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**WEST VIRGINIA EDUCATION AND
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TERRY McMANUS, et al.

v.

DOCKET NO. BOR-88-066/067

WEST VIRGINIA UNIVERSITY

DECISION

Grievants Mike Foley, Larry Williams, William Woodyard and Terry McManus are employed as Carpenters assigned to the West Virginia University (University) Physical Plant. The grievants filed a level one grievance on March 21, 1988 at which time they alleged that they had been working out of classification since 1984 and requested "...that the paygrade of a Carpenter be increased to that of a Senior Carpenter to provide adequate compensation for work performed and back pay...for whatever time is applicable by law."¹ The grievance was denied at levels one and two and a level four appeal was received on April 29, 1988.

Grievants Foley, Williams and Woodyard filed a second grievance on March 21, 1988 in which they alleged that they

¹The last classification review took place in 1984 and while the grievants identified no specific changes in classification to have occurred as a result of the review they have now designated that time as the beginning date of this grievance.

had performed the duties of Senior Carpenters at various times for at least the two previous years but had not received differential pay owed them.² This matter was also denied at levels one and two with a level four appeal filed on April 29, 1988. The matters were continued at level four while the parties attempted to negotiate a settlement. When a resolution could not be reached the matters were consolidated for a level four hearing held on April 4, 1989. Proposed findings and conclusions were filed by both parties by May 24, 1989.

The grievants argue that since 1984 they have worked on the same types of assignments and performed the same duties as Senior Carpenters and should have been compensated accordingly. In support of their allegation the grievants compare position descriptions dated August 24, 1984. The "function" for the position of Carpenter states that "[u]nder the supervision of the Trade Supervisor, performs general carpenter maintenance and installation as outlined by University guidelines; shall provide guidance to Carpenter Helper, General Maintenance Helper and unskilled personnel as assigned. Fills in for Senior Carpenter in his absence." The "function" of Senior Carpenter states that he "...under the supervision of the Trades Supervisor, performs

²Physical Plant Policy B5-115 provides that when an employee is assigned duties of a higher level classification for more than half of his regular shift he shall receive "differential pay" at the higher classification.

general carpenter maintenance and installation as outlined by University guidelines; shall fill in as acting Trade Supervisor in his absence due to sickness or vacation; shall provide guidance to Carpenter and Carpenter Helper, Maintenance Helper and unskilled personnel as assigned." The grievants assert that because they use the same skills to perform the same assignments completed by Senior Carpenters they should be similarly classified and compensated at paygrade eleven.³ In what appears to be an alternative argument, Grievant Foley lists four separate assignments for which he asserts that he acted as a Senior Carpenter but did not receive differential pay.⁴

The University denies that the grievants perform the duties of a Senior Carpenter or that Grievant Foley was acting as a Senior Carpenter in the four assignments he listed. Teresa Crawford, a Compensation Analyst who reviewed the positions of Carpenter and Senior Carpenter as a result of this grievance, testified at level four that the positions are significantly different. According to Ms.

³ Carpenters are compensated at paygrade nine.

⁴ Although grievants Williams and Woodyard were parties to this grievance Mr. Woodyard did not provide testimony at levels two or four identifying any assignments for which he performed the duties of a Senior Carpenter. Mr. Williams testified at level four regarding an asbestos removal assignment but stated that he considered the work to be regular carpenter duties. He seemed to state that he deserved differential pay for other assignments but was so vague in identifying any such work that it is impossible to determine whether the claim is meritorious.

Crawford, a Senior Carpenter is assigned larger projects or projects which extend over a prolonged period of time, they assist in planning, determine the labor and equipment required to complete a project, schedule work, prepare complex bills of materials, coordinate work with other crafts and communicate directly with the client. Ms. Crawford determined that the grievants do not assign work or supervise other carpenters, they are not responsible for work completed by others, do not participate in advance planning (they usually are given an assignment a day before it is to be completed) and use less communication, organization and planning skills.

Al Ingle, Assistant Director of the Physical Plant, confirmed that the difference in the positions was not the employees' skill in carpentry but the additional responsibilities of planning, preparing and communicating. Mr. Ingle addressed each of the four projects on which Grievant Foley asserts that he served as a Senior Carpenter and determined that the grievant was not required to coordinate with other crafts, supervise other employees, complete complex bills of material or confer with the client on any of the projects and therefore did not act as a Senior Carpenter.

The grievants are correct in their assertion that they perform many of the same skill related activities as Senior Carpenters. It is clear that carpentry skill is not a factor in the position designation and that assignments may

be made to a Carpenter or Senior Carpenter either randomly or based upon the expertise of an employee. These findings are confirmed by the listing of duties and responsibilities, knowledge required, etc., which were identically worded on the 1984 position descriptions.

However, evidence adduced by both parties at level four establishes that the two positions differ significantly. The additional responsibilities of a Senior Carpenter as stated by Ms. Crawford was confirmed by Grievants Foley and Williams in their testimony relating to their stints as Senior Carpenters. Mr. Foley stated that he ran two crews keeping two jobs going and took the work off the board himself if needed (T. pp 62-63). Mr. Williams also testified that while acting as Senior Carpenter he assigned work orders and was generally in charge of the downtown crew and two crews on the Evansdale Campus (T. pp 85-85). None of the grievants testified that they were in charge of a crew, coordinated the work among the crafts or otherwise assumed the more advanced duties of the Senior Carpenter on any individual assignment other than those for which they have already received differential pay. In consideration of this evidence it is determined that the grievants are properly classified and have not been denied any differential pay to which they were entitled.

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

Findings of Fact

1. The grievants are employed as carpenters assigned to the West Virginia University Physical Plant.

2. When the grievants work out of classification they are granted temporary differential status as Senior Carpenters and are compensated at paygrade eleven.

3. While Carpenters and Senior Carpenters use similar skills to complete similar assignments, Senior Carpenters are responsible for additional administrative duties including supervising crews, advance planning, completion of paperwork, etc.

Conclusions of Law

1. It is incumbent upon a grievant to prove the allegations of his complaint by a preponderance of the evidence. Taylor v. Putnam County Board of Education, Docket No. 9-40-429 (Sept. 21, 1989); Hanshaw v. McDowell County Board of Education, Docket No. 33-88-130 (Aug. 19, 1988).

2. The grievants have failed to prove that they are misclassified as carpenters or that they were entitled to any additional differential pay.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Monongalia County or to the Circuit Court of Kanawha 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 Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

DATED: October 31, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER