JANET GRAHAM

v. Docket No. 93-34-224

NICHOLAS COUNTY BOARD OF EDUCATION

DECISION

The grievant, Janet Graham, is employed by the Nicholas County Board of Education (Board) as a Custodian I assigned to Summersville Elementary School (SES). She initiated a grievance at Level I on or about May 12, 1993 alleging that she was improperly classified and should be placed in the Custodian II classification. Her supervisor was without authority to provide relief and the grievance was denied at Level II following a hearing held May 20, 1993. The Board, at Level III, declined to address the matter and appeal to Level IV was made June 17, 1993. A hearing was held August 3, 1993 (See footnote 1) and the parties submitted proposed findings of fact and conclusions of law by September 2, 1993.

FACTS

There is essentially no dispute over the facts of the case. The record developed at Levels II and IV supports the following findings.

1) The grievant works a 2:00 p.m. to 9:30 p.m. shift at SES and is responsible for cleaning thirteen classrooms and one cafeteria contained in the new wing of SES.

2) Between 3:30 p.m. and 4:00 p.m., the grievant is responsible for locking all doors to the wing. At the end of her shift she secures the doors and turns out the lights.

3) When various groups use the wing for after school activities, the grievant is responsible for admitting them to the wing and seeing that the doors are secured when they exit. After school events at SES are frequent but not daily occurrences.

4) The grievant, on an average shift, spends less than one-half hour locking or unlocking doors to the wing.

5) No employees at SES are classified as Custodian II. Two employees are classified as Custodian III's.

ARGUMENT

The grievant asserts that her responsibilities for locking and unlocking doors are security-related and a sufficient portion of her time is spent on those tasks to entitle her, per W.Va. Code §18A-4-8, to the classification of Custodian II. She cites the following May 18, 1992, State Superintendent of Schools Opinion as support.

> You have asked: "We have several custodians who work during the night in our schools. These custodians are currentlyclassified as Custodian I. The question has risen as to whether these personnel should be classified as Custodian II since it is an evening shift where obviously some degree of security is provided since they are in the building and lock up and turn the lights off when they depart.
>
> Yes; these custodians should be classified as Custodians II. However, because the class title definition for Custodian II omits (yet should imply) the phrase "to keep buildings clean and free of refuse" since it is a custodial class title and Watchman and Groundsman are other, separately defined class titles, and because the Custodian II definition does not expressly incorporate by reference the Custodian I definition, I recommend that these custodians be multi-classified as Custodians I/II.

The grievant seeks back pay only to the beginning of the 1992-93 school year. (See footnote 2)

The Board maintains any security-related duties the grievant may have are incidental to her job as Custodian I and are not sufficient for a reclassification. The Board also asserts that the Superintendent's Opinion is clearly wrong and should be disregarded.

CONCLUSIONS

After a thorough review of the parties' positions, the applicable law and the foregoing findings of fact, the undersigned makes the following conclusions of law.

1) A county board of education has an obligation to ensure that its school service employees' duties coincide with their classification designations. W.Va. Code §18A-4-8. An employee may contest his or her designation through the grievance procedure set forth in W.Va. Code §18-29-1 et seq.

2) "Custodian I means personnel employed to keep buildings clean and free of refuse. Custodian II means personnel employed as a watchman or groundsman. Watchman means personnel employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties. Groundsman means personnel employed to perform duties that relate to the appearance, repair and general care of school grounds

in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings." W.Va. Code §18A-4-8.

3) In order to prevail on a claim that his position is misclassified, an employee must establish, by a preponderance of evidence, that his duties more closely match those of a Code §18A-4-8 classification than that under which his position is categorized. Pope v. Mingo County Bd. of Educ., Docket No. 91-28-068 (July 31, 1992).

4) Because of similarities in the nature of certain jobs listed in Code §18A-4-8, two or more job definitions may encompass the same duties. Proof that an employee performs such "crossover" duties does not necessarily mandate that his position be reclassified.

5) Locking doors and windows or otherwise securing a building against entry are duties incidental to and not outside the responsibilities of a Custodian I assigned to a shift which begins or ends after the finish of a school day. Martin v. Fayette County Bd. of Educ., Docket No. 89-10-110 (July 20, 1989).

6) Inasmuch as the record establishes that the grievant spends only an inconsequential amount of time locking doors and windows, and that the Code 18A-4-8 definition for Custodian I most accurately describes the remainder of her duties, she has failed to prove that her position is misclassified.

7) The State Superintendent's interpretation of school laws must be given great weight unless it is clearly wrong. Smith v. Board of Education, 341 S.E.2d 685 (W.Va. 1985). The May 18, 1992 Superintendent's Opinion cited herein, to the extent that it states that a Custodian I who is required to lock the doors and windows at his workplace is entitled to a Custodian II classification, is clearly wrong.

Accordingly, the grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Nicholas 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 theintent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: January 6, 1994

Footnote: 1At this hearing, the parties merely supplemented the Level II record.

Footnote: 2At the Level II hearing the grievant, during her testimony and through counsel, indicated that she would forego back pay if the case were resolved at that level implying that the waiver was only good should she prevail. She also indicated that if the case reached Level IV she would seek back pay only to the beginning of the 1992-93 school term. It is not clear from the record why the grievant limits the relief. In any event, because the Board makes no assertions regarding the timeliness of the complaint and since the Board ultimately prevails on the merits, it is not necessary to address the issue further.