RICK MOORE,

Grievant,

v. Docket No. 01-HE-481

WEST VIRGINIA UNIVERSITY,

Respondent.

D E C I S I O N

Rick Moore ("Grievant"), employed by West Virginia University ("WVU") and assigned to the Physical Plant as a General Trades Helper, pay grade 9, filed a level one grievance on May 24, 2001, requesting an upgrade to General Trades Worker, pay grade 12, with back pay. After being denied at the lower levels, this grievance was appealed to level four on August 15, 2001, and was placed in abeyance pending review of the Physical Plant job families by the Job Evaluation Committee ("JEC"). Grievant's position was not upgraded, but was reslotted as Equipment Technician, pay grade 9, pursuant to this review. A level four hearing was conducted on May 10, 2005, at which time Grievant was represented by Kathleen Abate, Esq., and WVU was represented by Assistant Attorney General Samuel R. Spatafore. 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 assistedhigher 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/Impact of Actions (SE/I) and Scope and

Effect/Nature of Actions (SE/N); (6) Breadth of Responsibility (BR); (7) Intrasystem Contacts/Level (IS/L) and Intrasystem Contacts/Nature (IC/N); (8) External Contacts/Level (ECL) and External Contacts/Nature(EC/N); (9) Direct Supervision Exercised/Number (DSE/N) and Direct Supervison 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 for each 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. Grievant was first employed by WVU as a regular employee in August 1991, and was classified as a General Trades Helper, pay grade 9, when this grievance was filedin 2001. Grievant's duties in this position were custodial, preventative maintenance, and appliance and power tool repair.

4. The General Trades Helper job title was placed in pay grade 9, having received the following degree levels in each of the thirteen point factors: 4.0 in Knowledge; 1.0 in Experience; 1.5 in Complexity and Problem Solving; 1.5 in Freedom of Action; 1.0 in Scope and Effect, Impact of Actions; 1.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 1.0 in Intrasystems Contacts, Nature of Contact; 1.0 in Intrasystems Contacts, Level of Contact; 1.0 in External Contacts, Nature of Contact; 1.0 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. The Trades Worker classification was placed in pay grade 12, receiving the following degree levels in each of the thirteen point factors: 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 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.

6. Grievant completed a PIQ in September 1999, which listed his duties and the percentage of time they required as: custodial (40%); routine service/maintenance/repair to commercial custodial equipment (35%); under guidance of supervisor maintain/repair all power tools and equipment (20%); and, maintain computerized management program for custodial equipment and tools (5%).

7. Grievant challenges the degree level in the following point factors: Experience; Complexity and Problem Solving; Freedom of Action; Intrasystem Contacts/Level.

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 thepoint 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 Grievant argues that he should have been classified as a Trades Worker, pay grade 12, because he did not assist another worker, and that assignment would most accuratelyreflect his job duties relating to appliance repair. (See footnote 1) 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 General Trades Helper, General Trades Worker, and the degree levels Grievant argues should have been awarded in the challenged point factors. (See footnote 2)

	EX	CPS	FA	IC/L
General Trades Helper	1.0	1.5	1.5	2.0
General Trades Worker	3.0	2.5	2.5	2.0
Grievant's Proposed Data Line	2.0	2.0	2.5	3.0

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.

Grievant's job title received a degree level of 1.0, and Grievant argued he should have received a degree level of 2.0. A degree level of 1.0 is defined in the Plan as:

No experience or up to six months of experience.

A degree level of 2.0 is defined in the Plan as:

Over six and up to twelve months of experience.

Grievant argues that his PIQ indicated that at least one year of experience was required in four separate areas, entitling him to a 3.0 degree level. However, should the years be considered to be gained concurrently, he would still be entitled to a 2.0. 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.

Grievant offers his opinion on the amount of experience necessary to complete his duties. While he believes that at least one year of experience is required to complete the duties of his position, the JEC was looking at the minimum amount of experience. Applying that criteria, the JEC 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.

Grievant's job title received a degree level of 1.5, and Grievant argued he should have received a degree level of 2.0. The JEC granted a .5 to some point factors when the duties of the position fell within two degree levels. A degree level of 1.0 is defined in the Plan as: Routine problems are encountered involving simple solutions. Simple, standardized instructions (usually oral) covering all-important aspects of the assignment are provided to the employee. Very little judgment is required by the position. Tasks are clear-cut and procedures well defined.

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 the comparison of numbers or facts.

Grievant argues that while repairing and performing maintenance on a variety of appliances, he was required to make some basic decisions, and there were schematics and instructions to follow. In some instances there were no instructions or diagrams, and he was required to "trouble shoot" to determine the source of the problem, as well as the solution. Therefore, he concludes, a degree level of 2.0 was more accurate in this point factor. Ms. Curry testified that when compared to other jobs in the hierarchy of job titles, Grievant had many supervisors and lead positions to assist him with any problems. She further noted that the .5 given to Grievant compensated for those instances he encountered which were more than routine.

Because Grievant applies the higher standard to only the repair aspect of his position, and he was given partial credit for the higher level work he performed, the JEC determination that 1.5 was appropriate in this situation 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.

Grievant argued he should have received a degree level of 2.5 rather than a 1.5. A degree level of 1.0 is defined in the Plan as:

Tasks are substantially structured with the employee receiving clear, detailed and specific instruction from the immediate supervisor or where tasks are so highly routine that they simply require following standardized instructions or procedures without ongoing, on-site supervision. The work is checked for accuracy, adequacy, and adherence to instructions and established procedures by the supervisor or through established monitoring systems. The employee consults with the supervisor on matters not covered in the original instructions or guidelines.

A degree level of2.0 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.

Grievant argues that he is entitled to the higher score because during the period of time in question he determined his work priorities on a day to day basis, and his supervisor did not check his work. While his tasks were structured to the extent that operating procedures served as a guide, he functioned autonomously. WVU asserts that a degree level of 1.5 was proper because Grievant received his assignments via maintenance schedules and work orders, with his supervisor setting his everyday priorities. Grievant's task were viewed as routine.

Although Grievant may not have been directed by a supervisor, in person, on a daily basis, his Freedom of Action is limited. His tasks are substantially structured, and do not require on-going supervision. However, Grievant does occasionally function autonomously, therefore, the assignment of a degree level 1.5 was not 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. Grievant challenged the points awarded in Level of Contacts.

Level

Grievant argued he 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.

Grievant argues that he was required to confer with custodial supervisors in other buildings regarding equipment. WVU asserts that Grievant's contact was limited to supervisors in his unit, and any contact outside the unit was not regular, recurring and essential to his position, as is required by definition. Ms. Curry testified that Grievant's PIQ indicated that he had contact only with supervisors in his unit, but he received a 2.0 due to averaging with other, like positions.

Grievant does not meet with supervisors outside his work unit on a regular, recurring basis, an essential element of this point factor to be awarded a degree level of 2.0.

C. Summary Grievant was upgraded to Maintenance Mechanic, pay grade 11, in July 2003. This personnel change was not due to the 2001 JEC review, however, but was the result of a subsequent PIQ completed by Grievant. Although Grievant asserts that his duties did not change, the JEC makes its decisions based on the information presented on the PIQ, and some changes were apparent to those individuals. By Grievant's own admission, the percentage of his appliance duties had increased. Based upon the evidence presented at level four, Grievant did not prove by a preponderance of the evidence that he was incorrectly evaluated on any of the challenged the point factors, or that he was improperly classified as a General Trades Helper during the relevant period of time.

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, Fairmont State College, Docket No. 94- MBOD-349 (Aug. 8, 1995). 4. The JEC's decision that Grievant's position was that of General Trades Helper, to be compensated at pay grade 9, 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

.Grievant requests reclassification to pay grade 10, 11, and 12, at various points throughout the record. Because he believes he should have been a Trades Worker, pay grade 12 is determined to be his requested relief. Of course, should any changes in his point total entitle Grievant to a pay grade 10 or 11, that will be granted.

Footnote: 2

[3]To the extent that any of the point factors and/or 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 remains unchanged.