



REPLY TO:
101 Harper Park Drive
Suite D
Beckley, WV 25801
Telephone: 255-6155

Members
James Paul Geary
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone: 348-3361

JUDY ANN DAY

v.

DOCKET NO. 55-87-289-4

WYOMING COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Judy Ann Day, is employed by the Wyoming County Board of Education as a substitute custodian and she entered into those duties on February 19, 1986, when Ms. Mary McNew, a regular employee assigned to Glen Rogers High School, took a leave of absence. Grievant continued filling in for the regular custodian until September 23, 1987. Ms. McNew bid on and received a position as an aide and began in that assignment on August 27, 1987. The custodian position at Glen Rogers was then posted on September 3, 1987 and the job was awarded to Lottie Cook, a regularly employed custodian.

Ms. Day filed a grievance alleging she had more seniority than Ms. Cook since she had achieved regular employee status while serving in the custodian position and that seniority should have given her preference for the position. A Level II hearing was

held and a decision adverse to the grievant was rendered October 16, 1987 and the Board waived Level III proceedings on November 2, 1987. A Level IV hearing was held on December 15, 1987.

There is no factual dispute in the case and the parties offer differing interpretations of W.Va. Code, 18A-4-15 and 18A-4-8b (b) as it applies to the present grievance. Ms. Mary McNew, custodian, took a leave of absence beginning February 19, 1986 and grievant, a substitute custodian, was assigned to fill in for her. Apparently the leave of absence was to be much longer than first determined and Ms. McNew did not return to work in her former position but instead bid on and received another position in August 1987. Grievant actually worked in the custodian position from February 19, 1986 until September 1987 when she was told the position had been awarded to Ms. Lottie Cook.

It is the position of the grievant that since she worked in the custodian job past thirty (30) days, she was accorded all rights, privileges and benefits of regular employees in accordance with W.Va. Code, 18A-4-15(2). She further contends this regular employee status entitled her to the position when she bid on it because her seniority as such was greater than that of Lottie Cook. The Board admits grievant did achieve regular employee status but this status ended when Ms. McNew returned and took another job and W.Va. Code, 18A-4-8b(b) required it to fill the position in accordance with the order contained therein.

The question posed is whether W.Va. Code, 18A-4-15(2) and its requirement that substitute service personnel filling a position over twenty days be given regular employee status by its terms gives that employee seniority as a regular employee and hence, preference over less senior applicants when the job is eventually posted. While this section of the W.Va. Code clearly grants the substitute regular employee status after he or she has held the position for twenty days, there is the proviso that the position be filled on a regular basis in accordance with procedures set forth in W.Va. Code, 18A-4-8b. If the meaning and intent of W.Va. Code, 18A-4-15(2) were to give substitutes regular employee seniority while serving in another employee's absence, the proviso and its reference to W.Va. Code, 18A-4-8b(b) would be rendered meaningless, Cline v. Mingo County Board of Education, Docket No. 29-86-287-4; Gibson and Bradford v. Wyoming County Board of Education, Docket No. 55-87-060-4, as the position would already be held by a regular employee. Moreover, there is nothing in the language of the remaining portions of W.Va. Code, 18A-4-15 pertaining to substitute seniority which indicates substitutes accrue a different type of seniority when they fill in for an absent employee for twenty days or more.

In addition to the foregoing, the following findings of fact and conclusions of law are made.

FINDINGS OF FACT

1. Grievant is employed as a substitute custodian by the Wyoming County Board of Education and entered into those duties on February 19, 1986 filling in for Ms. Mary McNew, a regular custodian at Glen Rogers High School who had taken a leave of absence from her duties.

2. Grievant substituted for the regular custodian from February 19, 1986 until September 23, 1987 and she was granted regular employment status after serving in that position for thirty days.

3. The regular custodian, Mary McNew, did not return to the job but bid on and received a position as an aide in August 1987.

4. The custodian position at Glen Rogers High School was then posted on September 3, 1987 and awarded to Lottie Cook, a regularly employed custodian.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-15(2) requires a school board to give regular employee status to a substitute hired to replace a regular employee on leave of absence with twenty working days if

the leave of absence is to extend beyond thirty days.

2. W.Va. Code, 18A-4-15(2) gives such regular employee status only until the regular employee is returned to said position and in the event the regular employee does not return, the position must be filled in accordance with the hiring provisions of W.Va. Code, 18A-4-8b(b).

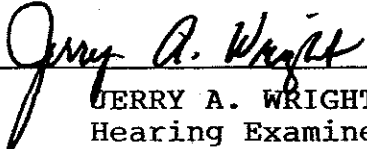
3. W.Va. Code, 18A-4-8b(b) requires school boards to give first consideration to regularly employed service personnel in the filling of vacancies.

4. A substitute custodian filling in for a regularly employed custodian acquires regular employee status but does not accrue seniority as a regular employee but as a substitute custodian. See generally Cline v. Mingo County Board of Education, supra; Gibson and Bradford v. Wyoming County Board of Education, supra.

5. The Wyoming County Board of Education followed the requirements of W.Va. Code, 18A-4-15(2) in granting grievant regular employee status within thirty days of her assumption of the duties of the absent regular custodian and the requirements of W.Va. Code, 18A-4-8b(b) when it awarded the custodian position to Ms. Lottie Cook, a regularly employed custodian.

Accordinlgy, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Wyoming County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of said decision. (W.Va. Code, 18-29-7). Please inform this office of your intent to do so in order that the record can be prepared and transmitted to the Court.


JERRY A. WRIGHT
Hearing Examiner

DATED: January 26, 1984