



Members
James Paul Geary
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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone 348-3361

**RUTH BLANKENSHIP and
LINDA O'BRYANT**

v.

Docket No. 20-86-012

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Ruth Blankenship, is employed by the Kanawha County Board of Education as a custodian IV at Charleston High School; Linda O'Bryant is a custodian III at Mary Ingles. They filed separate grievances alleging that the staffing policy utilized by the school officials had resulted in a serious understaffing of custodial personnel in schools throughout the county.¹ A level four hearing was conducted on November 7, 1986 at which the grievance was submitted on the transcript of evidence of the level two hearing and legal argument of counsel for the parties.

¹ Counsel for grievant contends that this is a class action grievance because the issue affects most, if not all, of the schools in the county and challenges the manner by which school officials establish the number of custodians. Counsel for the board of education objects to the class action status.

When Ms. Blankenship assumed her duties as head custodian at Charleston High School in 1980 there were ten custodians employed and at the time of the level two hearing there were six custodial positions. (T. 23). In making up work schedules she had divided the school into separate parts and assigned them to the ten custodians. Thereafter the custodial staff was gradually reduced to the extent that it is not possible to clean the entire building on a daily basis. To do the cleaning work adequately would require at least seven and preferably eight custodians because the physical plant had not changed in size but the daily working hours had decreased from eight to seven.² She contends that the staffing formula is outdated and was adopted at a time the custodians worked eight and one half hours per day; that it is a formula from California and Florida and does not factor in such duties as snow removal, etc. (T. 30). She requested that the formula be abandoned and that each building be evaluated on an individual basis as to staffing needs or that the formula be modified to exclude student enrollment and change the divisor from

² The Legislature had reduced the daily work hours by one hour per day by allowing thirty minutes for a meal and two fifteen minute break periods per day. (T. 32). She testified that, accordingly, she only had forty-two hours of labor available to her. (T. 28).

eight to seven to reflect the daily work hours. (T. 33, 34).³

John Clendenin, principal of Charleston High School, recalled that there were ten or eleven custodians at the school when he assumed his duties in 1978. He stated that there was presently more space utilized in the building by the addition of vocational and special education classrooms, etc., and there is inadequate custodial staff to clean the building on a daily basis. He noted that a minimum of one additional custodian would be required to do the work. (T. 54, 55).⁴

Grievant Linda O'Bryant had been assigned to three different schools in a six year period and only one of them had been adequately staffed by custodial personnel. (T. 45). She stated that one additional half time custodian would have to be

³ On cross examination Ms. Blankenship admitted that she was aware that part of the staffing formula provided for substitute or overtime assistance in understaffing situations but stated that it did not solve the problem. (T. 35, 36).

⁴ He confirmed that the school officials "frowned upon" the use of overtime and it was very difficult to get it approved; however, he agreed that the one occasion he had requested overtime was granted. (T. 57). He stated that the school was dirty, especially the third floor.

added at Mary Ingles to adequately clean the school. (T. 43).⁵

John W. Lyons, assistant superintendent, is in charge of custodial services and works with the formula in making recommendations to the personnel department. (T. 60). He testified concerning the three formulae used in custodial staffing of schools in Kanawha County and that he had visited over fifty schools in the county in 1985; that the buildings were clean, especially Charleston High School. He stated that the formula was applied uniformly throughout the county and included acreage, building area, square footage, student enrollment, night classes and number of teachers. (T. 63). He calculated that if the variable of seven hours were used instead of the eight hour variable twenty six positions would have to be added at an annual increase of \$314,000.00, which

⁵ At Mary Ingles there are eleven classrooms, a gym, a workroom, two offices, a clinic, a library, a conference room and seven bathrooms to be cleaned daily by one and one half custodians. (T. 41, 43). She concluded that it was necessary to also consider the age of the school, the type of floors, etc., in considering the custodial services required. She stated extra help three times a week would be very helpful. (T. 46). Three other custodians and a cook at Owens School testified as to the conditions of their respective schools, which evidence was cumulative in nature.

monies were not available in the current budget. (T. 63).⁶

The school officials contend that there are no statutory requirements as to custodial staffing and what is involved is a county policy; that grievants have not shown the policy has been violated or applied inconsistently.

In addition to the foregoing factual recitation the following specific findings of fact are appropriate.

FINDINGS OF FACT

1. Grievants are employed by the Kanawha County Board of Education and classified as custodians at Charleston High School and Mary Ingles.

2. Since 1980 the custodial staff at Charleston High School has been cut from ten custodians to six custodians

⁶ On cross examination he admitted that although he was authorized to grant overtime for routine cleaning that he had approved it only once that year. He also admitted that personal observation was not part of the formula and that he had not inspected the third floor of Charleston High. (T. 66).

as a result of the staffing formula utilized by the Kanawha County Board of Education. This situation has also occurred in other schools in Kanawha County.

3. The formula is predicated on acreage, building area, square footage, student enrollment, night classes and the number of teachers. The formula is applied uniformly throughout the county.

4. There is an insufficient number of custodians at the schools involved in this grievance to adequately perform their duties but school officials have provided a substitute and overtime system to alleviate or correct the problem.

CONCLUSIONS OF LAW

1. W. Va. Code, 18-5-13 (1) authorizes county boards of education to control and manage the schools within the county school systems and this authority implies the responsibility to provide for the custodial needs thereof.

2. There are no statutory provisions regulating the number of custodians required to maintain the schools in a sanitary condition and the boards of education have great latitude in the exercise of discretion in adopting formulae

for that purpose. It is only when boards of education abuse their discretion or act in an arbitrary or capricious manner in the exercise of this discretion that their decisions thereon can be reviewed in the grievance procedure. Sigmon v. Roane County Board of Education, 324 S.E.2d 352 (W.Va. 1984).

3. In view of the substitute and overtime system utilized by school officials to meet the custodial staffing problem the decision to reduce the custodial staff at Charleston High School and other local schools is not arbitrary or unreasonable.

For the foregoing reasons the grievance is denied.

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty days of receipt of this decision. (Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



LEO CATSONIS

Chief Hearing Examiner

Dated: November 26, 1986