THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

LINDA CAMPOLONG and
LINDA MOORE,
Grievants,

v. **DOCKET NO. 2008-0374-CONS**

WEST VIRGINIA UNIVERSITY,
Respondent.

DECISION

This grievance was filed by Grievants, Linda Campolong and Linda Moore, on September 11, 2006, against their employer, West Virginia University, challenging the pay grade assigned to their job title. The statement of grievance reads: "grievants are disputing recent changes to job description and/or point values(s) and requirements. [C]hanges not formally reviewed, and were changed without their participation, knowledge and consent. [T]he job remains same as does type of work performed." The relief sought by Grievants is "to be made whole in every respect including reinstatement of lost point values and years of experience required to perform the work within the job description." Grievants' representative stated that Grievants are seeking to have their Job Title placed in a pay grade 10. Their Job Title is currently in a pay grade 9.

A conference was held at level one on September 13, 2006, and a decision denying the grievance at level one was issued on September 15, 2006. Grievants appealed to level two on September 21, 2006. A conference was held at level two on September 28, 2006, and a level two decision denying the grievance was issued on September 29, 2006.

Grievants appealed to level three on October 4, 2006. A level three hearing was held on January 22, 2007.[1] The parties decided at that hearing to suspend the proceedings and submit Grievants' Position Information Questionnaires to the Job Evaluation Committee for review, which review was completed in March 2007. Grievants were dissatisfied with the Job Evaluation Committee's decision and wished to pursue the grievance. The parties then agreed to transfer this grievance to level one of the new grievance procedure, which was effective July 1, 2007.[2] A hearing was held at level one on February 15, 2008, and the grievance was denied at that level on March 5, 2008. Grievants appealed to level two on March 6, 2008, and a mediation session was held on July 2, 2008. An Order of Unsuccessful Mediation was entered on September 15, 2008, and Grievants appealed to level three on September 17, 2008. A level three hearing was held before the undersigned Administrative Law Judge on December 10, 2008, at the Grievance Board's Westover office. Grievant was represented by Diane Parker, and Respondent was represented by Samuel R. Spatafore, Assistant Attorney General. Respondent submitted Proposed Findings of Fact and Conclusions of Law, and this matter became mature for

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[1] The recording of this hearing could not be located by Respondent. The parties agreed at the hearing before the Grievance Board that any evidence presented at that hearing would no longer be relevant because of the review conducted by the Job Evaluation Committee after the hearing.

[2] In 2007, the Legislature, 2007 Acts ch. 207, abolished the West Virginia Education and State Employees Grievance Board, replacing it with the Public Employees Grievance Board. W. VA. CODE §§ 18-29-1 to 18-29-11 and W. VA. CODE §§ 29-6A-1 to 29-6A-12 were repealed and replaced by W. VA. CODE §§ 6C-2-1 to 6C-2-7 and W. VA. CODE §§ 6C-3-1 to 6C-3-6 (2007). Because this grievance has been transferred to the new procedure, it is being decided pursuant to the provisions of W. VA. CODE §§ 6C-2-1 to 6C-2-7 (2008).

decision on January 12, 2009, the deadline for submission of written argument. Grievants did not submit written argument.

Synopsis

Grievants believed the Job Evaluation Committee incorrectly determined that their Job Title, Housekeeper, should be in a pay grade 9. Grievants asserted their positions require more than one year of experience, and if they were credited with this in the Experience point factor, they would properly be placed in a pay grade 10. Grievants did not demonstrate that the Job Evaluation Committee's decision was clearly wrong or arbitrary and capricious.

The following Findings of Fact are properly made from the record developed at levels one and three.

Findings of Fact

1. Grievants are employed by West Virginia University ("WVU") as Housekeepers, pay grade 9.

2. In August 2006, Grievants and their supervisor prepared new Position Information Questionnaires ("PIQs"), and submitted them to WVU's Human Resources Department for review. The PIQs state the general purpose of the positions is "to provide housekeeping at the 9 homes of the Resident Faculty Leaders in support of normal household operations and special events relating to West Virginia University and/or the Office of Residential Education." These PIQs listed Grievants' duties as follows:

> **75% of time**
> Assist the Resident Faculty Leader (RFL) with special events by working with caterers to return the kitchen and house to normal status following an event. This would include, but not be limited to, dishwashing and returning dishes,

flatware, serving dishes, and equipment to correct storage areas. Also included would be the responsibility of keeping an inventory of items used for special events to ensure that they are not removed from the Faculty Leader homes.

Performs housekeeping duties includ[ing] but not limited to the following tasks: sweeps, mops, cleans, scrubs, disinfects, waxes, and polishes floors, walls, hallways, stairs, bathroom, and related fixtures using a vacuum cleaner, broom, mop, rags, and brushes. Empties and cleans waste receptacles and replenishes supplies as needed such as towels, soap, and paper products, loading/unloading of dishwasher, washing/drying of laundry, ironing of clothes, linens and tables [sic] cloths. Removes and replaces sheets and bedding, washes and cleans walls, ceilings, doors, windows and window sills, vacuums and shampoos carpets, rugs, and upholstery using commercial vacuum cleaners and shampooers and spot cleaners, dusts and polishes furniture, desks, table tops, bookcases, picture frames and related woodwork, including baseboard and trims. May also perform cleaning tasks with commercial equipment. Cleans refrigerators, ovens, closets and drawers as needed. Mixes, dilutes, and uses commercial strength disinfectants, germicidal detergents, and other stringent cleaning solutions following established safety procedures. Calculates area to determine the amount of cleaning solutions required. Sweeps, shovels, and removes water, ice, snow, and debris from sidewalks, steps, and entryways using brooms, shovels, and chemical ice removers.

10% of time

Provides light maintenance to RFL homes such as: Changing of lights (Florescent, standard, flood and decorative). Assembling and disassembling of shelving units (i.e. Bookcases, storage shelves). Knowledge of how and where the reset is located for the GFI receptacle for the front and back porches. The reset for GFI switch for kitchen outlets. Replacing furnace filters, cleaning of vents for stove, microwave and rooms. Touch up of paint, hanging of borders in bathrooms, replacement of toilet seats and shower heads. Decorating and undecorating for various holidays.

Interacts with Auxiliary Facilities regarding maintenance, repairs, and alterations as required in the RFL homes.

10% of time

Coordinate schedule to accommodate events and tasks for maintenance workers and contractors to have access to RFL homes on unscheduled days on assigned shift.

Greets scheduled and unscheduled visitors in a cordial and hospitable manner. Directs guests to an appropriate area of the house and announces

their arrival to the Faculty Leader. Answers telephone in the RFL home in a professional and courteous manner and records clear, concise, legible messages.

5% of time
Schedules commercial carpet cleaning of RFL homes on a bi-annual basis.
Responds to emergency calls at other RFL homes on assigned shift related to floods, maintenance problems, etc.
Other duties as assigned by Resident Faculty Leader of Administrative Assistant or Associate Director.

3. After this grievance was filed, Grievants' new PIQs were submitted to the Job Evaluation Committee ("JEC") for review and evaluation. The JEC is comprised of a number of higher education human resources professionals from around the state. The JEC is charged with administering the Mercer classification system for all higher education classified employees, utilizing the Job Evaluation Plan.

4. Prior to the review of Grievants' new PIQs, the JEC had determined that the Housekeeper Job Title was entitled to 1451 total points from the following degree levels in each of the thirteen point factors (which are defined in the Job Evaluation Plan): 3.5 in Knowledge; 3.0 in Experience; 2.0 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; 2.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level of Contact; 1.0 in External Contacts, Nature of Contact; 3.0 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; 2.0 in Physical Coordination; 2.0 in Working Conditions; and 3.0 in Physical Demands. Level Three Grievant's Exhibit Number 3.

5. The JEC review of Grievants' new PIQs resulted in a total point score of 1419, from the following degree levels in each of the thirteen point factors: 3.5 in Knowledge; 2.0 in Experience; 2.0 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; 2.0 in Intrasystems Contacts, Level of Contact; 1.0 in External Contacts, Nature of Contact; 3.0 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; 2.0 in Physical Coordination; 3.0 in Working Conditions; and 4.0 in Physical Demands. Level Three Grievant's Exhibit Number 3.[3] This was still within a pay grade 9. The JEC determined that Grievants were properly classified.

6. The difference between degree levels 2.0 and 3.0 in Experience is 56 points. Level Three Grievant's Exhibit Number 2.

7. The point range for a pay grade 9 is from 1395 through 1474 points. Level Three Grievant's Exhibit Number 2.

8. The point range for a pay grade 10 is from 1475 through 1560 points. Level Three Grievant's Exhibit Number 2.

Discussion

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that she is not properly classified. *Burke, et al., v. Bd. of*

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[3] Grievants argued at the level one hearing that they should have received a degree level of 3.0 in Working Conditions, and 4.0 in Physical Demands. The record reflects that these were the degree levels determined by the JEC to be appropriate upon its review in 2006. This argument was not pursued at level three.

Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job she feels she 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 her burden of proof in a higher education classification grievance merely by showing that the grievant's job duties better fit one job description than another, because the Mercer classification system used by higher education 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 a point factor methodology. The thirteen point factors and the degree levels under each point factor are defined in the Job Evaluation Plan. Therefore, the focus in Mercer decisions issued by this Grievance Board is upon the point factors the grievant is challenging.[4] 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. *Burke, supra*. A higher education grievant may prevail by demonstrating the decision on her classification was made in an arbitrary and capricious manner. *See Kyle v. W. Va.*

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[4] A grievant may challenge any combination of point factor degree levels, so long as she clearly identifies the point factor degree levels she is challenging, and this challenge is consistent with the relief sought. *See Jessen, et al., v. Bd. of Trustees*, Docket No. 94-MBOT-1059 (Oct. 26, 1995); and *Zara, et al., v. Bd. of Trustees,* Docket No. 94-MBOT-817 (Dec. 12, 1995).

State Bd. of Rehabilitation, Div. of Rehabilitation Services, Docket No. VR-88-006 (Mar. 28, 1989).

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 PIQs 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 Mercer classification system is necessary where the language is clear and unambiguous. *Watts v. Dep't of Health and Human Res.*, 195 W. Va. 430, 465 S.E.2d 887 (1995). The higher education employee challenging her classification has to overcome a substantial obstacle to establish that she is misclassified.

Grievants argued they should be placed in a pay grade 10, because the dataline generated by the JEC when it reviewed their new PIQs contained a clerical error in the Experience point factor[5], and if this clerical error were corrected, it would add 56 points to their point total of 1419 points, for a point total of 1475, which is a pay grade 10. Respondent denied that there was any clerical error. Derek Jackson, Senior Compensation Specialist in WVU's Division of Human Resources, and a member of the JEC, testified that, although he personally supported a degree level of 3.0 in Experience, when the JEC reviewed Grievants' new PIQs, the consensus of the JEC members was that a degree level of 2.0 was appropriate. There was no clerical error.

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[5] At level one, Grievants also argued they should have received a higher degree level in Scope and Effect/Nature of Actions. This argument was not pursued at level three, and is deemed abandoned.

The Job Evaluation Plan ("the Plan") defines Experience as follows:

> 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 believed they should have received a degree level of 3.0, rather than a 2.0 in Experience, primarily based upon the fact that this was the degree level assigned by the JEC to the Housekeeper Job Title prior to its review of Grievants' new PIQs. A degree level of 2.0 is defined in the Plan as "[o]ver six and up to twelve months of experience." A degree level of 3.0 is defined in the Plan as "[o]ver one year and up to two years of experience."

When examining the Experience point factor, the degree level in the Knowledge point factor must also be considered. In addition, the minimum experience requirement does not displace the need for some amount of on-the-job training. *See Nelson v. Bd. of Trustees,* 94-MBOT-727 (June 30, 1997); *Jones, et al., v. Bd. of Trustees*, Docket No. 94-MBOT-978 (Feb. 29, 1996). Further, "[t]he minimum amount of experience required to perform the essential duties of a position represents a subjective determination upon which reasonable minds may differ. *Zara v. Bd. of Trustees, W. Va. Univ.*, Docket No. 94-MBOT-817 (Dec. 12, 1995)." *Bee. v. Bd. of Trustees,* Docket No. 94-MBOT-946 (June 30, 1997).

As noted above, the burden of proof is on the Grievants to demonstrate that their job duties are such that someone coming into this job would need more than one year of experience to be able to perform the duties. The JEC determination that this is not the case is entitled to great weight. Grievants focused on the JEC's previous determination that the Housekeeper Job Title was entitled to an experience requirement of 3.0, and questioned how the JEC could have reduced the experience requirement to six months to

one year when reviewing their new PIQs. Neither party called any witnesses who could address this question. This query does not prove the present JEC determination to be wrong. The undersigned would note that there are some differences in the duties listed on Grievants' new PIQs from the previous PIQs, prepared for Grievants' positions in 2001. The previous PIQs listed that Grievants planned and prepared meals, and obtained supplies needed for meal preparation, and spent 20% of their time running errands, including transporting children, and caring for children. The record does not reflect whether it is these differences in Grievants' duties which accounted for the change in the JEC's perception.

Grievants presented little evidence to assist the undersigned in evaluating the ultimate question, which is, how long would it take to acquire the necessary experience to be able to perform Grievants' duties, after some on-the-job training. Some testimony was offered regarding the need to be able to identify problems. Grievants spend a small part of their time, less than 10%, working with Auxiliary Facilities regarding maintenance, repairs, and alterations. The record does not reflect that Grievants actually perform repairs, rather they recognize problems and contact the appropriate personnel at WVU to perform maintenance and repairs. Grievants called as witnesses two faculty members who reside in resident faculty housing. These witnesses testified that Grievants have the experience to recognize problems which some of the new hires are unable to recognize, and that they have the connections, because of their experience at WVU, to get maintenance and repair personnel on site to get the job done. While these contacts certainly are of benefit to the resident faculty, they are not a job requirement. Even these witnesses recognized that all that is required is that the Housekeeper fill out a work order.

It is apparent from the testimony of these witnesses that Grievants are dedicated workers, who go above and beyond what is minimally required of them. This, however, is a performance issue, not a classification issue. Further, it appears that the witnesses' opinions are based upon their preferences, not upon any evaluation of what would be minimally required. *See Bee, supra.*

Grievants' duties, as presented on the PIQs, are primarily basic housekeeping duties which anyone meeting the knowledge requirements of the position should be able to learn within a short period of time. The JEC determined that someone with six to twelve months of experience could perform these duties, after a reasonable amount of on-the-job training. While the faculty residing in the resident faculty housing would prefer to have people in these jobs with Grievants' level of expertise, that is not what this point factor measures. *Layne v. Bd. of Trustees*, Docket No. 98-BOT-236 (Dec. 7, 1998). The undersigned cannot conclude from the evidence presented that it takes more than one year of experience to be able to perform the duties listed on Grievants' PIQs. Grievants presented no evidence from which the undersigned can determine how much training is required in order to be able to perform any of their duties. Grievants simply disagree with the JEC's determination, which is not sufficient to outweigh the deference to which the JEC determination is entitled. The undersigned cannot find from the evidence that the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level of 2.0 in this point factor when evaluating Grievants' new PIQs.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. The burden of proof in a misclassification grievance is on the grievant to prove by a preponderance of the evidence that she is not properly classified. *Burke, et al., v. Bd. of Directors,* Docket No. 94-MBOD-349 (Aug. 8, 1995) The grievant asserting misclassification must identify the job she feels she 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).

2. The Respondent's interpretation and explanation of the Generic Job Description and 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,* Docket No. 94-MBOD-349 (Aug. 8, 1995).

3. The Job Evaluation Committee's decision that Grievants are properly classified as Housekeepers, pay grade 9, is not clearly wrong nor arbitrary and capricious.

4. The Job Evaluation Committee's assignment of degree levels to the point factors for the Housekeeper Job Title is neither clearly wrong nor arbitrary and capricious.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public 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 certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. *See also* 156 C.S.R. 1 § 6.20 (2008).

BRENDA L. GOULD
Administrative Law Judge

Date: May 19, 2009