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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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LIONEL G. HERNDON

v.

DOCKET NO. 30-86-186-2

WEST VIRGINIA UNIVERSITY

DECISION

Lionel G. Herndon, the grievant, is employed by the Board of Regents as a Supervisor of Custodians assigned to West Virginia University Hospitals, Inc. (hereinafter referred to as "the corporation"). Mr. Herndon alleges a violation of W. Va. Code, 18-11C-(d) as he is being denied a position upgrade as was recommended by the Classification and Compensation Unit of the West Virginia University Department of Human Resources.

Mr. Herndon has pursued this grievance through level four where he presented a statement of his case. The Board of Regents did not appear as counsel indicated that a complete record had been made at a lower level and there would be no further evidence to submit.

Events leading to the filing of this grievance are as follows. In 1985 a physical plant unit audit was completed and recommendations regarding personnel were to be implemented effective June 1, 1985. As a result of this audit, Mr. Herndon and another individual who also held the position of Supervisor of Custodians (pay rate 9) were to be upgraded to Supervisor/Housekeeping and Maintenance (pay rate 12). Upon receipt of the results of this audit, Barry Hilts, Associate Hospital Administrator, requested a job title review be conducted for the position of Supervisor/Custodians. The West Virginia University Department of Human Resources conducted a paper audit of these positions in compliance with Mr. Hilts request. The results of this audit were, again, to upgrade the Supervisor/Custodian position to Supervisor/Housekeeping and Maintenance. Mr. Hilts once more expressed his concern and the corporation has since refused to implement the position upgrade. While University officials have made a bona fide attempt to resolve the dispute, the corporation has exhibited continued bad faith. The corporation has failed to provide the University with pertinent information, its administrators have been inaccessible and it now claims an inaccuracy of the job title description of Supervisor/Custodian even though

the policies and regulations of that agency. The West Virginia University Department of Human Resources determined well over a year ago that Mr. Herndon's position should be upgraded. That decision belongs to the University alone. The legislature included no provisos, no contingencies and no exceptions to the statute which would allow the corporation to influence Board of Regents personnel matters.

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

Findings of Fact

1. The grievant is a Board of Regent employee "leased" to West Virginia University Hospitals, Inc.

2. As a result of a physical plant unit audit the grievant was to be upgraded from Supervisor/Custodian at pay grade 9 to Supervisor/Housekeeping and Maintenance, pay grade 12.

3. Upon receipt of the audit recommendation, Barry

Hilts, a hospital administrator, requested that the Classification and Compensation Unit of West Virginia University review the job description of Supervisor/Custodian.

4. The audit conducted pursuant to Mr. Hilt's request affirmed the recommendation that the position be upgraded.

5. Hospital administrators took exception to the findings of the audit and stated that the position was a classified too high as the hospital's job description was inaccurate.

6. The hospital administrators had previously signed the job description attesting to its accuracy and had again confirmed its accuracy at a meeting held February 26, 1986.

7. The administrators were advised that no changes could be made to the recommendation for the position to be upgraded until a new job description was submitted. The record does not reflect that a new description has

ever been submitted.

Conclusions of Law

1. No university employee may be required to become an employee of the corporation as a condition of employment or promotion. W. Va. Code, 18-11C-4(d). (Emphasis added.)

2. All university personnel are university employees in all respects. W. Va. Code, 18-11C-4(d).

3. It is the responsibility of West Virginia University to implement any personnel changes which are recommended by its Division of Human Resources for those Board of Regents employees leased to a private corporation. The corporation's refusal to accept the changes is a contractual matter between the corporation and the Board of Regents and shall not be allowed to affect the employees' classification status.

In consideration of the foregoing and the record in its entirety, the grievance is granted. Accordingly, West Virginia University is ORDERED to implement the recommended upgrade with all its benefits, privileges and rights, effective October 1, 1985.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia County and such appeal must be filed within thirty (30) days of receipt of this decision. (Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

DATED: November 5, 1986

Sue Keller

SUE KELLER

Hearing Examiner