

**WILLIAM R. CRITES, ET AL.,**

**v. DOCKET NO. 95-51-313**

**WEBSTER COUNTY BOARD OF EDUCATION**

**DECISION**

Grievants, William R. Crites, Ray Moore, and Eldon Gregory, are employed by the Webster County Board of Education (Respondent) as evening or night shift custodians. Grievants filed their grievance on May 4, 1995, alleging that:

Grievants are current and former custodians employed by the Respondent at Webster County High School. The Respondent reduced-in-force one custodian (Grievant Gregory) for the 1995-96 school year. The Grievants allege that the Respondent has acted in an arbitrary and capricious manner in determining the number of custodians to be employed at Webster County High School for the 1995-96 school year.

As relief, Grievants desire that Grievant "Gregory be instated to his former position at Webster County High School, reinstatement of his 200 day employment term, and all benefits, wages and seniority."

On May 5, 1995, Grievants were denied relief at Level I. At Level II, the Grievance Evaluator held "[c]learly, the Grievants are entitled to a reconsideration by the Board of Education of the volume of their duties versus that of the custodians at the other school sites. Accordingly, the grievance is UPHELD". (Emphasis in original.) Pursuant to W.Va. Code §18-29-4(c), Grievant bypassed Level III and appealed the Level II decision directly to Level IV. At Level IV, an evidentiary hearing was held at the Grievance Board's Elkins office on January 3, 1996. [\(See footnote 1\)](#) On January 31, 1996, the case became mature upon receipt of Grievant's brief. [\(See footnote 2\)](#)

**FINDINGS OF FACT**

1. Grievants Crites and Moore are regularly employed by Respondent as custodians and assigned to Webster County High School (WCHS) and work either the night or evening shifts.
- 2.

Grievant Gregory was employed by Respondent during the 1994-95 school year as a custodian at WCHS and work either the night or evening shifts.

3. Respondent's Superintendent solicited verbal recommendations from each school's principal as to positions which could be eliminated.

4. Respondent eliminated one full-time custodial position at WCHS effective for the 1995-96 school year.

5. Respondent subsequently recommended and approved Grievant Gregory for a reduction-in-force (RIF) effective for the 1995-96 school year.

6. At the time of his RIF, Grievant Gregory was the least senior regular custodian employed by Respondent.

7. After Grievant Gregory's RIF, there were three full-time evening or night shift custodians retained at WCHS for the 1995-96 school year. [\(See footnote 3\)](#)

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

### **DISCUSSION**

Grievants do not challenge Respondent's application of the RIF procedures as set forth in W.Va. Code § 18A-4-8b. Grievants, in their attempt to show that Respondent acted arbitrarily and capriciously in eliminating one full-time custodian position a WCHS, rely on the discrepancy of square footage that each custodian is required to clean. Grievants' Exhibit #1, at Level II, shows that for the 1995-96 school year, Respondent operates the following five schools in Webster County:

<u>School</u>	<u>Square Footage</u> <a href="#">(See footnote 4)</a>	<u>Custodians</u> <a href="#">(See footnote 5)</a>	<u>Sq.Ft.\Cust.</u> <a href="#">(See footnote 6)</a>
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WCHS	108,928	3	36,310
Glade Elementary	72,056	3	24,019
Diana Elementary	28,600	2	14,300
Webster Springs Elem.	64,878	3	21,626
Hacker Valley	16,920	1	16,920

However, Grievants failed to present sufficient evidence to show that Respondent acted arbitrarily and capriciously in determining which position(s) would be RIF'd. At the Level II hearing, Mr. Ronald Williams, Superintendent of Webster County Schools, testified: (1) that the Respondent was

overstaffed approximately fourteen service personnel positions based on the state formula; (2) that there was a loss of approximately eighty students in Respondent's school system during the 1994-95 school year; (3) that he hates reducing personnel positions; and (4) that he consulted the principal at each school over the phone to get their recommendations as to which positions should be RIF'd. In addition, even the Grievants, at the Level IV hearing, testified that Respondent has not harassed or pressured them in any way in regard to the cleaning of the school, but has been understanding and cooperative with Grievants in working through this period of reduced custodial staff. Furthermore, Grievants failed to produce any policy of Respondent or any statutory authority or case supporting their position.

It should also be noted that Grievants asserted, for the first time, a claim of discrimination in their brief. To allow Grievants to advance this legal theory, at such a late date in these proceedings, would not be proper and would be manifestly unfair to Respondent. This claim has, therefore, not been considered. [\(See footnote 7\)](#)

To the extent Grievants Crites and Moore are seeking to overturn the reduction in force of Grievant Gregory, they lack standing. In order to proceed in any action one must be a proper party. To be a proper party, one must have standing. Standing, defined simply, is a legal requirement that a party must have a personal stake in the outcome of the controversy, and one person cannot prosecute a grievance on behalf of another person. [\(See footnote 8\)](#)

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

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### **CONCLUSIONS OF LAW**

1. In a nondisciplinary action, Grievant has the burden of proving their case by a preponderance of the evidence. Napier v. Logan Co. Bd. of Educ., Docket No. 94-23-541 (Apr. 25, 1995).

2. A county board of education must exercise its discretion in personnel matters in a manner which is not arbitrary or capricious. Lilly v. Summers Co. Bd. of Educ., Docket No. 90-45-040 (Oct. 17, 1990), citing State ex rel. Hawkins v. Tyler Co. Bd. of Educ. and Roy Truby, State Superintendent, 375 S.E.2d 911 (W.Va. 1981).

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

4. Grievant Gregory did not prove by a preponderance of the evidence that Respondent's decision to eliminate his position was arbitrary and capricious.

5. Grievants Crites and Moore do not have standing to challenge the RIF of Grievant Gregory, and they did not prove Respondent acted arbitrarily and capriciously in eliminating a custodial position at WCHS.

Accordingly, the grievance must be DENIED.

DATED 2/26/96 JEFFREY N. WEATHERHOLT, ADMN. LAW JUDGE

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[Footnote: 1](#)

*Although the grievance evaluator ordered Respondent to reconsider the matter, Grievants were not granted the relief they sought. Because Grievants were not given the relief sought, it was proper for them to appeal to Level IV.*

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[Footnote: 2](#)

*The record in this case consists of the following: (1) the Level IV grievance form; (2) the Level I decision; (3) Grievants' three exhibits admitted at Level II; (4) the Level II transcript; (5) the Level II decision; (6) a letter to Grievants dated July 19, 1995, from Superintendent Williams; (7) Grievants' three exhibits admitted at Level IV; (8) the audio tapes of the Level IV hearing; and (9) briefs from both parties. It should further be noted that the Undersigned has considered all of the above matters of record.*

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[Footnote: 3](#)

*In addition to the Grievants, Respondent also employed another full-time day shift custodian at WCHS during the 1994-95 and 1995-96 school years.*

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[Footnote: 4](#)

*Square footage of interior floor space.*

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[Footnote: 5](#)

*The number of full-time evening or night shift custodians for the 1995-96 school year.*

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[Footnote: 6](#)

*Square footage of interior floor space which each full-time custodian is responsible for cleaning and maintaining. However, it should be noted that these calculations do not include the exterior grounds which are also maintained by the custodial staff at the respective schools. In addition, each school has a full-time custodian on duty during school hours who is able to perform minimal cleaning duties.*

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[Footnote: 7](#)

See, W.Va. Code §18-29-3(j). See also, W. Va. Dept. of Health and Human Res. v. Hess, 432 S.E.2d 27 (W.Va. 1993). Even though Hess is a "state" case, the analysis under W.Va. Code §29-6A-3(j) and W.Va. Code §18-29-3(j) is the same.

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[Footnote: 8](#)

See, Hall v. Mercer Co. Bd. of Educ., Docket No. 94-27-1099 (March 20, 1995); Lewis v. Mercer Co. Bd. of Educ., Docket No. 94-27-603 (Feb 23, 1995); Pomphrey v. Monroe Co. Bd. of Educ., Docket No. 94-31-183 (July 1, 1994); Relihan v. Greenbrier Co. Bd. of Educ., Docket No. 90-13-189 (Aug. 27, 1990); and Lyons v. Wood Co. Bd. of Educ., Docket No. 89-54-601 (Feb. 28, 1990).