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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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CURTIS L. MEEKS

v.

Docket No. 20-87-016-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Curtis L. Meeks, is employed by the Kanawha County Board of Education as a Custodian IV at Roosevelt Junior High School. He applied for a Custodian IV position at South Charleston High School and filed a grievance when another employee was selected. A level two evidentiary hearing was conducted on December 11, 1986, and appealed to the Education Employees Grievance Board; an evidentiary hearing was scheduled on June 24, 1987, and the grievance thereafter was submitted on the record.¹

¹ The hearing at level four was continued on the joint motion of the parties to prepare the transcript of evidence of the level two hearing. The transcript was filed on June 24 and the grievance submitted to the hearing examiner on the transcript and memoranda of the parties. References to the transcript will be designated as (T.____).

Grievant commenced employment with Kanawha County Schools at South Charleston High School as a Custodian I in 1981. Thereafter, he was assigned to the Crede facility and reclassified as a Custodian III; he remained in that position for two and one half years (T. 6). He served at Dunbar Junior High School before bidding upon his previous job as Custodian IV at Roosevelt Junior High School, where he has been for two years (T. 7).

In the fall of 1986 a Custodian IV vacancy occurred at South Charleston High School and grievant applied; when another employee was awarded the position grievant was told by the then principal, Mrs. Petry, that it was because of "something in my files that they could terminate me over" (T. 9).

Mr. Alan Harrison, the present principal of South Charleston High School, testified that when the Custodian IV resigned he contacted the personnel office, the position was posted and he interviewed the most senior applicant and selected her for the position. After approximately ten days she resigned and he again contacted the personnel office for directions. He was advised that the position did not have to be readvertised because there were three other applicants for the position; he interviewed those three applicants, one of whom was grievant (T. 12).² Thereafter, Mr. Harrison selected Francis Casto, the least senior applicant.

² In order of seniority was grievant, then Cecil Davis, a Custodian I at South Charleston High School and Francis Casto, a Custodian III at Nitro High School.

According to the principal the selection was based upon the comparative evaluations of grievant and Mr. Casto and the personal interviews, at which grievant made the following unacceptable response to an inquiry:

...in the interview the question to Mr. Meeks about supervising employees in the building to provide the cleanest facility for the students, I asked him how he would do that and he said he would talk to them...inspect, talk to them and then come to me. And, he mentioned twice that he had a family and he needed the job and he wasn't going to get into any problems over supervising employees (T. 15).³

Grievant disagrees with the principal's account of his response and testified that:

...I was asked by Mr. Harrison how I would plan to get the staff to do work and what I said to him was that I would probably go to them at least twice and try to work it out between myself and the employee. I would be the least senior person there and I've worked with them before and they do good work. And, what I said was that there wasn't a job that couldn't be asked that we couldn't get done...And, what I said was that if we couldn't work it out, at least me trying twice, that I would approach Mr. Harrison and inform him that I needed a little bit of help or would like him to handle it (T. 20).

³ Mr. Harrison stated that Mr. Casto responded by saying he would inspect and rearrange work schedules and only as a last resort come to the principal for assistance (T. 18).

Apparently, this was a legitimate inquiry in view of grievant's previous low ratings in the area of supervisory skills.

Counsel for the grievant contends that W.Va. Code, 18A-4-8b sets three criteria, i.e. seniority, qualifications and evaluations of past experience; that the order of those factors is of no significance and should all be equally weighed. Notwithstanding, it is contended that the negative evaluations should either not have been considered or otherwise have prejudiced grievant and that he should have been selected on the basis of seniority (T. 4, 21).⁴

Counsel for the school board contends that Mr. Casto received far superior evaluations than grievant and, when considered with the personal interview, permitted the principal to select Mr. Casto over grievant.

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

⁴ Counsel for grievant also cites Dorsey v. Nicholas County Board of Education, Docket No. 34-87-041-4, for the proposition that interviews are subjective and that objective criteria must be used in determining qualifications of an employee.

In Dorsey a committee interviewed each applicant, who was graded in four categories. However, in the area of "job related work skills" there was no objective means employed and this factor, along with the preferential factor given to a substitute employee over a regular employee, vitiated the selection process. Accordingly, the Dorsey grievance is inapposite.

FINDINGS OF FACT

1. Grievant is employed as a Custodian IV at Roosevelt Junior High School; he has worked as a custodian since 1981.

2. In the fall of 1986 he applied for a Custodian IV position at South Charleston High School along with three other applicants.

3. Mr. Harrison, the principal at South Charleston High School, examined the evaluations of the applicants and conducted personal interviews before selecting Mr. Francis Casto, a Custodian III at Nitro High School, for the position.

4. The 1985 evaluation submitted by the parties is partially illegible but that portion which is legible reveals eleven unsatisfactory ratings, an overall appraisal of grievant's performance as unsatisfactory and a recommendation against continued employment.

5. The 1986 evaluation contains nine unsatisfactory ratings and among the improvement programs to be undertaken by grievant during the next evaluation period were the following:

- a. To assume the responsibilities of a head custodian
- b. To increase the productivity of the custodial staff
- c. To clean the school and show more initiative
- d. To fulfill duties as head custodian
- e. To improve supervisory skills

6. These evaluations are consistent with the response made to the principal's inquiry during the personal interview and demonstrates a lack of supervisory skills required by a Custodian IV. The personal interview was not the determining factor in grievant's nonselection but was considered in the overall selection process.

7. The evaluations of the applicant selected, Francis Casto, were far superior to those of grievant and justified selection of Mr. Casto in preference to grievant irrespective of the responses at the personal interviews.

CONCLUSIONS OF LAW

1. Grievant has failed to demonstrate a violation of W.Va. Code, 18A-4-8b as a matter of law.

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: *July 31, 1987*