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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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RICHARD E. LALONDE

v.

Docket No. 20-86-260-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Richard E. Lalonde, is employed by Kanawha County Board of Education as a Custodian III, assigned to Loudendale Elementary School. On June 30, 1986, he filed a grievance alleging that he should be reclassified as a Custodian IV, with an effective date of December, 1984. A level two hearing was conducted on July 30, 1986, and the decision appealed to level four on September 2, 1986; a level four evidentiary hearing was conducted on March 11, 1987.¹

¹ Several hearings were scheduled and continued by counsel for the parties beginning in December, 1986; the transcript of evidence was filed in the office of the Education Employees Grievance Board on March 19, 1987. References to the transcript herein will be made as (T.____).

Grievant has been assigned to Loudendale Elementary as a full time Custodian III for three years and works the 8:00 a.m. to 4:00 p.m. shift. He testified that recently there had been a few Custodians III that had been reclassified as Custodians IV and he was performing the same duties that those custodians had performed. (T. 4). He allegedly supervised a half time custodian, Laura Clark, by leaving her notes or explaining to her the work that needed to be done. (T. 5).² Most of these instructions were oral and he acknowledged that any supervision of Ms. Clark by him was not done at the direction of the building principal.³

Ms. Clark had been employed as a half time custodian at Loudendale Elementary since October 20, 1985, but was not employed at the school during the summer of 1986. She testified that grievant was generally at the school when she arrived and if there was a problem grievant would inform her of it. However, she could not recall any specific instance in the spring of 1986 that grievant had instructed her as to her work assignments and stated that she had a set schedule to follow. The principal had not advised her that grievant was the head custodian or her supervisor but on occasion she did request grievant to show her how to operate cleaning equipment.⁴

² At the level two hearing he was of the opinion that Ms. Clark came to work at 6:30 p.m. (T.5) but at the level four hearing he testified that she worked the 4:00 p.m. to 7:30 p.m. shift.

³ He could not recall specific instances that he supervised Ms. Clark other than during accreditation in December, 1986, when he told her to dust; on another occasion he told her the halls needed scraped.

⁴ She recalled one instance in May, 1986, that, at her request, grievant had instructed her how to use the buffer on the floors.

Counsel for grievant contends that it is the duty of the board of education to reclassify annually those custodians whose duties involve those of a head custodian and that supervision of other custodians is not the determinative factor; that it is only one of the factors.

Counsel for the board denies that grievant performs the duties of a head custodian and has not identified any incident or "event" of supervision within fifteen days of the filing of the grievance; that the grievance is untimely.⁵

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.

⁵ Counsel also contends that grievant read a memorandum from Superintendent Acord in September, 1985, that Custodians III were not to supervise Custodians I. (T. 6). See, Mary L. Davis v. Kanawha County Board of Education, Docket No. 20-86-204-1; Minnie Lou Clark v. Kanawha County Board of Education, Docket No. 20-86-205-1.

FINDINGS OF FACT

1. Grievant has been employed for three years as full time Custodian III at Loudendale Elementary School. He works the 8:00 a.m. to 4:00 p.m. shift.

2. A Custodian I, Laura Clark, is also employed as a half time custodian at the school and generally reports to work at 4:00 p.m. and works until 7:30 p.m.

3. Grievant gave Ms. Clark occasional and sporadic instructions or messages concerning cleaning tasks that needed to be performed at the school but grievant did not function as the head custodian at the school with any type of official approval.

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. Edith Harrison v. Kanawha County Board of Education, Docket No. 20-86-219.

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

Accordingly, the grievance is 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 4, 1987