RUTH GREEN, et al.,

Grievants,

v. Docket No. 01-HE-340

HIGHER EDUCATION INTERIM GOVERNING BOARD/

WEST VIRGINIA UNIVERSITY,

Respondent.

D E C I S I O N

Grievants, Ruth Green, Brenda Holland, Debra Sviridenko, and Linda Smith, employed by West Virginia University (WVU or Respondent) as Postal Workers, individually filed level one grievances on January 31, 2001, in which they stated:

Based on reclassification of Material Handlers recently. 1/26/01. Filing grievance of decision of the Mercer Study and also for not being informed at the time of the right to appeal that decision until after the deadline had already passed. Grieving for job upgrade and back pay. I should have been upgraded to a higher level under the Mercer Study because of all the knowledge needed and physical work done to handle the efficient and timely processing at the Mail Center which is highly essential to the Health Sciences Med. Center.

For relief, Grievants request “upgrade and back pay from January 1, 1994.”

The grievances were denied at levels one and two. Grievants elected to by-pass level three, and advanced their appeals to level four in May 2001. The matters were consolidated for hearing which was held on April 16, 2002. Grievants represented themselves, and WVU was represented by Kristi McWhirter, Assistant Attorney General. The matter became mature for decision on May 30, 2002, the due date for proposed findings of fact and conclusions of law.

The following facts are derived from the record in its entirety.

Findings of Fact

1. Grievant Ruth Green has been employed by WVU since 1989, and was promoted to Lead Postal Worker, pay grade 10, in 1998. Grievant Green seeks an increase in pay grade to a minimum of 10 or 11, and possibly 12.

2. Grievant Brenda Holland has been employed by WVU since 1980 and has held the classification of Postal Worker, pay grade 8, since the Mercer plan was implemented in 1994. Grievant Holland seeks an increase to pay grade 10.

3. Grievant Debra Sviridenko has been employed by WVU as a Postal Worker, pay grade 8, since August 1994. She also requests a salary increase to pay grade 10.

4. Grievant Linda Smith has been employed by WVU since 1981, was classified as a Lead Postal Worker in 1994, and was promoted to Supervisor in 1998. Grievant Smith requests a promotion to Manager with a pay grade of 15 or 17.

5. None of the Grievants filed a grievance regarding their assigned classification and pay grade in 1994, or at any time prior to the present matter.

6. Grievants' duties and responsibilities have evolved with the growth of WVU, and subsequent to anthrax contaminations in the postal system in late 2001.

Discussion

Initially, Respondent asserts that this matter was not timely filed because all employees in the higher education system were given a definite period of time in which to dispute their classification in 1994, and Grievants did not file a grievance within that time. Grievants assert that they were never advised they could file a grievance in 1994.

Upon implementation of the Mercer classification system in 1994, a time limit was placed on grieving the initial classifications assigned under the plan. Respondent's Policy 62, set forth in §128-62-18 provides in pertinent part:18.1. An employee may seek a review of his/her initial classification under the new program implemented pursuant to this rule and may appeal such initial classification through the procedures of W. Va. Code §18-29 after completing such review. Such review or appeal shall be governed by the provisions of this rule and to the extent these provisions are inconsistent with W. Va. Code §18B-9-7 or W. Va. Code §18B-9-4, those code provisions are deemed null and void pursuant to the authorization contained in W.Va Code 18B-9-4 (c). If an employee does not first seek a review of his/her initial classification through the internal procedures set out herein, they shall be prohibited from grieving that classification under W. Va. Code 18-29.

18.2. An employee may seek a review of his/her initial classification, job title or pay grade by filing a request for review form after formal notification of his/her title and pay grade under the new program, but no later than January 31, 1994.

Contrary to Grievants' assertion that they were never advised of their right to file a grievance in 1994, Kimberly Clayton, Manager of Health Sciences Telecommunications, testified that she had discussed the matter with Grievants, and their requested review was conducted. If a review was conducted, it appears that it may have been an informal process with Ms. Clayton since James Hackett, Associate Vice President of Heath Sciences, testified that he had received no request for review from Grievants. The undersigned takes administrative notice of the fact that the Higher Education Governing Board and WVU took extraordinary steps to insure that all employees were aware of the change in the classification system, and their right to challenge the classification and pay grade to which they were assigned. Given the efforts of Respondent, it is incredible that none of the Grievants were aware of their rights, and they are now barred from claiming misclassification since 1994. However, Grievants may pursue a claim of present misclassification, if their duties have changed in a meaningful, identifiable manner sinceJanuary 1, 1994. If their claim of misclassification is proven, relief will be limited to fifteen days prior to the date the grievance was filed. See Syl. Pt. 5, Martin v. Randolph County Bd. of Educ., 195 W. Va. 297, 465 S.E.2d 399 (1995); Priest v. Interim Governing Bd./W. Va. Univ., Docket No. 01-HE-240 (Apr. 23, 2002).

The burden of proof in misclassification grievances is on the grievants to prove by a preponderance of the evidence that they are not properly classified. (See footnote 1) 156 C.S.R. 1 § 4.21 (2000); 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 grievants asserting misclassification must identify the job they feel they are performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Rush v. Bd. of Directors/Fairmont State College, Docket No. 97-BOD-369 (Apr. 3, 1998); Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

Higher education grievants are not likely to meet their burden of proof merely by showing that their 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. (See footnote 2) Therefore, the focus in classificationgrievances is upon the point factors the grievants are challenging. Grievants may challenge any combination of point factor degree levels, so long as they clearly identify the point factor degree levels they are 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). 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. Finally, whether grievants are properly classified is almost entirely a factual determination. As such, the Job Evaluation Committee (JEC)'s determination of degree levels and classification will be given great weight unless clearly erroneous. Thus, higher education employees challenging their classification will have to overcome a substantial obstacle to establish they are misclassified.

What all this means in the present matter is that Grievants are required to prove that their jobs have changed to the extent that the degree level(s) for one or more of the thirteen factors should be higher. This will increase the total number of points assigned to their job titles, and may then require an increase in their pay grades. (See footnote 3)

Grievants did not directly address any of the point factors used in the Mercer planto determine classification and compensation, and did not provide the degree level which they were seeking in those factors. Their comparison with other job titles is of little help because Material Handlers, Farm Workers, and all other categories, are evaluated based upon the total point score derived from the thirteen point factors. Grievants generally testified that they are now required to use more computer skills, wear protective equipment, and process a greater quantity of mail. However, with such limited information it is presently impossible to determine that they are assigned to an incorrect pay grade. See Skidmore v. Bd. of Trustees/W. Va. Univ., Docket No. 94-MBOT-819 (May 13, 1997). (See footnote 4)

The foregoing Discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. Higher education employees must demonstrate that their duties have changed in a meaningful, identifiable manner since January 1, 1994, in order to pursue a grievance over their classification, as grievants were required to grieve their initial classification under the Mercer system by certain deadlines in 1994. Rush v. Bd. of Directors/Fairmont State College, Docket No. 97-BOD-369 (Apr. 3, 1998); See Hardy v. Bd. of Directors/W. Va. Institute of Technology, Docket No. 94-MBOD-963 (Dec. 21, 1995).

2. Grievants employed in any classification after January 1994, may challenge their classification, but only once, if their duties have changed in a meaningful, identifiable manner. See Syl. Pt. 5, Martin v. Randolph County Bd. of Educ., 195 W. Va. 297, 465 S.E.2d 399 (1995); Priest v. Interim Governing Bd./W. Va. Univ., Docket No. 01-HE-240 (Apr. 23, 2002). 3. 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. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

4. Grievants failed to meet their burden of proof by demonstrating that their duties have changed in a meaningful, identifiable manner, or that the JEC's determination of degree levels assigned to the individual point factors for their positions was incorrect .

Accordingly, this 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. However, the appealing party is required by W. Va. Code §29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: June 19, 2002 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Misclassification may refer to an incorrect assignment of job title and/or pay grade.

Footnote: 2

Thirteen point factors are used in the Mercer plan to evaluate jobs. The items are knowledge, experience, complexity and problem solving, freedom of action, breadth of responsibility, scope and effect, intrasystems contacts, external contacts, direct supervision exercised, indirect supervision exercised, working conditions, physical coordination, and physical demands. The number of points assigned to each factor are then "weighted", and the total of the weights determines the pay grade to which a job title is assigned.

Footnote: 3

An increase in points does not automatically result in an increase in pay grade because each pay grade is assigned a point score range. For example, positions assigned between 1321 and 1394 points are assigned to pay grade 8.

Footnote: 4

Grievants may request a review of their positions at any time to more accurately identify whether changes should be made to the point factor allocations.