VIRGIL CROCKETT, et al.

v. Docket No. 94-MBOT-970

BOARD OF TRUSTEES/MARSHALL UNIVERSITY

D E C I S I O N

Grievants, Virgil Crockett, John Boyes, and William Lewis, employed by the Board of Trustees (Respondent) at Marshall University, were classified as HVAC Mechanics, at pay grade 12, under the "Mercer reclassification". Grievants were elevated to pay grade 13 effective April 16, 1996, and presently seek classification as HVAC Mechanics - Lead, at pay grade 14. (See footnote 1) This matter became mature for decision following a level four hearing conducted on November 15, 1996, when both parties waived the opportunity to submit fact/law proposals.

The following Findings of Fact are properly made from the record developed at level four.

Findings of Fact

1. At all times relevant to this matter Grievants have been employed by the Board of Trustees (Respondent) at Marshall University. Prior to the implementation of the Mercer classification system, they were classified as Building Engineers.

2. In 1991, all higher education classified employees, including Grievants, were asked to complete a Position Information Questionnaire (PIQ) prior to the reclassification. (See footnote 2) Employees were to describe their job duties and responsibilities and the job requirements on the PIQ, by answering a series of questions designed to elicit this information.

3. As a result of the Mercer reclassification, Grievants were placed in the classification of HVAC Mechanic, pay grade 12, effective January 1, 1994.

4. Grievants were elevated to pay grade 13 effective April 16, 1996, based upon a Job Evaluation Committee (JEC) decision to award additional credit for required licenses and certifications.

5. Grievants' primary job duties prior to January 1, 1994, consisted of maintenance and repair of

refrigeration units, including air conditioners, chillers, pumps, boilers, electronic temperature control panels, duct fabrication/sheet metal work, chemical testing of systems, electrical repairs, including the rebuilding and installation of motors, ventilation and exhaust equipment. Grievants also performed duties of lower-level positions, such as painting and carpentry.

6. The point range for Pay Grade 13 is from 1756 points to 1865 points. 7. The HVAC Mechanic job title received 1723 total points from the following degree levels in each of the thirteen point factors (See footnote 3) : 4.0 in Knowledge; 3.0 in Experience; 2.5 in Complexity and Problem Solving; 2.5 in Freedom of Action; 1.0 in Scope and Effect, Impact of Actions; 2.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 1.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level; 1.0 in External Contacts, Nature of Contact; 2.0 in External Contacts, Level; 1.0 in Direct Supervision Exercised, Number; 1.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 4.0 in Physical Coordination; 3.0 in Working Conditions; and 4.0 in Physical Demands. (See footnote 4)

8. The point range for pay grade 14 is from 1866 points to 1984 points.

Discussion

A. Burden of Proof

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 §4.1; W.Va. Code §18-29-6. Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W.Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991). A grievant is not likely to meet his burden of proof in a Mercer grievance merely by showing that his job duties better fit one job description than another, without also identifying which point factors he is challenging, and the degree level he believes he should have received. (See footnote 5) While some “best fit” analysis of the definitions of the degree levels is involved in determining which degree level of a point factor should be assigned, where the position fits in the higher education classified employee hierarchy

must also be evaluated. In addition, this system must by statute be uniform across all higher education institutions; therefore, the point factor degree levels are not assigned to the individual, but to the job title. W.Va. Code §18B-9-4; Burke, supra. A Mercer grievant may prevail by demonstrating his reclassification was made in an arbitrary and capricious manner. See Kyle v. W.Va. State Bd. of Rehabilitation, Div. of Rehabilitation Services and W.Va. Civil Serv. Comm'n, Docket No. VR-88-006 (Mar. 28, 1989).

Finally, whether a grievant is properly classified is almost entirely a factual determination. As such, the Job Evaluation Committee's (JEC) interpretation and explanation of the point factors and generic job descriptions at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 194 W.Va. 97, 459 S.E.2d 374 (1995); Burke, supra. However, no interpretation or construction of a term used in the Job Evaluation Plan (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. Watts v. Dept. of Health and Human Resources, 195 W.Va. 430, 465 S.E.2d 887(1995). The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. (See footnote 6)

B. Discussion

Grievants do not challenge any point factor, but assert that their personal education, experience, and seniority, plus the fact that they work in multiple trades, warrants their classification as Lead. (See footnote 7) ` They further note that at times they work with Preventive Maintenance employees, to help them earn “hands-on” experience.

Testifying on behalf of Respondent, Senior Compensation Analyst Teresa Crawford stated that Grievants' duties were all consistent with the classification of HVAC Mechanic. She also noted that some peripheral duties may overlap trades, but that it is acceptable for an employee to perform lower-level duties at the higher wage. Most importantly, Ms. Crawford addressed the fact that Grievants have no lead responsibilities. Even as Interim Supervisor, Grievant Lewis does not bear the duties of a lead worker. Occasional fill-in work and the work with Preventive Maintenance employees does not constitute lead activity, according to Ms. Crawford.

C. Summary

___ A comparison of the data lines for HVAC Mechanic and HVAC Mechanic - Lead, establishes variances in only four point factors: Experience; Complexity and Problem Solving;Freedom of Action;

and Direct Supervision Exercised (Number and Level). Consideration of an incumbent employee's personal experience, training, and seniority is not permitted because the Mercer classification plan measures the minimum amount of experience required for a new employee to function within a position. Grievants do not challenge the JEC determinations in Complexity and Problem Solving or Freedom of Action, as applied to their positions. The evidence clearly establishes that Grievants do not function in a “Lead” capacity in that they do not direct a work crew. Based upon the foregoing, it must be determined that Grievants have failed to prove that the JEC was clearly wrong or acted in an arbitrary and capricious manner when it assigned them as HVAC Mechanics at pay grade 13.

In addition to the foregoing facts and narration it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. The governing boards are required by W.Va. Code §18B-9-4 to establish and maintain an equitable system of job classifications for all classified employees in higher education.

2. The burden of proof in a misclassification grievance is on the Grievants to prove by a preponderance of the evidence that they are not properly classified. 156 C.S.R. 1§4.1. The grievant asserting misclassification must identify the job he feels he is performing. Otherwise, the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W.Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

3. The Job Evaluation Committee's interpretation and explanation of point factors will be given great weight unless clearly wrong, where the proper classification of a grievant is almostentirely a factual determination. See Tennant v. Marion Health Care Found., 194 W.Va. 97, 459 S.E.2d 374 (1995); Burke, et al. v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD- 349 (Aug. 8, 1995).

4. Grievants failed to prove by a preponderance of the evidence that the Job Evaluation Committee's assignment of their positions to the classification of HVAC Mechanic, pay grade 13, was clearly wrong or arbitrary and capricious.

5. Grievants have failed to prove that their duties and responsibilities warrant different classification and/or compensation at any higher pay grade.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of the county in which the grievance occurred, 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 andprovide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

Date: April 30, 1997 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

The reader is referred to Burke, et al. v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995), for a discussion of the background of the Mercer reclassification project, the procedural history of the Mercer grievances, and the definitions of various terms of art specific to the Mercer reclassification.

Footnote: 2

Grievants Crockett and Boyes did not complete PIQ's because they were not employed by Respondent until 1992.

Footnote: 3

The thirteen point factors are set forth in 128 C.S.R. 62 §2.27, and 131 C.S.R. 62 §2.27. Burke, supra.

Footnote: 4

As a result of the JEC decision to grant an additional .5 point credit in Knowledge to those employees required to obtain certification or licensure necessary to perform their duties, the total points for HVAC Mechanic was increased to 1760, placing Grievants in pay grade 13.

Footnote: 5

A grievant may challenge any combination of point factor degree levels, so long as he clearly identifies the point factor degree levels he is challenging, and this challenge is consistent with the relief sought. See Jessen, et al. v. Bd. of Trustees, W.Va. Univ., Docket No. 94-MBOT-1059 (Oct. 6, 1995); and Zara, et al., v. Bd. of Trustees, W.Va. Univ., Docket No. 94-MBOT-817(Dec. 12, 1995).

Footnote: 6

This discussion is not intended to address challenges to the way the Mercer system as a whole is set up, that is, challenges to the methodology.

Footnote: 7

Grievant Lewis has been classified as Interim Supervisor/Building Trades, at pay grade 16, since January 1, 1996. Although Respondent advised that to prevail in this grievance would result in a loss of compensation for him, Grievant stated that he wished to continue.