JAMES E. BOYER,

Grievant,

v. DOCKET NO. 95-54-309

WOOD COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, James Boyer, filed this grievance on or about April 13, 1995, alleging that replacing windows was not part of a custodian's job, but more properly fell within the maintenance department, and requesting back pay for the maintenance work performed. Following adverse decisions at the lower levels, Grievant appealed to level four on July 14, 1995. Hearing was held by teleconference on September 5, 1995, at which time this case became mature for decision.

The facts of this matter are not in dispute and are summarized in the following findings.

Findings of Fact

1. Grievant is currently employed as a Custodian IV, pay grade D at Greenmont Elementary School.

2. During school year 1994-95, Grievant was asked to complete one of two window glass replacement jobs. The otherwindow glass replacement was completed by another custodian at Greenmont Elementary School. Mr. Gary Bailey, Principal at Greenmont, asked that the window be replaced as a minor repair job.

3. Grievant replaced the window and then instituted the instant grievance.

Discussion

Grievant alleges that window replacement is outside the duties assigned to custodians and is the responsibility of the maintenance department. Grievant requests back pay for the time spent

replacing the window. (See footnote 1)

The Board argues that this grievance is barred by the principles of res judicata, and, in the alternative, that minor repair jobs such as window glass replacement fall within a custodian's duties as outlined by statute and board policy. A discussion of the merits of this grievance is unnecessary because the undersigned finds that the grievance is barred by the principles of res judicata.

The preclusion doctrine of res judicata may be applied by an administrative law judge to prevent the "relitigation of matters about which the parties have already had a full and fair opportunity to litigate and which were in fact litigated." Lillerv. W. Va. Human Rights Comm'n, 376 S.E.2d 639, 646 (W. Va. 1988). "The identicality of issues litigated is the key component to the application of administrative res judicata . . . . Res judicata focuses on whether the cause of action in the second suit is the same as in the first suit." Liller, p. 646.

Grievant previously filed a grievance styled Boyer v. Wood County Bd. of Educ., Docket No. 90-54-196 (Jan. 29, 1991), which is, in every instance, identical to the instant grievance. The Administrative Law Judge held that grievant's argument was without merit, based on prior grievance decisions and State Superintendent of Schools opinions, and that it was within the discretion of the school board to expand its job descriptions for various service personnel as long as the descriptions were not contrary to the definitions for class titles found in W. Va. Code § 18A-4-8.

Grievant has presented, and the undersigned has found, no facts or law which distinguish the instant grievance from the previously filed grievance. Therefore, Grievant is barred from bringing this case before the grievance board again in an attempt to relitigate matters which have previously been litigated and decided.

Conclusion of Law

The preclusion doctrine of res judicata may be applied to prevent the "relitigation of matters about which the parties have already had a full and fair opportunity to litigate and which were in fact litigated." Liller v. W. Va. Human Rights Comm'n, 376 S.E.2d 639, 646 (W. Va. 1988). The instant grievance is identicalto a previously filed grievance styled Boyer v. Wood County Bd. of Educ., Docket No. 90-54-196 (Jan. 29, 1991).

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wood 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 Administrative Law Judges is a party to such appeal, and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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MARY JO SWARTZ

Administrative Law Judge

Dated: September 29, 1995

Footnote: 1 *It is noted that Grievant indicated in the level four hearing that there were other duties he was required to perform which were also outside the duties of a custodian. However, the issue submitted on the grievance form and addressed at levels one and two was confined to window glass replacement. A grievant cannot change the substance of a grievance at level four and thus, the discussion herein is limited to window glass replacement. See, W. Va. Code § 18-29-3(j).*