BARBARA WILLIAMS,

Grievant,

v. DOCKET NO. 97-51-550

WEBSTER COUNTY BOARD OF EDUCATION,

Respondent,

DECISION

Barbara Williams, Grievant, is employed by the Webster County Board of Education, Respondent. Grievant originally filed her grievance on October 21, 1997 and in it alleged that:

> She is currently employed by Respondent as a Substitute Cook. She was employed full-time by Respondent as a Cook II at Glade Elementary until 1997, when that position was eliminated due to a reduction in force. At that time, a half-time cook position was also eliminated at Webster County High School and a half-time custodian position at Webster County High School was increased to full-time. Since the beginning of the 1997-98 school year, the aforementioned custodian has worked approximately two hours per day in the cafeteria scraping lunch trays and loading the dishwasher; duties which were previously handled by the half-time cook. The Grievant requests the half-time cook position at Webster County High School be reinstated and posted. Grievant also contends she would have first priority for any cook position that would become available in Webster County.

After the grievance was denied at Level I and Level II, Grievant appealed to Level III. A Level III decision was issued by the Webster County Board of Education on December 9, 1997, in which the grievance was again denied. The matter was submitted at Level IV and received by this Grievance Board on or about December 18, 1997. A Level IV hearing of the matter was held on May 5, 1998,before the undersigned Administrative Law Judge. (See footnote 1) The case matured for decision on June 10, 1998, upon receipt of post-hearing submissions by both parties.

The following Findings of Fact were derived from the lower level record and the hearing of May 5, 1998.

FINDINGS OF FACT

1 1.

Grievant was employed by Respondent for the 1997-98 school year as a Substitute Cook.

2.

Grievant was employed by Respondent as a Cook II from 1984 to 1997. Grievant was also employed by Respondent as a Substitute Cook from 1972 to 1984.

3.

At the conclusion of the 1996-97 school year, in response to budget concerns, Respondent eliminated a half-time cook's position at Webster County High School(WCHS)and another cook's position, thereby causing Grievant to be the subject of a reduction-in-force (RIF). At the same time, a previously half- time custodian position at WCHS was made a full-time position.

4.

Soon after the beginning of the 1997-98 school year, and in response to requests for help from the cafeteria staff, a decision was made to have Roger Hamrick, one of the day custodians at WCHS, work approximately one and a half to two hours per day in the cafeteria. 5 5.

Mr. Hamrick's duties in the cafeteria were limited to scraping trays, running trays, silverware and dishes through the dishwasher, emptying trash and unloading stock from delivery trucks. Mr. Hamrick did not prepare or serve food.

6 6.

Several of the duties performed by Mr. Hamrick were previously done by the person in the half-time cook position. The half- time cook had also performed additional duties not undertaken by Mr. Hamrick.

7 7.

Soon after Grievant filed her grievance, WCHS Principal James Marsh and Superintendent Mark Manchin ordered Mr. Hamrick to cease the duties he had been performing in assisting the cooks in the cafeteria.

DISCUSSION

In a non-disciplinary action, Grievant has the burden of proving her case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995).

It is clear that county boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel, as long as this discretion is exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Webster County Bd. of Educ. v. Johns, 447 S.E.2d 599 (W. Va. 1994); Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W. Va. 1986).

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, and staff reduction mayinclude parts of two or more different jobs. Payne v. Fayette County Bd. of Educ.,Docket No. 94-10-144 (Sept. 28, 1994). Once Respondent determined it was under budget constraints and felt it had too many people in the Cook classification category, it properly determined that a reduction-in-force was in order.

A board of education has full discretion to determine the number of jobs for and the employment terms of a board's service personnel, as long as the requirements of W. Va. Code 18A-4-8 are met. Lucion v. McDowell County Bd. of Educ., 191 W. Va. 399, 446 S.E.2d 487 (1994); Byrd v. Cabell County Bd. of Educ., Docket No. 96-06-316 (May 23, 1997). W. Va. Code § 18A-4-8 provides, in pertinent part, that:

> Should a county board of education be required to reduce
> the number of employees within a particular job
> classification, the employee with the least amount
> of seniority within that classification or grades
> of classification shall be properly released and employed
> in a different grade in that job classification if there
> is a job vacancy.

There is no evidence Respondent's actions in eliminating certain positions, including Grievant's, while creating another position in a separate job classification were improper or otherwise in violation of W. Va. Code § 18A-4-8b. In fact, in the instant case, Grievant really does not contest the legality of the RIF which led to her losing her position within the school system, or how that RIF was carried out by Respondent. She is also not alleging that any of the cooks currently working in the Webster County School System have less seniority than her and, therefore, she should have one of their positions. She simply maintains that since the custodian was working in the kitchen one to two hours perday, there should have been created a half-time cook position at WCHS, which she submits would have belonged to her due to her having seniority over any other cook on the preferred recall list.

Grievant is, however, essentially contesting a management prerogative, and this grievance cannot be granted merely because Grievant has different ideas on how the school system should be managed or operated. See Phillips v. W. Va. Div. Of Corrections, Docket No. 96-CORR-112 (June

19, 1996). Respondent reasonably determined that a full-time custodian position was needed at WCHS more than a half-time cook position. It was only after complaints from the kitchen staff at WCHS that Superintendent Manchin made arrangements to have the custodian, Mr. Hamrick, help with some duties in the kitchen.

Grievant argues that since the definition of a “Cook I” means personnel employed as a “cook's helper,” Mr. Hamrick was doing the job of a Cook I. However, such a broad definition of the phrase “cook's helper” is such that one could argue teachers are also “cook's helpers” since they keep the children from misbehaving while in the cafeteria line. Additionally, Mr. Hamrick's duties in the kitchen were but a small portion of his overall job responsibilities. In any case, Mr. Hamrick was definitely not doing the work of a Cook II, Grievant's prior position and the one which she sought to be posted, which primarily involves the preparation and serving of meals.

If Mr. Hamrick felt he was working outside his classification, he would have standing to contest that arrangement and could havefiled a grievance. He apparently did not. Likewise, if the cooks at WCHS felt that the decision to ask Mr. Hamrick to assist them with the cleaning duties in the kitchen was a substantial detriment to their job performance, they could likewise have filed a grievance challenging this practice. Jones v. Summers County Bd. of Educ., Docket No. 94-45-153 (Nov. 16, 1994).

Grievant has not presented sufficient evidence to indicate that Respondent improperly exercised its discretion by eliminating the half-time cook position at WCHS and allowing Mr. Hamrick, at the request of the kitchen staff, to assist with some cleaning duties in the kitchen area.

Furthermore, Grievant failed to present sufficient evidence to show that Respondent in any way acted arbitrarily and capriciously in determining the cook and custodial staffing level at WCHS. Nor did Grievant show that Respondent's actions were unreasonable, not in the best interest of the schools or in any way affected or endangered the health or safety of school personnel or students by the use of a custodian to provide cleaning services in the cafeteria area, including the kitchen.

In addition to the foregoing findings of fact and narration, it is appropriate to make the following conclusions of law.

CONCLUSIONS OF LAW

1 1.

In a non-disciplinary action, Grievant has the burden of proving her case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22,1995).

2 2.

County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel; nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Webster County Bd. of Educ. v. Johns, 447 S.E.2d 599 (W. Va. 1994); Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W. Va. 1986).

3 3.

Grievant failed to prove by a preponderance of the evidence there should have been created a cook's position at Webster County High School as a matter of law.

4 4.

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 interests require the elimination of some service personnel jobs. Payne v. Fayette County Bd. of Educ., Docket No. 94-10-144 (Sept. 28, 1994).

5 5.

Grievant did not prove by a preponderance of the evidence that Respondent acted unreasonably, or arbitrarily and capriciously, or that the health and safety of students or school personnel were in any way affected or endangered, by its actions.

Accordingly, the grievance is **DENIED**.

Any party may appeal this DECISION to the Circuit Court 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 are 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 27, 1998 _____

RANDY K. MILLER

ADMINISTRATIVE LAW JUDGE

Footnote: 1 At the hearing, Grievant was represented by her legal counsel, Harley E. Stollings. Respondent was represented by its legal counsel, Basil R. Legg, Jr.