ETHEL MYERS and SHELBY CAIN

v. Docket No. 94-52-325

WETZEL COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants Ethel Myers and Shelby Cain, employed by Respon dent Wetzel County Board of Education (WCBE) filed the following level four appeal in July 1994:

Grievants are employed as custodians at New Martinsville School [(NMS)]. Each received a written note on or about June 14, 1994 informing them that their daily schedule (hours/shift) would be changed for the 1994-95 school year indicating what the new hours would be. Grievants did not consent to this change nor did [WCBE] comply with the provisions of W.Va. Code 18A-2-7 relating to transfer of school service personnel. Grievants seek reinstatement of their 1993-94 daily schedule.

Grievants waived a hearing and requested a decision based on the record adduced at level two, to which WCBE agreed.1

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1The record consists of the transcript of the July 15, 1994 level two hearing, Superintendent Martha Dean's July 15, 1994 decision and both WCBE's and Grievant's August 22, 1994 fact/law proposals.

The facts in this case, set forth below, are not in conten tion:2

Findings of Fact

1. Grievant Myers, with approximately twenty-four years

of seniority, is employed as head custodian at NMS. During the 1993-94 instructional year, she was assigned to work from 6:30 a.m. to 2:30 p.m.

2. During the 1993-94 instructional year Grievant Cain, an employee for approximately sixteen years, worked at NMS from 10:20 a.m. to 6:20 p.m. T.5.

3. In June 1994, prior to the beginning of the new instructional year, Grievant Myers was notified in writing that her work hours for the 1994-95 school year would be from 10:00 a.m. to 6:00 p.m, a difference of three and one-half hours from her former starting and finishing hours.

4. Grievant Cain was also notified in writing in June 1994 that her work hours for the 1994-95 school year would be from 3:00 p.m. to 11:00 p.m., a difference of four and two-thirds hours from her former beginning and ending hours.

5. Grievants' duties and responsibilities at NMS remained unaltered for the 1994-95 school year; only their work hours had changed from the prior school year.

2None of the parties to the grievance testified at level two. Rather, their attorneys entered into stipulations of fact which were read into the record.

Discussion

W.Va. Code 18A-2-7 requires that, prior to any final action on the transfer and subsequent reassignment of school personnel, the employee must first receive notice of the pro posed transfer "on or before the first Monday in April" and be given the opportunity to request the reasons for the transfer and to request a hearing before the board of education on the

proposed transfer "on or before the first Monday in May." W.Va. Code 18A-4-8a(7) (1994) provides, "No service employee shall have his or her daily work schedule changed during the school year without such employee's written consent. . . ."3

Grievants contend that, absent their consent, WCBE must follow the transfer and subsequent assignment procedures in Code 18A-2-7 before implementing any change in the hours of their work day. They argue that a "change of a service personnel's daily working hours may be drastic enough to constitute a transfer." In their case, they claim, the three-plus hour alterations of each of their working hours was substantial, particularly considering Myers's movement from a basic day shift to a hybrid day-afternoon shift and Cain's movement from a hybrid day-afternoon shift to an evening shift. They assert they had only two weeks' notice to "rearrange their personal affairs to accommodate the change," whereas compliance with

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3An amendment to 18A-4-8a, effective July 1, 1994 redesigned six undesignated paragraphs as (1) through (9). The content of subsection seven is identical to the former paragraph.

18A-2-7 would have given them nearly two months notice had the reassignment been approved.

WCBE avers that no statutory violations have occurred. It contends that Code 18A-2-7 is not applicable to this situation because a change in an employee's hours alone does not require compliance with the provisions of the statute. WCBE argues that the hours of a service personnel's work day can be changed unilaterally as long as the employee is notified of such change

prior to the beginning of the instructional year, not "during the school year," a practice disallowed by Code 18A-4-8a(7). Unfortunately for Grievants, they have not met their burden of proof and have not established that the alteration of their working hours constituted a transfer as contemplated by Code 18A-2-7. Certainly, the statute does not identify the altera tion of working hours or any other specific condition as the basis of a transfer.

It is generally accepted that a work transfer is a reas signment from one location or job site to another. See, e.g., State ex rel. Hawkins v. Tyler County Bd. of Educ., 275 S.E.2d 908 (W.Va. 1980). In addition, a substantial change outside a "teacher's presently utilized area of certification, discipline, department or grade level of many years standing" may be work alterations amounting to a transfer as contemplated by 18A-2-7. Schafstall v. Brooke County Bd. of Educ., Docket No. 05-86-347-3 (Mar. 30, 1987). See also Winland/Steele v. Wetzel County Bd. of Educ., Docket No. 92-52-490 (Feb. 16, 1993) (placing aides on transfer and reposting jobs because of introduction of flexible work scheduling and possible alteration of overall work duties not found to be unlawful).

Somewhat related to the issue herein is the fact that Code 18A-4-8b does not require the posting of service personnel jobs as shift-specific. Because "[p]rincipals have some latitude when assigning duties to like-classified service personnel within their schools," Ennis v. Ohio County Bd. of Educ., Docket No. 93-35-516 (May 31, 1994), it stands to reason that principals also have some latitude to reassign their custodian's work hours prior to the start of a new school year, particularly when the change does not involve an entire eight-hour span or

shift change.

In addition to the foregoing, the following conclusions of law are appropriate.

Conclusions of Law

1. Prior to any final action on the transfer and subsequent reassignment of school personnel, the employee must first receive notice of the proposed transfer "on or before the first Monday in April" and be given the opportunity to request the reasons for the transfer and to request a hearing before the board of education on the proposed transfer "on or before the first Monday in May." W.Va. Code 18A-2-7.

2. "No service employee shall have his or her daily work schedule changed during the school year without such employee's written consent . . .." W.Va. Code 18A-4-8a(7).

3. "Principals have some latitude when assigning duties [and working hours] to like-classified service personnel within their schools." Ennis v. Ohio County Bd. of Educ., Docket No. 93-35-516 (May 31, 1994).

4. After the expiration of the 1993-94 school year but before the beginning of the 1994-95 school year, Grievants were properly advised by their principal at New Martinsville School that their custodial work hours were being altered; such change did not constitute a transfer pursuant to Code 18A-2-7.

Accordingly, the grievance is DENIED.

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

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NEDRA KOVAL

Administrative Law Judge

Date: October 27, 1994