PAUL SISLER,

Grievant,

v. **DOCKET NO. 96-BOT-467**

BOARD OF TRUSTEES/
WEST VIRGINIA UNIVERSITY,

Respondent.

DECISION

Grievant, Paul Sisler, instituted this grievance pursuant to the provisions of W. Va. Code §§ 18-29-1, et seq., alleging that he is entitled to "differential pay" as a lead painter for the period of May 13, 1996, to August 16, 1996. The grievance was denied at levels one and two, then waived to level four on November 8, 1996. A level four hearing was held in the Grievance Board's office in Morgantown, West Virginia, on June 11, 1997. This matter became mature for decision on June 30, 1997, upon receipt of Respondent's proposed findings and conclusions. Grievant elected not to file post-hearing submissions.

The following factual findings are appropriately made from the record as a whole, including evidence and testimony submitted at the level four hearing.

Findings of Fact

1. Grievant is employed as a Painter in West Virginia University's ("WVU") physical plant.

2. For the summer months of 1996, May 13 through August 16, Grievant was assigned by his supervisor to work with two student workers. The daily work was assigned by Grievant's supervisor, Homer Hart, who also ordered the majority of materials needed for their work prior tothe beginning of the summer. Grievant ordered small supplies as needed to complete the daily work.

3. Grievant's job description includes providing "guidance to other personnel as assigned."

4. Student workers who are not essential to the operations of a work unit are not considered

under the higher education classification system for purposes of awarding credit for supervisory responsibility.

5. The work Grievant performed during the summer of 1996 would have been accomplished without the assistance of the student workers; thus, they were non-essential.

6. Lead workers have control over a group of fully skilled workers performing the same job. Their responsibilities include training, assigning work, planning and coordinating projects, checking others' work, and ordering all needed materials.

7. Mr. Hart was ultimately responsible for all work performed by the student workers who worked with Grievant in the summer of 1996.

8. The only change in Grievant's usual job duties during the relevant time period was that he kept a daily log of the hours worked by the students. There was no significant change in Grievant's assigned duties and responsibilities while he was working with the student workers, and he was performing the same work he would have without the assistance of the students.

Discussion

In non-disciplinary matters, the grievant must prove his allegations by a preponderance of the evidence. W. Va. Code § 18-29-6; Byers v. Marion County Bd. of Educ., Docket No. 94-24-388 (Dec. 29, 1995). Grievant argues, that for the time period in question, he was functioning as a Lead Painter, which is a separate title in a higher pay grade. He has alleged entitlement to “differential”pay for those three months that he was performing lead worker duties. The term “differential” has not been defined by either party, but has been used interchangeably by Respondent with “interim” pay, which is addressed by the regulations governing personnel matters for the State College and University Systems. Respondent contends that Grievant was not performing “interim responsibilities,” as defined by those regulations, and, alternatively, that he was not functioning as a Lead Painter while assigned summer student workers.

The applicable portion of higher education's regulations upon which Grievant bases his claim reads as follows:

> Interim Responsibilities. A significant change in duties and responsibilities of an employee on a temporary basis justifying an interim promotion or upgrade for salary purposes. Such a temporary reassignment shall normally be for no less than four (4) consecutive weeks and no more than twelve (12) consecutive months and shall occur when the responsibilities being undertaken by the employee are those of another position that is vacant because of the incumbent's illness or resignation or because of

> temporary sufficient change in the duties and responsibilities of a filled position. . . .

128 C.S.R. 62 § 2.9, R. Ex. 3. At level four, the regulations were explained by Teresa Crawford, Senior Compensation Analyst for WVU, who is specifically assigned to classification issues at the physical plant. Ms. Crawford testified that Grievant was not eligible for interim pay, because he did not assume full responsibility for a vacant position. Her testimony was supported by that of Robert Ware, Assistant Director of Craft Maintenance, who stated that no Lead Painters were absent for any reason during the summer of 1996, and Grievant was not temporarily filling any position.

Perhaps more importantly, Ms. Crawford opined that Grievant simply was not functioning as a lead employee, and he was performing duties within his job description. As she explained, all higher education classified employees, since 1994, have been governed by the "Mercer"classification system, (See footnote 1) which was implemented pursuant to the legislative directive of W. Va. Code § 18B-9-4. Under the Mercer system, each job title has a "data line," whereby various aspects of the job's duties and responsibilities are evaluated using a numerical system, or the "point factor methodology." See Burke, supra, Footnote 1. Ms. Crawford testified that all classified positions are now recruited using the Mercer data line.

The point factor applicable to the instant situation is "Direct Supervision Exercised." (See footnote 2) The definition of this point factor explains that "supervision of student workers may be taken into account if they are essential to the daily operation of the [work] unit." R. Ex. 5, Excerpt from "Job Evaluation Plan" (emphasis in original). Lead workers were given credit under Direct Supervision Exercised, Level, at degree level 3.0, which provides as follows:

> Lead control over non-exempt employees performing the same work as this job. Lead responsibility includes training, assigning tasks, checking the work of others, and insuring supplies and tools are provided at the work site.

Id. Student employees are not covered by the Mercer classification system. 128 C.S.R. 31 § 2.4. They are not subject to classification and receive none of the benefits of classified employees.

Under the definitions used in the Mercer plan, no employee is given any supervisory credit for student employees such as those assigned to Grievant. As further explained by Ms. Crawford, lead positions are those who are working with other fully skilled workers who are performing the same job. While performing the same work as those they lead, leads have the additional responsibilities of

coordinating projects and assigning work, as set forth above. The testimony ofboth Grievant and Mr. Ware established that ultimate responsibility for the work of the summer students was Mr. Hart's, who also ordered the project materials in advance and decided what work would be done by the students. Grievant's only added responsibility was that of keeping a daily log of the hours worked by the students, but his job description includes “providing guidance to other personnel as assigned.” Ms. Crawford and Mr. Ware both opined that working alongside students over whom he had no formal supervisory responsibility fell within this aspect of his job duties.

Grievant did not attempt to argue that the students assigned to him were essential workers. The Job Evaluation Plan clearly states that supervisory credit is not given for students unless they are essential to the operation of the particular work unit. See Perkins v. Bd. of Trustees, 94-MBOT- 474 (March 12, 1997). Ms. Crawford stated that the students working with Grievant were functioning as helpers, and that the work could have been performed without them, even if it had taken longer. Grievant acknowledged that he would have been doing exactly the same work that summer, even if the students had not been there. Thus, they were non-essential under the Mercer system.

Grievant's argument must fail. He has not proven by a preponderance of the evidence that he was performing as a Lead Painter while he was working with non-essential student workers. Also, he has not proven that the work he performed during the summer of 1996 fits within the definition of “interim responsibilities” as defined by regulation, so he is not entitled to interim pay for performing work at a higher classification level.

In addition to the foregoing findings and discussion, the following conclusions of law are appropriate.

Conclusions of Law

1. In non-disciplinary cases, a grievant must prove each element of his complaint by a preponderance of the evidence. W. Va. Code § 18-29-6; Byers v. Marion County Bd. of Educ., Docket No. 94-24-388 (Dec. 29, 1995).

2. A “lead” employee works with other fully-skilled workers performing the same job, along with training, assigning tasks, checking the work of others, and insuring supplies and tools are provided at the work site. See “Job Evaluation Plan” of the State College and University Systems.

3. Grievant was not performing the duties of a Lead Painter during the summer of 1996 while assigned to work with two students.

4. Grievant's duties during the summer of 1996 were not “interim responsibilities” entitling him to temporary pay at a higher pay grade. See 128 C.S.R. 62 § 2.9.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Monongalia 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.

DATE: August 5, 1997 _____ **V.**

DENISE MANNING

Administrative Law Judge

Footnote: 1

For an expansive explanation of the terms, definitions, and mechanics of the Mercer system, see Burke v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995).

Footnote: 2

Direct Supervision Exercise is one of thirteen point factors. It has two aspects measured separately, Level of Supervision and Number of Direct Subordinates.