DORSEY MCCUTCHEON and HAVEN SIONS,

Grievants,

v. Docket No. 01-HE-338

WEST VIRGINIA UNIVERSITY,

Respondent.

D E C I S I O N

Dorsey McCutcheon and Haven Sions ("Grievants"), employed by West Virginia University ("WVU") as Personal Rapid Transit ("PRT") Technician IIs, filed level one grievances February 2001, requesting an upgrade to PRT Technician III, and back pay from 1997. After being denied at the lower levels, the grievances were appealed to level four in May and August 2001, respectively. The grievances were then placed in abeyance pending review of the Physical Plant job families by the Job Evaluation Committee ("JEC"). In the interim, Grievants were promoted to Technician III, limiting the requested relief to back pay. The grievances were consolidated for the level four hearing on May 10, 2005, at which time Grievants were represented by Kathleen Abate, Esq., and WVU was represented by Assistant Attorney General Samuel R. Spatafore. The grievance became mature for decision upon receipt of proposed findings of fact and conclusions of law filed by the parties on or before July 1, 2005.

The following findings of fact are properly made from the record developed at levels two and four.

Findings of Fact 1. The higher education system in West Virginia utilizes the "Mercer" classification plan. This name is derived from the name of the company which assistedhigher education in developing the classification system, William M. Mercer, Inc., and is generally referred to as "the Plan." Under the Plan, positions are evaluated pursuant to a "point factor methodology" wherein point values are assigned to thirteen "job evaluation factors:" (1) Knowledge (KN); (2) Experience (EX); (3) Complexity and Problem Solving (CPS); (4) Freedom of Action (FA); (5) Scope and Effect/Impact of Actions (SE/I) and Scope and Effect/Nature of Actions (SE/N); (6) Breadth of Responsibility (BR); (7) Intrasystem

Contacts/Level (IS/L) and Intrasystem Contacts/Nature (IC/N); (8) External Contacts/Level (ECL) and External Contacts/Nature(EC/N); (9) Direct Supervision Exercised/Number (DSE/N) and Direct Supervision Exercised/Level (DSE/L); (10) Indirect Supervision Exercised/Number (ISE/N) and Indirect Supervision Exercised/Level (ISE/L); (11) Physical Coordination (PC); (12) Working Conditions (WC); and (13) Physical Demands (PD). 131 C.S.R. 62 § 2.27 (1994).

2. Initially, the employee completes a Position Information Questionnaire (PIQ) answering a series of questions designed to elicit information describing their job duties and responsibilities, along with the minimum qualifications for their positions, "data lines" of particular degree levels for each point factor are determined and the employee is "slotted" into the job title which most closely fit his or her duties. The degree levels for each point factor in a job title are weighted and combined, creating a numerical point total, which in turn determines each job's pay grade.

3. In 1994, the Mercer plan initially classified PRT employees as PRT Techs I and II. Grievants were assigned the classification of PRT Tech II, pay grade 12, along with other senior employees. 4. Prior to implementation of the Mercer plan, a number of PRT technicians had been classified as Mechanic IIIs. Four of those individuals filed a grievance in 1994, challenging their classification as PRT Tech IIs. Those employees prevailed, and were placed in the newly created job title of PRT Tech III, pay grade 14, pursuant to the level four decision of Liston v. Board of Trustees, Docket No. 94-MBOT-845 (Mar. 31, 1997). Grievants did not file a grievance upon learning of the upgrade of their co-workers as a result of the Liston decision.

5. The PRT Tech II job title was placed in pay grade 12, having received the following degree levels in each of the thirteen point factors: 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; 1.0 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.

6. The PRT Tech III classification was placed in pay grade 14, receiving the following degree levels in each of the thirteen point factors: 4.0 in Knowledge; 5.0 in Experience; 3.0 in Complexity and Problem Solving; 3.0 in Freedom of Action; 2.0 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 IntrasystemsContacts, 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.

7. Grievants completed identical PIQs in July 2000, which listed their duties and the percentage of time they required as: performing journeyman level mechanical maintenance, troubleshooting and repair actions to PRT vehicles (50%); performing scheduled maintenance and repairs to PRT guideway structures, stations, buildings, fences, ancillary equipment and support equipment (25%); performing miscellaneous maintenance support necessary to support overall maintenance of the mission (including operating special purpose motor equipment within the maintenance facility and on the guideway, implementing emergency response plans, snow removal and de-icing) (20%); and, functions as group leader for other maintenance personnel, acts as supervisor in his absence, and completing minor auto body repair (5%).

8. Grievants challenge the degree level in the following point factors: Experience; Complexity and Problem Solving; Freedom of Action; Scope and Effect/Impact of Actions; and External Contacts/Level.

9. Grievant Sions was promoted to PRT Tech III in June 2001, and Grievant McCutcheon was promoted to PRT Tech III in August 2002.

Discussion A. Burden of Proof and Standard of Review 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; 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 higher education grievant is not likely to meet his burden of proof 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 is upon the point factors the grievant is challenging. 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, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94- MBOT-817 (Dec. 12, 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 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. The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. B. Application of the Point Factor Methodology Grievants argue that they should have been classified as a PRT Tech IIIs, pay grade 14, pursuant to the Liston decision because they perform the same duties as those who were elevated to that classification. WVU asserts that Grievants were properly classified and compensated.

The following table shows the differences between the degree levels assigned by the JEC to the job title of PRT Tech II, PRT Tech III, and the degree levels Grievants argue should have been awarded in the challenged point factors. (See footnote 1)

	EX	CPS	FA	SE/IA	EC/L
PRT Tech II	3.0	2.5	2.5	1.0	1.0

PRT Tech III	5.0	3.0	3.0	2.0	2.0
Grievants' Proposed Data Line	6.0	3.0	3.0	3.0	3.0

Experience 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.

Grievants' job title received a degree level of 3.0, and Grievants argue they should have received a degree level of 6.0. A degree level of 3.0 is defined in the Plan as:

Over one year and up to two years of experience.

A degree level of 5.0 is defined in the Plan as:

Over three years and up to four years of experience.

Grievants argues that the nature of their work entitle them to the higher degree level. Cynthia Curry, a member of the JEC, and Human Resources Director at WVU, testified that the degree level assigned was the minimum amount of experience required to complete the duties, and that the JEC could not require more than the minimum experience necessary because it artificially limits applicants for the position.

The JEC properly determined the minimum amount of experience necessary to complete the duties of a position. Applying that criteria, it is noted that the PRT was developed as an experimental transportation system, and while there are similar systems, none are identical. The Boeing company designed and developed the system, and trained the technicians over the years. The system is now approximately thirty years old, and maintenance and repair issues are beginning to arise. With no guidelines in these matters, Grievants must compile their own manuals based on their experience with the system. Because replacement parts do not always exist, Grievants must depend on their ingenuity. Finally, Grievants are responsible not only for the mechanical (electrical, pneumatic and HVAC) aspects of the system, but also the physical plant itself. Working to maintain the system could not reasonably be accomplished by an individual with two years or less experience, even if he studied all the facets required concurrently. In this instance, a degree level of 5.0 is consistent with the responsibilities of the positions.

Complexity and Problem Solving

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.

Grievants' job title received a degree level of 2.5, and Grievants argue they should have received a degree level of 3.0. The JEC granted a .5 to some point factors when the duties of the position fell within two degree levels. 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 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.

Grievants argue that the higher degree level is appropriate considering the repair and maintenance problems can be somewhat complex, and guidelines, references, and procedures must be adapted to fit variations in existing conditions. Ms. Curry testified that when compared to other jobs in the hierarchy of job titles, Grievants were awarded the correct degree level. WVU also notes that Grievants conceded that their positions fit the description of degree levels one, two, and three.

Because the PRT is aging, some repair and maintenance issues require resourcefulness and originality for Grievants to deal with the problems at hand. They must also find and adapt guidelines and references to fit variations in existing conditions. Therefore, Grievants fall squarely in the 3.0 degree level.

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.

Grievants argue they should have received a degree level of 3.0 rather than a 2.5. 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.

Grievants argue that they were entitled to the higher score because their work was minimally structured, i.e., fix it if its broken, and complete routine maintenance. They also prioritized their work, and determined how a task was to be completed. WVU asserts that a degree level of 2.5 was proper in consideration of the hierarchy of job titles.

The evidence establishes that Grievants' tasks were moderately structured, but completed consistent with their training and experience. They resolve some unusual situations independently. A degree level 3.0 was appropriate for Grievants in this point factor.

Scope and Effect

Measures the scope of responsibility of the position with regard to the overall mission of the institution, and/or the West Virginia higher education systems, as well as the magnitude of any potential error. Decisions regarding the nature of action should consider the levels within

the systems that could be affected, as well as impact on the following points of institutional mission: Instruction, Instructional support,research, public relations, administration, support services, revenue generation, financial and/or asset control, and student advisement and development. In making these judgments, consider how far-reaching is the impact and of what importance to the institution and/or the higher education systems is the work product, service or assignment. Decisions regarding the impact of actions should take into account institutional scope and size as reflected by operating budget, enrollment and institutional classification. Also, consideration should be given for the possibility that a unit, program or department within a large institution may be equivalent in size to multiple units, programs or department within a smaller institution. In making these interpretations, assume that the incumbent would have normal knowledge, experience and judgment, and that errors are not due to sabotage, mischief or lack of attention and care.

This point factor consists of two parts, Impact of Actions and Nature of Actions. Grievants challenge only the degree levels received in Impact of Action.

Impact of Action

Grievants argue they should have received a degree level of 2.0 rather than a 1.0 in Impact of Actions. A degree level of 1.0 is defined in the Plan as:

Work is limited to immediate work function and short- term situations.

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

Work affects either an entire work unit or several major activities within a department.

Grievants argue that an error could result in personal injury or death, and that any “down time” affects public transportation and safety. Ms. Curry testified that the situationsreferred to by Grievants are extremely unusual, neither constant nor frequent, therefore, a 1.0 was the correct degree level for this point factor.

Grievants' work in keeping the PRT system running safely affects a major portion of WVU's transportation department. Accordingly, they are entitled to a degree level of 2.0.

External Contacts

This factor appraises the responsibility for working with or through other people outside the SCUSWV to get results. Consider the purpose and level of contact encountered on a

regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, influencing others or negotiation.

This point factor also consists of two parts, Level of Actions and Nature of Actions. Grievant challenged the degree levels received in both parts.

Level

Grievants argue they should have received a degree level of 3.0 rather than a 1.0 in Level of External Contacts. A degree level of 1.0 is defined in the Plan as:

Extremely infrequent; virtually no contact beyond immediate work unit/area; or occasional contacts are incidental to the purpose of the job.

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

Students, parents, alumni, faculty of institutions outside the systems, sales engineers, higher-level product representatives, recruiters and/or prospective students.

Grievants claim 3.0 would be the correct degree level because they are required to have contact with Boeing representatives, vendors, students, parents, alumni, andmembers of the general public. Ms. Curry testified that students and parents are incidental contacts, not regular, recurring, and essential to their position, and that 1.0 was correct when viewed in the classification hierarchy. Because the PRT is the primary method of student transportation, but is also available for use by the public, a degree level of 3.0 would be appropriate.

C. Summary

The evidence of record establishes that Grievants' duties and responsibilities entitled them to the classification of PRT Tech III, during the relevant time period. It appears WVU recognized that Grievants were performing at the same level as those employees classified as PRT Tech III, as evidenced by their initial classification as Mechanic IIs, and by the subsequent promotion of the Tech IIs. The “PIQ Summary By Job Family” produced by the JEC, establishes that in 2001 there were 12 Tech IIs and no Tech IIIs. By 2004, there was one Tech II and 10 Tech IIIs.

WVU's assertion that Grievants are not entitled to back pay because they were promoted rather than upgraded, elevates form over function. Technically, Grievants applied for promotions; however, since the PIQ Summary indicates that the Tech II positions were never

filled, the process served only to place Grievants in their proper classification.

Because Grievants did not participate in the Liston grievance, which did not determine that an entire classification was placed in the wrong pay grade, but only that those employees were misclassified, they are not entitled to back pay from 1997. Grievants are entitled to the difference between pay grades 12 and 14 from 15 days prior to the filing of their level one grievances, to the date they were promoted to PRT Tech III.

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 classifications 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 § 4.21.

3. The Job Evaluation Committee's interpretation and explanation of 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., 194 W. Va. 97, 459 S.E.2d 374 (1995); Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94- MBOD-349 (Aug. 8, 1995). 4. The JEC's decision that Grievants' position was that of PRT Tech II, was clearly wrong.

5. Grievants have proven by a preponderance of the evidence that they were entitled to the classification of PRT Tech III at the time the grievances were filed.

Accordingly, this grievance is GRANTED, and WVU Ordered to compensate Grievants for the back pay to which they are entitled, consistent with this decision. Any party may appeal this decision to the Circuit Court of Kanawha County, or tothe Circuit Court of Monongalia County. Any 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: JULY 28, 2005

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

[3]To the extent that any of the point factors and/or degree levels requested at the level four hearing were inconsistent with those addressed by counsel in her proposed findings of fact and conclusions of law, those discussed at hearing will be considered. In any event, the outcome of the decision remains unchanged.