Kirkpatrick, et al. v. Mid-Ohio Valley Transit Authority
No. 20916

McHugh, Chief Justice, dissenting:

The majority of the Court has chosen to ignore the plain language of W. Va. Code, 8-27-21 [1969] in its conclusion. It has concluded that W. Va.Code, 8-27-21 applies only when the following conditions are met: (1) an existing system is acquired by an authority, and (2) the existing system had previously entered into a collective bargaining agreement.

In a strained interpretation, the majority focuses on the word "existing." However, a review of W. Va. Code, 8-27-21 is necessary to show how the majority has ignored pertinent language of that statute:

> Whenever any authority acquires any existing system pursuant to the provisions of this article, the employees of such system shall be protected in the following manner:
>
> . . . .
>
> (c) The rights, privileges and benefits of the employees under existing collective bargaining agreements shall not be affected and the owning authority shall assume the duties and obligations of the acquired system under any such agreement;
>
> (d) Collective bargaining rights shall be continued with respect to employees of any acquired system;
>
> (e) The rights, privileges and benefits of the employees under any existing pension or retirement plan or plans shall not be affected and the owning authority shall assume the duties

> and obligations of the acquired system under any such plan or plans[.]

(emphasis added).

In order for the majority to reach its result, it has added the word "existing" before the words "collective bargaining rights" in subsection (d), a word the legislature omitted. There is absolutely no requirement in this statute that an existing system previously had a collective bargaining agreement in order to secure rights for the present employees.

This statute is remedial, and therefore, to be construed as such--to protect the employees. W. Va. Code, 8-27-2(e) [1969] clearly reflects a legislative intent that this statute must be "liberally construed."[1]

In State ex rel. Johnson v.Robinson, 162 W. Va. 579, 582, 251 S.E.2d 505, 508 (1979), this Court said:

> It is a well known rule of statutory construction that the Legislature is presumed to intend that every word used in a statute has a specific purpose and meaning. . . . When intent of the Legislature clearly appears from a reading of the statute, it is unnecessary for a reviewing court to attempt construction. We believe that [where a] statute plainly expresses a legislative intent . . . it is unnecessary to search for a meaning beyond the plain words. In this instance there is nothing to construe. This is a rule of statutory construction so well established and often cited that we find it unproductive to cite authority here.

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[1]W. Va. Code, 8-27-2(e) provides: "This article . . . shall be liberally construed[.]"

Obviously, the legislature intended to omit the word "existing" in subsection (d) for a reason. That reason was to protect employees, whether or not a collective bargaining agreement was in place at the time the mass transit authority became responsible for the operation of the mass transit system. Moreover, it defies logic that the legislature would have enacted subsection (d), which guarantees collective bargaining rights upon acquisition of a system, in addition to subsection (c), which protects employees' rights under an already-existing agreement. The opinion of the majority, in essence, holds that subsections (c) and (d) provide the exact same protections when, in fact, they obviously do not.

If, however, there is a need to construe the statute, as shown above, the legislature has clearly said the statute should be "liberally construed."

Instead, the majority in this case has unnecessarily deprived the "existing" employees of a valuable protection guranteed by the statute--collective bargaining rights.

Accordingly, I must dissent.