PATRICIA JOHNSON

v. Docket No. 95-31-502

MONROE COUNTY BOARD OF EDUCATION

DECISION

At the beginning or shortly after the start of the 1994-95 school year, two special education pupils, identified here as student A and student M, were enrolled, apparently unexpectedly, at Peterstown Elementary School (PES). Both required the assistance of an Aide on his or her bus rides to and from the school. Ms. Jackie Martin, the only Aide assigned to PES, was given overtime pay to assume the additional time entailed in bus duties for student M, but was unable to also tend to student A. Because it was not possible, most likely for financial reasons, to assign another regularly-employed Aide to the school, student A's family members and/or substitute Aides accompanied her on the bus for the first semester of the 1994-95 school year.

By the end of the semester, Superintendent Guy concluded that it would be more practical to assign bus duties for student A to a regularly-employed Aide. At about the same time, she identified a need for an Aide at Union Elementary School (UES), which is located approximately twenty-six miles from PES. Despite the distance, Superintendent Guy elected to create an Aide position at UES which included the bus duties for the PES student. The announcement for the position indicated that since the bus portion of the job required hours beyond the Aide's regular workday, the successful applicant would receive overtime pay.

The grievant, Patricia Johnson, who was apparently then employed as a bus operator, applied for and received the position. It appears that because of the location of her home, itsproximity to the two schools, or the amount of travel time involved, she was the only candidate. The grievant assumed the duties of the post in January 1995.

In the spring of 1995, Superintendent Guy determined that reductions in state funding for personnel would require the elimination of at least one Aide position, effective the end of the 1994-95 school year. Her student enrollment predictions for school year 1995-96, indicated that there would no longer be a need for an Aide post at UES. Ms. Guy was also aware that student M would be enrolling

in a specialized, out-of-county school, and that Ms. Martin would, therefore, be available during the 1995-96 school year to assume bus duties for student A.

The grievant received timely, statutory notice that Superintendent Guy would recommend to the Board that her UES position be eliminated, and that she be placed on a transfer list for reassignment during the 1995-96 school year. Following a hearing on the matter, the Board accepted the recommendations.

During the summer, Ms. Martin was advised that she would be assuming bus duties for student A for the 1995-96 school year. By August 1995, the grievant had not obtained another post through competitive bidding. She was placed in a vacant Aide post at James Monroe High School on August 21, 1995. The position was not posted.

On August 26, 1995, the grievant filed a complaint at Level I, alleging, among other things, that Superintendent Guy had promised her that if student A required assistance on the bus during the 1995-96 school year, she would receive the assignment and the overtime pay. Certain relief was granted at Level II, but this “implied-contract” contention was rejected. (See footnote 1) The grievant advanced that claim to Level IV on November 15, 1995. A hearing in the case was not held until October 10, 1996. (See footnote 2) The parties submitted proposed findings of fact and conclusions of law by November 13, 1996.

Argument

The grievant claims that during the hearing on her proposed transfer, she specifically asked Superintendent Guy if she would be allowed to retain the bus duties for student A, and that the Superintendent responded in the affirmative. The grievant asserts that this was a legally binding promise. She appears to make a second argument that since student A required assistance on the bus for school year 1995-96, at least a portion of the reasons given for her transfer, i.e., lack of need, did not materialize and she was, therefore, entitled to retain her bus duties. She also seeks compensation for any overtime pay she has lost.

The Board responds that once student M left PES, and Ms. Martin assumed bus duties for student A, there was no longer a need for the grievant to perform those duties. The Board denies that Superintendent Guy made any promises to the grievant. **Findings and Conclusions**

The grievant's second claim is frivolous. She was assigned bus duties for student A because Ms. Martin was occupied with student M. Obviously, the departure of student M eliminated the need for

the grievant's bus duties.

The grievant's remaining claim is not supported by the evidence. At Level IV, she presented the testimony of bus operator Roger Ellison to corroborate her Level II testimony that Superintendent Guy unequivocally promised her that she could retain the bus duties for student A. He testified, however, that he was present at the grievant's transfer hearing, and overheard the Superintendent merely state that she “assumed” the grievant would retain the duties if student A required assistance. This testimony is entirely consistent with Superintendent Guy's account of what was said. She essentially related that, given the complexity of the law on school service personnel appointments, she would not have made a commitment to the grievant on any assignment. It is accepted that Mr. Ellison and the Superintendent provided the more credible and reliable testimony.

In summary, a preponderance of the evidence establishes that the grievant's transfer to James Monroe High School and the elimination of her bus duties for the Peterstown Elementary School student comported with all applicable statutes, and was accomplished in a manner and for reasons which were neither arbitrary nor capricious. The grievant has failed to substantiate any legal theory by which she was entitled to retain the Peterstown bus duties.

Accordingly, the grievance is **DENIED**.

JERRY A. WRIGHTDated: May 9, 1997

Footnote: 1

The grievant asserted at Level II that the James Monroe High School position which she was awarded in August 1995, should have been posted per W.Va. Code §18A-4-8b. Accepting the argument, Ms. Guy posted the position following the Level II hearing. Apparently, the grievant was again placed in the post after a competitive bidding process. The posting was unnecessary. Parker v. Summers County Bd. of Educ., Docket No.89-45-434 (Dec. 14, 1989) holds that a service employee who has been properly placed on a transfer list, and who has not obtained a new post through competitive bidding at or shortly before the beginning of the new school year, may be unilaterally placed in a vacant position for which he or she is qualified.

Footnote: 2

It appears that the case was held in abeyance for several months pending the parties efforts to reach an informal settlement.