

**WILLIAM R. SITES**

**v. Docket No. 94-MBOT-396**

**BOARD OF TRUSTEES/**

**WEST VIRGINIA UNIVERSITY**

## **DECISION**

Grievant, William R. Sites, classified as a Project Estimator, Pay Grade 14, under the “Mercer reclassification,” alleges that the pay grade is improper, and requests assignment to Pay Grade 16, with backpay, effective January 1, 1994, the date the classification system was implemented. ([See footnote 1](#)) A level four hearing was conducted on August 21, 1996, and the matter became mature for decision on the same date when both parties declined the opportunity to submit post-hearing proposed findings of fact and conclusions of law.

The following Findings of Fact are properly made from the record developed at level four.

### **Findings of Fact**

1. Grievant was first employed by the Board of Trustees (BOT) in 1989 as an Estimator, Pay Grade 12, at West Virginia University (WVU).
2. In 1991, all higher education classified employees, including Grievant, were asked to complete a Position Information Questionnaire (PIQ) prior to the reclassification. Employees were to describe their job duties and responsibilities on the PIQ, by answering a series of questions designed to elicit this information.
3. As a result of the Mercer reclassification, Grievant was classified as a Project Estimator, Pay Grade 14, effective January 1, 1994.
4. The Project Estimator job title received 1886 total points from the following degree levels in each of the thirteen point factors ([See footnote 2](#)): 5 in Knowledge; 4 in Experience; 3 in Complexity and Problem Solving; 2.5 in Freedom of Action; 3 in Scope and Effect, Impact of Actions; 3 in Scope

and Effect, Nature of Actions; 1 in Breadth of Responsibility; 2 in Intrasystems Contacts, Nature of Contact; 2 in Intrasystems Contacts, Level; 2 in External Contacts, Nature of Contact; 2 in External Contacts, Level; 1 in Direct Supervision Exercised, Number; 1 in Direct Supervision Exercised, Level; 1 in Indirect Supervision Exercised, Number; 1 in Indirect Supervision Exercised, Level; 2 in Physical Coordination; 2 in Working Conditions; and 2 in Physical Demands.

5. The point range for Pay Grade 14 is from 1866 points to 1984 points.

6. Grievant requested an internal review of his position and classification as a Project Estimator, Pay Grade 17. The review was conducted and his request for a higher Pay Grade was denied in 1994.

7. In March 1995, Grievant completed a position description which was reviewed by Respondent's Human Resources Department. No documentation was made part of the record establishing an amended data line; however, Teresa Crawford, Senior Compensation Analyst, indicated only minor changes were made at that time, and Grievant's pay grade was not affected.

8. During the internal review, Grievant developed charts which appear to indicate that Project Estimator would properly be assigned to Pay Grade 21; however, he stated at level four that he realized this was elevated, and would accept Pay Grade 16.

9. At level four Grievant did not identify which point factors he would contest, nor did he propose what the proper levels should be in any of the point factors in support of a Pay Grade 16 classification.

10. Effective August 1, 1996, Grievant was transferred to an unclassified position at WVU.

11. Because Grievant's 1991 salary exceeded the equity step at Pay Grade 16, he would have received no salary increase had he been classified at that level. Thus, the relief to which Grievant would be entitled, should he prevail in this matter, is limited to the differences in salary he would have received as the result of annual adjustments. This amount appears to be approximately \$1267.00.

### **Discussion**

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 §4.1; 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 grievant is not likely to meet his burden of proof in a Mercer grievance merely by showing that the grievant's job duties better fit one job description than another, without also identifying which point factors he is challenging, and the degree level he believes he should have received. [\(See footnote 3\)](#). 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. A Mercer grievant may prevail by demonstrating his reclassification was made in an arbitrary and capricious manner. See Kyle v. W.Va. State Bd. of Rehabilitation, Div. of Rehabilitation Services and W.Va. Civil Serv. Comm'n, Docket No. VR-88-006 (Mar. 28, 1989).

Finally, whether a grievant is properly classified is almost entirely a factual determination. As such, the Job Evaluation Committee's (JEC) interpretation and explanation of the point factors and generic job descriptions at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W.Va. 1995); Burke, supra. However, no interpretation or construction of a term used in the Job Evaluation Plan (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. Watts v. Dept. of Health and Human Resources, 465 S.E.2d 887 (W.Va. 1995). The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. [\(See footnote 4\)](#)

Grievant raised several concerns regarding his classification at the level four hearing. First, he noted that when completing the original PIQ questionnaire all four estimators complied with the instruction to complete the document based upon what they believed their duties should be, as opposed to what they actually were. He opined that this misdirection resulted in a lower evaluation than a recitation of their actual duties would have produced. His second concern was that during the internal review the comment "position needs to be compared with Estimator/Planner (PG 16) position at Marshall" indicated that his position remain misclassified. Finally, Grievant stated that of the four, institution specific positions of Project Estimator, three of the employees had been reassigned to

other units with a salary upgrade to Pay Grade 16, even though they continued to perform similar duties.

In response to these concerns, Ms. Crawford stated that the comment referring to the position at Marshall University had been hers, and that upon further investigation she found that the duties and responsibilities of those employees, who had initially been hired to work on the new stadium, differed significantly from those performed by Grievant. Addressing Grievant's former co-workers, Ms. Crawford reported that they had been transferred from the Physical Plant to the Engineering and Construction units and that their duties had changed, leaving Grievant with responsibilities unique to his position. Any original misperception of Grievant's duties by the JEC was cured, according to Ms. Crawford, when it reviewed the Position Description he completed in March 1995.

Grievant's 1995 Position Description, which includes his signature verifying the contents to be accurate, describes his duties to have been: estimates material and manpower requirements for Physical Plant work requests - 50% of his time; works with faculty/staff, deans, directors, chairpersons, and supervisors to coordinate and understand requests received by the University departments - 25% of his time; maintains current estimating programs on computer system for all work request projects - 10% of his time; coordinates material requirement for all Physical Plant work requests using warehouse inventory report to determine material availability - 5% of his time; provides scheduling and feedback to all departments as to the status of all work and submit written reports as necessary to document the progress of individual jobs - 5% of his time; and performs on-going inspections of all buildings and grounds with preparation of reports utilized by the craft trades to initiate preventative maintenance repairs - 5% of his time.

Using this information provided in the essential and marginal functions sections of the Position Description, along with those sections which mirror the data line used by the JEC to determine classification, Ms. Crawford reviewed the levels assigned to each point factor determining Grievant's pay grade. She concluded that while the March 1995, review resulted in minor increases in two of the point factors, the differences were not of such significance that Grievant's pay grade was amended. Based upon the 1995 Position Description and Ms. Crawford's testimony, it must be concluded that Grievant was properly compensated at pay grade 14 during the period of time in question.

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

## 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§4.1. 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).
3. The Job Evaluation Committee's interpretation and explanation of the generic job description, if one exists, 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., 459 S.E.2d 374 (W.Va. 1995); Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995).
4. The Job Evaluation Committee's assignment of degree levels to the point factors for the Project Estimator job title is neither clearly wrong nor arbitrary and capricious.
5. The determination of the JEC that the position of Project Estimator should be compensated at pay grade 14, based upon calculations determined by the degree levels assigned to the point factors is neither clearly wrong nor arbitrary and capricious.

Accordingly, the grievance is **DENIED**.

Any 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. 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. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

Date: October 31, 1996 \_\_\_\_\_

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

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[Footnote: 1](#)

*The reader is referred to Burke, et al. v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995), for a discussion of the background of the Mercer reclassification project, the procedural history of the Mercer grievances, and the definitions of various terms of art specific to the Mercer reclassification.*

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[Footnote: 2](#)

*The thirteen point factors are set forth in 128 C.S.R. 62 §2.27, and 131 C.S.R. 62 §2.27. Burke, supra.*

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[Footnote: 3](#)

*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. 6, 1995); and Zara, et al., v. Bd. of Trustees, W.Va. Univ., Docket No. 94-MBOT-817 (Dec. 12, 1995).*

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[Footnote: 4](#)

*This discussion is not intended to address challenges to the way the Mercer system as a whole is set up, that is, challenges to the methodology.*