

JOHN M. FLOYD,

Grievant,

v.

DOCKET NO. 94-MBOT-932

BOARD OF TRUSTEES/

WEST VIRGINIA UNIVERSITY,

Respondent.

DECISION

This is a grievance by John M. Floyd, Grievant, against the Board of Trustees, West Virginia University, Respondent. Grievant believes he was misclassified effective January 1, 1994, pursuant to W.Va. Code §18B-9-4 (the "Mercer reclassification") [\(See footnote 1\)](#). Grievant is classified as Data Network Specialist III, Pay Grade 20. Grievant claims that the market conditions for the position had not been properly reviewed and that the compensation for this position was not equivalent to market forces. Grievant seeks to be classified as Data Network Specialist III, Pay Grade 22, effective January 1, 1994, and backpay to January 1, 1994. [\(See footnote 2\)](#) A Level IV hearing was held on April 15, 1996. This matter became mature for decision on May 15, 1996, the date findings of fact and conclusions of law were due. Neither party submitted written argument.

The following Findings of Fact have been properly made from the evidentiary record developed in the case.

FINDINGS OF FACT

1. Grievant is employed by West Virginia University. Grievant was classified in the Mercer reclassification as a Data Network Specialist III, Pay Grade 20, effective January 1, 1994.
2. All classified employees were asked to complete a Position Information Questionnaire ("PIQ") prior to the reclassification. The employees were to describe their job duties and responsibilities, and the job requirements on the PIQ, by answering a series of questions designed to elicit this information. Grievant filled out a PIQ in 1991.

3. The Data Network Specialist III job position received a total of 2,833 points from the following degree levels in the point factors: 6.0 in Knowledge; 6.0 in Experience; 5.0 in Complexity and Problem Solving; 4.5 in Freedom of Action; 4.0 in Scope and Effect, Nature of Actions; 7.0 in Scope and Effect, Impact of Actions; 1.0 in Breadth of Responsibility; 3.0 in Intrasystems Contacts, Nature of Contact; 4.0 in Intrasystems Contacts, Level; 2.0 in External Contacts, Nature of Contact; 4.0 in External Contacts, Level; 3.0 in Direct Supervision Exercised, Number; 5.0 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 a 2.0 in Physical Demands.
4. The point range for a Pay Grade 20 is from 2,756 points to 2,953 points.
5. The point range for a Pay Grade 22 is from 3,170 points to 3,405 points.
6. Grievant does not have formal budgetary accountability for any functional area.

DISCUSSION

A. Burden of Proof

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 §4.17; 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 doing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-MBOD- 124 (Mar. 4, 1991).

A grievant is not likely to meet his burden of proof in a Mercer grievance merely by showing that his job duties better fit one job description than another, without also identifying which point factor degree levels he is challenging. [\(See footnote 3\)](#) 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 factors are not assigned to the individual, but to the job. 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, in this case, whether 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 Description at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Foundation, 459 S.E. 2d 374 (W. Va. 1995); Burke, supra. The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. ([See footnote 4](#))

B. Application of the Point Factor Methodology

In his Level IV appeal and at the Level IV hearing Grievant stated that he should have been given more credit for Knowledge, Complexity and Problem Solving, Freedom of Action, Scope and Effect, and Breadth of Responsibility. Grievant did not, however, indicate or testify as to which degree level should have been assigned to these job evaluation factors except Breadth of Responsibility. The JEC assigned Breadth of Responsibility with a 1 and Grievant testified that it should have been a 4.

Breadth of Responsibility is defined in the Job Evaluation Plan as:

This factor describes the variety of specific functional areas in which the job may have formal and ongoing accountability. In reviewing this factor, consider the level of in-depth knowledge required as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations [Examples of some functional areas within the following areas within the following divisions would include: (1) Student Services--Housing, Admissions, Financial Aid, Counseling; (2) Business and Finance--Purchasing, Auditing, Grants and Contracts, Bursar.]

A level of 1.0 for Breadth of Responsibility in the Job Evaluation Plan is defined as:

Accountable for only immediate work assignments but not for a functional area.

A level of 4.0 for Breadth of Responsibility in the Job Evaluation Plan is defined as:

In-depth knowledge of and accountability for three functional areas as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations.

In regard to Breadth of Responsibility, Grievant's attachment to his appeal form stated that he has formal responsibility in four functional areas. These areas are network operation and maintenance,

building wiring, LAN planning and support, and Unix system administration and management. Deborah Fusco, Senior Compensation and Classification Analyst at West Virginia University and also a member of the JEC, stated that Grievant was assigned a 1.0 along with all other University personnel. Ms. Fusco testified that to her knowledge, no classified position was given a point factor higher than a 1. The "areas" identified by Grievant are not "functional areas". They are all part of computer support services. Furthermore, the evidence reveals that Grievant was not accountable for these support services, i.e., he had no budgetary responsibilities. The undersigned cannot find from the evidence presented, that the decision of the JEC to assign Grievant's position a degree level of 1.0 in this point factor was arbitrary and capricious or clearly wrong.

As to Knowledge, Complexity and Problem Solving, Freedom of Action and Scope and Effect, Grievant did not indicate which degree level should have been assigned to these job evaluation factors. Grievant testified that he should have been given more credit for these four factors. When cross-examined by Respondent's counsel, however, Grievant agreed that the degree levels assigned to the point factors were indeed correct.

C. Summary

Grievant argued that the market conditions for the Pay Grade for the Data Network Specialist III position had not been properly considered. Ms. Fusco testified that the point factor methodology was not based on market. That the Mercer reclassification system was to classify positions not to compensate individuals. She testified that the market comes in when you look at compensation. Mr. Fusco further testified that when pay grades at West Virginia University are reviewed, a pay grade at 19 or 20 is for high level senior professional positions and that this is the level to which Grievant's position was assigned.

Grievant has not proven that his Job Title should be at a Pay Grade 22. None of the levels that Grievant challenged should be changed. Therefore, the number of points allotted to the Data Network Specialist III, 2,833, is appropriate.

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 §4.17. 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 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 Foundation, 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). Likewise, subjective determinations of the JEC regarding application of the Mercer Plan's point factor methodology to an employee or group of employees are entitled to deference when being reviewed by this Grievance Board. However, such subjective determinations may nonetheless be found to be arbitrary and capricious if not supported by a rational basis, or to be clearly wrong if there is no substantial evidence in the record supporting the finding or, review of the evidence of record makes it clear that a mistake has been made. Jesson v. Bd. of Trustees, Docket No. 94-MBOD-1059 (Oct. 26, 1995). See Frymier-Halloran v. Paige, 458 S.E. 2d 780, 788 (W.Va. 1995); Bd. of Educ. v. Wirt, 192 W.Va. 568, 453 S.E.2d 401 (1994); Kyle v. W.Va. State Bd. of Rehabilitation, Docket No. VR-88-006 (Mar. 28, 1989).

4. In order to prevail on a claim that a classification and pay grade should have been created that would more closely fit the duties and responsibilities of a grievant, the grievant has the burden of proving an abuse of the broad discretion extended. See Pridemore v. West Va. Bureau of Employ. Programs, Docket No. 92-BEP-435 (Aug. 17, 1993); Compare AFSCME v. Civil Service Com'n of W.Va., 380 S.E.2d 43 (W.Va. 1989); Nida v. W.Va. Dept. of Health and Human Res./Div. of Health and W.Va. Dept. of Admin./Div of Personnel, Docket No. 93-HHR-240 (Aug. 20, 1993); Johnston v. W.Va. Dept. of Health and Human Res./Div. of Personnel, Docket No. 94-HHR-206 (June 15, 1995).

5. The Job Evaluation Committee's interpretation of the point factors assigned to Data Network Specialist III, is not clearly wrong.

6. Grievant failed to establish by a preponderance of the evidence that his Job Title, Data Network Specialist III, should be at a Pay Grade 22.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the circuit court of Kanawha County or in the circuit court of Monongalia County 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: June 14, 1996

MARY BETH ANGOTTI-HARE

Administrative Law Judge

[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.*

[Footnote: 2](#) *Grievant is no longer employed with West Virginia University. Grievant stated that he left the University in May, 1995. This grievance, therefore, involves the issue of backpay only.*

[Footnote: 3](#) *A grievant may challenge any combination of point factor degree levels, so long as he can clearly identify 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, West Virginia Univ., Docket No. 94-MBOT-1059 (Oct. 26, 1995); and Zara, et al., v. Bd. of Trustees, West Virginia Univ., Docket No. 94-MBOT-817 (Dec. 12, 1995).*

[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.*