WILLIAM M. GIBSON,

Grievant,

v.

DOCKET NO. 98-50-374

WAYNE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, William Gibson, filed this grievance on June 23, 1998, protesting his non- selection for a summer school bus run in the Fort Gay area of the Wayne County Board of Education ("Board") in the Summer of 1998. A decision was waived at level one for lack of authority, and a level two hearing was held on August 11, 1998. A decision denying the grievance was rendered by the Superintendent's designee, James Ross, on September 17, 1998. Grievant appealed to level four, and the parties agreed to submit the grievance on the record developed at level two. Grievant was represented by Susan E. Hubbard, West Virginia Education Association, and the Board was represented by Wilts Salmons, Superintendent of Wayne County Schools. No proposed findings of fact and conclusions of law were submitted by the parties, and this case became mature on November 12, 1998.

SUMMARY OF EVIDENCE

Level Two Joint Exhibits

Ex. A -

Grievance statement.

Ex. B -

July 28, 1998 letter from James J. Ross, Director of Personnel, to William Gibson.

Level Two Board Exhibits

Ex. C -

Wayne County Extended Title I School Projects Summer '97.

Ex. D -

May 7, 1997 memorandum from Joann Hurley to Mr. Don Trimboli and Mr. Jim Ross.

Ex. E -

Wayne County Board of Education Employees Attendance Record, June 10- 20, 1997.

Ex. F -

Extra Duty Assignments Payroll Report School Year 96/97.

Ex. G -

Fort Gay Elementary Educational Camp Program, June 9-20, 1997.

Testimony

Grievant testified in his own behalf, and the Board presented the testimony of Michael Ferguson.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts.

1. Grievant is employed by the Board as a bus operator.

2. For the past three years, Grievant has driven a bus in the summer for the Extended Title I Schools Project.

3. In the Fall of 1997, the Board determined they wanted a summer school program for elementary, middle, and high-school students. Other than the Extended Title I Schools Project, the

Board had not had a summer school program for several years.

4. Bus routes were posted for the 1998 summer school program. Grievant did not receive any of the bus runs. 5. The bus runs posted for the 1998 summer school program were essentially the same as the bus runs driven the prior year for the Extended Title I Schools Project.

6. The Wayne County 1998 summer school program was the first of its kind in the state. The focus was on academic instruction, including classes in Math, Reading, and Language Arts. Students could make up failed classes, and elementary students who were behind in their skill level were given remedial instruction.

7. The Extended Title I Schools Project was more like “camp”, and the focus was on non-academic activities, such as sports, arts and crafts, drama, cooking, and dance, and encouraged parental involvement in the classes as well.

8. Enrollment in the Extended Title I Schools Project was limited to elementary school children. The 1998 summer school program was open to all students in need of academic instruction.

9. The Extended Title I Schools Project was a “summer school” within the meaning of W. Va. Code § 18-5-39.

DISCUSSION

Grievant alleges the Board violated the provisions of W. Va. Code § 18-5-39 by not selecting him for one of the summer school bus runs, as he had summer school seniority pursuant to the provisions of Code § 18-5-39. The Board argues that the Extended Title I Schools Project was not “summer school” within the meaning of Code § 18-5-39, and therefore, Grievant has not proven he was entitled to a run during the Summer of 1998.

> Inasmuch as the present county school facilities for the most part lie dormant and unused during the summer months, and inasmuch as there are many students who are in need of remedial instruction and others who desire accelerated instruction, it is the purpose of this section to provide for theestablishment of a summer school program, which is to be separate and apart from the full school term as established by each county.
>
> The board of any county has the authority to establish a summer school program utilizing the public school facilities and to charge tuition for students who attend the summer school. The tuition may not exceed in any case the actual cost of operation of the summer school program: Provided, That any deserving pupil whose parents, in the judgment of the board, are unable to pay the tuition, may attend the summer school program at a reduced charge or without charge. The county board shall have the authority to determine the term and curriculum of the summer schools based upon the particular needs of the individual county. The curriculum may include, but is not limited to, remedial instruction, accelerated instruction and the teaching of manual arts. The

> term of the summer school program may not be established in such a manner as to interfere with the regular school term.
>
> . . .
>
> Notwithstanding any other provision of the code to the contrary, the county board is authorized to employ school service personnel to perform any related duties outside the regular school term as defined in section eight [§ 18A-4-8], article four, chapter eighteen-a of this code. An employee who was employed in any service personnel job or position during the previous summer shall have the option of retaining the job or position if the job or position exists during any succeeding summer. If the employee is unavailable or if the position is newly created, the position shall be filled pursuant to section eight-b, article four, chapter eighteen-a of this code. . .
>
> If a county board reduces in force the number of employees to be employed in a particular summer program or classification from the number employed in that position in previous summers, the reductions in force and priority in reemployment to that summer position shall be based upon the length of service time in the particular summer program or classification.
>
> For the purpose of this section, summer employment for service personnel includes, but is not limited to, filling jobs and positions as defined in section eight, article four, chapter eighteen-a of this code and especially established for and which are to be predominantly performed during the summer months to meet the needs of a county board.

The only factual issue to be decided in this grievance is whether the Extended Title I Schools Project is to be considered "summer school" within the meaning of W. Va. Code § 18-5-39. If it is, then Grievant will prevail, as he has established summer school seniority for the purposes of filling the summer school bus runs. Based upon a review of the recordin its entirety, I find that the Extended Title I Schools Project was a "summer school" within the meaning of Code § 18-5-39.

Although I recognize that the parameters of the two different summer school programs were vastly different, this does not take away from the fact that the Extended Title I Schools Project was designed to develop academic and school-related schools among school-age children. Indeed, the brochure for the camp stresses that the need to provide incoming kindergartners with an early intervention program. The brochure also states that, while many of the programs will be "fun", non-academic activities, it also states that instruction in Language Arts, Math, Career Education, and Music will be included. Finally, and most importantly to the undersigned, the brochure concludes with the following paragraph:

> We are making preparations to include a strong and diverse curriculum designed to capture the interest and imaginations of all grade levels. We plan to do an on-going

> evaluation that will help us keep our program relevant and meaningful to our school/community population.

As I understand the evidence, this is exactly what happened in the summer of 1998. The program was expanded to include “all grade levels” and the curricular was expanded to provide a wide variety of instructional opportunities for the students. In addition, the location of the programs changed in the Summer of 1998. However, none of these changes make this a new program. The underlying purpose of the program remains the same: providing remedial, interim instruction to students during the summer, between school years. See Lilly v. Fayette County Bd. of Educ., Docket No. 96-10-481 (Sept. 15, 1997). Limiting a summer school program to elementary school students does not make it less of a summer school than one involving all grade levels.

CONCLUSIONS OF LAW

1. W. Va. Code § 18-5-39 provides summer seniority for service personnel who have been employed in a county board of education's summer school program in previous years.

2. Grievant has proven by a preponderance of the evidence that he has three years' summer school seniority with the Board, and those previous years were spent driving the bus for the Board's summer school program.

3. The Board violated Code § 18-5-39 by not selecting Grievant for one of the summer school bus runs during the Summer of 1998.

Accordingly, this grievance is **GRANTED** and the Board is hereby **ORDERED** to compensate Grievant the amount he would have earned had he been selected for one of the posted 1998 summer school bus runs.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wayne 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.

MARY JO SWARTZ

Administrative Law Judge

Dated: December 3, 1998