

**RALPH PARSLEY, et al.,**

**Grievants,**

**v.**

**DOCKET NO. 95-29-473**

**MINGO COUNTY BOARD OF EDUCATION,**

**Respondents.**

### **DECISION**

Grievants, Ralph Parsley, Roy Messer, William Reeves, and James Dean, state the Mingo County Board of Education ("MCBOE") violated W. Va. Code §18A-2-6 when it terminated their positions as bus operator and first aid instructors. They contend they were not properly notified of their terminations and allowed a pre- termination hearing before MCBOE. They request reinstatement into their original positions with wages and benefits retroactive to the beginning of the school year. MCBOE argues, as it did at Level II, that this case is not timely filed. This grievance was denied at Levels I and II and waived at Level III. A Level IV hearing was held on January 5, 1995, and this case became mature for decision on February 9, 1996, the deadline for submission of the parties' proposed findings of fact and conclusions of law. The facts of this case are not in dispute and will be set forth below.

### **Findings of Fact**

1. Grievants are bus operators for MCBOE. Grievant Parsley has been a first aid instructor for six years. Grievant Messer has been a first aid instructor for 8 to 10 years. Grievant Reeves has been a bus operator instructor for 12 to 14 years. Grievant Dean has been a bus operator instructor for 20 years and a first aid instructor for approximately 15 years.

2. When Grievants started performing these jobs they worked as volunteers.

Later MCBOE started paying them for the duties. [\(See footnote 1\)](#) Each Grievant received ten days extra pay, either at the end of or during the year, for work they performed throughout the school year. None of the Grievants ever had a contract for these duties.

3. Each Grievant received a letter dated January 17, 1995, stating "[y]our services as a full time instructor in First Aid/Driver Training will not be required beginning the 1995-1996 school term."

4. Because of financial constraints, MCBOE had assigned the majority of these instructor duties to Mr. Earl Spence, the Transportation Supervisor. Mr. Spence was a 261-day employee and would be available to teach year round. 5. MCBOE also continued to use Ms. Liz Hite to teach First Aid. Ms. Hite has more seniority in teaching First Aid than any of Grievants.

6. Grievants Reeves, Parsley, and Messer filed their grievances on August 29, 1995. Grievant Dean filed his grievance on September 7, 1995.

7. Grievants stated they knew they had a right to file a grievance, but gave a variety of reasons why they did not file sooner.

8. Grievant Dean stated he did not file his grievance until he found out Ms. Hite was going to continue to teach First Aid. He filed then because he had more seniority than she did as a bus operator. He did not have more seniority than she as a First Aid Instructor.

9. Grievant Messer stated he did not file his grievance until he found out Mr. Spence was going to perform these duties. He stated Mr. Spence was not certified to teach these courses any more because he let his certifications lapse when he was ill. He felt MCBOE should continue to hire the employees who stayed with the program and maintained their certification, and Mr. Spence should not be allowed to replace him. [\(See footnote 2\)](#)

10. Mr. Reeves stated he thought he had time to file until he was no longer paid. He thought he had until ten days after school started for the 1995-1996 school year, and that it would be premature to file while he was still being paid.

11. Mr. Parsley stated he intended to file a grievance all along, but did not

think there was "any rush on it." He thought he had until the 1995-1996 school year started.

### Discussion

MCBOE argued at Level IV, as it did at Level II, that these grievances were untimely. W. Va. Code §18-29-4 states a grievance should be filed:

"within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance . . .".

Clearly, the occurrence of the event upon which this grievance is based must be the January 17, 1995 letter. At that time Grievants were notified their services would no longer be needed. Howard v. D.C. Public Employees Relations Bd., 148 L.R.R.M. (BNA) 2874, 655 A.2d 320 (D.C. 1995). This is the date of the grievable event, and subsequent actions of MCBOE have no bearing on this filing time. Grievants' reasons are not sufficient toll the statute on the basis of equitable principles. See Collins v. Bureau of Employment Programs, Docket No. 94-BEP- 1080 (Apr. 28, 1995). The above-discussion will be supplemented by the following Conclusion of Law.

### Conclusion of Law

Grievants failed to file their grievances within the statutory timelines, and thus their grievances must be **DISMISSED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mingo 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: April 30, 1996**

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[Footnote: 1](#)

*Mr. Bill Kirk, Director of Transportation, testified he was very pleased with the performance of all the Grievants, and were it not for the budgetary constraints of MCBOE, he would like to retain them in their positions.*

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[Footnote: 2](#)

*Mr. Spence's certification as a First Aid Instructor had lapsed. He has since taken the necessary course work and is again certified to teach in this area. A question still remains about his certification to teach Drivers' Training. Mr. Spence was previously certified to teach bus operators. Mr. Kirk has and is continuing in discussions with the State Department of Education ("SDOE") as to whether Mr. Spence's prior certification is still acceptable. Until Mr. Kirk receives the "go-ahead" from SDOE he will not allow Mr. Spence to teach in this area. If Mr. Spence's certification is not accepted, he will take the necessary steps to become re-certified.*