



WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD

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DUANE CARTE, ET AL.

vs.

DOCKET NO. 04-86-091

BRAKTON COUNTY BOARD OF EDUCATION

DECISION

The grievants, Duane Carte, Clinton Linger, Timothy Simons and James Shaw are employed by the Braxton County Board of Education as Custodians III¹ at Braxton County High School. The grievants state that Glenn Morrison, principal at the school, directed them to mow the approximately 13 acres of grass surrounding the school using a four wheel drive John Deere farm tractor.² The grievants allege a violation of W.Va. Code, 18A-4-8 in that the mowing of grass and the operation of a tractor is not in compliance with the job description of custodian III. They ask to be relieved of this duty in the future and to be compensated

¹ Grievant Duane Carte is multi-classified as custodian III/sewage plant operator.

² Grievants Linger, Simons and Shaw are required to use the tractor with mower. Grievant Carte is responsible only for mowing approximately one acre of flat area and uses a lawn-mower.

as heavy equipment operators for the time they have already performed this duty.³

In addressing the question of whether the tractor meets the definition of "heavy equipment" the Superintendent presented a two page advertisement which included general information and specifications for the model used by these grievants. (Board Exhibit #2) This information indicates the model 950 is smaller than a full sized tractor and is able to get in to confined areas.

James Rogers, Director of Supportive Services, testified that he had conducted research on whether this tractor should be considered heavy equipment. (Board's Exhibit #1) Citing the Dictionary of Occupational Titles, Mr. Rogers found several references to heavy equipment as that used to dig, drill, dredge, hoist or move substances and materials involved in construction, logging or mining industries. Rogers also inquired at the Department of Highways as to the classification of employees who operated tractors with mowers and found them to be classed as operator I, II or III (none related to heavy equipment) by the West Virginia Civil Service.

The grievants provided no evidence that this should be considered heavy equipment save their opinion.

Superintendent Seal provided a job description/performance standards form for custodian III which specifically states

³ Grievant Carte does not object to his present grass cutting duties and asks for no present relief but appears to be asking for an advisory opinion regarding potential future duties. Grievant Simons asks only that he not be required to mow the lawn during the school term and has no objection to performing this duty during summer recess.

that an individual of that classification will be required to maintain grounds by cutting grass with hand, power and riding mowers. While this job description was not adopted by the Braxton County Board of Education until September 17, 1985, four months after the filing of this grievance, it is the job description under which these grievants are presently employed.

Both parties have submitted a State Superintendent of School opinion dated September 6, 1983. (Joint Exhibit #1). The inquiry of this opinion relates to a different factual situation; however, several statements make reference to the custodian classification. The Superintendent states on page two that a custodian I may only be required to clean the building but custodians II, III and IV may also be required to make minor repairs and that a custodian II can be a groundsman with duties relating to the general care of the school grounds. While the Board interprets this statement to mean a custodian III may be required to mow the lawn, the Grievants assert that the definitions of custodian I, II, III and IV do not pyramid the job duties and responsibilities but rather must be strictly applied.

The question to be determined then is whether the mowing of grass is a duty which may be assigned to only a Custodian II.

W.Va. Code, 18A-4-8 provides the duties of custodian I to clean and keep the building free of refuse; custodian II as being a watchman or groundsman and custodian III to keep building clean and free of refuse, to operate the heating or cooling systems and to make minor repairs.

The grievants interpret these definitions strictly and ask that they be so applied. However, the definitions of watchman and groundsman state that additional assignments

may include the operation of a small heating plant and routine cleaning duties in buildings.

Regarding these definitions with those of custodians it appears that as an employee is reclassified from custodian I to custodian II through custodian IV that the employee must assume additional duties which may require greater skills and training. The statute states no prohibition against requiring an employee to perform work of a class lower than one's job or pay classification.

Common sense dictates that in a school assigned four custodians, all classified at level III, mowing the grass must be an assigned duty of one or all. Certainly performing duties of a lower job classification is more preferable than remaining at the lower classification at a lower salary.

These grievants have failed to show a violation of W.Va. Code, 18A-4-8 and therefore this grievance is denied.

STATEMENT OF FACTS

1. The grievants are employed by the Braxton County Board of Education and are assigned to Braxton County High School in the positions of custodian III.
2. The principal of Braxton County High School requires the grievants to mow the lawn surrounding the school using a John Deere tractor model 950.
3. The grievants allege a violation of W.Va. Code, 18A-4-8 as custodians III are not required to maintain school grounds

and that they were required to operate heavy equipment in the mowing of the lawn.

CONCLUSIONS OF LAW

1. The definitions of custodian, groundsman and watchman indicate the duties and responsibilities of custodians do increase as they advance in classification.
2. There is no statutory prohibition in requiring an employee to perform duties in a lower classification so long as there is no reduction in classification or pay.
3. The John Deere tractor model 950 cannot be determined to constitute heavy equipment for purposes of compensating the grievants as heavy equipment operators.
4. The grievants have failed to show a violation of W.Va. Code, 18A-4-8 by the Braxton County Board of Education.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Braxton County and such appeal must be filed within thirty (30) 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.

Sue Kuhn

HEARING EXAMINER

DATED: 4/30/86