RON CAMPOLONG,

Grievant,

v.

Docket No. 04-HE-063

WEST VIRGINIA UNIVERSITY,

Respondent.

DECISION

Ron Campolong ("Grievant"), employed by West Virginia University ("WVU" or "Respondent") as a Trades Specialist, filed a level one grievance on July 24, 2003, in which he alleged misclassification. For relief, Grievant requested reclassification to Trades Worker Lead, with back pay to July 31, 2002. (See footnote 1) **The grievance was denied at level one by William Solomon, Operations Manager, at level two by Baron Smith, Associate Director of the Physical Plant, and at level three, by Scott Kelley, Vice President for Administration and Finance. Appeal was made to level four on February 13, 2004, and an evidentiary hearing was conducted on April 13, 2004. Grievant was represented by Linda Campolong, and WVU was represented by Assistant Attorney General Samuel R. Spatafore. The grievance became mature for decision upon receipt of post-hearing submissions filed by the parties on or before May 28, 2004.**

The following facts are undisputed by the parties and may be set forth as findings of fact.

Findings of Fact

1. Grievant is employed by WVU at the Physical Plant and presently is the only employee assigned as a Lamper. Grievant is responsible for scheduling and completingmaintenance and replacement of lamps, high voltage ballasts and transformers in fluorescent, metal halide,

mercury vapor, and high-pressure sodium lighting fixtures. Grievant works in a variety of environments, including classrooms, laboratories, theaters, and above swimming pools. Grievant also works outdoors on street and stadium lighting.

2. With the implementation of the Mercer classification system in 1994, Grievant was classified as a Trades Worker, pay grade 12. Grievant completed a new Position Information Questionnaire (PIQ) in July 2001, when the Job Evaluation Committee (JEC) began a review of the Physical Plant job families. As a result of that review, Grievant was reclassified as a Trades Specialist, pay grade 13, effective July 1, 2003. Grievant initiated this grievance challenging the JEC decision in July 2003. In December 2003, another PIQ was completed, and Grievant's position was again reviewed. No changes were made to his classification as a result of the review.

3. Grievant works independently to schedule projects, coordinate with other Trades Workers needed, and secure the necessary equipment and tools. Grievant requires the assistance of a Maintenance Worker or Trades Specialist to complete the projects. He works with these individuals, and provides them with some cross-training, for varying periods of time from a single day to several weeks.

4. Grievant is not responsible for assigning and monitoring the work of another employee on a regular, permanent basis.

5. Grievant was offered a Lead position; however, he was unable to accept it because it required him to work the midnight shift, and he does not believe that he can complete his duties at night.

Discussion

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 § 4.21 (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 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. 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).

A grievant is not likely to meet his burden of proof in a higher education misclassification grievance merely by showing that the grievant's job duties better fit one job description than another, because the classification system does not use "whole job comparison." The higher education classification system is largely a "quantitative" system, in which the components of each job are evaluated using the point factor methodology. Therefore, the focus is upon the point factors the grievant is challenging. 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 higher education grievant may prevail by demonstrating his classification was determined in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehab., Div. of Rehab. Serv., Docket No. VR-88-006 (Mar. 28, 1989). Finally, whether a grievant is properly classified is almost entirely a factual determination. As such, the JEC's 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., 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. Dep't of Health and Human Res., 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.

Grievant argues that he acts as a lead worker by planning and directing the work of the employee assigned to him on any given day. WVU asserts that Grievant works with and trains other employees, but he is not responsible for assigning and monitoring the work of employees on a regular, permanent basis. WVU concludes that Grievant cannot be a lead worker without providing direct supervision to at least one employee.

The definition of "lead" found in the Job Evaluation Plan, under Direct Supervision Exercised - Level of Supervision at (c). This is the level of supervision assigned to the Trades

Specialist Lead Job Title. This level of supervision is defined as "[l]ead 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." The Job Evaluation Plan states that the point factor Direct Supervision Exercised: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 operations of the unit. The number of subordinates should be reported in full-time equivalency (FTE) and not head count.

While it certainly would make sense that a Trades Specialist Lead would have to have responsibility for leading other employees, and this is consistent with the definition of lead responsibility in the Job Evaluation Plan, it is not necessary for an employee to have lead responsibility in order to be classified as a Trades Specialist Lead. Although this may seem odd, it is important to remember that the key to the Mercer classification plan is to evaluate the employee's duties using the point factor methodology to determine the appropriate pay grade. The Job Title is a secondary consideration. Frost v. Higher Educ. Interim Governing Bd./Bluefield State College, Docket No. 01-HE-095 (Nov. 13, 2001).

In the present matter, Grievant's data line from the 2003 review was not made part of the record. Positions with a total point value of 1756 (minimum) through 1865 (maximum) are assigned to pay grade 13. The point range for Trade Specialist Lead (pay grade 14) is 1866 - 1984, and the range for Trade Specialist Lead II (pay grade 15) is 1985 - 2113 points. Without the total point value assigned to Grievant's position, it is impossible to determine whether he is properly classified. To further complicate matters, the JEC has approved a new classification, Trades Specialist II (pay grade 14), effective March 2004, for which Grievant may qualify. Therefore, WVU is directed to review Grievant's most recent PIQ, and ensure that he is placed in the pay grade required by his total points. In addition to the foregoing findings of fact and discussion, it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant bears the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); See W. Va. Code § 29-6A-6. Moore v. W. Va. Univ., Docket No. 04-HEPC-061 (May 7, 2004).

2. Grievant failed to prove by a preponderance of the evidence that he is entitled to classification as a Trades Specialist Lead II.

Accordingly, the grievance is DENIED, but with directions for further review consistent with this decision.

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." Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 29-6A-7 (1998). 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: JULY 26, 2004 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

.Grievant amended his requested relief at level four to classification as Lead II.