

to him, that relief is de minimis at best.

2. De minimis relief is unavailable from the West Virginia Education and State Employees Grievance Board. Carney v. DRS, Docket No. VR-88-055 (Mar. 28, 1989).

Accordingly, this 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. 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. This office should be advised of any intent to appeal so that the record can be prepared and transmitted to the appropriate court.



M. DREW CRISLIP
Hearing Examiner

Date: February 16, 1990