DANNY MURRAY,

Grievant,

v. Docket No. 01-HE-459

WEST VIRGINIA UNIVERSITY,

Respondent.

D E C I S I O N

Danny Murray ("Grievant"), employed by West Virginia University ("WVU") and assigned to the Physical Plant as an Asbestos Abatement Worker, pay grade 13, filed a level one grievance on February 28, 2001, requesting an increase to pay grade 14, with back pay from 1994. After being denied at the lower levels, this grievance was appealed to level four on May 22, 2001, and was placed in abeyance pending review of the Physical Plant job families by the Job Evaluation Committee ("JEC"). Grievant's position was not upgraded, but was reslotted as Trades Specialist, pay grade 13, pursuant to this review. A level four hearing was conducted on March 31, 2005, at which time Grievant was represented by Kathleen Abate, Esq., and WVU was represented by Assistant Attorney General Samuel R. Spatafore. After an extension requested by Ms. Abate, the grievance became mature for decision upon receipt of proposed findings of fact and conclusions of law filed by the parties on or before June 28, 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 Supervison 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. Grievant has been employed by WVU since April 1976. When the Mercer system was implemented in 1994, he was classified as a Plasterer/Mason. On January 1, 1997, he was upgraded to Asbestos Abatement Worker, the position he held when thisgrievance was filed in 2001. Grievant had not previously grieved his classification in either 1994 or 1997.

4. The Trades Specialist I job title was placed in pay grade 13, having received 1816 total points from the following degree levels in each of the thirteen point factors: 4.5 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 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.

5. Trade Specialist Lead was placed in pay grade 14, receiving the following degree levels in each of the thirteen point factors: 4.0 in Knowledge; 4.0 in Experience; 3.0 in Complexity and Problem Solving; 3.0 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; 2.0 in External Contacts, Level of Contact; 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; 4.0 in Physical Coordination; 3.0 in Working Conditions; and 4.0 in Physical Demands.

6. Grievant completed a PIQ in July 2001, which listed his duties and the percentage of time they required as: working on interior and some exterior settings with plaster ceramic tile, drywall, masonry, and concrete (60%); asbestos abatement (40%).

7. Grievant challenges the degree level in the following point factors: Experience; Freedom of Action; Intrasystem Contacts/Level; External Contacts/Level, and Direct Supervision/Number.

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 ischallenging, 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 Grievant argues that he should be classified as a Plasterer/Mason Lead (now Trade Specialist Lead II), pay grade 15, assigned to the asbestos abatement shop because that assignment would most accurately reflect his job duties. WVU asserts that Grievant was properly classified and compensated. The following table shows the differences between the degree levels assigned by the JEC to the job title of Trades Specialist, Trade Specialist Lead II, and the degree levels Grievant argues should have been awarded in the challenged point factors.

	EX	FA	IC/L	EC/L	DS/N
Trades Specialist I	4.0	2.5	2.0	2.0	1.0
Trade Specialist Lead II	4.0	3.0	2.0	2.0	1.0
Grievant's Proposed Data Line	4.5	3.0	2.0	2.0	2.0

The points from Grievant's data line would entitle him to a pay grade 15. (See footnote 1)

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.

Grievant's job title received a degree level of 4.0, and Grievant argued he should have received a degree level of 4.5. The JEC granted a .5 to some point factors when the duties of the position fell within two degree levels. Experience was not one of the point factors where a fraction was awarded, nevertheless, Grievant's request will be evaluated. A degree level of 4.0 is defined in the Plan as:

Over two years and up to three 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.

Grievant argues that the 3.0 degree level does not adequately represent the three to four years of experience in the trade or the lead function of his position. 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.

Grievant offers his opinion on the amount of experience necessary to complete his duties. While he believes that three to four years of experience is required, the JEC was looking at the minimum amount of experience. Applying that criteria , the JEC determination was not clearly wrong.

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.

Grievant argued he 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.

Grievant argues that he is entitled to the higher score because during the period of time in question based upon his work as a Lead supervising and training others. Grievant additionally notes his duties involved inspecting the job, determining what methods would be used, the equipment and supplies needed, and the requisition of the supplies. WVU asserts that a degree level of 2.5 was proper because Grievant receives his assignments via work orders, and his supervisor would ultimately bear responsibility for those matters addressed by Grievant.

Although Grievant may not have been directed by a supervisor, in person, on a daily basis, his Freedom of Action is limited. He "organizes and carries out most of the work assignments in accordance with standard practices, policies, instructions or previous training," and the assignment of a degree level 2.5 was not clearly wrong.

Intrasystem Contacts

This factor appraises the responsibility for working with or through other people within the SCUSWV [State Collegeand University Systems of West Virginia] 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, explaining policies or discussing controversial issues. The factor considers only those contacts outside the job's immediate work area.

This point factor consists of two parts, Level of Contacts and Nature of Contacts. Grievant challenged the points awarded in Level of Contacts.

Level

Grievant argued he should have received a degree level of 2.0 rather than a 1.0 in Level of Intrasystem Contacts. A degree level of 1.0 is defined in the Plan as:

Limited to immediate associates and own supervisor within the immediate office, unit or related units.

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

Staff and faculty outside the immediate work unit.

Grievant argues that he was required to schedule plastering jobs with the persons in

charge of buildings or those in whose office he was working. Grievant further noted that a degree level of 3.0 would be consistent with that awarded to plasterer/masons who were not assigned Lead duties.

WVU asserts that Grievant's contacts with staff and faculty were not regular, recurring and essential to his position, as is required by definition. Ms. Curry testified that typically if a Dean had a problem, he would contact Grievant's supervisor or the manager,not Grievant. Grievant does not meet the regular, recurring and essential element of this point factor to be awarded a degree level of 3.0.

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 consists of two parts, Level of Actions and Nature of Actions. Grievant challenged the degree level received in Level of Actions.

Level

Grievant argued he should have received a degree level of 2.0 rather than a 1.0 in Level of Actions. 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 2.0 is defined in the Plan as:

General public, visitors, and/or service representatives and vendors.

Grievant asserts that he is required to speak with vendors, students, and the general public, entitling him to a degree level of 2.0. Ms. Curry testified that Grievant's position would have minimal contact with people outside the immediate work area, and were not regular, recurring and essential to his position. Grievant makes no claim that he had contact with most of the categories included in level three, including, service representatives and vendors. Further, his communication with students and the general public was limited to answering questions, and was not required for him to complete his duties. The JEC determination that a

degree level of 1.0 was not clearly wrong.

Direct Supervision Exercised

This factor 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 daily by 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 operation of the unit. The number of subordinates should be reported in full-time equivalency (FTE) and not head count.

This point factor consists of two parts, Number of Direct Subordinates and Level of Supervision. Grievant challenged only the degree level received in Number of Direct Subordinates.

Grievant argued he should have received a degree level of 2.0 rather than a 1.0 in Level of Actions. A degree level of 1.0 is defined in the Plan as:

Minimal or no responsibility for the work of others; however, may provide functional guidance to student workers or lower-level employees on a non-essential basis.

A degree level of 2.0 is defined in the Plan as: Responsible for directing and monitoring the work of student workers essential to the operations of the unit.

Grievant argues that he is entitled to the higher degree level because he leads a crew approximately 75% of the time. Ms. Curry testified that 1.0 was correct because Grievant did not lead anyone in the same pay grade, but rather works more in a collaboration of individuals. Ms. Curry further noted that to get credit for direct supervision, an employee must be permanently assigned as a Lead, while Grievant worked with various individuals on a random schedule.

Grievant does not permanently supervise a crew of workers within the same pay grade, and the allocation of 1.0 in this point factor was not clearly wrong.

C. Summary

Grievant appears to have held an unusual assignment as the majority of his work was as a plasterer/mason, but performed in the context of the asbestos abatement unit. However, the

JEC determination was based on Grievant's PIQ, and he did not prove by a preponderance of the evidence that he was incorrectly evaluated on any of the challenged the point factors, or that there was any violation of the statutory mandate that a uniform system of classification be maintained for the period of time in question, for the classification of Trades Specialist.

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 inhigher 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 Grievant's position was that of Trades Specialist, to be compensated at pay grade 13, was not clearly wrong.

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. 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.

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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.

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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 determination that Grievant's duties placed him in the classification of Certified Trades Worker, pay grade 13, is not clearly wrong.

Accordingly, this grievance is DENIED.

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DATE: JULY 19, 2005

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.