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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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LARRY D. ROHRBAUGH

v.

DOCKET NO. 12-86-255-2

GRANT COUNTY BOARD OF EDUCATION

DECISION

The grievant, Larry D. Rohrbaugh, has been employed by the Grant County Board of Education as a substitute custodian since 1983. The grievant alleges there to have been a violation of W. Va. Code, 18A-4-15 in the improper rotation of the substitute list which has prevented him from accruing deserved seniority. Mr. Rohrbaugh requests that proper rotation of the substitute custodian list be implemented immediately and that he be hired for the next available custodial position. Superintendent David Adkins responded to the grievance by letter dated August 1, 1986 and the board of education waived consideration of the matter to level four on August 20, 1986. Following a continuance requested by the grievant, a level four hearing was conducted on November 17, 1986.

Testimony presented at the level four hearing establishes that when the grievant was first available to be called as a substitute, he did not have a telephone. In early fall,

1983, Mr. Rohrbaugh's mother received a call from the board of education and immediately contacted the grievant who was at another job. By the time the grievant contacted the board office another substitute had been called. Mr. Rohrbaugh states that he was not called again that year or during the 1984-1985 term. His first day of substitute work was October 18, 1985.

Mr. Rohrbaugh alleges that the improper rotation of the substitute list has prohibited him from accruing seniority at a rate comparable with other substitutes and has impeded his efforts to secure a regular, full-time position with the board.

Dave Cooper, Principal at Petersburg High School, and Joe Cunningham, Principal at Dorcas Elementary School, testified as to their unsuccessful past efforts to locate the grievant for substitute work.

Superintendent Adkins stated that prior to the 1986-1987 school term custodians had called their own substitutes but, that a new procedure which requires that substitutes be called on the basis of seniority has been implemented.

In addition to the foregoing it is appropriate to make these additional findings of fact and conclusions of law.

Findings of Fact

1. The grievant began employment as a substitute custodian with the Grant County Board of Education in 1983.

2. The grievant did not have a home phone at the beginning of the school term but had used his parents' number on his application and had given Superintendent Adkins his work number.

3. The grievant's mother was called in the fall of 1983, however by the time the grievant traced the call another substitute had been secured.

4. The grievant first worked as a substitute custodian on October 18, 1985.

5. Two principals testified as to their inability to locate the grievant for substitute work.

6. The grievant is presently the third most senior substitute custodian.

7. Prior to the 1986-1987 school term custodians generally called their own substitutes.

8. Individuals who were hired as substitutes at approximately the same time as the grievant but who entered into their assigned duties prior to him have been placed in regular, full-time positions.

Conclusions of Law

1. W. Va. Code, 18A-4-15 requires that all substitutes be employed on a rotating basis according to the length of

their service time until each substitute has had an opportunity to perform similar assignments.

2. An employee's seniority begins on the date that he enters into his assigned duties. W. Va. Code, 18A-4-8b.

3. W. Va. Code, 18A-4-8b requires that all decisions affecting promotion and filling of any service personnel position must be made on the basis of seniority, qualifications and evaluation of past service.

Accordingly, the grievance is granted in part and denied in part. The Grant County Board of Education is statutorily required to employ all substitutes on a rotating basis and appears to have implemented a procedure to achieve that directive. The grievant may not be awarded the next available custodian position as two other substitutes have earned more seniority than he and W. Va. Code, 18A-4-15 requires that service personnel positions be filled on the basis of seniority, qualifications and evaluations of past service.

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

DATE December 31, 1986

Sue Keller

SUE KELLER

Hearing Examiner