

12/21 9-27-89



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LOUISE SMITH

v.

Docket No. 29-88-204

MINGO COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Louise Smith, is employed by the Mingo County Board of Education (Board) as a Custodian III assigned to Gilbert Grade School. She filed a grievance at Level I on September 10, 1988 alleging her principal had improperly assigned her certain duties which were outside the scope of her classification. A Level II hearing was held September 27, 1988 and a subsequent decision was adverse to the grievant. The Board waived Level III proceedings and an appeal to Level IV was filed October 20, 1988 and a hearing was held November 17, 1988. Proposed findings of fact and conclusions of law were received by December 1, 1988.

The facts giving rise to the grievance are essentially undisputed. Grievant has been employed as a custodian at Gilbert Grade School by the Board for approximately nine (9) years. Her primary responsibilities in the past have been the operation of the school's furnace, in addition to cleaning schoolrooms and the cafeteria. Sometime in September 1988 grievant, for the first time, was given the assignment of cleaning outside garbage bins by her principal, Mr. Joe Hatfield.<sup>1</sup> There had apparently been an ongoing problem with the cleanliness and appearance of the bins which are housed in a concrete structure apart from the school. According to the grievant, Health Department complaints may have prompted Mr. Everett Conn, Assistant Superintendent of Schools, to instruct Mr. Hatfield to give the assignment to a custodian.<sup>2</sup>

Grievant contends the assignment is obviously not within the scope of the duties and responsibilities of a Custodian III, which is defined in W.Va. Code §18A-4-8 as:

"Custodian III" means personnel employed to keep buildings clean and free of refuse, to operate the heating and cooling systems and to make minor repairs.

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<sup>1</sup>It appears that Mr. Hatfield initially assigned the job to all three custodians at the school but for reasons not discernible from the lower level records or testimony at Level IV but grievant eventually was given full responsibility for it.

<sup>2</sup>The actual task involves picking up loose trash and garbage in and around the concrete building and spraying disinfectant in the bins.

Grievant maintains the chore is part of the maintenance of school grounds and, as such, should fall within the definition of a Custodian II or Groundsman. Those positions are defined in W.Va. Code §18A-4-8 as:

"Custodian II" means personnel employed as a watchman or groundsman.

"Groundsman" means personnel employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings.

The Board maintains that, pursuant to its own job description for Custodian III, grievant can be assigned to grounds cleaning tasks and other duties as assigned by the building supervisor. The pertinent parts of that policy provide:

II. JOB DESCRIPTION SUMMARY:

A. Performs assigned tasks in keeping school buildings and grounds [sic] clean, safe, and attractive for the purpose of providing adequate educational environment for students and faculty.

. . . . .

V. Duties

. . . . .

E. Performs other related duties as assigned by building supervisor.

It is clear from the language contained in the description of a Custodian III, found in W.Va. Code §18A-4-8, that tasks related to the maintenance of grounds is not a responsibility of the position. The description contemplates cleaning duties associated only with a school building and/or operation of heating and cooling systems. As the garbage bins are located on the outside of the school or the school grounds, any tasks associated with their maintenance or cleanliness are those of a Custodian II or Groundsman. The Board's job description for a Custodian III, which includes the care of school grounds, is in conflict with the provisions of Code §18A-4-8 and to that extent it is void and of no effect.

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

#### FINDINGS OF FACT

1. Grievant, Louise Smith, is employed by the Mingo County Board of Education as a Custodian III assigned to Gilbert Grade School.

2. In September 1988 grievant was assigned, for the first time, the task of cleaning and disinfecting garbage bins which were outside and separate and apart from the school.

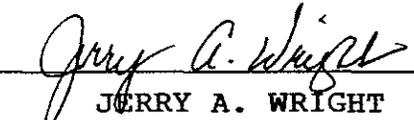
CONCLUSIONS OF LAW

1. The job description for Custodian III does not include duties associated with the maintenance or cleaning of school grounds as do the job descriptions for Custodian II and Groundsman and therefore school service employees holding the classification Custodian III cannot be assigned such duties.

2. A county board of education may adopt its own job descriptions for school service employees but those descriptions must be consistent with and conform to those contained in W.Va. Code §18A-4-8.

Accordingly, the grievance is GRANTED and the Mingo County Board of Education is hereby ORDERED to discontinue the practice of assigning to the grievant, Louise Smith, the task of cleaning and/or disinfecting the outside garbage bins at Gilbert Grade School.

Either party may appeal this decision to the Circuit Court of Mingo 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.

  
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JERRY A. WRIGHT  
Chief Hearing Examiner

Dated: February 23, 1989