



Members
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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

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UREAL BURGESS

v.

Docket No. 20-86-206-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Ureal Burgess, is employed by Kanawha County Board of Education as a Custodian III assigned to Buena Vista Elementary School. On May 7, 1986, he filed a grievance alleging that he was performing the duties of a Custodian IV and should be reclassified in accordance with W. Va. Code, 18A-4-8. A level two hearing was conducted on June 4, and appealed to level four on June 27, 1986; a level four evidentiary hearing was conducted on December 1, 1986.¹

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This is one of eight grievances consolidated for the level two hearing and the grievances were originally to be submitted to the hearing examiner on the record made at level two. However, a hearing was thereafter requested and during the level four hearing it was agreed that the transcript of level two would be prepared and submitted to the hearing examiner; the transcript was filed on February 4, 1987. At the conclusion of the level four hearing counsel for the board of education requested and was granted leave to adduce the testimony of the principal of Buena Vista Elementary, Mr. Stemple, and another hearing was scheduled on March 11, 1987.

Grievant has been employed by Kanawha County Schools for over thirteen years, has been a Custodian III since 1975 and has been assigned to Buena Vista Elementary for over eleven years. He works the 7:00 a.m. to 3:00 p.m. shift and allegedly supervises the Custodian I who works the 6:00 p.m. to 9:30 p.m. shift at the school.

On September 13, 1985, an administrative memorandum was issued by the then Superintendent of Kanawha County Schools directing principals of all county elementary schools to refrain from delegating any supervisory responsibilities to a Custodian III. This action had been prompted by a decision of the Circuit Court of Kanawha County in July, 1985, directing the reclassification of a Custodian III to a Custodian IV on the basis that the custodian's duties included supervising other custodians. Notwithstanding, grievant contends that he has performed supervisory duties since July, 1980, and is entitled to reclassification and back pay to that date.²

² The memorandum was not uniformly followed by principals throughout the county, however, as evidenced by several decisions of the Education Employees Grievance Board. See, e.g., Casto v. Kanawha County Board of Education, Docket No. 20-86-205; Davis v. Kanawha County Board of Education, Docket No. 20-86-204; Clark v. Kanawha County Board of Education, Docket No. 20-86-205, etc.

Counsel for the board objected to the admissibility of evidence relative to the supervisory duties performed by grievant subsequent to the memorandum and subsequent to the filing of the grievance but it was admitted to show that the duties had not, in fact, changed.

More specifically, on May 6, 1985, a memorandum was sent to all principals from William J. Godbey, director of custodial services, instructing head custodians at each school to attend an inservice training session on June 17 or 18, 1985, and grievant attended. (Grievant's Exhibit No. 4). In December, 1985, Mr. Godbey directed another memorandum to Mrs. White, principal of Buena Vista Elementary, confirming a meeting at which:

Approval was granted for your Head Custodian, Ureal Burgess, to provide twelve hours (12.0) of overtime assistance to Mr. Facemyre to resolve these cleaning problem areas.
(Grievant's Exhibit No. 2).³

Additionally, grievant submitted several exhibits reflecting that from April 25, 1986, grievant made reports on the condition of the building and directed the activities of the part time custodian by written memos dating from May 7, 1986, to November 26, 1986.

³ Grievant testified that Mrs. White had told him she had received the September memorandum and jokingly told him not to supervise any longer but continued to ask him to supervise the Custodian I. (Grievant's Exhibit No. 3).

The Custodian I, Roger Burdette, confirmed that grievant supervised his work and grievant testified that the present principal, Mr. Stemple, specifically told grievant to supervise the part time custodian.

The level two grievance evaluator held that grievant had established that he had in fact performed supervisory duties on certain days and awarded grievant out-of-classification pay as a Custodian IV for those days.

W.Va. Code, 18A-4-8 defines the following pertinent positions:

"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 factual recitation the following specific findings of fact are appropriate.

FINDINGS OF FACT

1. Grievant is employed as a Custodian III at Buena Vista Elementary School and has served in that capacity since 1975; he works the 7:00 a.m. to 3:00 p.m. shift.

2. Since May, 1985, grievant has been generally considered the head custodian at Buena Vista Elementary School and has been referred to as such head custodian in official communications from school officials.

3. Also employed at Buena Vista Elementary School is a Custodian I who works the 6:00 p.m. to 9:30 p.m. shift. Grievant has consistently supervised and directed the duties of the Custodian I over the years.

4. By memorandum dated September 13, 1985, then Superintendent of Schools David Acord instructed all elementary school principals to refrain from delegating supervisory responsibilities to a Custodian III.

5. At the time of the memorandum grievant exercised supervisory responsibilities over the Custodian I and grievant continued to exercise supervisory responsibilities thereafter with the explicit and implicit approval of the principal.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-8 requires a reclassification of an employee classified as a Custodian III who is performing the duties of a Custodian IV. Connie Casto, et al. v. Kanawha County Board of Education, Docket No. 20-86-014.

2. Grievant has proven by a preponderance of the evidence that he was performing the duties of a Custodian IV and was entitled to reclassification. Mary Davis v. Kanawha County Board of Education, Docket No. 20-86-204; Minnie Lou Clark v. Kanawha County Board of Education, Docket No. 20-86-205.

The grievance is GRANTED and the Kanawha County Board of Education is Ordered to reclassify grievant as a Custodian IV with back pay from May, 1985.

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.

A handwritten signature in cursive script, reading "Leo Catsonis", is written over a horizontal line.

LEO CATSONIS

Chief Hearing Examiner

Dated: March 20, 1987