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LEO FOGUS

v.

Docket No. 89-13-604

GREENBRIER COUNTY BOARD OF EDUCATION

DECISION

Grievant, Leo Fogus, is employed by the Greenbrier County Board of Education (Board) as a Custodian IV at Greenbrier Junior High School (GJHS). He initiated a grievance at Level I September 7, 1989, protesting his assignment to mop the school's kitchen floor. Grievant's supervisor denied the grievance, as did the hearing evaluator at Level II following a hearing held September 19, 1989.<sup>1</sup> The Board waived Level III proceedings and appeal to Level IV was made October 12, 1989, where a hearing was held November 16, 1989. Proposed findings of fact and conclusions of law were submitted by the grievant on December 12, 1989. The Board elected to stand on its Level II findings and conclusions.

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<sup>1</sup>The transcript of this hearing is part of the record herein.

There is no dispute over the relevant facts of the case. Grievant serves as head custodian at GJHS and is assigned to the 6:00 a.m. to 2:00 p.m. shift. Another custodian, Mr. Donald Hanson, works from 2:00 p.m. to 10:00 p.m. During the 1988-89 school term, Mr. Hanson was responsible for mopping the school's kitchen floor, a 15' x 30' area adjacent to the cafeteria.<sup>2</sup> Some question about this assignment apparently arose at the beginning of the 1989-90 school term and grievant was informed by Mr. Robert Carlisle, principal at GJHS, that it would remain with the custodians. Grievant then concluded that, due to the distribution of other cleaning duties in the school, he should assume the assignment himself, which he began performing at approximately 12:15 p.m., a time at which cooks had finished serving students their lunch. The cooks also had routinely completed their kitchen-related cleaning duties by that time.

Grievant maintains the job description for cooks and custodians contained in W.Va. Code §18A-4-8 and the Board's own descriptions for these positions could reasonably be construed so as to find that mopping the area in question is the task of a cook. He also asserts that, as a practical matter, it is preferable for the cooks to perform the duties since they possess

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<sup>2</sup>The record does not reveal who had the responsibility for mopping this area prior to the 1988-89 term.

health cards and custodians are often engaged in less than sanitary tasks, such as cleaning toilets and grounds work.<sup>3</sup>

The Board contends the contested assignment is implicitly contained in the custodian's job description and alternatively argues that if the duties could reasonably be inferred in either description, then the principal should have the discretion to make the assignment. The Board disputes the grievant's assertions concerning health-related drawbacks of having custodians perform the assignment and maintains that the mopping requires no contact with countertops, cooking utensils or other items in the kitchen, the use of which does require local health department approval.

In addition to the foregoing factual recitation, the following conclusions of law are made.

#### CONCLUSIONS OF LAW

1. W.Va. Code §18A-4-8 defines Cook I as "personnel employed as a cook's helper." Cook II as "personnel employed to interpret menus, to prepare and serve meals in a food service program of a school..." and Cook III as "personnel employed to prepare and serve meals, make reports, prepare requisitions for

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<sup>3</sup>Mr. John Roush, grievant's West Virginia School Service Personnel Association counsel, represented during the Level IV hearing that, while the question raised herein might, at first glance, appear trivial, his organization receives more requests for opinions on the issue than insurance or pay-raise related problems.

supplies, order equipment and repairs for a food service program of a school system."

2. Greenbrier County Board of Education job descriptions for cooks are consistent with W.Va. Code §18A-4-8 and require that they "assist the daily cleaning of all kitchen equipment, sterilizing of all trays, silverware, utensils, and etc., the cleaning of counters, tables, and etc. in the dining and kitchen area."

3. W.Va. Code §18A-4-8 defines Custodian I as "personnel employed to keep buildings clean and free of refuse," Custodian III as "personnel employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs" and Custodian IV as "personnel employed as head custodians. In addition to providing services as defined in "Custodian III," their duties may include supervising other custodian personnel."

4. The Board's job descriptions for custodians are consistent with W.Va. Code §18A-4-8 and the description for Custodian IV specifically provides that he or she "is responsible for performing a variety of cleaning and minor maintenance tasks in a school building [and] perform[ing] related duties as required."

5. School principals are responsible for the supervision, management and operation of the school or schools to which they are assigned. W.Va. Code §18A-2-9.

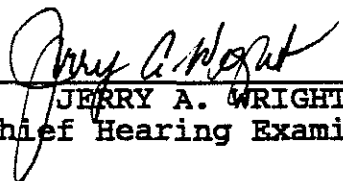
6. A county board of education may utilize its own expanded job descriptions for various service personnel positions but those descriptions must be consistent with and not contrary to those contained within W.Va. Code §18A-4-8. Smith v. Mingo County Board of Education, Docket No. 29-88-204 (February 23, 1989).

7. When a particular task could reasonably fall within two or more of the job descriptions contained in W.Va. Code §18A-4-8 or descriptions promulgated by a county board of education consistent therewith, the decision as to which service employee should be assigned said task is within the discretion of the principal of the school involved.

8. The responsibility of mopping a kitchen floor could reasonably fall within the descriptions of either custodian or cook as those positions are defined by W.Va. Code §18A-4-8 and the Board's policy, and Mr. Carlisle's decision to assign the task to the custodians at GJHS was within the discretion granted him in W.Va. Code §18A-2-9.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Greenbrier 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: April 30, 1990