



REPLY TO:
407 Neville Street, Suite 120
Beckley, WV 25801
Telephone: 256-6855
ON NET: 557-6855

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

**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
GASTON CAPERTON
Governor

Offices
240 Capitol Street
Suite 515
Charleston, WV 25301
Telephone 348-3361

BETTY MARTIN

v.

Docket No. 89-10-110

FAYETTE COUNTY BOARD OF EDUCATION

DECISION

Grievant, Betty Martin, is employed by the Fayette County Board of Education (Board) as a Custodian I assigned to Gauley Middle School. She and Ms. Rose McClung, another custodian, filed a grievance at Level I on December 16, 1988 alleging:

We feel that we should have been changed from Custodian I's to the Custodian II position when we received the memorandum from Wayne Wriston that we were being changed to night duties for security purposes.

Their supervisor found that she was without authority to grant the relief requested and, upon appeal to Level II, a hearing was held January 17, 1989. The hearing evaluator at that level denied the grievance because of the failure of the grievants to timely file and/or establish entitlement to the relief

requested.¹ At Level III the Board voted to uphold the Level II decision and an appeal to Level IV was made March 22, 1989. The parties subsequently agreed that a decision could be made on the record developed at Level II (T2). The record was received by April 17, 1989 and counsel for the Board submitted proposed findings of fact and conclusions of law by the same date. No such proposals were submitted by grievant's counsel.

The facts of the case are undisputed. In a memorandum dated December 30, 1987 Wayne Wriston, the Board's Director of Services, informed all principals that the Board had issued directions that custodians in schools which had more than one custodian would have their schedules adjusted "[t]o insure that they are not assigned the majority of their working hours during the time students are present and that late shift assignments be made for security purposes". Grievant's principal furnished her with a copy of the memorandum several days later and her daily schedule was changed from 3:00 - 6:30 p.m. to 4:30 - 8:00 p.m. effective January 20, 1988.

Grievant contends the change in her schedule, which necessitated the additional security-related duties, placed her in the Custodian II classification as defined in W.Va. Code §18A-4-8. Grievant also maintains her "misclassification" has been a continuous practice and the grievance was filed in compliance

¹Ms. McClung, by letter dated January 31, 1989, to Douglas Kincaid, Director of Personnel, withdrew from the grievance.

with the timelines contained in W.Va. Code §18-29-3.² The Board maintains there was no change in grievant's duties in that her only security-related duty is to insure doors are locked during her shift, a responsibility she has always had.

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

FINDINGS OF FACT

1. Grievant is a Custodian I assigned to Gauley Middle School. Her duties consist of general cleaning in designated areas of the school.

2. Pursuant to a directive from Wayne Wriston, the Board's Director of Services, grievant's daily schedule was changed from 3:00 - 6:30 p.m. to 4:30 - 8:00 p.m. With the exception of minor changes in the areas grievant was designated to clean, her duties were not altered as a result of the schedule change.

CONCLUSIONS OF LAW

1. "Custodian I" means personnel employed to keep buildings clean and free of refuse. "Custodian II" means personnel

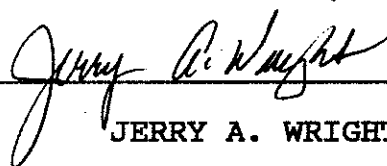
²During the Level II hearing counsel for the grievant made it clear that she was not protesting the change in hours and expressed an opinion that "If [she] had been protesting the change of [her] schedule, which occurred in January, then its quite probable that [she] would have to have protested at that particular change within 15 working days" (T2.68).

employed as a watchman or groundsman. "Watchman" means personnel employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties. W.Va. Code §18A-4-8.

2. Although the change in grievant's schedule may have provided incidental security to her assigned school by virtue of her presence there during later hours, her duties remained the same and she is therefore properly classified as a Custodian I.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Fayette County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision (W.Va. Code §18-29-7). Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.



JERRY A. WRIGHT

Chief Hearing Examiner

Dated: July 20, 1989