ANTHONY L. RIDDLE,

Grievant,

v. **Docket No. 05-43-450**

RITCHIE COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Anthony Riddle ("Grievant") initiated this proceeding on August 31, 2005, alleging as follows:

> I am filing a grievance concerning the way custodial assignments were assigned at the Ritchie County High School/Middle School complex for the 2005-2006 school year. I believe they were wrongly assigned by not following a longstanding county policy (Procedures for Personnel Assignment - GBEF-R). I seek relief of this grievance by requesting that the custodians at RCHS/MS be allowed to meet and/or submit their preferences (by seniority) for the available 6 custodial positions, and then be placed in those preferences.

After denials at the lower levels, Grievant appealed to level four on December 14, 2005. A hearing was held in Westover, West Virginia, on March 1, 2006. Grievant was represented by counsel, John E. Roush of the School Service Personnel Association, and Respondent was represented by counsel, Richard S. Boothby. This matter became mature for consideration upon receipt of the parties' fact/law proposals on April 5, 2006.

The following material facts have been proven by a preponderance of the evidence of record.

Findings of Fact

1. Grievant has been employed by Respondent as a custodian for approximately 12 years. 2. Grievant bid into a custodian position at the Ritchie County High School/Middle School Complex ("HSMS") in the middle of the 2004-2005 school year. He was previously assigned to the HSMS in approximately 2000-2001, but had been assigned to other schools during the remainder of years as an employee of Respondent.

3. When Grievant previously worked at the HSMS in 2000-2001, the specific shift for the custodian position was stated in the job posting.

4. When he transferred to the HSMS in 2004-2005, Grievant was placed on the day shift.

5. During the 2004-2005 school year, the HSMS received citations and negative evaluations for uncleanliness. There were no custodians working during the night at the time, and the principal, April Haught, decided that it would be better to assign more staff to the evening and night shifts while students were not present. (See footnote 1)

6. In order to achieve the desired reassignments to improve the school's cleanliness, all custodians assigned to the HSMS were notified of their placement on the transfer list in the spring of 2005. Each transfer letter stated the reason as “[c]leaning, maintenance, and security needs at RCMS/HS may necessitate the re-scheduling of the hours of some or all of the RCMS/HS custodial staff within the building.”

7. Grievant received a transfer letter dated March 11, 2005, containing the above explanation. There was no specific designation as to which shift Grievant would be assigned for the upcoming school year. 8. Grievant and the other custodians at the HSMS did not protest their transfers or request hearings.

9. In August of 2005, Principal Haught determined the assignments of custodial staff for the upcoming school year. She placed two custodians on day shift, two on afternoon (or evening) shift, and two at night.

10. One of the custodians on day shift is the head custodian, David Hardbarger, who must be present during the day to receive deliveries and perform inventory duties. The other custodian placed on day shift was John Hudkins. Mr. Hudkins was chosen for the other day shift position because he had been working at the HSMS since it opened and was very familiar with all of its aspects, including electrical issues. He was also the number one choice of Mr. Hardbarger, Rick Coffman (facility administrator), and Ms. Haught, based upon his excellent work ethic and overall performance.

11. Mr. Hudkins has 4 months less overall seniority as a custodian than Grievant.

12. Grievant was assigned to the night shift for 2005-2006, working 10 p.m. until 6 a.m.

13. Respondent's Policy “GBEF-R” is entitled “Procedures for Personnel Assignment,” and states that “all positions are to be considered as new” and “all vacancies” are to be posted. Service personnel in each classification are to submit their preferences for positions, based upon seniority.

Finally, the policy states that “personal choice will be used for an unchallenged position.” Testimony from the Superintendent established that the purpose of this policy was to determine the reassignments of personnel when the high schools were closed and consolidated into one in 1986. 14. Grievant was notified by letter dated August 9, 2005, of his assignment for the 2005-2006 school year, prompting him to file this grievance. (See footnote 2)

Discussion

This grievance does not challenge a disciplinary action, so Grievant bears the burden of proof, and his allegations must be proven by a preponderance of the evidence. *See*, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. *Id.*

Grievant argues that, based upon past practice, Board policy, and the provisions of W. Va. Code § 18A-4-8b, Respondent was required to conduct a meeting of the custodians at the beginning of the school year and allow them to pick their own shift, based upon seniority. Respondent counters that there was no established practice of allowing custodians to pick their shifts, the provisions of the introduced policy are not applicable to this transfer situation, and the assignments were determined in accordance with the best interests of the school. In addition, it points out that there is no right to a seniority-based assignment when employees are transferred.

Pivotal to the instant case is the fact that Grievant did not challenge his transfer when he was notified of the potential schedule changes in May of 2005. If Grievant wished to obtain or avoid a particular shift, it would have been prudent for him to voice hisconcerns at that time. Moreover, it is well-settled that employees have no right to be assigned to a particular position, and transfers are not based on seniority, but are based on the needs of the school system, as decided in good faith by the superintendent and the board. *State ex rel. Hawkins v. Tyler County Bd. of Educ*., 166 W. Va. 363, 275 S.E.2d 908 (1980); *Post v. Harrison County Bd. of Educ.*, Docket No. 89-17-355 (Feb. 20, 1990). *See Jochum v. Ohio County Bd. of Educ.*, Docket No. 91-35-396 (Jan. 31, 1992). Therefore, even if Grievant had challenged his transfer at the appropriate time, Respondent has appropriately justified

its decision, as dictated by the needs of the particular school involved.

In addition, as discussed in *Burford v. Kanawha County Board of Education*, Docket No. 03-20-256 (March 11, 2004), no new positions are created when employees are transferred to existing positions, so the provisions of W. Va. Code § 18A-4-8b are not implicated. Similar logic would apply to Grievant's allegation that Respondent's policy GBEF-R requires seniority-based assignments, because not only is there evidence that the policy was specifically promulgated to govern a consolidation situation, but it also would not apply to a transfer situation such as this, because there are no “new” positions being posted.

As to Grievant's claim that there was a long-standing practice of having an annual meeting of the custodians at the HSMS to determine shift assignments, Grievant's evidence is not convincing. Grievant only worked at the HSMS complex during one school year previous to his 2004-2005 assignment, and the postings clearly show that, during that time period, each posting specified the shift assignment. There was one other custodianpreviously assigned to the facility who testified that, prior to her resignation in 2004, a schedule was presented to the custodians at the beginning of the school year, and Mr. Hardbarger asked “if everyone was okay with it.” However, once she became principal in 2004, Ms. Haught testified that she did not conduct any such meetings, nor did Mr. Hardbarger have any knowledge of such meetings occurring in the past. Nevertheless, in the absence of a legal requirement to do so, a board of education is not required to follow the same informal personnel practices year after year. *Conner v. Barbour County Bd. of Educ*., Docket No. 93-01-246 (Apr. 28, 1994). *See e.g*., *Taylor v. Monongalia County Bd. of Educ*., Docket No. 92-30-314 (Nov. 30, 1992); *Biller v. Upshur County Bd. of Educ*., Docket No. 90-49-533 (Sept. 27, 1991); *Napier v. Lincoln County Bd.of Educ.*, Docket No. 89-23-635 (May 25, 1990); *Isaacs v. Lincoln County Bd. of Educ.*, Docket No. 89-22-555 (Jan. 12, 1990); *Terek v. Ohio County Bd. of Educ.*, Docket No. 35-87-294-3 (July 20, 1988).

Accordingly, under the circumstances presented, Grievant has established no entitlement to a specific shift assignment. The following conclusions of law support this decision.

Conclusions of Law

1. Grievant bears the burden of proof, and his allegations must be proven by a preponderance of the evidence. *See*, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. 2. Employees

have no right to be assigned to a particular position, and transfers are not based on seniority, but are based on the needs of the school system, as decided in good faith by the superintendent and the board. *State ex rel. Hawkins v. Tyler County Bd. of Educ*., 166 W. Va. 363, 275 S.E.2d 908 (1980); *Post v. Harrison County Bd. of Educ.*, Docket No. 89-17-355 (Feb. 20, 1990). *See Jochum v. Ohio County Bd. of Educ.*, Docket No. 91-35-396 (Jan. 31, 1992).

3. In the absence of a legal requirement to do so, a board of education is not required to follow the same informal personnel practices year after year. *Conner v. Barbour County Bd. of Educ*., Docket No. 93-01-246 (Apr. 28, 1994). *See e.g*., *Taylor v. Monongalia County Bd. of Educ*., Docket No. 92-30-314 (Nov. 30, 1992); *Biller v. Upshur County Bd. of Educ*., Docket No. 90-49-533 (Sept. 27, 1991); *Napier v. Lincoln County Bd.of Educ.*, Docket No. 89-23-635 (May 25, 1990); *Isaacs v. Lincoln County Bd. of Educ.*, Docket No. 89-22-555 (Jan. 12, 1990); *Terek v. Ohio County Bd. of Educ.*, Docket No. 35- 87-294-3 (July 20, 1988).

4. Grievant has established no legal entitlement to a specific shift assignment after his transfer for the 2005-2006 school year.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Ritchie County. Any such appeal must be filed within thirty (30) daysof 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: April 26, 2006

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DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

The HSMS is very large, with approximately 800 students attending, so Ms. Haught determined the presence of the students was interfering with the custodians' ability to effectively clean the facility.

Footnote: 2

This letter actually notified Grievant of his assignment to the 7 p.m. to 3 a.m. shift, but he was reassigned after stating a preference for the night shift over evening.