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DENCIL SCARBERRY

v.

Docket No. 89-23-63

LOGAN COUNTY BOARD OF EDUCATION

DECISION

Grievant, Dencil Scarberry, is employed by the Logan County Board of Education (Board) as a Custodian I assigned to Sharples High School (SHS). He filed a grievance October 6, 1988 alleging:

I am doing work of a Custodian III. I am classified as a Custodian I. I want reclassified as a Custodian III retroactive to August 25, 1988.

Grievant's supervisor found he had no authority to resolve the matter at Level I. After a December 1, 1988 hearing, the Level II hearing evaluator made the following findings:

From testimony given at that hearing it has been determined four of the duties being performed by Mr. Scarberry are outside his job classification. Those duties are:

1. Operating a heating and cooling system
2. Making minor repairs as needed
3. Cleaning heating and air filters
4. Stocking supplies

It is therefore determined that Mr. Scarberry will no longer be required to perform these duties.

Since Mr. Scarberry will no longer perform these duties the grievance complaint for reclassification to custodian III is denied.

Grievant appealed the decision to Level III, where the Board waived proceedings. An appeal was made to Level IV February 16, 1989, where a hearing was held May 2, 1989. The grievant submitted proposed findings of fact and conclusions of law by June 26, 1989. It is assumed the Board has declined to submit proposals.

There is no dispute over the facts of the case as the parties stipulate that grievant performed the duties of a Custodian III from August 25, 1988, until the date of the Level II hearing evaluator's decision.¹ The Board also concedes grievant is entitled to the difference in salaries of Custodian I's and III's for that period of time.² At issue is whether the Board's assignment of the Custodian III duties to the grievant and his assumption of such entitles him to be reclassified.

Grievant finds support for his position in W.Va. Code §18A-4-8 which, in pertinent part, provides:

Upon the change in classification or upon meeting the requirements of an advanced classification of or by any employee, his salary shall be made to comply with the requirements of this article, and

¹At Level IV, grievant's brief testimony was offered in support of the stipulation as no Level II transcript was made due to the loss of tapes.

²The Board apparently offered such compensation prior to the Level IV hearing as part of settlement negotiations but it was refused.

to any county salary schedule in excess of the minimum requirements of this article, based upon his advanced classification and allowable years of employment.

. . .

The county boards shall review each service personnel employee job classification annually and shall reclassify all service employees as required by such job classifications. The state superintendent of schools is hereby authorized to withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by such county boards. Further, he shall order county boards to correct immediately any improper classification matter and with the assistance of the attorney general shall take any legal action necessary against any county board to enforce such order.

Grievant contends once a reclassification is implemented, a county board of education is prohibited from reducing the salary or duties of the new classification by virtue of the following 18A-4-8 provisions:

No service employee, without his written consent, may be reclassified by class title, nor may a service employee, without his written consent, be relegated to any condition of employment which would result in a reduction of his salary, rate of pay, compensation or benefits earned during the current fiscal year or which would result in a reduction of his salary, rate of pay, compensation or benefits for which he would qualify by continuing in the same job position and classification held during said fiscal year and subsequent years.

The Board's position, as articulated by counsel at the Level IV hearing, is that a deletion of duties improperly imposed on an employee and compensation for the time they were so imposed is the equitable remedy in grievant's case. No statutes or case law were cited in support of this assertion.

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

FINDINGS OF FACT

1. Grievant, a Custodian I at Sharples High School, was assigned duties beginning August 25, 1988 which involved the operation of a heating/cooling system, and minor repairs to equipment and parts of the building.

2. Shortly after a Level II hearing held December 1, 1988, grievant was relieved of said duties.

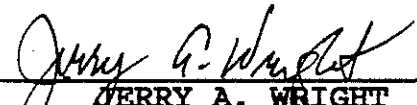
CONCLUSIONS OF LAW

1. The imposition of duties upon a school service employee which has the result of changing said employee's classification to a higher one is, in effect, a promotion and requires a county board of education to comply with the provisions of W.Va. Code §18A-4-8 mandating a raise in salary.

2. Once a school service employee assumes the duties of a higher classification, he is entitled to remain in said classification. Casto, Bowling and Smith v. Kanawha County Board of Education, Docket Nos. 20-86-014/015/016 (February 25, 1986). A county board of education may, however, require the employee to complete any tests or other certification requirements of the classification and failure of said employee to comply can be just cause for his or her placement in the former classification.

Accordingly, the grievance is **GRANTED** and the Logan County Board of Education is hereby **ORDERED** to instate the grievant to the classification of Custodian III and award him the difference in the salary of Custodian I and Custodian III dating back to August 25, 1988.

Either party may appeal this decision to the Circuit Court of Logan 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: October 30, 1989