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CONNIE CASTO, REBECCA BOWLING
and JULIA SMITH

v.

KANAWHA COUNTY BOARD OF EDUCATION

DOCKET NOS. 20-86-014/015/016

DECISION

The grievants are employed as Custodians III and assigned to various elementary schools in Kanawha County. In July, 1985 an Order was entered in the case of Kanawha County Board of Education v. Dr. Roy Truby and Kenneth Tyler, Civil Action No. 84-P. Misc. 801, in the Circuit Court of Kanawha County, affirming the decision of Dr. Truby that Kenneth Tyler should be reclassified as a Custodian IV if he had supervisory duties.¹ Thereafter, on September 13th, the Kanawha County Board of Education issued an administrative memorandum to all elementary school principals advising that if a Custodian IV was not assigned to their school they were not to delegate supervisory responsibilities

¹ The Court held that in accordance with Code, 18A-4-8 "head custodians" had to be classified as Custodian IV; that in addition to providing services as defined in Custodian III, their duties might include supervising other custodial personnel.

to Custodians III; that the principals were to assume such responsibility.

In late September or October, 1985, Rebecca Bowling, Julia Smith, Connie Casto and Clifford Conway filed a "class action" grievance alleging that they should be reclassified as Custodians IV with back pay from the effective date of their employment as Custodians III.² A level two hearing was conducted on November 21 and a decision was rendered on December 3 denying the grievance. On December 30, an appeal was filed for a level four hearing and an evidentiary hearing was conducted by the undersigned hearing examiner on January 31, 1986. The following is a summary of the evidence presented.³

Grievant, Rebecca Bowling, commenced working at Arthur I. Boreman Elementary School as a Custodian I in 1978 and was promoted to Custodian III two years ago. She works 7:30 to 3:30 o'clock and there is one other full time custodian,

² Clifford Conway participated in the grievance procedure through the level two stage but his counsel has advised that he has since dropped out of the grievance. Accordingly, this decision will not inure to his benefit. Similarly, this decision will not be construed to determine the rights of any employee not made a specific party to this grievance, since each case has to be determined on its own merits.

³ Counsel for the grievants and the school board submitted the transcript of the evidence of the level two hearing and the grievants did not testify at the level four hearing. Counsel for the grievants offered the evidence of two additional witnesses and counsel for the school board offered no additional evidence at the level four hearing. The grievance was submitted to the hearing examiner for decision on the basis of the foregoing evidence.

Carl Berry, at the school; he works 2:00 to 10:00 o'clock p.m. as a Custodian I. Between 2:00 and 3:00 o'clock each day grievant and Berry discuss the things that need to be done and grievant sometimes leaves notes for Berry concerning the work. She testified that she had given directions to Berry prior to the September board memorandum and has received communication from the board office directed to her as "head custodian".⁴ Grievant testified that the principal, Mr. Woods, did not tell her that she had the responsibility of supervising Berry but evaluated her at least partially on the basis that she was an employee who supervised others. Mr. Woods testified that prior to the board memo he authorized grievant to give instructions and directives to the other custodians; that he and grievant established the work schedule for Berry, that she ordered the cleaning supplies and they shared responsibility for ordering repairs.

Grievant, Julia Smith, commenced work in 1978 at Sissonville Junior High School as a Custodian I, was moved to Roxalana Elementary School about a year and a half ago and reclassified as Custodian III. She works the 7:00 to 3:00 o'clock shift and there is one half time custodian, Ken Metten, and one

⁴ Mr. Berry testified that he was Custodian III at Boreman until two years ago when he gave it to grievant because it was a "headache". He considered grievant his supervisor but stated that she did not give him orders; that the principal, Mr. Woods, gave his orders.

substitute custodian, Billy Carol Sigman. Metten works 2:30 to 6:00 o'clock and reports to work a half hour early so that he and the grievant can go over the work assignments. Grievant supervises the substitute custodian more closely than Metten and has received mail from John Lyons at the board of education office directed to the "head custodian". The substitute custodian, Billy Carol Sigman, testified that grievant had supervised her and instructed her as to her duties subsequent to the board memorandum and considered her to be her supervisor; that she had only met the principal once and the principal did not supervise her. Conversely, the principal, Ms. Laurentta Kellum, testified that she generally gave the directions to the custodians and has never requested grievant to evaluate or administer discipline to the other custodians. She further testified that grievant filled out the order forms for cleaning supplies and she (Ms. Kellum) signed them; that it was grievant's duty to check on needed repairs.

Grievant, Connie Casto, has been a Custodian III at Cross Lanes Elementary School for thirteen (13) years. There is one other full time custodian and one who works three and a half hours a day. She stated that she would inform the two custodians if their work was lacking in some respect and would try to go to the principal when he was available if something came up. She also received mail directed to the "head custodian".

Code, 18A-4-8 requires a county board of education to review each service personnel employee job classification annually and to reclassify all service employees as required by job classification. The purpose is to establish a classification title for service personnel so as to lend uniformity to salaries, rates of pay, benefits, increments of compensation for all persons regularly employed and performing like assignments and duties within the county. Upon the changes in classification or upon meeting the requirements of an advanced classification of or by any employee, the salary shall be made to comply with the pay scale set out in Article 4.

The definitions of Custodian III and IV in Code 18A-4-8 are as follows:

"'Custodian III' means personnel employed to keep building clean and free of refuse, to operate the heating or cooling system and to make minor repairs."

"'Custodian IV' means personnel employed as head custodians. In addition to providing services as defined in 'Custodian III', their duties may include supervising other custodian personnel."

Accordingly, by definition, a Custodian IV is a Custodian III serving as head custodian, who may or may not supervise other custodian personnel. This definition describes the duties performed by these grievants in their respective schools until the issuance of the memorandum on September 13, 1985 and they were entitled to be reclassified as Custodians IV

upon meeting the requirements thereof. Therefore, grievants are entitled to the classification of Custodian IV with the back pay from August 30, 1984 or the time that it can be ascertained that they commenced acting in that capacity if subsequent to August 30, 1984.

FINDINGS OF FACT

1. Grievant, Connie Casto, is presently classified as a Custodian III and assigned to Cross Lanes Elementary School.

2. Grievant, Rebecca Bowling, is presently classified as a Custodian III and assigned to Boreman Elementary School.

3. Grievant, Julia Smith, is presently classified as a Custodian III and assigned to Roxalana Elementary School.

4. Sometime prior to September 13, 1985, these three grievants commenced performing services and duties of a Custodian IV at their respective schools but their classifications were not reviewed or changed by the Board of Education.

5. On January 17, 1984, Kenneth Tyler filed his grievance with the Kanawha County Board of Education on this point and on August 30, 1984, Dr. Truby ruled that he should be reclassified to Custodian IV. At least from that time the board was on notice that other service personnel might be in a similar situation and should have reviewed the job classifications of others in Tyler's position. Similarly, it appears that

these grievants should have taken some action to have themselves reclassified at least soon after the decision in the Tyler case by Dr. Truby.

6. By Administrative Memo dated September 13, 1985, the principals of all elementary schools not having a Custodian IV assigned were directed that supervisory responsibilities were not to be delegated to a Custodian III.

7. Prior to the filing of the instant grievance, the grievants did not attempt to effect a change of their classification.

CONCLUSIONS OF LAW


1. Code, 18A-4-8 defines a Custodian IV as a head custodian, employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs; their duties may also include supervising other custodian personnel.

2. Code, 18A-4-8 required a board of education to annually review service personnel employee job classifications and to reclassify where necessary.

3. Grievants were entitled to be reclassified to Custodian IV pursuant to Code, 18A-4-8 and by the ruling of the State Superintendent of Schools in the decision of Tyler v. Kanawha County Board of Education as of August 30, 1984.

4. Grievants are entitled to back pay from August 30, 1984 if they were performing the duties of a Custodian IV on that date.

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
Hearing Examiner