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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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EDITH HARRISON

v.

Docket No. 20-86-219

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Edith Harrison, is employed by Kanawha County Schools as a Custodian III assigned to Alban Elementary School in St. Albans. On May 5, 1986, she filed a grievance alleging that she had performed the duties of a Custodian IV since June, 1974, and should be re-classified in accordance with W.Va. Code, 18A-4-8 and awarded back pay. A level two hearing was conducted on June 4, 1986, and appealed to the Education Employees Grievance Board; a level four evidentiary hearing was conducted on March 11, 1987.¹

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This grievance was one of eight grievances consolidated for hearing at level two and which was originally to be submitted on the combined record. The transcript of the level two hearing of the eight grievances was filed in the office of the Education Employees Grievance Board on February 4, 1987, and an evidentiary hearing was scheduled at the request of counsel for grievant.

On March 11, 1987, the testimony of grievant and the Custodian I at the school, Madeline Johnson, was taken and the grievance was then submitted to the hearing examiner on that evidence and the level two transcripts. (T. __).

Grievant has served as the full time custodian at Alban Elementary School for twelve years and works the 6:30 a.m. to 3:15 p.m. shift this school year. A half time Custodian I, Madeline Johnson, is also employed at the school and works the 2:50 p.m. to 6:20 p.m. shift this school year. The schedules of grievant and Ms. Johnson overlap approximately fifteen minutes and grievant contends that during that period she supervises the duties of Ms. Johnson. At the level two hearing grievant testified that as of April, 1986, she could recall no specific instance that she directed Ms. Johnson to perform a particular duty other than to advise that she check that the windows were locked each evening. (T. 28).²

At the level four hearing grievant reiterated the testimony that she requested Ms. Johnson to ascertain that the windows were locked prior to her departure each day and added that she would also inform Ms. Johnson of any complaints she might have received from the teachers as to cleanliness of the classrooms; that she

² Throughout these proceedings counsel for the board of education objected to testimony of incidents of alleged supervision which occurred over fifteen working days prior to the date of filing of the grievance as time barred and to similar evidence allegedly occurring since the filing of the grievance. (e.g., T. 27). Counsel for grievant contends that it was a continuing practice and almost daily occurrence. Due to the disposition of this case on the merits it is unnecessary to resolve the timeliness issue.

Counsel for the board had stipulated at level two that grievant performed all the duties of a Custodian III so the evidence was accordingly directed to the "supervisory" duties. (T. 29).

would instruct Ms. Johnson the hours to report for work on snow days.³

Madeline Johnson testified that she and grievant would discuss the items that had been done and needed to be done and that the principal would also inform her on a daily basis when things needed to be done. Otherwise, Ms. Johnson adhered to a work schedule which was in place at the time she was employed.

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.⁴

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Grievant testified that all of these directions were given orally and there was no documentary evidence reflecting grievant's alleged status as head custodian. However, she observed that Ms. Johnson knew her duties quite well and she didn't have to tell her too much. (T. 28).

Kanawha County School Job Description for a Custodian III appears to contemplate training a new employee and serving as the primary custodian in small facilities. (Employer's Exhibit 2, level two transcript).

⁴ Several grievances of this nature have been decided by the Education Employees Grievance Board and each case has been decided upon its own merits. See, e.g., Connie Casto, Rebecca Bowling & Julia Smith v. Kanawha County Board of Education, Docket Nos. 20-86-014, 015, 016; Minnie Lou Clark v. Kanawha County Board of Education, Docket No. 20-86-205-1; Mary Davis v. Kanawha County Board of Education, Docket No. 20-86-204-1.

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 Alban Elementary School and works the 6:30 a.m. to 3:15 p.m. shift.

2. A half time Custodian I is also employed at the school and works the 2:50 p.m. to 6:20 p.m. shift.

3. Grievant and the Custodian I discuss generally the work which needs to be done during the period of overlap in their schedules and the principal of the school also requests certain chores to be performed by the Custodian I.

4. Grievant instructs the Custodian I to check the windows each day and on occasion advises the Custodian I when to report for work on snow days. The Custodian I has a fixed schedule, however, and needs very little, if any, supervision.

5. Grievant performed the duties of a Custodian III and functioned within the scope of the job description of a Custodian III adopted by Kanawha County Schools. Grievant did not function as the head custodian at Alban Elementary School.

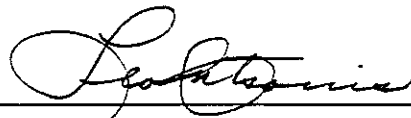
CONCLUSIONS OF LAW

1. In the grievance proceeding it is incumbent upon the grievant to prove the elements of the grievance by a preponderance of the evidence.

2. Grievant failed to prove that she was employed as head custodian at Alban Elementary School and otherwise failed to prove the essentials of her grievance. Paul Smith v. Kanawha County Board of Education, Docket No. 20-86-277.

The grievance is accordingly DENIED.

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: April 6, 1987