DAVID LAMBERT, et al.,

Grievants,

v. DOCKET NO. 01-HE-132

HIGHER EDUCATION INTERIM GOVERNING

BOARD/MARSHALL UNIVERSITY,

Respondent.

DECISION

This grievance was filed by Grievants, David Lambert, Joseph Justice, Henry Lambert, and Ronald Shortt, against their employer, Respondent, Higher Education Interim Governing Board/Marshall University ("Marshall"). The statement of grievance reads:

> The data line adjustment to the plumbers [Creed, [sic] et al., v. Board of Trustees/WVU, et al.] has created an inequity because electrical workers require the same amount of experience to come into the job and have the same amount of freedom.

As relief, Grievants sought:

> We ask that the data lines be changed and that the pay grades be adjusted to reflect that change. Also, we request the pay be retroactive to January 16, 2001.

The grievance was filed on or about January 8, 2001, and was apparently denied at Level I on that date. Grievants appealed to Level II on January 12, 2001, where a hearing was held on April 6, 2001. A Level II decision was issued on April 11, 2001, denying the grievance. Grievants bypassed Level III, appealing to Level IV on April 19, 2001. This grievance was placed in abeyance at the request of Respondent, until May 15, 2002, while the Job Evaluation Committee ("JEC"), the body charged with higher education job evaluation and classification decisions, reviewed the Physical Plant Job Family. The JEC review was not completed by that date. In September 2002, Grievants Henry and David Lambert and Justice submitted a new grievance form at Level I, in an effort to move

their grievance forward. In November 2002, in response to a request from the undersigned as to the status of the JEC review, Respondent advised that the JEC review had been completed, and that it was anticipated that the recommendations would be addressed by the Higher Education Policy Commission in December 2002. Respondent did not advise of the Higher Education Policy Commission's decision on the JEC recommendations until March 12, 2003, after the undersigned again sent a letter inquiring as to the status of this matter. The Higher Education Policy Commission had approved the JEC recommendations at its December 2002 meeting, to be effective July 1, 2003. It was not apparent at that time, however, how these Grievants would be affected. This grievance was placed in abeyance at Level IV until July 7, 2003. Nonetheless, a second lower level hearing was held, at Level III (See footnote 1) on June 13, 2003, and a decision denying the grievance was issued on June 20, 2003. Grievants David and Henry Lambert and Justice advised that they wished to proceed with their grievance, and a Level IV hearing was held on August26, 2003. Those Grievants represented themselves, Grievant Shortt did not appear, and the remaining Grievants did not represent Grievant Shortt. Respondent was represented by Jendonnae L. Houdyschell, Esquire. Grievants David and Henry Lambert and Justice advised at the Level IV hearing that they are satisfied with their new classification and pay grade, Trade Specialist, pay grade 13, and are seeking back pay in this grievance. This case became mature for decision upon receipt of Respondent's written argument on September 16, 2003.

The following findings of fact are made based upon the evidence presented at the Level II, III and IV hearings.

Findings of Fact

1. On January 1, 1994, Grievant David Lambert was employed by Marshall as an Electrician, pay grade 12. He did not file a grievance contesting his initial classification as an Electrician. He was still classified as an Electrician when this grievance was filed. His duties have not changed significantly since January 1, 1994.

2. Grievant Henry Lambert was hired by Marshall in February 1997. He was employed in a Trades Worker position for some period of time, and on January 17, 2001, he was placed in an Electrician position.

3. Grievant Justice was hired by Marshall as a Maintenance Worker Repairman in September

1993. In November 1998, he transferred into an Electrician position. The Electrician position had been held by John Hagy. Mr. Hagy held that position on January 1, 1994, and did not file a grievance at the time contesting his initial classification.

4. Grievant Shortt resigned his employment with Marshall in May 2002, and did not provide the Grievance Board, any of the other Grievants, or Marshall with a newaddress. Mail sent to Grievant Shortt's last known address has been returned to the Grievance Board. Grievant Shortt has not indicated that he wishes to continue with this grievance, and he did not attend the Level IV hearing.

5. Grievants did not complete new Position Information Questionnaires ("PIQ's") prior to filing their grievances. They completed new PIQ's in the summer of 2001, as part of the Physical Plant Job Family review by the JEC, submitting them on July 20, 2001. These PIQ's were used to place Grievants in their current Job Title. Grievants' duties have not changed significantly since January 8, 2001.

6. In November 2002, the JEC made recommendations to the Higher Education Policy Commission for changes in the Physical Plant Job Family. The Higher Education Policy Commission approved these recommendations in December 2002, to be effective July 1, 2003.

7. As a result of the JEC review of the Physical Plant Job Family, effective July 1, 2003, Grievants Henry and David Lambert and Justice were classified as Trade Specialists, pay grade 13.

Discussion

Grievants Henry and David Lambert and Justice are satisfied with their new classification and pay grade. The only issue is whether they should receive back pay.

On June 11, 2001, Respondent filed a Motion to Dismiss the grievance, or place it in abeyance. The grievance was placed in abeyance pending the outcome of the JEC review of the Physical Plant Job Family. On August 22, 2003, Respondent renewed its Motion to Dismiss. The arguments set forth in the Motion to Dismiss were reiterated in Respondent's post-hearing written argument, which included additional argument. The first argument which will be addressed is Respondent's assertion that the grievance should be dismissed because Respondent did not violate any statutes, policies, etc., when it made changes to the data line for plumbers as a result of the Grievance Board decision Creel v. Bd. of Trustees, Docket No. 94-MBOT-458 (Mar. 31, 1997), and therefore this matter is not grievable. Although the changes made by the JEC as a result of the Creel decision

certainly led to the filing of this grievance, it is clear that Grievants were grieving the pay grade to which their classification was assigned, and that certainly is a grievable matter.

Respondent argued Grievants did not meet their burden of proof. Inasmuch as the JEC has placed Grievants in a different job title in a higher pay grade, based upon the duties set forth on the PIQ's submitted in July 2001, and no testimony was presented that the JEC changed its interpretation of any of the point factors prospectively, Grievants have met their burden, demonstrating that their duties merited a higher pay grade as of at least that date. Glenna Racer, Compensation Analyst at Marshall, and a JEC member, testified that the fact that Grievants were placed in a new Job Title in a higher pay grade by the JEC review did not mean they were previously misclassified, as the JEC had new PIQ's to work from, and the JEC did a better job with the point factor methodology. The PIQ's merely describe an employee's duties. If an employee was performing the same duties before he completed a new PIQ which better described his duties, resulting in his placement in a higher pay grade, he was misclassified before he completed the PIQ. The fact that the JEC may have done a better job applying the point factor methodology likewise has no bearing on whether Grievants were misclassified either before they completed new PIQ's or before the JEC completed its review. It will be noted at this point that the JEC completed its review in November 2002, and its recommendations were approved in December 2002. The only reason given by Respondent for delaying the implementation to July 1, 2003, was that was the beginning of the fiscal year, and the implementation cost a lot of money.

Respondent argued the grievances were not timely filed, as the grievances were not filed within 15 days of Grievants being classified as Electricians. This argument has no merit. First, Grievant Henry Lambert was not classified as an Electrician until January 17, 2001, after the grievance was filed. Second, it is well established that misclassification is a continuing practice, and a grievance may be initiated at any time during which the misclassification continues. Martin v. Randolph County Bd. of Educ., 195 W. Va. 297, 465 S.E.2d 399 (1995). However, back pay is limited to 15 days preceding the filing of the grievance. Id. In this case, Grievants are requesting back pay only to January 16, 2001. The grievance was filed before that date.

Respondent pointed out that Grievant David Lambert was classified as an Electrician on January 1, 1994, and did not grieve his initial classification. Grievant David Lambert is precluded, by legislative rule from filing a grievance challenging his initial classification.

> A higher education employee must also demonstrate that his duties have changed in a meaningful, identifiable manner since January 1, 1994, in order to pursue a grievance over his [initial] classification. In 1993 the West Virginia Legislature amended W. Va. Code § 18B-9-4 to provide, among other things, "an equitable system of job classifications" for classified employees of the University System of West Virginia Board of Trustees and the Board of Directors of The State College System of West Virginia (collectively "the governing boards"). As amended, W. Va. Code § 18B-9-4 required the governing boards to establish by rule and to implement a system establishing uniform classifications in all institutions of highereducation within West Virginia. This reclassification is commonly referred to as the "Mercer reclassification."
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> The Legislative Rules promulgated by the governing boards set forth identical procedures for a classified employee to seek review of his initial classification under the new system. 131 C.S.R. § 18.1 makes it clear that failure on the part of an employee to go through the internal review procedure precludes the employee from pursuing a grievance on his reclassification. Hardy v. Bd. of Directors/W. Va. Institute of Technology, Docket No. 94-MBOD-963 (Dec. 21, 1995). (See footnote 2)
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> Accordingly, now that the Mercer reclassification grievances have all been processed and decided by this Grievance Board, a higher education grievant must demonstrate that his job has changed since January 1, 1994, in order to pursue a misclassification grievance.

Rush v. Bd. of Directors, Docket No. 97-BOD-369 (April 3, 1998).

It is clear that Grievant David Lambert cannot file a grievance over his classification, as his initial classification in 1994 was Electrician, and there was no argument or evidence that his duties have changed in a significant identifiable manner. While the result is that Grievant David Lambert is not eligible for the back pay that the other Grievants will be awarded, the undersigned cannot change the law. Grievant David Lambert, and all other higher education employees at that time, were given only one chance to grieve their initial classification, and he chose not to avail himself of that chance. He is now stuck with that choice.

Grievant David Lambert argued he should be allowed to pursue this grievance because he relied upon the advice of his co-worker not to file a grievance, as he would have a better chance of getting a supervisory position which was going to be open if he did not grieve; and his supervisor agreed with this. This Grievance Board has previously determined that when a grievant decides to follow such advice, it does not operate as a excuse for his failure to timely file a grievance. The undersigned concludes that this same principle should apply here.

> The West Virginia Supreme Court of Appeals, in Naylor v. W. Va. Human Rights

> Comm'n, 180 W. Va. 634, 378 S.E.2d 843 (1989), defined the type of representations made by employers which would bar a subsequent claim of untimely filing. The Court held that estoppel was available to the employee only when the untimely filing "was the result either of a deliberate design by the employer or actions that an employer should unmistakably have understood would cause the employee to delay filing his charge." This standard was adopted in and incorporated in this Grievance Board's decision in Steele v. Wayne County Bd. of Educ., Docket No. 50-87-062-1 (Sept. 29, 1987). See also Khoury v. Kanawha County Bd. of Educ., Docket No. 99-20- 031 (Mar. 31, 1999); Watkins v. Logan County Bd. of Educ., Docket No. 93-23-052 (Sept. 20, 1993); Altizer v. Greenbrier County Bd. of Educ., Docket No. 89-13-679 (Jan. 31, 1991).

Thomas v. W. Va. Dep't of Health and Human Resources, Docket No. 01-HHR-385 (Nov. 20, 2001). There was no deliberate design by the employer here. Grievant David Lambert's co-worker offered him advice, his supervisor agreed with the advice, and Grievant chose to follow this advice. This choice did not toll the time period for contesting Grievant's initial classification. Grievant David Lambert's grievance must be dismissed.

Respondent argued that the same provision which precludes Grievant David Lambert from filing a grievance now over his initial classification, also precludes the remaining Grievants from filing a grievance if they have not first submitted PIQ's and sought an internal review of their classification, and if their duties have not changed in a significant, identifiable manner. Respondent argued that Grievants had to submit PIQ's for review, and obtain a determination on their classification from the JEC before they could file a grievance, and that since the JEC had not made a determination as to whether the Grievants were misclassified, the relief sought was speculative and the grievance was premature. Respondent pointed to no other statute, policy, or rule which precludes higher education employees from filing a grievance if they have not first completed and submitted PIQ's.

This argument is rejected. The cited legislative rule quite clearly applies only to the procedure which must be followed to contest the employee's “initial classification.” It is also clear, from reading the legislative rule, that when it refers to the “initial classification,” it is referring to the classification assigned to the employee effective January 1, 1994, when the Mercer classifications first became effective, and the internal procedure to be followed was the unique review process set up to implement the new classification system. The rulefurther applies to the employee, and does not indicate that it is to apply to any and all other employees who are ever placed in the position after January 1, 1994. This legislative rule is not applicable to any of the Grievants except David Lambert.

Further, no other statute, rule, or policy precludes a higher education employee from filing a grievance to contest his classification when he has not first submitted a PIQ. Respondent pointed to

the definition of upgrade in support of its argument. An upgrade is defined in 128 C.S.R. § 62-2.10 as the “advancement of the employee's current position to a higher pay grade as a result of a significant change in the position's existing duties and responsibilities.” Respondent asserted that “an employee's entitlement to an upgrade necessarily involves a review of the duties, responsibilities and minimum qualifications of his/her job.” From this Respondent concluded that the employee must first submit a PIQ.

128 C.S.R. §62-10, entitled Classification Review Request, provides additional requirements for position reviews:

> 10.1. When significant changes occur in the principal duties and responsibilities of a classified position, it is the responsibility of the supervisor to recommend through established procedures that the position be reviewed. Requests for position reviews also may be initiated by an employee after discussion with the immediate supervisor. Within thirty (30) days from the date of request for review of a job, the department of human resources shall report to the requestor, in writing, whether the reclassification has been denied or approved. The immediate supervisor must prepare a complete and accurate position description form of the duties of the position, but the description may be written by the employee at the supervisor's request.
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> The responsibility for assigning tasks and duties to a position belongs to the supervisor. It is the supervisor's responsibility to document and submit the position description form for classification review when significant changes occur in the principal duties and responsibilities of a position. It is also the responsibility of a supervisor to ensure completion of required forms. The institutional president or the president's designee may also initiate action to review positions. The institutional president or the president's designee has authority on the campus to make classification determinations forinstitution-specific titles or the slotting of employees under existing systems-wide titles. The president may delegate authority to the human resource administrator for day to day management of the classification program. Management of the program requires adherence to written rules which ensure a uniform system of personnel classification. All classified positions shall be placed on any salary schedule which may be subsequently enacted by the Legislature or adopted by the governing boards.
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> 10.2. A position description form shall exist for every classified position. It shall be reviewed by the supervisor and/or the president or the president's designee on a formal basis at least every three years as part of the position audit procedures established by each institution. The date of each review shall be recorded on the description.

Grievants are not asserting that their duties have changed. Accordingly, the provision set forth above is not applicable here, and Grievants are not seeking an upgrade. Even if the above provision

were applicable, it does not preclude an employee from filing a grievance while he is seeking a review of his position. It certainly would make the process work more efficiently if the employee submitted his PIQ first, and received a determination on his classification, but this is not required. The relief sought is not speculative, nor is the grievance premature. Grievants believe they are misclassified, and the Grievance Board has the authority to take evidence on that issue and order that the employee be placed in a different pay grade, and/or classification. If the parties wish to hold the grievance in abeyance while a review of the employee's duties is completed, as was done in this case, that certainly would seem to be a reasonable way to approach the situation. As this Grievance Board has pointed out in state classification cases, the employee who does not file his grievance first takes a risk.

> [A] state employee who suspects she is misclassified has two choices: she may apply to DOP for reclassification, and thereby waive any back pay claim; or she may grieve and possibly recover back pay limited to the ten day period preceding the filing of the grievance, should her employer raise a timeliness defense. See Mullens v. W. Va. Dep't of Health and HumanResources/W. Va. Div. of Personnel, Docket No. 96-HHR-226 (July 31, 1997). In other words, an employee harboring any doubts regarding her classification should file a grievance at once, and certainly no later than her request for reclassification, or risk waiving any claim for back pay. [Akers v. W. Va. Dept. of Health and Human Resources, Docket No. 99-HHR-302 (Dec. 30, 1999), rev'd Cir. Ct. of McDowell County, Civil Action No. 00-AP-34 (Nov. 3, 2000).]

Thomas, supra.

Respondent finally argued in its post-hearing written argument that Grievants are precluded from filing a grievance by the legal doctrine of collateral estoppel. The undersigned cannot find where this argument was raised at or before the Level IV hearing. “Collateral estoppel is a narrower legal doctrine than res judicata which prevents a party to a contested matter from relitigating an issue that was determined against him in an earlier proceeding, even though there is a significant difference between the present action and the previous grievance. See Black's Law Dictionary 256 (7th ed. 1999); Jordache Enterprises v. National [Union] Fire Ins. Co., 204 W. Va. 465, 513 S.E.2d 692 (1998). See also State ex rel. Leach v. Schlaegel, 191 W. Va. 538, 447 S.E.2d 1 (1994).” Rule v. W. Va. Dep't of Health and Human Resources, Docket No. 00-HHR-080 (May 24, 2000). Respondent pointed to the Grievance Board decision in Hardee, et al., v. Board of Directors/Concord College, Docket No. 94-MBOD-373 (January 10, 1997). This Grievance Board does not consider new arguments raised by any party for the first time in their post- hearing written argument, as the

opposing party was not placed on notice that this would be an issue, and had no opportunity to submit evidence to dispute the claim. Beckley v. Lincoln County Bd. of Educ., Docket No. 95-22-107 (Feb. 29, 1996). Even if this issue were to be considered, none of the Grievants were parties to the Hardee grievance, and are not bound by it. As to Grievants' claim for back pay, Respondent argued that if any were to be awarded, it should be limited to the date Grievants completed their PIQ's as that is the date they sought reclassification from Respondent.

This case is nearly identical to Campolong v. Bd. of Trustees, Docket No. 99-BOT- 511 (April 26, 2000). After the grievant filed her grievance alleging she was misclassified, a review of her classification was conducted by the JEC. As a result, the grievant was placed in a different classification in a higher pay grade. In granting the grievant back pay, the Administrative Law Judge noted:

> Under ordinary circumstances, employees who benefit from a position upgrade do not receive back pay. For example, in the present matter, other employees previously classified as Housekeeper I will not receive back pay. Grievant holds a unique position; however, due to the fact that she filed a grievance alleging misclassification, and was ultimately reclassified. Grievant did not initiate a claim to have the entire class series reviewed. That was not her intent or request. Nevertheless, in partially granting her grievance at level two, the statewide review transpired. As evidenced by the outcome, the results of the review were convincing enough to support a change in both class titles in the Housekeeper series. This determination resulted in Grievant prevailing in her original claim. She is, therefore, entitled to the relief she originally requested.

Campolong, supra.

Due to the ruling previously made, Grievant David Lambert cannot recover back pay, as he could not file a grievance. Grievant Shortt is deemed to have abandoned his grievance. Grievants Henry Lambert and Justice were performing essentially the same duties when these grievances were filed as they were on July 1, 2003. They requested back pay to January 16, 2001, and Grievant Justice is entitled to that relief. Campolong, supra. As Grievant Henry Lambert did not enter into his duties as an Electrician until January 17, 2001, his back pay will go to that date. The following Conclusions of Law support the Decision reached.

Conclusions of Law

1.

A higher education employee must also demonstrate that his duties have changed

> in a meaningful, identifiable manner since January 1, 1994, in order to pursue a grievance over his [initial] classification. In 1993 the West Virginia Legislature amended W. Va. Code § 18B-9-4 to provide, among other things, "an equitable system of job classifications" for classified employees of the University System of West Virginia Board of Trustees and the Board of Directors of The State College System of West Virginia (collectively "the governing boards"). As amended, W. Va. Code § 18B-9-4 required the governing boards to establish by rule and to implement a system establishing uniform classifications in all institutions of higher education within West Virginia. This reclassification is commonly referred to as the "Mercer reclassification."

> The Legislative Rules promulgated by the governing boards set forth identical procedures for a classified employee to seek review of his initial classification under the new system. 131 C.S.R. § 18.1 makes it clear that failure on the part of an employee to go through the internal review procedure precludes the employee from pursuing a grievance on his reclassification. Hardy v. Bd. of Directors/W. Va. Institute of Technology, Docket No. 94-MBOD-963 (Dec. 21, 1995).

Rush v. Bd. of Directors, Docket No. 97-BOD-369 (April 3, 1998).

2. Grievant David Lambert is precluded, by legislative rule, from filing a grievance challenging his initial classification, as his duties have not changed significantly since January 1, 1994.

3.

> The West Virginia Supreme Court of Appeals, in Naylor v. W. Va. Human Rights Comm'n, 180 W. Va. 634, 378 S.E.2d 843 (1989), defined the type of representations made by employers which would bar a subsequent claim of untimely filing. The Court held that estoppel was available to the employee only when the untimely filing "was the result either of a deliberate design by the employer or actions that an employer should unmistakably have understood would cause the employee todelay filing his charge." This standard was adopted in and incorporated in this Grievance Board's decision in Steele v. Wayne County Bd. of Educ., Docket No. 50-87-062-1 (Sept. 29, 1987). See also Khoury v. Kanawha County Bd. of Educ., Docket No. 99-20-031 (Mar. 31, 1999); Watkins v. Logan County Bd. of Educ., Docket No. 93-23-052 (Sept. 20, 1993); Altizer v. Greenbrier County Bd. of Educ., Docket No. 89-13-679 (Jan. 31, 1991).

Thomas v. W. Va. Dep't of Health and Human Resources, Docket No. 01-HHR-385 (Nov. 20, 2001).

4. There was no deliberate design by the employer here to keep Grievant David Lambert from filing a grievance in 1994 over his initial classification.

5. Misclassification is a continuing practice, and a grievance may be initiated at any time during which the misclassification continues. Martin v. Randolph County Bd. of Educ., 195 W. Va. 297, 465 S.E.2d 399 (1995). However, back pay is limited to 15 days preceding the filing of the grievance. Id.

The grievances of Henry Lambert and Joseph Justice were timely filed.

6. The legislative rule which precludes Grievant David Lambert from filing a grievance over his initial classification, 131 C.S.R. § 18.1, quite clearly applies only to the procedure which must be followed to contest the employee's “initial classification.” It is also clear, from reading the legislative rule, that when it refers to the “initial classification,” it is referring to the classification assigned to the employee effective January 1, 1994, when the Mercer classifications first became effective, and the internal procedure to be followed was the unique review process set up to implement the new classification system. The rule further applies to the employee, and does not indicate that it is to apply to any and all otheremployees who are ever placed in the position after January 1, 1994. This legislative rule is not applicable to any of the Grievants except David Lambert.

7. No statute, rule, or policy precludes a higher education employee from filing a grievance to contest his classification when he has not first submitted a PIQ.

8. As Grievants Justice and Henry Lambert were performing essentially the same duties when this grievance was filed as they were when they were placed in pay grade 13 and new classification on July 1, 2003, they have demonstrated that their positions should have been in a pay grade 13 on the date they filed their grievance.

9. Grievant Shortt has abandoned his grievance.

Accordingly, this grievance is **GRANTED IN PART, AND DISMISSED IN PART**. The grievances of David Lambert and Ronald Shortt are **DISMISSED**. The grievances of Henry Lambert and Joseph Justice are **GRANTED**, and Respondent is **ORDERED** to pay them back pay to January 17 and January 16, 2001, respectively, as though they had been in a pay grade 13 from those dates. No interest will be awarded as none was requested.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Cabell County. Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 29-6A-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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

BRENDA L. GOULD

Administrative Law Judge

Dated: October 6, 2003

Footnote: 1

At the time of the Level II hearing, higher education employee grievances proceeded under the education employees grievance procedure, W. Va. Code §§ 18-29-1, et seq., which provides for a hearing at Level II. At the time of the Level III hearing, the Legislature had changed the law to provide that higher education employee grievances would proceed under the state employees grievance procedure, W. Va. Code §§ 29-6A-1, et seq., which provides for a hearing at Level III.

Footnote: 2

131 C.S.R. § 18.1 states:

> *An employee may seek a review of his/her initial classification under the new program implemented pursuant to this rule and may appeal such initial classification through the procedures of W. Va. Code §18-29 after completing such review. Such review or appeal shall be governed by the provisions of this rule and to the extent these provisions are inconsistent with W. Va. Code §18B-9-7 or W. Va. Code §18B-9-4, those code provisions are deemed null and void pursuant to the authorization contained in W. Va. Code §18B-9-4(c). If an employee does not first seek a review of his/her initial classification through the internal procedures set out herein, they shall be prohibited from grieving that classification under W. Va. Code §18-29. (Emphasis added.)*

131 C.S.R. § 18.2 explains the internal procedures referred to in § 18.1 as follows:

> *An employee may seek a review of his/her initial classification, job title or pay grade by filing a request for review form after formal notification of his/her title and pay grade under the new program, but no later than January 31, 1994. Request for review forms shall be available at each institution and shall be in a form prescribed by the governing boards.*

The regulations continue, explaining the request for review form was to be filed with the president of the institution, or his designee, who would then make a recommendation to the JEC by March 31, 1994.