

LARRY CROWDER,

Grievant,

v.

Docket No. 96-BOT-109

BOARD OF TRUSTEES/MARSHALL UNIVERSITY,

Respondent.

DECISION

Grievant, Larry Crowder, argues Marshall University ("MU") improperly decreased his salary by \$4,420.00 when it evaluated his position and changed him from a Manager Residence Services Operations D, Pay Grade 19 to a Construction Project Manager, Pay Grade 16. Grievant does not contest his title or pay grade, only the decreased salary. This grievance was denied at Levels I, II, and III. A Level IV hearing was held on June 18, 1996, and this case became mature for decision on August 5, 1996, the deadline for the parties' proposed findings of facts and conclusions of laws.

The majority of the facts are not in dispute and will be set out below.

Findings of Fact

1. In December 1992, Grievant was hired as the Assistant Director of Residence Services for the Physical Plant. He was in charge of maintenance and housekeeping services for student dormitories as well as small, (\$1,000-\$2,000) interdepartmental construction projects.

2. In January 1994, Grievant was reclassified, through the Mercer project, to a Manager Residence Services Operations D at a Pay Grade 19. 3. During the summer of 1994, Dr. Ed Grose, Grievant, and Mike Meadows, Director of Facilities, Planning and Management and Grievant's supervisor, discussed the possibility of transferring Grievant from Residence Services ("RS") to the Facilities, Planning and Management Department ("FPMD"). Mr. Meadows wanted this change because of his "excessive workload", and he needed Grievant's expertise to manage large construction projects. Trans. Level III at 14.

4. Grievant did not disagree with this transfer, and on June 1, 1994, Grievant was

“administratively transferred” to FPMD with no change in salary or title. Trans. Level III at 13.

5. Although Grievant worked an initial period under closer supervision during his orientation to this position, his job duties since June 1, 1994, have not changed significantly. He now independently supervises non-MU contractors' completion of various large, (\$100,000- \$200,000) projects.

6. On May 4, 1995, Mr. Bill Burdette, Acting Director of the Department of Human Resources, wrote Mr. Meadows noting Grievant was “administratively transferred” the previous year, and his present title as a Manager of Resident Services was no longer appropriate. Mr. Burdette requested that Grievant complete a new Position Description Questionnaire (“PIQ”).

7. In August 1995, Mr. Meadows asked Grievant to complete the new PIQ and on October 4, 1995, he did so. Resp. Exh. 3.

8. On December 6, 1995, Mr. Burdette wrote Mr. Meadows, with a copy sent to Grievant, stating Grievant was reclassified to a Construction Project Manager (“CPM”), Pay Grade 16, with a \$4,420.00 decrease in salary. This salary was calculated as a decrease of 5% per pay grade.

9. The CPM job title was not contained among the Mercer study's original titles. Prior to Grievant administrative transfer, the other individual already in the FPMD and performing similar work was classified as a Construction Project Coordinator I, Pay Grade 15.

10. At the time Grievant agreed to the transfer, he was never informed his salary would be decreased and was transferred with title and salary intact.

11. At the time Grievant was administratively transferred, Mr. Meadows knew what duties Grievant would be performing, and these duties have not changed significantly since June 1, 1994 when he started in the position.

12. Grievant's voluntary agreement to this administrative transfer was a benefit to FPMD, specifically, and to MU, in general. Level IV hearing.

Issues

Grievant contends he was either transferred or demoted. If transferred, 128 CSR 62, §17.1 does not allow a change in base pay; if demoted, the guidelines set forth in the Classified Staff Handbook (July 1991) were not followed. Respondent argues Grievant was downgraded and a 5% decrease in salary per pay grade was required.

Discussion

The resolution of this grievance turns on deciding exactly what type of personal action occurred. The question is whether Grievant was transferred, demoted, or downgraded. 128 CSR 62 sets out the regulations for Personnel Administration for the Board of Trustees. It contains the following definitions:

2.11

Demotion. Movement from a position requiring a certain level of skill, effort and responsibility to a vacant or newly created position assigned to a different job title and lower pay grade requiring a significantly lesser degree of skill, effort and responsibility.

2.12

Downgrade. A reassignment of the employee's current position to a job title assigned to a lower pay grade as a result of a significant reduction in the existing position's duties and responsibilities. When a position is downgraded, the employee does not move to a different position in a lower pay grade. Rather, it is the employee's position that is moved to a lower pay grade because of a significant decrease in the position's existing responsibilities as determined by job evaluation. When a downgrade occurs to an employee occupying a title held by more than one individual, the position's current title will be changed to a different title in the lower pay grade. When a downgrade occurs to an employee occupying a title exclusively assigned to that position, the current title may or may not be revised depending upon how relevantly the current title describes the position.

2.13

Transfer. Movement from one position or job title to another position or job title requiring the same degree of skill, effort and authority. Both positions are in the same pay grade.

Additional sections add further data to these definitions and their effect on an employees' pay grade.

SECTION 15.

DEMOTION

15.1

Demotions result from an employee moving from his/her current position to a vacant or newly created position assigned to different job title and lower pay grade, and which requires a significantly lesser degree of skill, effort and responsibility than that of the employee's current position.

15.2

Upon demotion, the employee's base salary is decreased five percent (5%) per pay grade rounded to the nearest step in the new pay grade.

SECTION 16. DOWNGRADE

16.1

Downgrades result from the process of job evaluation where a determination is made that a significantly lower level of skill, effort and responsibility exists in the employee's current position. A new pay grade shall then be established based on the application of the job evaluation plan and the calculation of a revised total point value for the position. Upon determination of the pay grade, job descriptions shall be reviewed of the other titles having the same pay grade and whose duties, responsibilities and requirements closely match the work of the position as it is now described. The position shall then be slotted into the classification whose grade is consistent with the point value calculated and whose duties and requirements most appropriately characterize the position. For unique and specialized positions where no current titles exists at the needed grade, the creation of a new title shall be established so that the position can be properly classified and graded within the system. This work must be done by the human resource administrator or the human resource administrator's designee.

16.2

The method of calculating the employees' new base salary after a downgrade is the same as that specified for a demotion.

SECTION 17. TRANSFER

17.1

No change of base salary as a function of a transfer may occur.

The Classified Staff Handbook of MU also contains information about transfer and demotion. No information about "Downgrade" is contained in this book. Demotion and transfer procedures are as follows:

DEMOTION PROCEDURES

Demotions are personnel transactions in which employees either voluntarily or involuntarily assume the duties of a position classified in a lower pay grade. Employees being demoted must meet the qualifications of the classification into which they are being demoted. Demotions may result from the choice of the employee, inefficiency in performance, better utilization of individual ability, or reduction in force.

In an involuntary demotion, a written statement concerning the reasons for the demotion must be presented to the Director of Affirmative Action & Human Resources and have his/her approval prior to the action to assure that proper procedures have been followed. Once approval is given by the Director, the supervisor must present the employee with a letter stating the reasons for the demotion and indicate an effective date four weeks or twenty working days in advance of the demotion. Within that period, the employee may accept the demotion in writing, appeal the demotion according to the established grievance procedures, or resign from the University.

A demoted employee's salary will be at the same percentile above the minimum of the lower pay grade as it was on the higher pay grade. Example: If an individual is 15% above the minimum of Pay Grade 4, it will be revised to 15% above the minimum of Pay Grade 3.

A new probationary period will be established due to the demotion. The demotion will include an additional probationary period of three to six months depending on the circumstances. All accrued annual and sick leave is transferable.

Id. at 3.1

TRANSFER PROCEDURES

Transfers are personnel transactions involving changing from one position to another position in the same classification and/or in the same pay grade. Transfers do not involve a change in base pay status. Transfers may be voluntary on the employee's part and are applied for through the normal application procedure. All qualified internal transfer candidates will be guaranteed an interview.

An employee must complete the six-month probationary period before becoming eligible for transfer outside his/her department; however, the time requirement may be waived with the mutual consent of the departments involved.

All accrued annual and sick leave is transferable. Transferred employees will retain their base salary with the new department. When transferred, the employee's departmental seniority will not be transferred to the new department. It is a courtesy for the supervisory of the department from which the employee is being transferred to notify the new department from which the employee is being transferred to notify the new department in writing of the unused annual and sick leave credits being transferred with the employee.

If a transfer is initiated by a department, prior approval must be given by the Department of Affirmative Action & Human Resources. The involuntary transfer will be made only if it is in the best interest of the employee, the department and the University.

Id. at 30.

A review of all the above-cited regulations and information, as well as the testimony of the parties, indicates Grievant was administratively transferred from his position with RS to FPMD. Grievant agreed to this transfer, and he was transferred with his title and pay grade intact. In fact, his title and pay grade remained the same for approximately eighteen months. The parties all agree Grievant was transferred at this time, even though the other individual who performed similar type of work Grievant was transferred to was classified as a Pay Grade 15. Further, all parties agree Grievant was never informed that this transfer would result in a decrease in salary, and one does not appear to have been anticipated at the time of the transfer even though his co-employee was at a lower pay grade. Also, the parties are clear that Grievant's duties did not decrease in the level of skill, effort, and responsibility required during his eighteen month tenure. In fact, the testimony is the opposite, Grievant's responsibility level increased and he received less supervision.

One other point must be made. Clearly, Grievant did not view his transfer as requiring a lesser degree of skill, knowledge, and responsibility. He moved from supervising \$1,000-\$2,000 projects to \$100,000-\$200,000 projects. This interpretation of his transfer is not unreasonable, although a "Mercer type" review of his job duties and point factor ratings compared with his former job duties may result in a lower pay grade. Further, when Grievant took this position, it did not have a job

description, title or pay grade. There was no information he could seek out to clarify his situation. In fact, a new title and pay grade were established by MU.

As far as whether Grievant was downgraded; his situation does not meet the definition contained in 128 CSR 62, §2.12. Downgrade requires “a significant reduction in the existing position's duties and responsibilities.” Id. It requires moving the position to a lower pay grade. While it is clear Grievant was misclassified from the time he took the job in FPMD, his duties and responsibilities did not decrease during his eighteen months in the position. Further, a downgrade requires the employee's position to move to a lower pay grade because of a decreased responsibilities. Grievant's position title, Director of Management Services, did not move to a lower pay grade.

The above discussion will be supplemented by the following conclusions of law.

Conclusions of Law

1. Grievant was transferred from his position with RS to a new position with FPMD. This transfer was not a demotion or a downgrade, as the elements of these two personnel actions were not met. 2. No change in base salary can occur as the result of a transfer. See Snider v. W. Va., Dept. of Commerce, 190 W. Va. 642 (1994).

Accordingly, this grievance is **GRANTED**. Respondent may either keep Grievant in his current position with his prior salary, or Grievant may be transferred back to his former position with Residence Services. Any back pay due Grievant as a result of his change in salary must be paid.

Any party or the West Virginia Division of Personnel may appeal this decision to the “circuit court of the county in which the grievance occurred,” and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-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.

JANIS I. REYNOLDS

Administrative Law Judge

Dated: November 27, 1996