LYNDA A. NELSON

v. **DOCKET NO. 94-MBOT-727**

BOARD OF TRUSTEES,

WEST VIRGINIA UNIVERSITY

D E C I S I O N

Grievant Lynda A. Nelson alleges she was misclassified effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) . She seeks as relief classification as an Electrician Lead, Pay Grade 14, rather than Electrician, Pay Grade 12, and backpay from January 1, 1994. She challenges the degree levels received in Experience, Complexity and Problem Solving, Freedom of Action, and Direct Supervision Exercised/Number of Subordinates and Level of Supervision. (See footnote 2)

The following Findings of Fact are properly made from the record developed at Level IV.

Findings of Fact.

1. Grievant has been employed at West Virginia University ("WVU") since 1982, and works at the Personal Rapid Transit System ("PRT").

2. In 1991, all higher education classified employees were asked to complete a Position Information Questionnaire ("PIQ"). 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 completed a PIQ in 1991.

3. Grievant was classified as an Electrician, Pay Grade 12, effective January 1, 1994.

4. Grievant's primary job duties (with the percentage of time she performs these duties in parenthesis) are performing electrical repairs on and maintenance of various components of the PRT System (70%); and implementing emergency response plans and actions for unplanned or emergency events and participating in emergency teams, including evacuation of the PRT System, removing injured persons, performing first aid, putting out fires, and performing repairs, troubleshooting electrical hardware problems, providing instruction to maintenance personnel,

interpreting and preparing maintenance manuals, blueprints, schematics and drawings,estimating manpower and material needs, accounting for man-hours and materials used, testing equipment, maintaining inventory of tools, and related duties (30%).

5. The PRT is a unique system, and the parts and some manuals are obsolete.

6. Grievant and another Electrician are assigned tasks each shift. She is the more senior employee and chooses which part of the task she will work on, leaving the other part to the less senior Electrician. She determines how to go about completing the assignment, relying upon blueprints, manuals, schematics, the Electrical Code, and general electrical principles.

7. Grievant has not been formally assigned to supervise any employees.

8. The Electrician Job Title received 1723 total points from the following degree levels in each of the thirteen point factors (See footnote 3) : 4.0 in Knowledge; 3.0 in Experience; 2.5 in Complexity and Problem Solving; 2.5 in Freedom of Action; 1.0 in Scope and Effect, Impact of Actions; 2.0 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; 2.0 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;4.0 in Physical Coordination; 3.0 in Working Conditions; and 4.0 in Physical Demands. Joint Exhibit 2.

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 § 4.19; 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, because the Mercer classification system 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 the point factor methodology. Therefore, the focus in Mercer Decisions issued by this Grievance Board is upon the point factors the grievant is challenging. (See footnote 4) While some "best fit" analysis of thedefinitions 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, 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 or PIQ's 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 Res., 465 S.E.2d 887 (W. Va. 1995). The higher education employee challenging his classification thus will have to overcome asubstantial obstacle to establish that he is misclassified. (See footnote 5)

B. Application of the Point Factor Methodology

The following table shows the differences between the degree levels assigned in the point factors challenged by Grievant for the Electrician, the Electrician Lead ("Lead"), and the degree levels Grievant argued she should have received.

	EX	CPS	DSE FA	DSE NUM	LVL (See footnote 6)
Electrician	3	2.5	2.5	1	1
Lead	4	3	3	3	3
Grievant's					

Argument 6 3 4 3 3

Joint Exhibit 2. Each of the point factors challenged by Grievant will be addressed separately below.

1. Experience

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.

Grievant's Job Title received a degree level of 3.0, which is defined in the Plan as "[o]ver one year and up to two years of experience." Grievant argued she should have received a degreelevel of 6.0, which is defined in the Plan as "[o]ver four years and up to six years of experience." The Lead Job Title received a degree level of 4.0, which is defined in the Plan as "[o]ver two years and up to three years of experience."

Grievant argued she had to have all the basic electrical skills prior to entering into her job duties, and it takes over four years to acquire those. She stated that after two years of experience one would have a very basic knowledge, and after six years of experience one can thin conduit, and would have a working knowledge of the Electrical Code and practical knowledge. She also stated, however, that she was trained as an electrician in a formal training program which required three years of school and one year as an apprentice. She explained that "[a]lthough many of the general electrical principals were the same as I learned in school, the system was so unique and complex, each problem required learning something new." Grievant's Exhibit 1. She stated it took her two to three months to learn the basics of the PRT, and it took her one to two years to learn the PRT System.

Teresa Crawford, Senior Compensation Analyst at WVU and JEC member, stated it is important to remember in applying this point factor that the employee cannot receive credit under Experience for what has been credited under Knowledge. Respondent's Exhibit 1. She stated this Job Title received a degree level of 4.0 under Knowledge for the vocational training of up to 18 months. She stated Grievant acknowledged that she had to have certain basic electrical knowledge in order to begin working at the PRT, and thather experience gained at the PRT was on-the-job training, which is not counted in applying this point factor. She stated this point factor measures the minimum prior experience necessary to perform the job at an entry level. She pointed out that state employees are not required to be licensed, and therefore a journeyman's license, as Grievant has, is not required.

Grievant's testimony indicates that some, if not all, of the experience she asserts is needed is

actually knowledge of the Electrical Code received in formal training and applied on the job. The record merely reflects a difference of opinion about how much experience is needed to be able to learn to perform Grievant's duties.

The 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). 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 3.0 in this point factor.

2. Complexity and Problem Solving

The Plan defines Complexity and Problem Solving as:

> This factor measures the degree of problem-solving required, types of problems encountered, the difficulty involved in identifying problems and determining an appropriate course of action. Also considered is the extent to which guidelines, standards and precedents assist or limit the position's ability to solve problems.

Grievant's Job Title received a degree level of 2.5 in this point factor. Grievant argued she should have received a degreelevel of 3.0, as did the Lead Job Title.

A degree level of 2.0 is defined in the Plan as:

> Problems encountered require the employee to make basic decisions regarding what needs to be done, but the employee can usually choose among a few easily recognizable solutions. Established procedures and specific instructions are available for doing most work assignments, with some judgment required to interpret instructions or perform basic computation work such as in the comparison of numbers or facts.

A degree level of 3.0 is defined in the Plan as:

> Problems encountered can be somewhat complex and finding solutions to problems may require some resourcefulness and originality, but guides, methods and precedents are usually available. Diversified guidelines and procedures must be applied to some work assignments. Employee must exercise judgment to locate and select the most appropriate guidelines, references, and procedures for application, and adapt standard methods to fit variations in existing conditions.

Grievant stated most of the time the solutions are not easily recognizable. For example, she stated usually the problem is something like a 300 pound breaker will not stay closed, and there are no written guidelines for it, and she has to tear the breaker apart to determine why it will not stay closed. She admitted that with her years of experience, some solutions are now easily recognizable. She stated there are no updated manuals available which she can use, but it is part of her job to

update the manuals. She stated she can ask engineers questions at times; otherwise, she either finds blueprints or tears the equipment apart. She stated she uses forms and blueprints she developed, and techniques she and another employee developed.

Ms. Crawford explained in applying this point factor and Freedom of Action, "[t]he JEC was sensitive to positions wheremultiple functions were performed and gave half credit (.5) in cases where the position was performing significant portions of duties and responsibilities in both levels, i.e.: part in 2 and part in 3, hence a 2.5." Respondent's Exhibit 1. She stated the JEC determined that the craft positions, including the Electrician position, the majority of the work fell between a 2.0 and a 3.0.

The undersigned accepts that working on the PRT is different from other electrical jobs, and that Grievant must, at times, adapt standard electrical methods to fit variations in existing conditions. There is no evidence of how often she must do this. Obviously, certain components are standard throughout the system, and once standard methods are adapted to fit the component, the routine is the same the next time. While Grievant opined that the problems she encounters are complex, she did not provide a lot of detail regarding how she solves the problems encountered, and this is key in evaluating this point factor. It is clear Grievant relies upon her general training in electrical repairs, the Electrical Code, general electrical principles, blueprints, and troubleshooting procedures. The undersigned would imagine that when Grievant is tearing a piece of equipment apart, she is looking for some clues as she goes along, and follows a checklist for determining the sources of the problem, but Grievant did not really address this. There are a limited number of possible problem sources. Grievant has not proven her job duties are so frequently within a degree level of 3.0 that the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degreelevel which recognizes some problem-solving is within a degree level of 3.0, but some duties are within a degree level of 2.0.

3. Freedom of Action

The Plan defines Freedom of Action as:

> This factor measures the degree to which the position is structured as is determined by the types of control placed on work assignments. Controls are exercised in the way assignments are made, how instructions are given to the employee, how work assignments are checked, and how priorities, deadlines and objectives are set. Controls are exercised through established precedents, policies, procedures, laws and regulations which tend to limit the employee's freedom of action.

Grievant's Job Title received a degree level of 2.5 in this point factor. Grievant argued she should have received a degree level of 4.0. The Lead Job Title received a degree level of 3.0.

A degree level of 2.0 is defined in the Plan as:

> Tasks are structured to the extent that standard operating procedures serve as a gauge to guide the employee's work. The employee can occasionally function autonomously with the immediate supervisor available to answer questions. Questionable items are referred to the immediate supervisor.

A degree level of 3.0 is defined in the Plan as:

> Tasks are moderately structured with incumbent working from objectives set by the supervisor. At this level, the employee organizes and carries out most of the work assignments in accordance with standard practices, policies, instructions or previous training. The employee deals with some unusual situations independently.

A degree level of 4.0 is defined in the Plan as:

> Tasks are minimally structured with incumbent working from broad goals set by the supervisor and established institutional policies. The employee and supervisor work together to establish objectives, deadlines and projects. The employee, having developed expertise in the line of work, is responsible for planning and carrying out the assignment; resolving most of the conflicts which arise;and coordinating the work with others. The employee keeps the supervisor informed of progress and potentially controversial matters. Completed work is checked only to determine feasibility, compatibility with other work, or effectiveness in meeting the objectives of the unit.

Grievant stated she generally receives assignments from the maintenance manager, but if he is not there she decides what is pressing, although the shift supervisor also makes assignments. Some assignments are in the form of work orders. She indicated her tasks are dependent upon what has broken. She stated her work is not checked, but the equipment either works or it does not when she is finished. She stated the objective is to make sure the PRT is running at the end of the shift. She stated she can go to her supervisor with non-electrical questions.

Ms. Crawford pointed out the majority of Grievant's assignments are received by work orders, and Grievant plans the work from the work order for that day. She defined objectives set by the supervisor as when he or she assigns an ongoing project with a completion deadline in the future. She stated the only objective for Grievant is that the system needs to be running at the end of the shift, but on a daily basis she is told what work to do.

Grievant receives assignments in the form of work orders, and her job is substantially structured by this. Although she performs her duties with little supervision, she does so in accordance with her training, and perhaps a checklist. Certain items have priority. Grievant decides how to carry out the

task, and what materials are needed for each job. The undersigned is not convinced that Grievant's freedom to decide which part of the jobshe will perform is based on anything other than seniority. Parts of degree levels 2.0 and 3.0 seem to fit Grievant's duties. Grievant has not proven her duties better fit a degree level of 3.0 than a 2.5. See Hardee, et al., v. Bd. of Directors, Concord College, et al., Docket No. 94-MBOD-373 (Jan. 10, 1997).

4. Direct Supervision Exercised

> This factor measures the job's degree of direct supervision exercised over others in terms of the level of subordinate jobs in the organization, the nature of the work performed, and the number supervised. Only the formal assignment of such responsibility should be considered; informal work relationships should not be considered. Supervision of student workers may be taken into account if they are essential to the daily operation of the unit. The number of subordinates should be reported in full-time equivalency (FTE) and not head count.

This point factor consists of two parts, Number of Subordinates and Level of Supervision. Grievant challenged the degree levels received in both parts. Grievant argued she should have received a degree level of 3.0 in Number, as did the Lead Job Title, rather than a 1.0. A degree level of 1.0 is defined in the Plan as no direct subordinates. A degree level of 2.0 is defined in the Plan as one direct subordinate, and a degree level of 3.0 is defined in the Plan as two to three direct subordinates.

Grievant argued she supervises because she has a crew which she is responsible for training, and she is the Lead person. She stated she was told she was in charge of those working with her, and her position was considered to be a Lead job, as there were two levels of Electricians under the old system, a I and a II. She stated there is not an electrical supervisor on her shift, butthere is a shift supervisor who has basic electrical knowledge. She stated that 90% of the time she is responsible for organizing the work and getting supplies together, and generally she decides how the work will be done. She stated she is responsible for monitoring the progress of the work, checking it, and answering any questions. She stated she works with one Electrician, and at times a helper works with her. She also pointed to assistance received at times from utility workers and mechanics. She stated she orders the parts and tools, and is responsible for making sure the needed tools are on hand. She stated she picks up the assignments from the supervisor, and lets the other Electrician know what the assignment is, and she picks where they will work and how they will work on the project. She stated she works side by side with the other Electrician, and sometimes he checks her work, and they have to always check the Helper's work.

Ms. Crawford stated the PIQ signed by Grievant's supervisors indicates she has no supervisory responsibilities, and this is consistent with what they told her. She stated part of the reason there are no Lead positions at the PRT is because of the presence of shift supervisors. She stated Grievant's testimony led her to believe that she is merely working side by side with a co-worker, not supervising.

This point factor, by definition, measures only the formal assignment of supervisory responsibility. Grievant has not been assigned formal supervisory responsibility for any other employees. Although Grievant does, in fact, train new Electricians on the PRTsystem, checks their work, and at times insures that supplies are at the work site, the other Electrician is not formally assigned to her, and she does not have control over any employees. Her supervisor has control over the other Electrician and the helper. Grievant's testimony indicated that the other Electrician also instructs the helper and they both check his work, and that he checks her work. See Hardee, supra.

Grievant argued she should have received a degree level of 3.0 in Level of Supervision, as did the Lead Job Title, rather than a 1.0.

A degree level of 1.0 in Level is defined in the Plan as:

> Minimal or no responsibility for the work of others; however, may provide functional guidance to student workers or lower-level employees on a non-essential basis.

A degree level of 2.0 in Level is defined in the Plan as:

> Responsible for directing and monitoring the work of student workers essential to the operations of the unit.

A degree level of 3.0 in Level is defined in the Plan as:

> Lead control over non-exempt employees performing the same work as this job. Lead responsibility includes training, assigning tasks, checking the work of others, and insuring supplies and tools are provided at the work site.

As with Number, Grievant must have formal assignment of supervisory responsibility in order to receive credit in the Level of Supervision. Grievant's testimony indicates that she is responsible for tools and supplies, but not that this is because she has supervisory responsibilities, or that she has sole responsibility for getting tools and supplies together for the job. She is not solely responsible for the Helper. Once the other Electrician has been trained in the unique aspects of the PRT, it appears he should be able to perform the work on his own, and does so. While Grievant stated she is to monitor the progress of work, it is her supervisor who has responsibility for making sure the assigned tasks are completed, and that the other Electrician does his job. Grievant has no formally assigned

supervisory responsibilities. See Hardee, supra.

C. Summary

Grievant failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning her Job Title, or in assigning the degree levels in the point factors to her Job Title. Because the point factor analysis does not result in a change in the pay grades, a comparison of Grievant's duties to those found in the Generic Job Description for the Job Title sought is not necessary.

The following Conclusions of Law support the decision reached.

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 classifi cations 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 isperforming. 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 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 decision that Grievant is an Electrician, Pay Grade 12, is not clearly wrong or arbitrary and capricious.

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

Accordingly, the grievance of Lynda A. Nelson is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or 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.

BRENDA L. GOULD

Administrative Law Judge

Dated: June 30, 1997

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

A Level IV hearing was held on February 20, 1997. This matter became mature for decision on April 14, 1997, with receipt of Respondent's post-hearing fact/law proposals. Grievant declined to submit post-hearing written argument. This matter was subsequently reassigned to the undersigned for administrativereasons.

Footnote: 3

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.

Footnote: 4

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. 26, 1995); and Zara, etal., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-817 (Dec. 12, 1995).

Footnote: 5

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.

Footnote: 6

These headings are shorthand for the following point factors: EX is Experience; CPS is Complexity and Problem Solving; FA is Freedom of Action; DSE, NUM is Direct Supervision Exercised/Number of Subordinates; and DSE, LVL is Direct Supervision Exercised/Level of Supervision.