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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
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DORIS DICKERSON

v.

Docket No. 50-87-025-1

WAYNE COUNTY BOARD OF EDUCATION

DECISION

Grievant, Doris Dickerson, is employed by the Wayne County Board of Education and classified as a Custodian II at Kellogg Elementary School. On November 24, 1986, she filed a grievance alleging "favoritism" and seeking to be reclassified as a Custodian III; a level two evidentiary hearing was conducted on January 9, 1987. On February 3 she appealed to the Education Employees Grievance Board and an evidentiary hearing was conducted on June 22, 1987.¹

¹ The transcript of evidence of the level two hearing was admitted at level four and will be referred to herein as (T. ___).

At level four the school board offered the testimony of Kenneth Adkins, principal of Kellogg Elementary School, and additional testimony of grievant.

Grievant began her employment as a custodian at Kellogg Elementary School on December 9, 1971, and presently works the 2:00 p.m. to 10:00 p.m. shift along with Ray Bailey, a Custodian III, and a half-time custodian, Teresa Wheeler (T. 6,7).² Grievant is responsible for the east side of the school building and the cleaning of nine classrooms, a hallway and eight or nine bathrooms; Mr. Bailey has the same responsibility on the west side (T. 8). In addition to these cleaning duties grievant testified that she mounted pencil sharpeners, checked the thermostat at night before leaving, changed light bulbs, used a plunger on the drains and had been performing these duties since the classification system began in 1975 (T. 9,10,12,16).³

² Grievant's husband, Willard, is employed as a Custodian II at Kellogg and works the 6:00 a.m. to 2:00 p.m. shift; Ms. Wheeler works from 3:00 p.m. to 6:30 p.m.

³ Sometime in early 1987 a new school building was completed and it is not clear from the evidence which chores grievant alleges were done at the old school and those done at the new school except the repairs to the old wooden banisters. More specifically, at level two she stated she didn't put filters in the heating system because she wasn't a Custodian III (T. 16); at level four she stated she changed the filters in the air conditioning units in the new school rooms.

Counsel for the school board contends that under the evidence in this case grievant is more properly a Custodian I rather than a Custodian II.

Grievant contends there has been "favoritism" in the selection of employees who have been reclassified but acknowledges that several years ago the school board commenced a program at the vocation school whereby custodians could attend the school and become qualified for reclassification as a Custodian III; that Ray Bailey had attended the school but that she had been off work with a fractured ankle and could not attend. She stated that the principal, Kenneth Adkins, had requested that she be made a Custodian III and if anyone was to be reclassified it should be her.⁴

Kenneth Adkins has been principal of Kellogg Elementary School for twenty five years and testified that each custodian has a job description sheet signed by him and the superintendent. The job

⁴ In the grievance she had stated that during her fourteen years her co-workers and other service personnel had been promoted to a higher classification and there was "favoritism." However, there was no direct evidence of any "favoritism" at level two and at level four only one instance testified to by grievant, i.e., a cook at Kellogg, Ms. Adkins, who came to work after grievant, had been reclassified a Cook III.

It appears that the claim for back pay to 1975 or before would be barred by the doctrine of laches. Maynard v. Wayne County Board of Education, 357 S.E.2d 246 (W.Va. 1987).

description for grievant lists the following duties:

1. 2:00 On Duty.
2. 2:00 - 3:00 P.M. Get equipment ready.
3. 3:00 -10:00 P.M. Clean all of east building, 3 new class rooms first floor and $\frac{1}{2}$ of hallways, office, lounge
4. 4:00 - 4:20 P.M. Break
5. 6:00 - 6:30 P.M. Lunch
6. Clear walks, steps, etc. of ice and snow.
7. See attached schedule for general guidelines for custodial service.
8. 10:00 P.M. Off Duty.

(Employer's Exhibit 3)⁵

Mr. Adkins went over these duties with grievant and she understood that she would have no responsibility to operate the heating and cooling system other than to set the thermostat. He did not expect grievant to do repairs at the school and when something needed repairs she was to report it to him so he could have the

⁵ On the list of duties on the attached sheet it is noted that the custodians should report to the principal any needed repairs or problems encountered in their area.

When they moved into the new building the job description was revised on April 20, 1987.

maintenance department do the repair.⁶ He was not aware that grievant made minor repairs on the stairway at the old school but expected all custodians to change the filters in the air conditioning units and light bulbs.⁷

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 by the Wayne County Board of Education as a Custodian II and is assigned to Kellogg Elementary School.

2. On November 24, 1986, she filed a grievance alleging "favoritism" because other less senior employees at the school had been reclassified to higher positions; however, there is no probative evidence that the school board or school officials engaged in "favoritism" as defined by W.Va. Code, 18-29-2(o).

⁶ He acknowledged that he had written to the school board recommending that grievant be reclassified as a Custodian III but explained that at the time grievant's husband had been off work for surgery and he wanted a Custodian III on the day shift. (Joint Exhibit 1).

⁷ Counsel for the school board tendered an opinion of the State Superintendent dated March 4, 1985, concluding that changing filters in a heating and air conditioning system appeared to be work comprehended in the definition of a Custodian II. This interpretation is considered as persuasive authority unless clearly wrong. Smith v. Logan County Board of Education, 341 S.E.2d 685 (W.Va. 1985).

3. The probative evidence is that approximately four years ago the Wayne County Board of Education sponsored a class to train present employees to become eligible for Custodian III classification by teaching them to make repairs; this class was offered to all custodial employees. All of the employees who successfully completed the training were reclassified as a Custodian III and since then the school board has attempted to maintain one Custodian III at each school. Ray Bailey, the Custodian III at Kellogg Elementary School, completed the course and the custodial staff at the school is considered adequate by the school board. There has been no showing that this decision was arbitrary or capricious.

4. Changing of filters on a heating and air conditioning system and other infrequent chores performed by grievant are routine duties expected of a Custodian II as defined by W.Va. Code, 18A-4-8.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-8 defines Custodian II as "personnel employed as a watchman or groundsman." "Watchman" is defined as "personnel employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties." "Groundsman" means "personnel employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system.

Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings."

2. W.Va. Code, 18A-4-8 defines Custodian III as personnel employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs.

3. Grievant has failed to prove by a preponderance of the evidence that she performs the duties of a Custodian III as a matter of law.

Accordingly, the grievance is DENIED.

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