CHARLES CARDER

v. Docket No. 94-MBOT-1006

BOARD OF TRUSTEES/WEST VIRGINIA UNIVERSITY

D E C I S I O N

Grievant Charles Carder, employed by the Board of Trustees (Respondent) at West Virginia University, was classified as a Roads and Grounds Worker - Lead at pay grade 12, under the "Mercer reclassification". He seeks classification in pay grade 14, "with other leads". (See footnote 1) This matter became mature for decision following a level four hearing conducted on December 11, 1996, when both parties waived the opportunity to submit proposed 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 Physical Plant. Prior to the implementation of the Mercer classification system, he was classified as a Road and Grounds Maintenance Worker III.

2. In 1991, all higher education classified employees, including Grievant, were asked to complete a Position Information Questionnaire (PIQ) prior to the reclassification. Employees wereto 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 Roads and Grounds Worker - Lead, pay grade 12, effective January 1, 1994.

4. Grievant's primary job duties, and the percentage of time allocated to each, prior to January 1, 1994, consisted of acting as crew leader for 6 to 10 maintenance workers while performing some of the same duties himself (50%); training employees (15%); performing skilled professional landscape

gardening tasks, such as pruning ornamental shrubs, applying insecticide, fungicide, herbicide, fertilizers, and landscaping materials (15%); maintaining tools, equipment and materials (5%); and acting as crew leader for snow removal, working in concrete, cement, drainage systems, and maintaining cleanliness of assigned areas (15%).

5. The point range for Pay Grade 12 is from 1655 points to 1755 points.

6. The Roads and Grounds Worker - Lead job title received 1711 total points from the following degree levels in each of the thirteen point factors (See footnote 2) : 3.0 in Knowledge; 4.0 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; 1.0 in External Contacts, Nature of Contact; 2.0 in External Contacts, Level; 4.0 in Direct Supervision Exercised, Number; 3.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 2.0 in Physical Coordination; 3.0 in Working Conditions; and 3.0 in Physical Demands.

7. The point range for pay grade 14 is from 1866 points to 1984 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 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., 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 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

Grievant does not challenge any point factor, but simply asserts that “if you're a lead, you're a lead” and that all leads should be placed in the same pay grade. Mr. Carder specifically comparedhimself with Robert Frame, an employee classified as a Landscape Gardener - Lead. Mr. Carder stated that much of their work is similar, and opined that personal abilities and experience should have been considered.

Testifying on behalf of Respondent, Senior Compensation Analyst Teresa Crawford stated that all positions with a “lead” designation do not warrant the same pay grade. She noted that Laborer - Lead was slotted at pay grade 8, Physical Plant Craft - Lead, pay grade 14, Painter - Lead, pay grade 13, and Building Service Worker - Lead, pay grade 7. Ms. Crawford explained that the pay grade of the “Lead” positions was tied to those employees led. For example, Roads and Grounds Workers I and II are assigned to pay grades 7 and 9, respectively. As a Lead in pay grade 12, Grievant is at least 3 pay grades higher than the employees he leads. However, Mr. Frame is only 2 pay grades higher than the employees he leads. These differences are based on the point spreads assigned to the positions.

Ms. Crawford also explained that Grievant and Mr. Frame are assigned to different pay grades because they have different specialty areas. Grievant's work lies more in the area of construction. He prepares many areas for Mr. Frame, who is responsible for the design work and care of the landscaping materials which includes plants, turf, shrubs, and trees. Mr. Frame is also certified to apply pesticides. While Grievant's work is limited to the Medical Center, Mr. Frame is responsible for work on all three campuses.

Finally, Ms. Crawford acknowledged that there is a universal definition for lead workers, i.e., they coordinate and oversee the completion of daily work assignments and provide input on performance appraisals and disciplinary action. Lead workers are not the ultimate supervisors and have no authority to hire or fire. However, within the general definition, Ms. Crawford noted thatlead workers are subject to specific requirements and their responsibilities vary in complexity, resulting in differing data lines, and variant pay grades.

Although Grievant did not challenge any point factors, for purposes of this decision, it is noted that the data lines for Roads and Grounds Worker - Lead, and Landscape Gardener - Lead, differ in only 4 point factors: Knowledge, Experience, Complexity and Problem Solving, and Freedom of Action. To illustrate why these positions are not in the same pay grade these point factors will be briefly addressed.

Knowledge

The Job Evaluation Plan ("the Plan") defines Knowledge as: “the minimum level of education equivalency and/or training typically required for an incumbent to reach acceptable occupational competence on the job. The factor considers the technical, theoretical, and/or mechanical skills required, and the complexity and diversity of the required skills.”

The JEC assigned Roads and Grounds Worker - Lead a degree level of 3.0, defined in the Plan as “[j]ob requires basic knowledge of grammar, spelling, punctuation, and simple mathematical functions like percentages, ratios, etc., as might normally be acquired through attainment of a high school diploma or GED.” Landscape Gardener - Lead was assigned a degree level of 6.5. The degree level of 6.0 is defined in the Plan as “[j]ob requires a thorough knowledge of a professional discipline or technical specialty as would normally be acquired through a relevant baccalaureate education program. Knowledge of principles, concepts, and methodology of a highly technical, professional, or administrative occupation is indicative of this level.” A degree level of 7.0 is defined

as “requires a broad or in-depth body of knowledge such as would normally be acquired through a Master's education program that is directly related to the type of work being performed. Advanced knowledge in a particular field of expertise with the skill in applying this knowledge to difficult and complex work assignments is characteristic of this level.”

Experience

The Plan defines experience as “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.” See Jones, et al. v. Bd of Trustees/West Virginia University, Docket No. 94-MBOT-978 (Feb. 29. 1996).

Roads and Grounds Worker - Lead was assigned a degree level of 4.0, defined by the Plan as “[o]ver two years and up to three years of experience.” Landscape Gardener - Lead was assigned a degree level of 2.0, defined as “[o]ver six and up to twelve months of experience.”

Complexity and Problem Solving

The Plan defines Complexity and Problem Solving as “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.”

The JEC awarded the position of Roads and Grounds Worker - Lead a degree level of 2.5 in this point factor. A degree level of 2.0 is defined in the Plan as “[p]roblems 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 as: [p]roblems 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.

___Landscape Gardener - Lead was assigned a degree level of 3.0 in this point factor.

Freedom of Action

The Plan defines Freedom of Action as:

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.

Roads and Grounds Worker - Lead was accorded a degree level of 2.5, in this point factor. A level of 2.0 is defined by the Plan as: “[t]asks 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.” The degree level for 3.0 is defined by the Plan as:
[t]asks 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.

Landscape Gardener - Lead was assigned a degree level of 3.0 in this point factor.
D. Summary This comparison establishes that employees classified as Landscape Gardener - Lead are required to possess a much higher educational level, and are awarded substantially more points in the factor of Knowledge, than employees classified as Roads and Grounds Worker - Lead. The Position of Landscape Gardener - Lead, also holds slightly higher degree levels in Complexity and Problem Solving and Freedom of Action. Employees classified as Roads and Grounds Worker - Lead are required to possess more experience; however, the points allocated to Landscape Gardener - Lead total 1958, 247 more than those assigned to Grievant. Based upon the foregoing, it must be determined that Grievant 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 12.

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. Grievant failed to prove by a preponderance of the evidence that the Job Evaluation Committee's assignment of the position Roads and Grounds Worker - Lead to pay grade 12 was clearly wrong or arbitrary and capricious.

4. 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 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 §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: March 28, 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.