WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

DIANE FRANCE WALKER,
Grievant,

v. **Docket No. 2009-0195-FayED**

FAYETTE COUNTY BOARD
OF EDUCATION,
Respondent.

D E C I S I O N

Grievant, Diane France Walker, filed this grievance against Fayette County Board of Education ("FCBE"), Respondent, on or about August 12, 2008. On an attached sheet, Grievant provided a number of statements and allegations related to various specific work assignments, job duties related to various classifications in the custodian group and rates of pay. In short, Grievant alleges she is being required to perform certain job duties out of her classification. For relief sought, Grievant request "Pay for doing different job classifications or stop doing these jobs."

A hearing was held at Level One on September 18, 2008, and the grievance was denied at that level on October 20, 2008. Grievant appealed to Level Two on November 11, 2008, and a mediation session was held on January 8, 2009. Grievant appealed to Level Three. A Level Three hearing was convened before the undersigned Administrative Law Judge on April 20, 2009, in Beckley, West Virginia. Grievant appeared *pro se*, and represented her interest. Respondent was present by Bryan Parsons, Director of Personnel and Safety, and by counsel, Erwin L. Conrad, Attorney at Law. This case became mature for decision on May 16, 2009, the deadline for the submission of the parties' proposed findings of fact and conclusions of law. Both parties submitted fact/law proposals.

Synopsis

Grievant is employed by Respondent as a Custodian I assigned to Meadow Bridge High School. Grievant alleges she is being required to perform certain job duties out of her classification. The duties of which Grievant complains (cleaning ceiling shades, ceiling fans and vents, cleaning heating radiators, cleaning the ceilings, shampooing carpets, running a floor scrubber and cleaning floor-stripping machine) are responsibilities which are consistent with "assigned duties" of her job classification. Said duties can be within the general job responsibilities of a Custodian I and are not reserved exclusively for a Custodian III simply because the Custodian III has the responsibility of *operating* the heating and cooling system and making minor repairs. The statutory job descriptions for a Custodian I and the job descriptions of the Fayette County Board of Education do not reserve the "hard cleaning" to Custodian II or Custodian III and exempt the Grievant from what she deems to be "hard cleaning." This grievance is DENIED.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant is employed by Respondent as a Custodian I assigned to Meadow Bridge High School. Grievant's traditional shift assignment is 4:00 p.m. to midnight. Grievant first received assignment as a Custodian I at Meadow Bridge High School during school year 2000-2001 and had served in assignments similar to her current assignment for the entire time of her employment until school year 2007.

2. Brooke Bibb is employed by Respondent as a Custodian I at Meadow Bridge High School. His shift assignment is also 4:00 p.m. til midnight at Meadow Bridge High School.

3. Bruce Hanshew is a Custodian III, employed by Respondent assigned to Meadow Bridge High School. Employee Hanshew works a split shift (5:30 a.m. to 9:00 a.m. and 10:30 a.m. to 2:00 p.m.).

4. The description of a Custodian I is generally described as personnel employed to "keep building clean and free of refuse." W. VA. CODE 18A-4-8(30).

5. The general description of a Custodian III at W. VA. CODE 18A-4-8(32) is "a person employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs."

6. The responsibilities of a Custodian I pursuant to the Fayette County Schools Job Description of the position include:

RESPONSIBILITIES:

1. **Daily sweep, dust, mop, or buff areas of the building assigned**.
2. Daily clean and sanitize all plumbing fixtures and drinking fountains in assigned area.
3. Daily remove all waste and trash from assigned area.
4. **Daily vacuum carpeted areas and assist in wet cleaning these areas when appropriate.**
5. Sweep sidewalks and remove debris from grounds as required. Cut grass and remove snow when necessary.
6. **Wash windows and wax floors.**
7. Reports needed repairs or problems encountered in assigned area to the Principal.
8. Insures that unnecessary lights are turned off to conserve electricity.
9. Maintains positive work habits.

10. Performs duties efficiently and productively.

11. Maintains and/or upgrades job-related skills.

12. Performs other related duties as assigned by supervisor or principal.

Fayette County Schools Job Description, Custodian I(Emphasis added)(Joint Ex. 2)

7. The Fayette County Schools Job Description for the position of Custodian III enumerates no less than 19 separate responsibilities for personnel performing in that classification. (Joint Ex. 2) The description of duties performed by a Custodian III is more intense than that of a Custodian I. Custodian IIIs are compensated at a higher pay grade than Custodian Is.

8. In an explanatory Memorandum from the School Principal (Al Martine) to all Custodians of Meadow Bridge High School (Grievant, Brooke Bibb and Bruce Hanshew), the Principal reiterated that cleaning the air vents and light covers are the responsibility of the Custodian to whom the room is assigned. (Joint Ex. 4)

9. Grievant first received assignment as a Custodian I at Meadow Bridge High School during school year 2000-2001 and has served with distinction in assignments similar to her current assignment. Grievant is perceived to be an honorable and responsible employee.

10. Sometime during the 2007-2008 school year, Grievant “switched sides” with Brooke Bibb (the other Custodian I assigned to the same shift) at Meadow Bridge High School, resulting in Custodian Bibb doing Grievant’s former assignments as to the number and location of rooms and Grievant doing the rooms which had previously been done by Custodian Bibb.

11. Grievant performed her assignment without complaint throughout the 2007 school year.

12. Sometime after an in-service conducted in August 2008, Grievant began to voice objections to certain cleaning tasks she was performing.

13. Grievant had the job description for her position and its responsibilities available to her but allegedly never examined it (fully) until after an in-service presentation and shortly prior to the filing of her Grievance.

14. Subsequent to August 2008, Grievant professed the belief that certain duties she was performing should not be required of a Custodian I.

15. Sometime subsequent to August 11, 2008, it became Grievant's professed belief that her job as a Custodian I was limited to simple basic cleaning. Among her contentions was the proposition(s) that she should not be required to perform duties not specifically listed in or on a Custodian I Job description. In general, Grievant professes that the "hard cleaning" falls under Custodian II and Custodian III classifications with a higher different pay grade. And as a Custodian I, she should not be required to perform these duties and/or she should be properly compensated for performing duties out of her classification.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her case by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2008). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved

is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he 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 & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. *Id.*

Grievant, a Custodian I assigned to Meadow Bridge High School, alleges that she is performing tasks above her job classification. Grievant contends she should not be required to:

1. Clean ceiling shades, ceiling fans and vents; or
2. Clean heating radiators; or
3. Clean ceilings; or
4. Shampoo carpet; or
5. Run the floor scrubber and clean the floor-stripping machine.

Among Grievant's expressed rationale(s) for her position is that the heating and cooling system are solely Custodian III domain. She should not be required to dust vents, clean heating radiators or ceiling fan vents because they are part of the heating and cooling system. Further Grievant does not believe that she should be required to wash walls, strip and clean floors, mop or clean the gymnasium. These duties are considered by Grievant to be "hard cleaning." Her job is simple, basic cleaning. "Hard cleaning" falls under Custodian II and Custodian III job responsibilities.[1] Grievant requests additional compensation or to be relieved of performing "hard cleaning" duties.

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[1] In fact, there are no Custodian II's currently assigned to Meadow Bridge High School. At the level three hearing Grievant suggested she could be promoted to the classification of Custodian III.

Simply expressed, Grievant wants a raise. Her thinly veiled request is couched in classification terms and equity principles. She believes she is entitled to more money or less work. The less work is distinguished as duties performed beyond her classification. A desire to expand one's salary base is understandable in today's economy but this grievance is more theory than substance. The merits of this grievance are dubious at best. Grievant's beliefs may be sincere but her interpretation of the facts, case law and applicable legal principles is misguided and woefully inaccurate.

W. VA. CODE 18A-2-9 assigns to Public School Principals the "supervision and management and operation of the school or schools to which they are assigned" and reserves to the Principal "administrative and instructional supervisory responsibility for planning, management, operation . . . of the total educational program of the school or schools to which he is assigned."

The class title for service personnel positions are defined at W. VA. CODE 18A-4-8.[2] Service workers cannot be assigned to perform duties not contemplated by the statutory description of their currently-held classifications or not stated in their official job descriptions. *See Britton v. Preston County Bd. of Educ.*, Docket No. 90-39-015 (Aug. 31, 1990). However, "county boards of education may expand upon the W. VA. CODE §18A-4-8 classification definitions in a manner which is consistent with those definitions. *Brewer v. Mercer Co. Bd. of Educ.*, Docket No. 91-27-002 (March 30, 1992)." *Pope and Stanley v.*

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[2] Relevant applicable definitions set out in W. VA. CODE 18A-4-8 include:
(30) "Custodian I" means a person employed to keep buildings clean and free of refuse;
(31) "Custodian II" means a person employed as a watchman or groundsman;
(32) "Custodian III" means a person employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs.

Mingo County Bd. of Educ., Docket No. 91-29-068 (July 31, 1992); *Grugin v. Marion County Bd. of Educ.*, Docket No.02-24-244 (Dec 4, 2002). FCBE's job description and responsibilities of a Custodian I are not inconsistent with the statutory definition of the classification. (Joint Ex. 2). Grievant's responsibilities are consistent with the statutory classification definition and county job description for her job title.

It is within the authority of the School Principal to direct (assign) a Custodian I to dusting vents, cleaning fans, dusting radiators, washing walls, stripping floors and cleaning the machines used to strip the floors and mopping and cleaning the gymnasium. The duties of which Grievant complains are appropriate duties which can be assigned within the general job responsibilities of a Custodian I and are not reserved exclusively for a Custodian II or Custodian III simply because those job classifications have the responsibility of the heating and cooling system and making minor repairs. The statutory descriptions for Custodian I and the description provided by the Fayette County Board of Education do not reserve the identified duties to Custodian II or Custodian III and exempt the Grievant from what she deems to be “hard cleaning.”

Grievant’s assigned duties are encompassed within the job description of a Custodian I, as set forth in the statute and the Fayette County Board of Education job responsibilities. The facts of this grievance do not demonstrate that Grievant is unlawfully being required to perform custodian duties outside of her classification.

The following conclusions of laws are appropriate and support this decision.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her case by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2008). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he 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 & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. *Id.*

2. W. VA. CODE 18A-2-9 assigns to Public School Principals the "supervision and management and operation of the school or schools to which they are assigned" and reserves to the Principal "administrative and instructional supervisory responsibility for planning, management, operation . . . of the total educational program of the school or schools to which he is assigned." It is within the authority of a School Principal to direct a Custodian I to perform appropriate cleaning duties.

3. The identified duties relevant to this case are duties which can be assigned within the general job responsibilities of a Custodian I and are not reserved exclusively for a Custodian III simply because that job classification is assigned the heating and cooling system and making minor repairs.

4. Grievant did not establish she has been required to perform duties above her classification. The statutory position description(s) and the job responsibilities descriptions of the Fayette County Board of Education of the various Custodian classifications (I, II, and/or III), do not reserve the assigned duties of which Grievant complains to a Custodian II or Custodian III and exempt Grievant, as a Custodian I, from performing said duties.

5. Grievant has failed to establish Respondent is in violation of any applicable code, rule or regulation.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public 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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (2008).

Date: October 20, 2009

Landon R. Brown
Administrative Law Judge