GARY MATTHEWS and FRANK DANIEL,

Grievant,

v. Docket No. 01-HE-417

WEST VIRGINIA UNIVERSITY,

Respondent.

D E C I S I O N

Gary Matthews and Frank Daniel ("Grievants"), employed by West Virginia University ("WVU") and assigned to the Physical Plant as Certified Trades Workers, pay grade 13, filed a level one grievance on February 28, 2001, alleging a violation of W. Va. Code § 18B-9-1, when Plumber Leads were upgraded to pay grade 15. For relief, Grievant requested an upgrade to pay grade 14, with back pay and benefits from 2001. After being denied at the lower levels, this grievance was appealed to level four on June 27, 2001, and was placed in abeyance pending review of the Physical Plant job families by the Job Evaluation Committee ("JEC"). Effective July 1, 2003, the Certified Trades Worker position was not upgraded, but was reslotted as Trades Specialist I, pay grade 13, pursuant to the JEC review. A level four hearing was conducted on March 31, 2005, at which time Grievant was represented by Kathleen Abate, Esq., and WVU was represented by Assistant Attorney General Samuel R. Spatafore. At that time, Grievants stated that they had been upgraded to pay grade 14 in 2004, and amended their requested relief to the period of time beginning 15 days prior to the filing of the level one grievance and the date of the upgrade. After an extension requested by Ms. Abate, the grievance became mature for decision upon receipt of proposed findings of fact and conclusions of law filed by the parties on or before June 29, 2005. The following Findings of Fact are properly made from the record developed at levels two and four.

Findings of Fact 1. The higher education system in West Virginia utilizes the "Mercer" classification plan. This name is derived from the name of the company which assisted higher education in developing the classification system, William M. Mercer, Inc., and is generally referred to as "the Plan." Under the Plan, positions are evaluated pursuant to a "point factor methodology" wherein point values are assigned to thirteen "job evaluation

factors:" (1) Knowledge (KN); (2) Experience (EX); (3) Complexity and Problem Solving (CPS); (4) Freedom of Action (FA); (5) Scope and Effect (SE); (6) Breadth of Responsibility (BR); (7) Intrasystem Contacts/Level (IS/L) and Intrasystem Contacts/Nature (IC/N0; (8) External Contacts/Level (ECL) and External Contacts/Nature(EC/N); (9) Direct Supervision Exercised/Number (DSE/N) and Direct Supervision Exercised/Level (DSE/L); (10) Indirect Supervision Exercised/Number (ISE/N) and Indirect Supervision Exercised/Level (ISE/L); (11) Physical Coordination (PC); (12) Working Conditions (WC); and (13) Physical Demands (PD). 131 C.S.R. 62 § 2.27 (1994).

2. Initially, the employee completes a Position Information Questionnaire (PIQ) answering a series of questions designed to elicit information describing their job duties and responsibilities, along with the minimum qualifications for their positions, “data lines” of particular degree levels for each point factor are determined and the employee is “slotted” into the job title which most closely fit his or her duties. The degree levels foreach point factor in a job title are weighted and combined, creating a numerical point total, which in turn determines each job's pay grade.

3. In February 2001, Grievants were employed by WVU as Certified Trades Workers, pay grade 13. Grievants are assigned to Unit 35, a team of “first responders” to emergency maintenance calls. Grievants must assess the problem, and then either correct it themselves, or contact the Morgantown Department of Public Safety, the Fire Department, or other Physical Plant employees for assistance.

4. The Certified Trades Worker job title was placed in pay grade 13, based on the following degree levels in each of the thirteen point factors: 4.5 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 of Contact; 1.0 in External Contacts, Nature of Contact; 2.0 in External Contacts, Level of Contact; 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.

5. Grievants completed PIQs in January 2001 which listed their duties and the

percentage of time they required as: conduct daily routine inspections and maintenance of facilities (40%); answer emergency calls, make repairs, monitor fire alarms and emergency generators (25%); asbestos abatement (20%); manual and computerdocumentation, keep work area clean (10%); and, maintain certification, pick up material for emergency situations, etc. (5%).

6. Grievants challenge the degree level in the following point factors: Experience; Complexity and Problem Solving; Freedom of Action; Intrasystem Contacts/Level; and Working Conditions.

Discussion A. Burden of Proof and Standard of Review 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 § 4.21; 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 higher education grievant is not likely to meet his burden of proof merely by showing that the grievant's job duties better fit one job description than another, because the Mercer classification system does not use "whole job comparison." The Mercer classification system is largely a "quantitative" system, in which the components of each job are evaluated using the point factor methodology. Therefore, the focus is upon the point factors the grievant is challenging. 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. 26, 1995); and Zara, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94- MBOT-817 (Dec. 12, 1995). 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. Finally, whether a

grievant is properly classified is almost entirely a factual determination. As such, the JEC's interpretation and explanation of the point factors and Generic Job Descriptions or PIQ's 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. The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. B. Application of the Point Factor Methodology Grievants argue that because they are required to work without a Lead, and are required to apply a variety of skilled trades in responding to emergency situations, their position should be rated higher than employees with experience and skill in one trade, and who work with a Lead, such as the plumbers, who were upgraded to pay grade 15. WVU asserts that Grievant was properly classified and compensated. The following table shows the differences between the degree levels assigned by the JEC to the job title of Certified Trades Worker, and the degree levels Grievants argue should have been awarded in the challenged point factors. (See footnote 1)

	EX	CPS	FA	IC/L	WC
Certified Trades Worker	3.0	2.5	2.5	2.0	3.0
Grievants' Proposed Data Line	5.0	3.0	3.0	3.0	4.0

Experience

This factor measures the amount of prior directly related experience required before entering the job. Previous experience or training should not be credited under this factor if credited under Knowledge.

Grievants' job title received a degree level of 3.0, and Grievants argue they should have received a degree level of 5.0. A degree level of 3.0 is defined in the Plan as:

Over one year and up to two years of experience.

A degree level of 5.0 is defined in the Plan as:

Over three years and up to four years of experience.

Grievants argue that because their job requires two to three years of experience in a variety of trades, from carpentry to plumbing to asbestos abatement, and they must apply these skills without supervision of a Lead, their job requires more than three years creditfor experience. Grievants further note that Trades Workers with only one skill, such as plumbers

and plasterer/masons, were given a 4.0 for Experience, thus they should be entitled to a higher level.

Cynthia Curry, a member of the JEC, and Human Resources Director at WVU, testified that the degree level assigned was the minimum amount of experience required to complete the duties, and that the JEC could not require more than the minimum experience necessary because it artificially limits applicants for the position.

Grievants' logic that multiple skills require more years of experience because a certain amount of time is required to learn each skill is not applied by the JEC. While it may require two years to learn plumbing, carpentry, etc., an individual could be acquiring the skills simultaneously. While the individual may not be as expert in any one trade as someone who has devoted themselves to a single area, the JEC was not looking for that degree of expertise in this position, and their determination was not clearly wrong.

Complexity and Problem Solving

This factor measures the degree of problem-solving required, types of problems encountered, the difficulty involved in identifying problems and determining an appropriate course of action. Also considered is the extent to which guidelines, standards, and precedents assist or limit the position's ability to solve problems.

Grievants' job title received a degree level of 2.5, and Grievants argue they should have received a degree level of 3.0. A degree level of .5 was assigned by the JEC to a job title when the duties fell partially within two degree levels. See Gregg, supra. A degree level of 2.0 is defined in the Plan as: Problems encountered require the employee to make basic decisions regarding what needs to be done, but the employee can usually choose among a few easily recognizable solutions. Established procedures and specific instructions are available for doing most work assignments, with some judgment required to interpret instructions or perform basic computation work such as in the comparison of numbers or facts.

A degree level of 3.0 is defined in the Plan as:

Problems encountered can be somewhat complex and finding solutions to problems may require some resourcefulness and originality, but guides, methods and precedents are

usually available. Diversified guidelines and procedures must be applied to some work assignments. Employee must exercise judgement to locate and select the most appropriate guidelines references, and procedures for application, and adapt standard methods to fit variations in existing conditions.

Grievants argue that because they are first responders, and must locate, select, adapt, and apply diversified guides and procedures to various conditions, the higher degree level is more appropriate.

Ms. Curry testified that a degree level of 2.5 was appropriate for Grievants' position based upon a comparison to other jobs in the hierarchy of job titles. She further noted that there are many levels of supervisors and Lead positions that Grievants may consult.

Because Grievants work alone and are the first responders to emergencies, they are required to engage in finding solutions to a broad range of situations. However, Grievants' decisions are relatively basic, as they determine whether they can handle the problem, or if other individuals need to be called. Awarding a degree level of 2.5 in this point factor was not clearly wrong. Freedom of Action The Plan defines Freedom of Action as:

This factor measures the degree to which the position is structured as is determined by the types of control placed on work assignments. Controls are exercised in the way assignments are made, how instructions are given to the employee, how work assignments are checked, and how priorities, deadlines and objectives are set. Controls are exercised through established precedents, policies, procedures, laws and regulations which tend to limit the employee's freedom of action.

Grievants argue they should have received a degree level of 3.0 rather than a 2.5. A degree level of 2.0 is defined in the Plan as:

Tasks are structured to the extent that standard operating procedures serve as a gauge to guide the employee's work. The employee can occasionally function autonomously with the immediate supervisor available to answer questions. Questionable items are referred to the immediate supervisor.

A degree level of 3.0 is defined in the Plan as:

Tasks are moderately structured with incumbent working from objectives set by the

supervisor. At this level, the employee organizes and carries out most of the work assignments in accordance with standard practices, policies, instructions, or previous training. the employee deals with some unusual situations independently.

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Grievants argue that they are entitled to the higher score because during the period of time in question they had no Lead supervision. Grievants assessed what work was to be done, and who would perform various aspects of the work, coordinated the work withthe Department of Public Safety, Fire Department, etc., and independently dealt with unusual situations such as breaking and entering, smoke detection, and floods.

WVU argues that a degree level of 2.5 was proper because Grievants have a supervisor who would ultimately bear responsibility for relevant matters addressed by Grievants. Ms. Curry noted that a degree level of 3.5 was awarded to Physical Plant Managers and Assistant Directors.

Although Grievants were not directed by a supervisor, in person, on a daily basis, their Freedom of Action is limited. They organize and carry out most of the work assignments “in accordance with standard practices, policies, instructions or previous training," and do not bear direct responsibility for the outcome of a situation. The evidence does not establish that the JEC's assignment of a degree level 2.5 to this point factor was clearly wrong.

Intrasystem Contacts

This factor appraises the responsibility for working with or through other people within the SCUSWV [State College and University Systems of West Virginia] to get results. Consider the purpose and level of contact encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, explaining policies or discussing controversial issues. The factor considers only those contacts outside the job's immediate work area.

This point factor consists of two parts, Level of Contacts and Nature of Contacts. Grievants challenged only the degree received in Level.

Level

Grievants argue they should have received a degree level of 3.0 rather than a 2.0 in Level of Intrasystem Contacts. A degree level of 2.0 is defined in the Plan as:

Staff and faculty outside the immediate work unit.

A degree level of 3.0 is defined in the Plan as:

Supervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office.

Grievants argue that their contacts with building directors, deans, professors, technicians, and the Department of Public Safety entitled them to a degree level of 3.0.

WVU asserts that Grievants' contacts with professors, deans, etc., are not regular, recurring and essential to their position, as is required by definition. Ms. Curry testified that typically if a Dean had a problem, he would contact Grievant's supervisor or the manager, not Grievant.

Grievants' intrasystems contacts do not meet the regular, recurring and essential element of this point factor to be awarded a degree level of 3.0.

Working Conditions

This factor considers the physical demands of the job as measured by the exertion placed on the skeletal, muscular and cardiovascular systems of the incumbent. It also takes into account the quality of the physical working conditions in which the job is normally performed such as lighting adequacy, temperature extremes and variations, noise pollution, exposure to fumes, chemicals, radiation, contagious diseases, heights and/or other related hazardous conditions. Grievants argue they should have received a degree level of 4.0 rather than a 3.0 in Working Conditions. A degree level of 3.0 is defined in the Plan as:

Routine discomforts from exposure to moderate levels of heat, cold, moisture/wetness, noise and air pollution. May involve routine exposure to light chemical substances such as cleaning solutions or occasional exposure to hazardous conditions such as radiation, chemicals, diseased laboratory animals, contagious diseases, heights, and moving parts.

A degree level of 4.0 is defined in the Plan as:

Frequent or prolonged exposure to extreme levels of temperature, air pollution, noise, radiation, chemicals, contagious diseases, gases and substances, heights, and moving parts.

Grievants argue that they are entitled to the higher degree level because much of their work is performed in steam tunnels where the temperatures can climb to over 130 degrees.

Further, they work with asbestos on a regular basis, and on rooftops and ladders around belts, fans, and other moving parts. WVU asserts that Grievants do not work with chemicals, gases, or diseases. Ms. Curry explained that a degree level of 4.0 would be given to positions such as a sanitation driver, who handles hazardous waste, or a pest controller who works with dangerous chemicals.

It is fair to say that Grievants are exposed to extreme levels of temperature; however, it does not appear that the conditions are as undesirable or dangerous as those who work with radiation, chemicals, or diseases. Because the degree level for each individual position must be allocated in consideration the system as a whole, thedetermination by the JEC to award this position a 3.0 in Working Conditions was not clearly wrong.

C. Summary

Grievants did not prove by a preponderance of the evidence that WVU was in violation of the statutory mandate to maintain an equitable system of classification for all classified employee, or that they were incorrectly evaluated on any of the challenged point factors. In addition to the point factor argument, Grievants also claimed that their PIQs were virtually identical to a co-worker who was compensated at pay grade 14. This issue cannot be addressed because there is a lack of evidence that the co-worker was properly classified.

The following conclusions of law support the decision reached.

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 grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.21.

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 almost entirely 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, FairmontState College, Docket No. 94- MBOD-349 (Aug. 8, 1995). 4. The JEC's determination that Grievants' duties placed them in the classification of Certified Trades Worker, pay grade 13, was not clearly wrong.

Accordingly, this grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Monongalia County. Any 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. 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 Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

DATE: JULY 28, 2005

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

[3]To the extent that any of the degree levels requested at the level four hearing were inconsistent with those addressed by counsel in her proposed findings of fact and conclusions of law, those discussed at hearing will be considered. In any event, the outcome of the decision would remain unchanged.