

**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD****ARCH A. MOORE, JR.**  
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Telephone: 348-3361**DAVID DEEMS, et al.****v.****Docket No. 17-86-253-3****HARRISON COUNTY BOARD OF EDUCATION****DECISION**

Grievants herein, David Deems, Mae Clevenger, Michael Beech and Lloyd Johnson are all employed as custodians by the Harrison County Board of Education. On or about August 25, 1986 grievants filed a level four appeal containing no statement of their grievance issues. The filings indicated that the procedural requirements had been met and that grievants wished to submit the matter for decision on the record. A transcript of the July 18, 1986 level two proceedings was received on February 5, 1987 but no written waiver of a level four evidentiary hearing was submitted by either party. Accordingly, the case was set for hearing on April 2, 1987; however, the board made no appearance by agent or counsel. After a telephone call to the board offices it was determined that counsel for the board of education had not been copied the hearing notice. Counsel for the grievants moved

that the matter not be rescheduled for hearing but be decided upon the record. The motion was granted by Order dated April 15, 1987 and no objection was filed thereto by the board. Counsel for grievant submitted proposals on May 21, 1987 and the board submitted proposals July 2, 1987.

This grievance was originally filed as two separate grievances at level two and was consolidated by the board of education primarily because each grievance contained one common issue. Each grievance also dealt with a singular issue. Grievants Lloyd Johnson and Michael Beech allege that their summer employment had been taken over by enrollees of the Governor's Summer Youth Program (GSYP). Moreover, they allege the board had wrongfully placed less senior employees in temporary custodial positions from June 18, 1986 through July 2, 1986.

Grievants David Deems and Mae Clevenger also allege that enrollees of the GSYP had taken over their summer employment on the grass crew. Additionally, they allege that the board's action extending the 200 day contracts of custodians at the Kelly-Miller Building to 240 days without posting the jobs violated W.Va. Code, 18A-4-8b.

Grievant Issue One: Summer Employment-Grass Cutting

The board of education has participated in the GSYF for approximately 15 years. In the summer of 1986 the board was allotted 20 positions, two fewer than it was allotted in 1985. Funding for GSYF comes from the state and involves no expenditures from the board's budget. All of these grievants were employed as 200-day regular custodians at the time the grievance was filed. In past summers they were employed during the summer months on the grass cutting crew as general maintenance employees. On May 28, 1986, prior the state's notice of GSYF allotment to the board, the custodial staff was informed that summer employment would not be available primarily due to budgetary problems created by a reduction in operating revenues, thus the grievants were not hired for summer work in 1986.

Grievants claim that the GSYF crew displaced county service personnel who were entitled to the work. They liken the board's action to having hired independent contractors to perform work in areas in which the legislature had provided classification titles. Grievants argue that the jobs must be filled in a traditional manner by board employees.

The board argues that the grievants herein who previously worked during the summer may be given preference with respect to summer vacancies but such employees do not have continuing contract status with respect to temporary summer employment. Moreover, it argues, temporary summer employment was always contingent upon need for services and available financial resources to pay employees and there were no vacancies for grass crews for the summer of 1986.

Grievant Issue Two: Four Temporary Summer Custodial Positions

Grievants Johnson and Beech felt they had been unjustly denied employment for temporary summer custodial positions from June 19 through July 2, 1986, a period in which the temporary positions were posted. They allege the school board should have known in advance of June 18 that the positions would be needed and that the positions should have been posted earlier so that senior employees could have had the work June 19 through July 2, as well as thereafter.

The board states that it had originally anticipated using only 12 month employees to provide necessary maintenance services during the summer months of 1986. Because of an unanticipated starting delay, the 12 month employees at four schools were subsequently assigned to a construction project at another school

and had to be kept there in order that construction deadlines be met. The board of education met June 18 and created four positions for summer employment at the affected schools which the 12 month custodians had vacated for the construction project.

Grievant Issue Three: Extension of Custodial Contracts

Grievants Deems and Clevenger allege that the board's action extending the 200 day contracts of the custodians at the Kelly-Miller Building to 240 days without posting the jobs violated W.Va. Code, 18A-4-8b. The grievants contend that extension of a contract period by 40 days is tantamount to creating a new position and that the new position must be posted.

By way of explanation the board states that at the time the grievance was filed, it had just completed its move into its new administrative complex known as the Kelly-Miller Building. Prior to completion of the building the board had employed one 12 month, 240 day custodian and two 10 month, 200 day custodians at Kelly-Miller. All three custodians were needed year round after the building became completely operational in order to provide necessary custodial and security services at the building on a full-time basis.

The board contends that job vacancies were not created and that W.Va. Code, 18A-4-8 empowers a county board of education to contract with all or part of its personnel for a longer term than a 10 month employment period. Accordingly, the board renegotiated the employment term of two of its custodians located at the Kelly-Miller Building from 200 day terms to 240 day terms.

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

#### FINDINGS OF FACT

1. Grievants David Deems, Mae Clevenger, Lloyd Johnson and Michael Beech were all 200 day custodians during the 1985-86 school year.

2. Grievants had had summer employment on grass cutting or maintenance crews in previous years. In 1986 the board of education did not have the financial resources to hire 200 day custodians for the summer grass cutting or other similar duties but instead utilized the work crew provided by the GSYF at no cost to the board.

3. The board posted four temporary summer custodial positions on June 19, 1986 and employed substitutes to fill the positions until the temporary custodians could be hired. The posting period was from June 23 through June 27, 1986 and the positions were filled on July 2, 1986. Grievants herein have not established that the school board knew or could have known in advance of June 18, 1986 that the four positions would be needed.

4. After completing its move into the Kelly-Miller facility the board extended the contracts of two of its custodians from 200 days to 240 days in order to provide year round custodial service. Grievants herein have failed to establish that the extension of the custodians contracts constituted newly created positions.

#### CONCLUSIONS OF LAW

1. County boards of education are authorized to employ service personnel as are necessary to meet the needs of the school system. W.Va. Code, 18A-4-5.

2. The grievants herein have failed to prove a need for the board to employ a summer grass crew for the summer of 1986 or that the board of education knew it would need four custodians in advance of June 18, 1986.

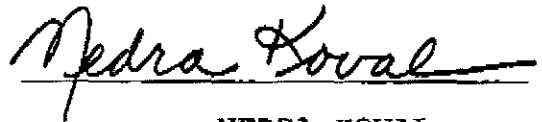
3. Grievants have failed to prove that the renegotiation of the terms of an employee's contract, to provide necessary services, is a violation of law, regulation or policy.

4. In this instance, the board of education may renegotiate and extend an employee's contract without posting when the employee has been performing the duties of the position and was needed to perform those services over a longer period of time. Dale G. Stevens v. Wayne County Board of Education, Docket No. 50-86-294-1.

Accordingly, this grievance is **DENIED** in its entirety.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Harrison 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: November 20, 1987



NEDRA KOVAL  
Hearing Examiner