LOUISE BLACK, ET AL.

v. **Docket No. 93-06-416**

CABELL COUNTY BOARD OF EDUCATION

D E C I S I O N

The Grievants, Louise Black, Jennifer Clagg, Shirley Eaves, Barbara Fisher, Lora Hall, and Patricia Jeffrey, are employed as bus monitors by the Cabell County Board of Education ("CCBOE"). These Grievants care for special education students assigned to their school buses, and are classified under W. Va. Code §18A-4-8 as either Aides III or IV. They allege a "violation of West Virginia Code §18A-5-8." (See footnote 1) This code section deals with the authority of certain aides to exercise control over pupils. The Grievants allege that since they supervise special education students to and from school, and they exercise such authority and control over these pupils as is required of a teacher, they must be paid a salary not less than one pay grade above the minimum salary to which they are entitled.

The CCBOE argues the statute does not apply to bus monitors and does not contemplate delegation of the right to exercise authority and control to school bus aides.

The salient facts are not in dispute.

Findings of Facts

1. All the Grievants are employed as bus monitors on special education buses and have the classification of either Aide III or IV.

2. During the course of their working day these Grievants are responsible for meeting the physical and emotional needs of the children in their care. These needs may include behavior control, medical care, or emergency intervention.

3. The Grievants are under the direct supervision of Greg Porter, the Director of Transportation.

4. None of the Grievants have a written agreement with the Director of Transportation or any

school principal which designates them as individuals who agree to exercise authority and control over pupils.

5. Grievants' duties include facilitating communication between the parents and school authorities about daily changes in the students' status.

Discussion

The code section at issue in this grievance, W. Va. Code § 18A-5-8, states in pertinent part:

> (a) Within the limitations provided herein, any aide who agrees to do so shall stand in the place of the parent or guardian and shall exercise such authority and control as is required of a teacher as defined and provided insection one [§ 18A-5-1] of this article. The principal shall designate such aides in the school who agree to exercise such authority on the basis of seniority as an aide and shall enumerate the instances in which such authority shall be exercised by an aide when requested by the principal, assistant principal or professional employee to whom the aide is assigned: Provided, That such authority does not extend to suspending or expelling any pupil, participating in the administration of corporal punishment or performing instructional duties as a teacher or substitute teacher.
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> An aide designated by the principal under this subsection shall receive a salary not less than one pay grade above the minimum salary to which said aide would otherwise be entitled under section eight-a [§ 18A-4-8a], article four of this chapter, and any county salary schedule in excess of the minimum requirement of this article.
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> (b) . . . The terms and conditions of such agreement shall be in writing, signed by both parties, and may include additional benefits. Such agreement shall be uniform as to aides assigned similar duties for similar amounts of time within the school. Aides shall have the option of agreeing to supervise students and of renewing related assignments annually . . . .

The statute provides that aides who assume authority and control may only do so with a written, mutual agreement. These aides must also be designated by the principal and must be school aides. These Grievants are bus monitors under the direct supervision of the Department of Transportation and have no written, mutual agreement to exercise authority and control. Although it is clear that these individuals do difficult and important jobs, it is also obvious they are doing the job they were hired to do, caring for special education students while they are transported to and from the school setting.

Grievant's Representative argued at the Level III hearing that the law is poorly written, and its intent was for any aide leftalone with children to receive supervisory pay. Since the language of the statute is clear and unambiguous, that is classroom aides upon written, mutual agreement and designated by the principal shall have authority and control over students, it is not necessary to interpret or construe the statute.

Further, these bus monitors are not alone with these students but are with a bus driver, who has been delegated the authority and control over children while they are "in transit to and from school" by W. Va. Code §18A-5-1. This code section makes no provisions for the driver to delegate this authority.

Additionally, this Board has held that an aide "who alleges he or she acts in the stead of the teacher pursuant to West Virginia Code §18A-5-8 must demonstrate the duties performed are more than task which accommodate the functional needs of the afflicted student." Rymer/Miller v. Wood County Bd. of Educ., Docket No. 89-54-91 (Dec. 19, 1989). The duties performed by the Grievants are ones that "accommodate the functional needs of afflicted students," not ones that are performed "in the stead of the teacher or other professional" or ones that require "teacher-like authority over the students in a professional's stead." Id. at 11 and 12.

In addition to the foregoing, the following conclusions of law are made:

Conclusions of Law

1. W. Va. Code §18A-5-1 delineates responsibility when the school acts in loco parentis and the students are within its authority. This section states the teacher "shall stand in theplace of the parents . . . and shall have control of all pupils enrolled in the school from the time they reach the school until they have returned to their respective homes." The exception to this rule is when transportation is provided, then "the driver in charge of the school bus . . . shall exercise such authority and control over the children while they are in transit to and from school."

2. W. Va. Code §18A-5-8 allows an aide within certain limitations to "stand in the place of the parent or guardian" and to "exercise such authority and control over pupils as required of the teacher." These limitations are: 1) the aide must agree to exercise this authority and control and have such agreement in writing; 2) the aide must be designated by the principal on the basis of seniority as an aide; 3) the instances when the aide may exercise such authority shall be enumerated; and 4)

these aides are within the school setting.

3. The Grievants have not demonstrated that they fall within the limitations and requirements set out in W. Va. Code §18A-5-8. In addition the Grievants have not demonstrated that they "perform specialized tasks for students or otherwise assume teacher-like authority over students in a professional's stead." Rymer/Miller, supra.

Accordingly, this grievance is **DENIED**.

Any 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 Administrative Law Judges is a party to such appeal, and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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JANIS I. REYNOLDS

Administrative Law Judge

Dated: February 28, 1994

Footnote: 1This grievance was denied at prior levels and appealed to this Board on October 6, 1993 for a decision on the record. The record was received on October 21, 1993. The parties submitted briefs on October 27, 1993, but did not file rebuttal briefs. This case became mature for decision on November 3, 1993.