**HERBERT WHITTINGTON,**

**Grievant,**

**v.**

**DOCKET NO. 02-40-035**

**PUTNAM COUNTY BOARD OF EDUCATION,**

**Respondent.**

**D E C I S I O N**

Grievant, Herbert Whittington, filed the following grievance against his employer, the Putnam County Board of Education ("Board") on October 5, 2001:

> Violations of WV Code 18-29-2(a) with regard to being required to perform work responsibilities outside of his classification that constitute a substantial detriment and interference with his job performance. Grievant performing duties under 18A-4-8 that are those of a cook.
>
> Relief sought: Relief sought is to not be required to perform duties of cook.

Grievant's immediate supervisor, Principal Thomas Tull, denied the grievance at level one on October 8, 2001, and Grievant appealed to level two on October 12, 2001. A level two hearing was conducted on November 14, 2001, and Grievance Evaluator Harold Hatfield issued a decision denying the grievance on December 17, 2001. Grievant by-passed level three, and appealed to level four on February 7, 2002. The parties agreed to submit the case on the record developed at levels one and two, and this matter became mature for consideration on February 21, 2002, the deadline for the parties' submission of proposed findings of fact and conclusions of law. Grievant was represented by SusanHubbard, West Virginia Education Association, and the Board was represented by John A. Grafton, Esq., Grafton Law Office.

## SUMMARY OF EVIDENCE

### Joint Exhibits

Ex. 1 -

Grievance form and level one response.

Ex. 2 -

Custodian job description; Custodian schedule; Vacancy Bulletin.

### Testimony

Grievant testified in his own behalf, and presented the testimony of Thomas Tull. The Board also presented the testimony Thomas Tull.

## FINDINGS OF FACT

I find the following facts have been proven by a preponderance of the evidence.

1. Grievant is employed by the Board as a full-time custodian, assigned to George Washington Middle School.

2. Due to a fire last year at George Washington Middle School, it became necessary for the middle school to utilize the kitchen from George Washington Elementary School for its meal preparation. The elementary school is next door to the middle school.

3. George Washington Middle School Principal Thomas Tull asked Grievant to assume additional job responsibilities which involve: driving a truck to George Washington Elementary School; pushing large tray carts of food up a ramp into the truck; driving back to the middle school; and unloading the tray carts into the service area of the dining hall. Grievant performs these duties for both breakfast and lunch at the middle school. After the lunch periods are over, Grievant loads the food tray carts back into the truck, and transports them back to the elementary school, where he unloads the carts into the kitchen. 4. In addition to the duties listed in Finding of Fact No. 2, Grievant is responsible for mopping the gymnasium floor, mopping the dining hall floor, sweeping the halls, cleaning windows, doors, restrooms, office areas, locker rooms, and other duties as required.

LII Jt. Ex. 2.

5. The duties associated with Finding of Fact No. 3 take up approximately one hour and ten or fifteen minutes. LII Jt. Ex. 2. (See footnote 1)

DISCUSSION

Grievant contends that delivering and handling food trays is not part of the Putnam County Schools job description for a middle school custodian, and he does not wish to perform these duties. Grievant has the burden of proving each element of his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

W. Va. Code § 18A-4-8 defines “Custodian I” as “personnel employed to keep buildings clean and free of refuse.” “Custodian III” is defined as “personnel employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs.” (See footnote 2) 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 supplies, order equipment and repairs for a food service program of a school system.”

The Putnam County Schools middle school custodian job description lists a custodian's job responsibilities and duties as follows:

1. To complete all required cleaning and requested minor repairs.
2. To order, receive and maintain supplies, materials and equipment as needed.
3. To follow the prepared work schedule.
4. To move and arrange furniture as requested.
5. To complete all other duties assigned by the principal or assistant principal.

LII Jt. Ex. 2.

W. Va. Code § 18A-4-8 places a burden on county boards of education to see that the duties of a particular service position coincide with the classification and paygrade to which it is assigned. Robinson v. Nicholas County Bd. of Educ., Docket No. 93-34-197 (Mar. 25, 1994). "In order to

prevail in a misclassification grievance an employee must establish, by a preponderance of the evidence, that her duties more closely match that of another W. Va. Code §18A-4-8 classification than that under which her position is categorized." Porter v. Hancock County Bd. of Educ., Docket No. 93-15-493 (May 24, 1994). See Hamilton v. Jackson County Bd. of Educ., Docket No. 91-18-264 (Mar. 31, 1992). Conversely, simply being required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render a grievant misclassified, per se. Hamilton v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991). It is clear that food handling is not listed among any of the statutory definitions of a custodian, nor is it listed in the Putnam County Schools middle school custodian job description, although it also is not clear that the loading and unloading of food trays from the delivery truck would fall within the cook classification, either. Nevertheless, the job description also provides that the custodian shall complete “all other duties assigned by the principal”, and Principal Tull assigned Grievant to deliver and handle food trays for the middle school. Grievant testified he is able to perform all of his duties as set forth in his custodian schedule (Jt. Ex. 2), but is concerned that at some point he may not be able to complete his tasks as assigned.

## CONCLUSIONS OF LAW

1. Grievant has the burden of proving each element of his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88- 130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

2. Grievant has failed to prove that the additional duties assigned to him constitute a substantial detriment and interference with his job performance.

3. Grievant has failed to prove by a preponderance of the evidence any violation, misapplication, or misinterpretation of any statutes, policies, rules, regulations or written agreement.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Putnam County. Any 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

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**MARY JO SWARTZ**

**Administrative Law Judge**

**Dated: March 4, 2002**

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*Footnote: 1*

*Grievant asserts these duties take approximately 2-1/2 hours per day, but in arriving at this figure, Grievant includes mopping the dining room floor and cleaning tables, which, while associated with the meals served, are clearly within the purview of a custodian's job.*

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*Footnote: 2*

*It is unclear from the record whether Grievant is classified as a Custodian I, II, III or IV. However, the evidence supports a presumption that Grievant is either a Custodian I or III.*