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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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MARY L. DAVIS

v.

Docket No. 20-86-204-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Mary L. Davis, is employed by the Kanawha County Board of Education as a custodian at Spring Hill Elementary School in South Charleston. In May, 1986 she filed a grievance alleging that she should be reclassified and a level four evidentiary hearing was conducted on December 15, 1986.

Grievant is presently classified as a custodian III and served twenty two years at Dunbar High School prior to transferring to Spring Hill Elementary School in October, 1985.¹ She works 6:30 a.m. to 2:30 p.m. and supervises Lucille Reed, a custodian I, as part of her duties. Ms. Reed is a half-time

¹ She had bid on the custodian III position at Spring Hill because the school was more convenient to her home. At Dunbar High School she had supervised other custodians at the direction of the principal.

employee whose hours are 2:30 to 6:00 p.m.; she generally arrives ten to fifteen minutes early each day to receive her cleaning instructions from grievant.² Grievant orders the cleaning supplies and assumed she would be the head custodian at Spring Hill Elementary when she applied for the position. Ms. Reed confirmed most, if not all, of grievant's testimony as to the supervisory functions she performed.

Mr. Tommy Bunting, principal of Spring Hill Elementary, was very pleased with the custodial services performed by grievant and acknowledged that he probably had authorized grievant to supervise Ms. Reed notwithstanding a memorandum from the Superintendent of Kanawha County Schools to the contrary.³ He had not discussed the memorandum with grievant and conceded that grievant's predecessor was considered the "head custodian" and

² Grievant stated that the work was divided between them, Ms. Reed doing the sweeping and grievant doing "the rest of it." Grievant also testified that Ms. Reed would telephone her at home if the doors were not working or the toilets were clogged and other matters involving minor repairs.

³ In July, 1985 the Circuit Court of Kanawha County issued a ruling in Tyler v. Kanawha County Board of Education that a custodian III should be reclassified as a custodian IV if the duties included supervising other custodial personnel.

Accordingly, on September 13, 1985 Superintendent Acord issued a memorandum to elementary school principals instructing them to assume all supervisory responsibility and not delegate any such responsibilities to custodians III. Several grievances have been decided and each grievance is decided upon its own merits inasmuch as it is clear that not all principals adhered to the directive.

that it was logical for grievant to assume that she was the "head custodian."⁴

W.Va. Code, 18A-4-8 defines the following pertinent custodian 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 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 Spring Hill Elementary School on the 6:30 a.m. to 2:30 p.m. shift.

⁴ Principal Bunting had discussed the memorandum with the previous custodian III primarily because of the personality conflict between that custodian and Ms. Reed. He stated that grievant and Ms. Reed have "gone above and beyond the call of duty" in maintaining the cleanliness of the building.

2. Lucille Reed, a custodian I, is also employed half-time at Spring Hill Elementary School and her shift is 2:30 p.m. to 6:00 p.m.

3. Grievant orders the cleaning supplies and supervises and directs the custodian duties of Ms. Reed; she performs these duties in addition to her custodian III duties.

4. Grievant has acted as the "head custodian" at Spring Hill Elementary School with the express or implied approval of the principal of said school.

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.

Accordingly, it is ORDERED that the grievance is GRANTED and that the grievant be reclassified as Custodian IV.

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:

January 13, 1987