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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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TIM COGAR, FLOYD CUTRIGHT
and DAVID ROWAN

v.

DOCKET NO. 49-86-346-2

UPSHUR COUNTY BOARD OF EDUCATION

DECISION

Grievants, Timothy L. Cogar, Floyd B. Cutright and David R. Rowan, are employed as Custodians III by the Upshur County Board of Education and are assigned to Buckhannon-Upshur High School. On September 22, 1986 the custodians filed a grievance alleging that their work schedules had been changed during the school year without their written consent, a violation of W.Va. Code, 18A-4-8a. The grievance was denied at levels one and two and the Upshur County Board of Education waived consideration to level four. By agreement of all parties the grievance was submitted for a decision on the record supplemented by briefs.

Approximately one week into the 1986-1987 school year the grievants were instructed by their principal that the cleaning of the athletic field house was being added to their area

assignments. Each of the custodians are now assigned to clean the field house one hour per day on a three week rotation. For example, Mr. Cogar will clean the facility one hour per day on week one, Mr. Cutright will clean one hour per day on week two, Mr. Rowan will clean one hour per day on week three, Mr. Cogar will clean again on week four and so on.¹

The grievants argue that the assignment of additional duties outside of the main building constitutes a change of schedule without their consent in violation of W. Va. Code, 18A-4-8a. They have expressed their concern that the addition of the field house to their area assignments may result in their inability to maintain optimal custodial care in those areas to which they were originally assigned. All three grievants indicate their belief that a part-time custodian should be hired to clean the field house and specifically request that the assignment be removed from their duties.

The position of the board of education is that there has been no change in the grievants' daily work schedules inasmuch as the nature of their duties and the hours during which they work remain the same. The board argues that the last four paragraphs of W. Va. Code, 18A-4-8a all address the same issue

¹Although only one custodian is assigned to clean the field house on any given day the testimony of all three grievants was that they were sometimes assisted by another.

of time and not duties and that to adopt the grievants' interpretation of "schedule" to mean duties performed would be inconsistent with the remainder of the statute.²

Findings of Fact

1. Grievants are employed by the Upshur County Board of Education as Custodians III and are assigned to Buckhannon-Upshur High School.

2. Approximately one week after the beginning of the 1986-1987 school term the grievants were advised that they would be responsible for providing custodial services to the athletic field house in addition to their area assignments within the main building.

3. The grievants were originally directed to allocate one hour two days per week for the cleaning of the field house. This schedule has since been changed to one hour per day although some controversy exists as to whether the grievants or administration requested the expanded services.

4. The grievants are presently scheduled to clean the field house one hour per day for one week on three week rotation.

²While under cross-examination by the grievants' attorney, Superintendent Westfall testified that he had discussed this statute with Delegate Lyle Sattes, Chairman of the House Education Committee, who indicated that the legislative intent was to prevent time schedules of service personnel employees from being changed after the school year or the employment year had begun. (T. pp 47, 48).

5. All of the grievants assist each other in the cleaning of the field house.

6. The duties performed by the grievants at the field house are no different than those performed at any of their other assigned areas.

7. The hours worked by the grievants have remained the same, i.e., 3:30 p.m. to 11:30 p.m. also referred to as the evening shift.

8. While the grievants have expressed some concern that they no longer have adequate time to thoroughly clean their assigned areas their principal indicates that he has found no fault with their work.

Conclusion of Law

The revision of a custodian's area assignment within an educational complex which does not change his daily work hours does not constitute a change of his work schedule as contemplated by W.Va. Code, 18A-4-8a.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Upshur 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.

DATED: March 9, 1987

Sue Keller

SUE KELLER
Hearing Examiner