DAVID SKIDMORE

v. Docket No. 94-MBOT-819

BOARD OF TRUSTEES/WEST VIRGINIA UNIVERSITY

D E C I S I O N

Grievant David Skidmore, employed by the Board of Trustees (Respondent) at West Virginia University, was classified as a Supervisor of Building Trades II at pay grade 17, under the "Mercer reclassification". (See footnote 1) He seeks classification in pay grade 19. A level four hearing was conducted on January 13, 1997, and the matter became mature for decision on February 21, 1997, the due date for submission of fact/law proposals.

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

Findings of Fact

1. At all times relevant to this matter Grievant has been employed by the Board of Trustees (Respondent) at West Virginia University, assigned to the Health Science Center. Prior to the implementation of the Mercer classification system, he was classified as a Trade Supervisor.

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 and the job requirements on the PIQ, by answering a series of questions designed to elicit this information.

3. As a result of the Mercer reclassification, Grievant was placed in the classification of Supervisor/Building Trades II, pay grade 16, effective January 1, 1994.

4. Grievant was elevated to pay grade 17 in 1997 when the JEC increased the degree level of Knowledge by .5 points to credit employees for certification necessary for the completion of their duties.

5. Grievant's primary job duties, and the percentage of time allocated to each, prior to January 1, 1994, consisted of coordinating work orders with employees, determining the best method or procedure to complete the job, insuring that necessary materials are available to complete the job,

inspecting the work to insure that it is complete, keeping records of time required for each job, and training subordinates - 60%; processing time cards and leave forms, calculating time per task for work orders, securing information to order materials and equipment used by tradesmen, and meeting with Deans and department heads to discuss work to be completed - 30%; interpreting and reviewing blueprints and specifications to advise contractors of best methods to complete work in that area of the shop - 10%.

6. The point range for Pay Grade 17 is from 2255 points to 2407 points.

7. The Supervisor/Building Trades job title received 2248 total points from the following degree levels in each of the thirteen point factors (See footnote 2) : 5.5 in Knowledge; 5.0 inExperience; 3.5 in Complexity and Problem Solving; 3.5 in Freedom of Action; 3.0 in Scope and Effect, Impact of Actions; 3.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 2.0 in Intrasystems Contacts, Nature of Contact; 3.0 in Intrasystems Contacts, Level; 1.0 in External Contacts, Nature of Contact; 2.0 in External Contacts, Level; 5.0 in Direct Supervision Exercised, Number; 4.0 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 2.0 in Physical Demands.

8. The point range for pay grade 19 is from 2574 points to 2755 points.

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 §4.1; 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 his job duties better fit one job description than another, without also identifying which point factors he is challenging, and the degree level he believes heshould 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., 194 W.Va. 97, 459 S.E.2d 374 (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, 195 W.Va. 430, 465 S.E.2d 887 (1995). The highereducation 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

Grievant does not challenge any point factor, (See footnote 5) but simply asserts that the classification schedule under the Mercer plan places him in a position where his maximum salary will be $2,000.00 less than it would have been previously. He also notes that there are three pay grades between his position and that of a lead worker, and four pay grades between himself and his supervisor. He asserts that he is responsible for a number of trades (air conditioning, refrigeration and sheet metal) which maintains machinery which must function at all times.

Testifying on behalf of Respondent, WVU Senior Compensation Analyst Teresa Crawford reviewed each point factor and explained why the JEC determination of the degree level assigned to Grievant's position is correct. Ms. Crawford also stated that the pay grade assigned to the position of Supervisor/Building Trades was correct because Grievant actually works as a supervisor less than 20% of his time. She also compared the Supervisor position with that of Manager, which is compensated at pay grade 18, noting that Managers are assigned a budget within which they must

work, while Supervisors have no budgetary responsibility, and simply submit a request to obtain necessary items.D. Summary

___ Because Grievant has not established that the degree levels assigned to the point factors were incorrect as applied to his position, it must be determined that he has failed to prove that the JEC was clearly wrong or acted in an arbitrary and capricious manner when it assigned him to pay grade 17.

In addition to the foregoing facts and narration 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 Grievants to prove by a preponderance of the evidence that they are not properly classified. 156 C.S.R. 1§4.1.

3. Determinations of the JEC regarding application of the Plan's point factor methodology are essentially questions of fact. In that regard, the JEC's interpretation and explanation of the point factors and PIQs at issue will be given great weight unless clearly erroneous. Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995).

4. Subjective determinations of the JEC regarding application of the Plan's point factor methodology are entitled to deference when being reviewed by the Grievance Board. Miller v. Bd. of Directors, Docket No. 94-MBOD-495 (Oct. 29, 1996). 5. Grievant failed to prove by a preponderance of the evidence that the Job Evaluation Committee's assignment of the position Supervisor/Building Trades II to pay grade 17 was clearly wrong or arbitrary and capricious.

6. Grievant has failed to prove that his duties and responsibilities warrant different classification and/or compensation at any higher pay grade.

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: May 13, 1997 _____

SUE KELLER

SENIOR 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

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: 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).

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.

Footnote: 5

On cross-examination Grievant did suggest that he should have received a higher degree level in Complexity and Problem Solving, but did not state what he believed would be the correct level.