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DAMON NICHOLSON, JIM LAKE,
ROBERT SLOAN, ROBERT SCHLOBOHN,
HERBERT WARMAN and RICHARD FAUST

v.

DOCKET NO. 30-86-134-2

WEST VIRGINIA UNIVERSITY

D E C I S I O N

Grievants, Damon Nicholson, Jim Lake, Robert Sloan, Robert Schlobohn, Herbert Warman and Richard Faust are employed by the Board of Regents as painters assigned to the West Virginia University Physical Plant. On January 21, 1986 these individuals filed a level one grievance alleging that the failure of the Department of Human Resources to upgrade their positions as a result of a Physical Plant classification study was in violation of W. Va. Code, 18-26-8, Board of Regents and university policies. The grievance was denied at level one, the grievants refused to agree to a continuance at level two¹ and filed an appeal to

¹Acting President Diane L. Reinhard requested that the parties agree to a continuance of the level two hearing pending the return from a leave of absence of the compensation analyst most knowledgeable about the case. The respondent's motion that the matter be remanded back to level two for an evidentiary hearing is denied based on the considerable amount of time the grievance has been pending.

level four on March 10, 1986.² An evidentiary hearing was held on July 21 and 22, 1986 with further evidence and testimony offered in December, 1986.³ A briefing schedule was concluded by the grievants on March 19, 1987.

In April, 1983 Dorsey Jacobs, Physical Plant Diretor, requested that the division of Human Resources perform a classification review of all Physical Plant positions. In February, 1984 the review was announced and a project advisory committee was assembled. This committee consisted of a representative from administration, four elected Physical Plant staff members (one each from the managerial and supervisory levels, two from the service/craft levels) and one representative from the medical center Physical Plant.

All Physical Plant employees were asked to review their job descriptions and to make any change necessary to accurately describe the duties and responsibilities of the position. Compensation analysts observed the type of work done, equipment used and working conditions of each shop. Interviews were scheduled for each employee to discuss his job with an analyst.

²The grievants exercised the option provided by W.Va. Code, 18-29-4(c) and did not appeal to level three.

³A hearing had previously been scheduled for this matter on June 13, 1986. A continuance had been requested by the grievants' representative and verbally agreed to by a Special Assistant to the President. A breakdown in communications resulted in a failure to notify the counsel for the Board of Regents and several witnesses who appeared at the designated time. Respondent's counsel filed a motion to dismiss at that time and again at the July 21, 1986 hearing, that motion was denied.

When the information gathering was concluded the advisory committee assigned points to fourteen representative job titles using the Board of Regents Position Classification Plan for Service, Craft, Maintenance and Technical Occupations as a guide⁴ to answer questions and provide input on the level of each factor which best represented the position. The final assessment of points was used to determine the relationship between positions, i.e., whether jobs should be in the same paygrade, one paygrade apart, etc..

A final determination of classification was made by Sheila Seccurro, Interim Manager of Classification and Compensation, with the assistance of the two compensation analysts assigned to the project. Ms. Seccurro testified that she considered factors such as knowledge, skills and abilities required, consequence of error, level of decision making, the relationship between positions as determined by point factors assigned by the advisory committee, information provided by The Dictionary of Occupational Titles and a salary survey of six other universities. Directors and Associate Directors were given the opportunity to approve or disapprove

⁴Those job titles assigned points were: plumber, electrician, mechanical equipment worker, maintenance mechanic, painter, carpenter, sheetmetal worker, plaster-mason, plumber at the Medical Center, electrician at the Medical Center, roads and grounds worker II, custodian, warehouse attendant and senior plumber.

all results before they became final in June, 1985. As a result of the review several positions were upgraded; painters remained at the same paygrade.⁵

The grievants allege violations and misapplications of W.Va. Code, 18-26-8, Board of Regents and West Virginia University policies relating to Classification evidenced in part by lack of representation on the advisory committee, a failure of the job analysts

⁵By memorandum dated June 13, 1985 Joe Simoni requested information regarding the reclassification review. Grievants' Exhibits Nos. 1-6 indicate ongoing communication between the parties regarding the decision not to upgrade the painters. On October 17, 1985 a level one grievance was filed for the purpose of obtaining additional information. The grievance was appealed to level two and additional information was presented. On January 21, 1986 the present grievance was filed. W.Va. Code, 18-29-4 provides that before a level one grievance is filed and within fifteen days following the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant or his designated representative shall schedule a conference with the grievant's immediate supervisor to discuss the nature of the grievance, the action, redress or other remedy sought. Within ten days of receipt of the response of the immediate supervisor, a written grievance may be filed. The grievants' exhibits indicate that they took prompt action to determine whether a grievable action existed and then filed a grievance relating to the reclassification review. Although the procedure utilized by the grievants is not typical, this examiner believes that they did act in a timely manner and that the filing of the first grievance in no way destroyed their rights to file the present one. Therefore, both the issue of misclassification at the time of review and the issue of ongoing misclassification will be considered.

to reschedule interviews missed by employees, the failure to allow the grievants an opportunity to rewrite their job descriptions and a prejudicial attitude exhibited by one of the analysts. The grievants argue that they are required to possess the same degree of skill, effort and responsibility as those crafts which were upgraded, that the point allocations on the job evaluation sheet were incorrect, that information from the wrong job description was chosen from the D.O.T. and that results of the telephone survey are ambiguous without an comparative job description.

They submit that a proper allocation of points on the evaluation sheet would indicate that painters should be classified at a higher paygrade under the Board of Regents Position Classification Plan, that construction/maintenance painter was the more accurate job description from D.O.T. and that a telephone survey conducted by AFSCME indicated that painters were paid at the same or higher rate than plumbers and carpenters at other institutions.⁶

⁶Prior to the study painters were classified at paygrade 8. The advisory committee awarded painters a total of 56 points which would indicate classification at paygrade 7. The grievants have assigned these categories points totalling 75 which would place them in paygrade 9.

The grievants attached great importance to worksheets completed for the other crafts and had requested that they be provided.

(footnote continued)

In support of their position the grievants offered their own testimony and that of other craftsmen, their supervisor, their manager and labor economist employed by AFSCME. These individuals discussed the attitude of the analysts, their perception of how reclassification was determined, errors made by the respondent and most offered their opinion that painters should have been upgraded.

The respondent asserts that the classification review was reasonable and based on scientific methods, that the assigned paygrades made as a result of the study are uniform with other Board of Regents institutions and that the changes which did occur reflect a correction in undervalued crafts, not a reduction in value of painters.

In addition to the foregoing it is appropriate to make the following specific findings of fact and conclusions of law.

(footnote continued)

The respondent indicated that the worksheets could not be located. The grievants argue that the failure to receive this information resulted in a deprivation of due process on which they base a motion for a directed verdict. The respondent has convinced this examiner that a bona fide effort has been made to locate the documents. The usefulness of any information contained in them would appear to be limited to the purpose for which they were used, i.e., a comparison of the positions, and would not provide any direct evidence determinative of the paygrade to which painters were assigned. Therefore, the motion for a directed verdict is denied.

Findings of Fact

1. Grievants are employed by the Board of Regents as painters assigned to the Physical Plant at West Virginia University.

2. At the request of Director Dorsey Jacobs the Department of Human Resources performed a classification review of all Physical Plant positions in 1984.

3. The classification review process included all employees being asked to review and, if necessary, revise their job descriptions to accurately reflect the duties and responsibilities of their positions, compensation analysts observed the type of work done, equipment used and working conditions of each shop and scheduled interviews with each employee. An advisory committee, with the assistance of the position supervisors, assigned points to various categories of fourteen representative job titles. The manager of the Division of Classification and Compensation and the two compensation analysts made the determination as to position classifications based on the evaluation worksheets completed by the advisory committee, information provided by The Dictionary of Occupational Titles and a salary survey of like institutions. Directors and Assistant Directors were given the opportunity to approve or disapprove all results before they became final in June, 1985.

4. Painters were not reclassified and remain at paygrade 8 with senior painters classified at paygrade 10.

5. The purpose of the West Virginia University Board of Regents Position Classification Plan for Service, Craft, Maintenance and Technical Occupation is to set for criteria against which duties and responsibilities of service, craft maintenance and technical positions are compared and analyzed to determine the level of skill, effort and responsibility required. The plan provides a framework for obtaining and analyzing supporting data. An attached chart titled "Point Ranges" indicates paygrade assignments based on the allocated points.

6. The West Virginia University Employee Handbook provides that the evaluation of all non-faculty positions is the responsibility of the Office of Personnel. A factor comparison system for clerical and related positions and a point evaluation system for all other occupational categories is utilized to determine the value of a job. Based on the criteria of skill, effort and responsibility as they relate to other positions, an evaluation is to be made.

7. The Employee Handbook further provides that the Director

of Personnel is responsible for recommendations relating to single rates, salary ranges, grade classifications and allocations for groups or classes of personnel. These recommendations are developed in cooperation with department chairpersons, deans and directors and in accordance with University fiscal and budget policies.

8. It appears that the results of the Position Classification Plan is all that is required by Board of Regents policy in the determination of the grievants' paygrade. Other research and calculations undertaken by the respondent cannot be considered in paygrade classification of service, craft, maintenance and technical occupations.

9. The job evaluation sheet completed by the project advisory committee lists the criteria of the Board of Regents Classification Plan in chart form. Painters were assigned a total of 56 points which would indicate classification in paygrade 7; the grievants argue that a correct valuation would total 75-77 points and place them in paygrade 9.

Conclusions of Law

1. W. Va. Code, 18-26-8(a)(12) provides that the W.Va. Board of Regents shall have the power and duty to administer

a uniform system of personnel classification and compensation for all employees other than faculty and policy level administrators.

2. Utilization of information and/or criteria beyond the plan promulgated by the Board of Regents shall not be considered in the classification of the service, craft, maintenance and technical occupations. Application of additional criteria would in effect result in an institutional procedure or policy inconsistent with the Board of Regents classification plan. David Graf v. West Virginia University, Docket No. 30-86-047 and Patricia Straight v. West Virginia University, Docket No. 30-86-184-2.

3. Although additional information was improperly considered in the present matter, results obtained from the Board of Regents Classification Plan through the job evaluation sheets indicates that painters should not be upgraded and to that extent the decision of the division of Human Resources is valid.

4. The decision made by individuals trained to fulfill administrative duties and responsibilities shall not be disturbed unless shown to be clearly wrong or arbitrary and capricious.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia County and such appeal must be filed within thirty (30) days of receipt of this decision. (W. Va. Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

DATED

May 28, 1987

Sue Keller

SUE KELLER

Hearing Examiner