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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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MINNIE LOU CLARK

v.

Docket No. 20-86-205-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Minnie Lou Clark, is employed by the Kanawha County Board of Education and is presently classified as a Custodian III. In April, 1986, she filed a grievance alleging that she was incorrectly classified and sought reclassification as a Custodian IV with back pay. A level two hearing was conducted on June 4, 1986, and an appeal taken to level four on June 26, 1986; a level four evidentiary hearing was conducted on December 8, 1986.¹

¹ This was one of eight grievances consolidated at level two as involving the same issues. The grievance was submitted to the hearing examiner on the record of the level two hearing, (T. ___), which was received by the Education Employees Grievance Board on February 4, 1987, and the testimony adduced on December 8, 1986.

Grievant has been employed for twenty four years at High Lawn Elementary School in St. Albans as a custodian and her work hours are 6:00 a.m. to 2:00 p.m. (T. 14). Linda Louise Fink is also employed at High Lawn Elementary as a Custodian I and these two employees constitute the custodian staff at the school.²

Grievant testified that when Ms. Fink arrives at work at 11:00 she reviews the events of the day and informs her of any after-hours activities which would require setting-up rooms, etc. Grievant writes the requisition orders for supplies, reports emergency repairs, etc., and otherwise does "everything that has to be done and sees that everything is done right." Sometime in the spring of 1986 she was informed that three custodians had been reclassified as Custodians IV and she filed a grievance; she was unaware at the time that seven other custodians had also filed grievances.³

² Ms. Fink has been in that position for thirteen years at the school and works 11:00 a.m. to 7:00 p.m.; she is the daughter of the grievant. Grievant testified that she does not allow this relationship to interfere with their working relationship.

Until about five years ago grievant supervised two custodians when the number of custodians was reduced to one full time custodian.

³ Grievant obviously had reference to the grievances of Casto, Bowling and Smith, decided by the Education Employees Grievance Board on February 25, 1986. That decision was predicated on the Circuit Court decision in Tyler v. Kanawha County Board of Education, Civil Action No. 84-P. Misc. 801, directing the reclassification of a Custodian III who performed the duties of a Custodian IV. See Casto, et al. v. Kanawha County Board of Education, Docket No. 20-86-014.

Judith Reed has been principal at High Lawn Elementary School for four years and admitted that as of September 13, 1985, grievant had and exercised supervisory duties over the other custodian. By memorandum dated September 13, 1985, she was instructed by David L. Acord, then superintendent of Kanawha County Schools, to cease delegating supervisory responsibilities to a Custodian III. (Employer's Exhibit 1). However, she did not direct grievant to do anything differently after receipt of the memorandum and she specifically did not instruct grievant to refrain from supervising the other custodian. Moreover, she refers to and introduces grievant as the "head custodian" at the school.

Counsel for grievant contends that a school, of necessity, cannot operate without a head custodian and that there must therefore be a Custodian IV at each school; that in this case it should be grievant. Counsel for the board of education contends that the grievance is untimely and alternatively that the September 13, 1985, memorandum expressly directed principals to refrain from delegating supervisory responsibilities to a Custodian III.⁴

⁴ Due to the disposition of this grievance on the evidence it is unnecessary to reach counsel for grievant's argument.

The position of counsel for the board of education that the grievance is untimely is not well taken because it is the duty of the board of education to annually review service personnel positions and to reclassify where necessary. (W.Va. Code, 18A-4-8). The board failed to do this and grievant filed her grievance immediately upon learning that other custodians similarly situated had been reclassified. This satisfied the timeliness requirement. Cameron v. Hancock County Board of Education, Docket No. 15-86-149-2.

Grievant did not develop evidence on the request for back pay and that portion of the grievance is deemed abandoned.

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 and conclusions of law are appropriate.

FINDINGS OF FACT

1. Grievant is employed as a Custodian III at High Lawn Elementary School and has served as a custodian at the school for twenty four years; she works the 6:00 a.m. to 2:00 p.m. shift.

2. Also employed at High Lawn Elementary School is a full-time Custodian I, Linda Louise Fink, who works the 11:00 a.m. to 7:00 p.m. shift. Ms. Fink considers grievant to be her supervisor.

3. Over the years grievant has supervised as many as two other custodians and has generally been understood to be the "head custodian" at the school.

4. Grievant prepares the requisition orders for supplies, reports emergency repairs and generally supervises the work activities of Ms. Fink, the Custodian I.

5. 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.

6. At the time of the memorandum grievant exercised supervisory responsibilities over the Custodian I and grievant was not directed to cease the practice. Principal Judith Reed did not perceive a need to change the manner in which grievant was performing the custodial services at the school; the principal considered grievant to be the "head custodian".

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-8 requires a reclassification of an employee serving 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 she was performing the duties of a Custodian IV and was entitled to reclassification. Mary Davis v. Kanawha County Board of Education, Docket No. 20-86-204-1.

Accordingly, it is Ordered that the grievance is granted and that the grievant be reclassified as Custodian IV as of the date of this decision.

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: February 24, 1987