HARRY AREFORD,

Grievant,

v. **Docket No. 97-BOT-559**

BOARD OF TRUSTEES/WEST VIRGINIA UNIVERSITY,

Respondent.

D E C I S I O N

Grievant, Harry Areford, employed by West Virginia University (Respondent) as a Motor Pool Fleet Attendant, filed a level one grievance on September 23, 1997, in which he alleged, "[t]he University has added more duties and responsibilities to [my] job for which [I am] not currently compensated. The employer is not complying with [my] current job description duties." For relief, Grievant requested that he be equitably compensated by reclassification to pay grade 12, and to make him whole in every respect. Grievant's immediate supervisor, Denzil Banks, did not have the authority to grant the relief requested, but noted that Grievant's position description had been re-written at his request, and had been reviewed and signed by Grievant prior to review by Human Resources, and that he had not been directed to perform any duties outside the scope of that job description.

Grievant appealed and a level two hearing was convened on November 3, 1997. After testimony was given by Grievant and Mr. Banks, Grievant's representative suggested that Respondent conduct an on-site review of his position, and file the report with the hearing evaluator. Respondent agreed, and Thomas Helmick, Human Resources Representative, submitted his findings on December 3, 1997. The grievance was denied by decision dated December 8, 1997. Grievant elected to by-pass consideration at level three, as is permitted by W. Va. Code §18-29-4(d), and filed a level four appeal on December 19, 1997. Grievant's representatives, Grove Pennington and Harold Creel of Laborers' International Union of North America, Local 814, and Respondent'scounsel, Gregory G. Skinner, Assistant Attorney General, agreed to submit the matter for decision based upon the lower level record, supplemented with a written statement filed by Grievant on February 25, 1998, and proposed findings of fact and conclusions of law filed by Respondent on April 13, 1998.

Upon review of the record in its entirety, it is appropriate to make the following findings of fact.

Findings of Fact

1. Grievant has been employed by Respondent for approximately twenty-five (25) years, and is presently classified as a Motor Pool Fleet Attendant.

2. Prior to January 1, 1994, Grievant was classified as Assistant Supervisor of the Motor Pool, and compensated at pay grade ten (10).

3. Following implementation of the Mercer classification system on January 1, 1994, Grievant received his current classification of Motor Pool Fleet Attendant, which is also compensated at pay grade ten (10).

4. Based upon required refrigeration certifications, all Motor Pool employees, with the exception of Grievant, were upgraded as a result of the Mercer classification. Grievant's present job description does not require that he hold these certifications.

5. As a result of the Mercer classification, and/or a matter raised to the Social Justice office, Grievant was relieved of all supervisory duties. Consequently, he no longer works overtime when Mr. Banks is absent, and he no longer receives the $1200.00 to $1400.00 per year overtime compensation he earned in that capacity.

6. In March 1997, Grievant requested a review of his position description. The requestwas granted and a revised position description was drafted. Grievant then requested that he be assigned more duties, in an effort to get his position upgraded. In response, Grievant was assigned daily and monthly billings, and the non-supervisory duties of Mr. Banks in his absence.

7. The revised position description was reviewed by Respondent's Department of Human Resources which determined the change in duties did not affect Grievant's classification or pay grade.

8. The essential functions of Grievant's position are as follows:

(30%) Schedule Motor Pool vehicles for faculty and staff travel. Maintain log book for each day's scheduled trips with starting mileages. Maintain a five (5) month vehicle schedule board to facilitate long range vehicle scheduling. Maintain a file on all trips for future reference. Explain policies and procedures to faculty and staff regarding leasing of vehicles. Respond to customer complaints and diplomatically resolve problems. Serve as primary telephone contact for other customer scheduling requests as deemed appropriate by the supervisor.

(25%) Regulates use to control vehicle mileage in order to obtain maximum use of total fleet, considering a four-year replacement cycle. Assists in determining which vehicles are to be or need to be replaced. Receives new vehicles from dealer.

(20%) Process billings to WVU departments and outside agencies for use of Motor Pool Services. Maintains Accounts Receivable records on a daily basis.

(15%) Assures each vehicle scheduled out is properly serviced before lease. Assures the requesting department has submitted the necessary vehicle requisition and intra-university cost transfer required by Motor Pool before lease.

(5%) Calculates gasoline purchases by departments and submits to Business Office for proper billing. Collects credit card slips, including any other invoice, and ending mileage for each monthly lease or individual trip. From this material, calculates the cost of lease or trip and submits necessary paperwork to the Business Officefor billing or leasing departments.

(5%) Other duties as assigned by Supervisor, Fleet Manager, and Director of Public Safety and Transportation Services.

9. In December 1997, Human Resources Representative Thomas Helmick conducted an on-site review of the Motor Pool Fleet Attendant position. Mr. Helmick concluded that, in consideration of Grievant's duties and responsibilities, the title of Motor Pool Fleet Attendant, and pay grade ten (10), were appropriate for his position.

Discussion

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 §4.19; W. Va. Code §18-29-6; Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). The Mercer classification system evaluates a position by assigning degree levels to a number of point factors. The total number of points awarded to the point factors determines the pay grade of the position. Whether a grievant is properly classified is almost entirely a factual determination, and the interpretation of the point factors, and the employee's Position Description, by the Job Evaluation Committee will be given great weight unless shown to be clearly erroneous. See Tennant v. Marion Health Care Found., 194 W.

Va. 97, 459 S.E.2d 374 (1995); Burke, supra. Thus, a higher education employee seeking to overturn his classification will have to overcome a substantial obstacle to establish that he is misclassified.

Grievant does not allege that he is misclassified, and does not claim that any point factor had been assigned an incorrect degree level. Instead, he states in general terms that his performance of Mr. Banks' non-supervisory functions, and the accounting duties which he assumed from anemployee classified as an Accounting Assistant I, justify his compensation at pay grade twelve (12). When asked to elaborate on the non-supervisory duties, Grievant stated that he could not provide a list, but explained they were in the nature of calling a bus driver if needed, or answering customer inquiries and complaints. The accounting duties consist of billing departments for Motor Pool vehicles used for a day, or by the month.

Respondent argues that Grievant is properly classified, and his position is properly slotted into pay grade ten (10). In the most recent review of Grievant's position, Mr. Helmick concluded that the contents of the March 1997 position description accurately reflect the duties of his position, and the percentage of time he engages in those duties. In his report Mr. Helmick specifically addressed the supervisory and accounting functions raised by Grievant. He concluded that Grievant occasionally, on an as-needed basis, prepares work orders for fleet cars, a duty normally performed by his supervisor. The actions relating to the preparation of the work orders were found to consist of relaying and exchanging information. It was noted that Grievant lacks authority to assign tasks to other Motor Pool employees or to provide supervisory oversight to their work product.

Another task which Grievant opines is that of his supervisor, involves the arrangement for a bus driver to transport individuals across campus. This function, which Grievant performs on average one or two times per month, requires that he locate a bus operator and request that he/she report to work. Mr. Helmick concluded that this duty also consists of relaying and exchanging information, and that Grievant lacks authority to actually require off-duty employees report to work, to change existing work schedules to meet such requests, or to discipline employees for refusal.

It was found that Grievant signs for the receipt of deliveries of supplies, but that he does not monitor the expenses or prepare the budget requests for the unit. Mr. Helmick concluded thatGrievant may deal with some unusual situations independently in the absence of his supervisor, but that he does so infrequently, and the supervisor is consulted on controversial or questionable matters. Otherwise, he found Grievant's tasks to be structured, and his actions governed by standard

operating procedures, with no independent authority to make final or binding decisions.

Addressing the accounting issue, Mr. Helmick found that the new duties assigned to Grievant increased the volume of paperwork he is expected to process, and consisted of lower-level functions requiring basic mathematical computations of addition, subtraction, and multiplication. Grievant is required to accurately complete intra-university cost transfer forms to ensure correct billing to departments for the use of Motor Pool vehicles, duties similar to the processing of credit card and gas receipts, which Grievant has performed for many years. Mr. Helmick opined that the duties are typical of an Accounting Clerk II, pay grade ten (10), position at WVU. In summary, Mr. Helmick found Grievant to be properly compensated at pay grade ten (10).

It is apparent from the level two transcript that Grievant's sole motive is to secure a salary increase, since he did not receive one when the Mercer classification was implemented, and he is no longer able to earn overtime compensation covering for Mr. Banks. However, he has failed to establish that any of his regular duties are beyond the level expected of an employee assigned to pay grade ten (10).

In addition to the foregoing discussion, the following conclusions of law are appropriate in this matter.

Conclusions of Law

1. The burden of proof in a misclassification grievance is on the grievant to prove bya preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 §4.19; Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995).

2. Grievant failed to prove they he performs duties regularly assigned to his supervisor on more than an occasional basis, that he completes accounting tasks of more than a basic level, or that he routinely completes duties associated with positions assigned to pay grade twelve (12).

Accordingly, the grievance is **DENIED**.

Any 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. 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: May 7, 1998 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE