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LEONARD NIDA

v.

Docket No. 06-86-364-1

CABELL COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Leonard Nida, is employed by the Cabell County Board of Education as a Custodian IV assigned to Pea Ridge Elementary School. On October 8, 1986, he filed a grievance alleging that his seniority rights had been violated when a position at another school was extended to a twelve month term and was not posted, depriving him of the opportunity to bid for the assignment. The grievance was denied following a level two hearing held on October 27, 1986 and the Cabell County Board of Education waived consideration to level four. Both parties agreed to submit the matter for decision based upon the record supplemented with closing oral statements and proposed findings of fact and conclusions of law.<sup>1</sup>

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<sup>1</sup>The grievant declined to offer proposed findings and conclusions at level four, the respondent's proposals were received April 23, 1987.

The grievant has been employed by the Cabell County Board of Education for the past fourteen years and presently is assigned as head custodian at Pea Ridge Elementary School. In July, 1986 the position of custodian at Merritts Creek Elementary School was changed from Custodian III to Custodian IV. The grievant argues that this reclassification significantly altered the job description so as to create a new position which is to be posted and filled on the basis of seniority.

The respondent alleges that there was no newly created or vacant position and that the reclassification was a result of the annual review which indicated the change was needed to make the position at Merritts Creek School consistent with other positions throughout the county. Donna Ross, the sole custodian at that school had been performing the duties of a Custodian IV and had worked on a twelve month basis for several years.

In addition to the foregoing it is appropriate to made the following specific findings of fact and conclusions of law.

#### Findings of Fact

1. Grievant has been employed by the Cabell County Board of Education for the past fourteen years and presently is assigned as a Custodian IV at Pea Ridge Elementary School.

2. In July, 1986 the sole custodial position at Merritts Creek Elementary School was reclassified from a Custodian III

position with a two hundred day employment term to a Custodian IV position with a two hundred sixty-one day employment term.

3. Prior to the reclassification the individual who held that position had been performing the duties of a Custodian IV and had worked on a twelve month basis with supplemental summer contracts.

4. The reclassification of the position at Merritts Creek School to Custodian IV is consistent with other positions throughout the county.

5. The same individual remains as custodian at Merritts Creek School and no additional custodial positions have been added at that location.

#### Conclusions of Law

1. W. Va. Code, 18A-4-8b provides that county boards shall review each service personnel employee job classification annually and to reclassify all such employees as required by job classifications. Connie Casto v. Kanawha County Board of Education, Docket No. 20-86-014 and Dale G. Stevens v. Wayne County Board of Education, Docket No. 50-86-294-1.

2. The upgrading of an existing position does not constitute a newly created or existing vacancy as contemplated by W.Va. Code, 18A-4-8b.

3. It is incumbent upon the grievant to prove the elements of the grievance by a preponderance of the evidence. Robert L. Young v. Kanawha County Board of Education, Docket No. 20-87-210-1 and Rosella Damron v. Mingo County Board of Education, Docket No. 29-86-250-4.

4. Grievant has failed to prove the essential elements of the grievance as a matter of law.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Cabell 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 May 28, 1987

Sue Keller

SUE KELLER  
Hearing Examiner