

**EDWARD RAY WAYNE,**

**Grievant,**

**v. DOCKET NO. 96-51-057**

**WEBSTER COUNTY BOARD OF EDUCATION,**

**Respondent.**

### **DECISION**

Grievant, Edward Ray Wayne, is employed by the Webster County Board of Education (Respondent) as an evening shift custodian at Glade Elementary School (GES). Grievant filed this grievance on December 4, 1995, alleging:

I am grievance [sic] the fact that the position left vacant by the extended medical leave of Peggy Mallette at Glade Elementary School wasn't posted correctly which could result in one person having to clean an area of approximately 72,000 sq. ft.

As relief, Grievant seeks to restore the full-time custodian position, previously held by Ms. Mallette, at GES. He did not elicit any evidence that the posting did not comply with W.Va. Code §18A-4-8b.

Relief was denied at Levels I and II on December 6, 1995, and December 18, 1995, respectively. At Level III, Respondent held a hearing, and subsequently issued a decision denying the grievance on January 22, 1996. At Level IV, an evidentiary hearing was held at the Grievance Board's Elkins office on March 23, 1996. The case became mature for decision on June 6, 1996. ([See footnote 1](#))

The following findings of fact are derived from the record.

### **FINDINGS OF FACT**

1. Grievant is employed by Respondent as an evening shift custodian at GES.
2. At the beginning of the 1994-95 school year, Respondent employed three full-time custodians at GES. One full-time custodian worked the day shift, and two full-time custodians worked the evening shift.

3. Before the 1995-96 school year, Ms. Mallette was selected, through a competitive bidding process, for an evening custodian position at GES, but did not work in that position. Ms. Mallette was off work for approximately forty-one days on sick leave, before taking a leave of absence. On February 26, 1996, Ms. Mallette's resignation was accepted by Respondent.

4. Respondent temporarily assigned Eldon Gregory, a substitute custodian, to Ms. Mallette's position while she was on sick leave. After Ms. Mallette was granted a leave of absence, Mr. Gregory was awarded this position, through a competitive bidding process, for the leave of absence period.

5. Respondent reduced personnel because of decreasing enrollment and fiscal constraints. Accordingly, Respondent assigned Mr. Gregory to GES three days a week, and to Webster County High School (WCHS) two days a week. [\(See footnote 2\)](#)

6. Respondent has not posted the position since Ms. Mallette's resignation.

7. Respondent has not pressured or harassed Grievant concerning the quality or quantity of his work.

8. Respondent does not have a "custodian square footage" policy.

### **DISCUSSION**

Grievant testified that on the two nights that Mr. Gregory is not assigned to GES, he is only able to "hit the highlights." When Grievant's counsel asked Grievant how the performance of his duties was affected on the two nights when he was the only custodian at GES, he responded:

Well, normally the jobs that I do three days a week, I have to let one of them go. I let go cleaning the carpet. I did take out half of the trash. I locked half of the building, and I helped clean both gyms.

Now, since I'm by myself, I have to take out all of the trash. I have to lock all of the building. I have to mop all the tile. I have to clean both gyms the best I can. I have to clean all the rest rooms the best I can. It has T-totally changed my job seventy-five percent. Respondent has merely rescheduled or prioritized Grievant's job duties. Moreover, Grievant testified that Respondent has not pressured or harassed him. Respondent understands the constraints on Grievant's time, and the amount of work performed. Furthermore, the record is devoid of any evidence that would show that Grievant's job performance is poor, or unsatisfactory. On the contrary, Respondent seemed pleased with Grievant's efforts. Respondent merely asked Grievant to do the best he can, and to realize the constraints under which it is forced to operate.

A county board of education has the discretion to determine the number of jobs for and the employment terms of service personnel. When a board of education seeks to reduce employment costs, the board may decide that the schools' best interest requires the elimination of some service

personnel jobs. Payne v. Fayette County Bd. of Educ., Docket No. 94-10-144 (Sept. 28, 1994). Staff reduction may include parts of two or more different jobs. Furthermore, a county board of education has substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion in personnel matters must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary or capricious. Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W.Va. 1986); State ex rel. Hawkins v. Tyler County Bd. of Educ., 375 S.E.2d 911 (W.Va. 1981).

Grievant also alleged health and safety concerns on behalf of the students, teachers, and co-workers. However, the record is devoid of any evidence that would show there is a danger, or a potential danger, resulting from a reduction in custodial staff at GES.

The problem is not unsanitary bathrooms or classrooms. The problem is that the school is not quite as clean as it used to be. At Level IV, Grievant stated "[t]hey're not asking me to do anymore, but I have pride in my job and I'm not, it's hard to face a teacher and tell them that I won't be able to clean your room today." Superintendent Williams stated that teachers have also been asked to spend the last few minutes of the day cleaning their respective classroom. In summary, Grievant is contesting a management prerogative, and this grievance should not be granted merely because Grievant has different ideas on how GES should be managed or operated. See Phillips v. W.Va. Div. of Corrections, Docket No. 96-CORR-112 (June 19, 1996).

Furthermore, Grievant failed to present sufficient evidence to show that Respondent acted arbitrarily and capriciously in determining custodial staffing level at GES. Likewise, Grievant failed to produce any policy of Respondent or any statutory authority or case supporting his position.

In addition to the foregoing Findings of Fact and narration, it is appropriate to make the following formal conclusions of law.

### **CONCLUSIONS OF LAW**

1. In a nondisciplinary action, Grievant has the burden of proving his case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995). 2. A county board of education has substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion in personnel matters must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary or capricious. Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W.Va. 1986); State ex rel.

Hawkins v. Tyler County Bd. of Educ., 375 S.E.2d 911 (W.Va. 1981).

3. A county board of education has the discretion to determine the number of jobs for and the employment terms of service personnel. When a board of education seeks to reduce employment costs, the board may decide that the schools' best interest requires the elimination of some service personnel jobs. Payne v. Fayette County Bd. of Educ., Docket No. 94-10-144 (Sept. 28, 1994).

4. Grievant failed to show a violation, misapplication or misinterpretation of any statute, policy, rule, regulation, or written agreement.

5. Grievant did not prove by a preponderance of the evidence that Respondent acted arbitrarily and capriciously in determining custodial staffing level at GES, or that the health and safety of students or school personnel is being affected or endangered by the current custodial staffing level.

Accordingly, the grievance is **DENIED**.

Any party may appeal this DECISION to the Circuit of Kanawha County or to the Circuit Court of Webster 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.

DATED: August 2, 1996 \_\_\_\_\_

JEFFREY N. WEATHERHOLT

ADMINISTRATIVE LAW JUDGE

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[Footnote: 1](#)

*Although the parties agreed not to submit written post- hearing proposals, the Level III tape of the hearing was lost, and the parties agreed to proceed "on the record as compiled."*

*The record in this case consists of the following: (1) the Level I, II, and III decisions; (2) Grievant's exhibit #1 introduced at Level IV; (3) Joint exhibit #1 introduced at Level IV; and (4) the audio tape from the Level IV hearing. The Undersigned considered all matters of record.*

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[Footnote: 2](#)

*See Crites v. Webster County Bd. of Educ., Docket No. 95-51- 313 (Feb. 26, 1996), a similar grievance concerning*

*custodians, for a recitation of Respondent's fiscal woes.*