



**Members**

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

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**PAUL H. SMITH**

**v.**

**Docket No. 20-86-277-1**

**KANAWHA COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Paul H. Smith, is employed by the Kanawha County Board of Education as a custodian at Village Elementary School in South Charleston. He filed a grievance in June, 1986 alleging that he was misclassified and sought classification as Custodian IV. Level two evidentiary hearings were conducted on July 24 and August 20, 1986 and an appeal to level four was filed on September 22, 1986.<sup>1</sup>

Grievant has been a custodian at Village Elementary since 1971 and is classified as a twelve month Custodian III. He works 6:30 a.m. - 2:30 p.m. and is assisted at Village Elementary

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<sup>1</sup> Kanawha County Board of Education waived participation on September 18, 1986; the parties waived an evidentiary hearing at level four and submitted the grievance to the hearing examiner on the level two transcript, which was filed in this office on October 13, 1986.

by Eric Mallory, a 200 day Custodian II at the school for eight years, who works the 1:30 - 9:30 p.m. shift. Grievant alleges that he is the "head custodian" at Village Elementary and during the one hour that their work hours overlap he instructs Mr. Mallory as to his duties; that he also orders the custodial supplies and equipment. These directions include matters such as instructing Mr. Mallory to mow the grass, do some extra dusting or cleaning or generally whatever would need to be done over and above the routine duties. Grievant alleges that Jewell Copley, the principal at Village Elementary, authorized him to supervise the other custodian when she became principal but recently instructed him otherwise. Grievant does not evaluate Mr. Mallory, establish his schedule or administer discipline and doesn't assign the regular duties to him because he is well versed in his responsibilities after eight years.

Principal Copley testified that Superintendent David Acord issued a memorandum dated September 13, 1985 to elementary school principals which included the definitions of Custodians I, III and IV and instructed that if they did not have a Custodian IV assigned to their building the principals were to assume all supervisory responsibility and not delegate supervisory

responsibilities to a Custodian III.<sup>2</sup> After she received the memorandum she did not discuss it with grievant because at that time grievant did not actively supervise anyone (T. 23); she denied authorizing him to supervise Mr. Mallory. She testified that instead, she, grievant and Mr. Mallory were very agreeable and would get together and discuss these matters and agree upon what would be done; that she didn't feel that grievant had been supervising Mr. Mallory.<sup>3</sup> She denied that grievant was head custodian at Village Elementary and asserted that if there was a head custodian, it was she. Simply put, she stated that grievant was the day custodian and Mr. Mallory was the night custodian; that historically the day custodian has been considered the "big man" and makes more money. (T. 26).

Counsel for the grievant contends that every school must have a head custodian by definition and grievant is entitled to reclassification as Custodian IV with back pay.

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<sup>2</sup> This memorandum was precipitated by a ruling of the Circuit Court of Kanawha County in Tyler v. Kanawha County Board of Education in July, 1985 affirming a decision by the State Superintendent that a Custodian III should be reclassified as a Custodian IV if the duties included supervising other custodial personnel.

Several grievances have also been decided by the Education Employees Grievance Board since that decision and each case has been decided upon its own merits. See, e.g., Casto, et al. v. Kanawha County Board of Education, Docket No. 20-86-014, decided February 25, 1986.

<sup>3</sup> Mr. Mallory did not testify at the hearing so his perception of this arrangement is not available.

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

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

"Custodian IV" means personnel employed as head custodians. In addition to providing services as defined in "Custodian III", these 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.

In addition to the foregoing recitation the following specific findings of fact and conclusions of law are appropriate.

#### FINDINGS OF FACT

1. Grievant is employed as a Custodian III at Village Elementary School and works the 6:30 a.m. to 2:30 p.m. shift.
2. Mr. Eric Mallory has also been employed as a custodian at Village Elementary for eight years and works the 1:30 to 9:30 p.m. shift.
3. Ms. Jewell Copley is the principal of Village Elementary School and is the "head custodian" in that she supervises the custodian personnel at the school.

4. Since September 13, 1985 it has been the policy of the Kanawha County Board of Education to relieve Custodian III of supervisory duties in the elementary schools of the county.

CONCLUSIONS OF LAW

1. In a grievance proceeding it is incumbent upon the grievant to prove the elements of the grievance by a preponderance of the evidence.

2. Grievant failed to prove that he was employed as head custodian at Village Elementary School and otherwise failed to prove the essentials of his grievance.

Accordingly, it is ORDERED that 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. (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.



LEO CATSONIS

Chief Hearing Examiner

Dated: December 30, 1986