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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
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ROBERT L. YOUNG

v.

Docket No. 20-87-210-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Robert Young, is employed by the Kanawha County Board of Education as a Custodian III assigned to Mound Elementary School in Dunbar. On May 28, 1986, he filed a grievance alleging that he should be reclassified as a Custodian IV in accordance with W.Va. Code, 18A-4-8 and awarded back pay from 1983 because he had performed the duties of a Custodian IV. A level two hearing was conducted on June 4, 1986, and the decision appealed to level four on June 29, 1986; a level four evidentiary hearing was conducted on April 7, 1987.¹

¹ This grievance was one of eight grievances consolidated for hearing at level two and which was originally to be submitted to the hearing examiner on the consolidated record. The transcript of the level two hearing was filed in the office of the Education Employees Grievance Board on February 4, 1987, and an evidentiary hearing was scheduled and continued until April 7, 1987, by counsel for grievant.

On April 7, 1987, the testimony of the grievant and Carroll Haynes, the Custodian I at Mound Elementary, was taken and the grievance was submitted to the hearing examiner on that evidence and the level two transcript (T.___).

Grievant has served as the full time custodian at Mound Elementary for approximately three years and prior thereto was assigned to Ruffner Elementary as a Custodian I; he has a total of ten years service with the school board. During the 1985-86 school year grievant worked the 7:00 - 3:00 shift and Ms. Effie Beard, a part time custodian, worked the 3:00 - 6:00 shift. Ms. Beard retired on March 28, 1986, and a substitute custodian, Carroll Haynes, worked on a substitute basis until August when he was employed as a regular, part time Custodian I (T. 54).

Grievant contends that commencing in April, 1986, he supervised the work activities of Mr. Haynes and he was therefore entitled to be reclassified as a Custodian IV. More specifically, he testified that he had directed Mr. Haynes to check the windows before he left work (T. 55) and on one occasion to clean the kindergarten restroom because a teacher had made a complaint that it was unclean; on another occasion he requested Mr. Haynes to cut the grass near the parking area because grievant did not have time and because cars were present during the day (T. 57). However, in each instance, grievant stated that he first went to the principal, Lewis Elliott, and that Mr. Elliott had instructed grievant to inform Mr. Haynes to perform these assignments.

Carroll Haynes, the Custodian I at Mound Elementary, testified that last school year he worked from 2:45 to 6:00 p.m. and 5:50 to 10:00 p.m. this school year. This witness did not corroborate the testimony of grievant as to the supervisory communications

and stated that occasionally grievant would request that he perform some chore. However, he did not consider grievant to be his supervisor and stated unequivocally that Mr. Elliott, the principal, was his supervisor.²

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.³

² On cross examination grievant acknowledged that Mr. Haynes had a detailed schedule to follow and regular directives were unnecessary. In fact, grievant also had a chronological, detailed schedule prepared by Mr. Elliott which outlined grievant's duties in fifteen minute intervals. (Grievant's Exhibit No. 1).

In September, 1986, Mr. Haynes' schedule was changed so that his work hours commenced at 6:00 p.m. Accordingly, grievant had no personal contact with him but alleges he left a note on one occasion. (Grievant's Exhibit No. 2). However, again, the note was prepared by grievant at the direction of the principal.

³ 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 Mound Elementary School and works the 7:00 a.m. to 3:00 p.m. shift.

2. A half time Custodian I is also employed at the school and worked the 2:45 p.m. to 6:00 p.m. shift during the period in question.

3. At the direction of the principal grievant has requested the Custodian I to perform certain work assignments but the principal supervises the custodians at Mound Elementary School, not grievant.

4. Grievant has instructed the Custodian I to check the windows and on occasion advised the Custodian I as to a certain chore but the Custodian I has a fixed schedule 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 Mound 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 he was employed as head custodian at Mound 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: May 22, 1987