VIRGINIA CAMPBELL-TURNER, et al.,

v. DOCKET NO. 94-MBOT-1035

BOARD OF TRUSTEES,

MARSHALL UNIVERSITY

D E C I S I O N

This is a grievance by Virginia Campbell-Turner, Marsha Simmons, Yetta Evans, and Stephanie Smith (See footnote 1), Grievants, against the Board of Trustees, Marshall University, Respondent. Each Grievant believes she was misclassified effective January 1, 1994, pursuant to W. Va. Code § 18B-9-4 (the "Mercer reclassification") (See footnote 2). Grievants are classified as Purchasing Assistant II's, Pay Grade 12. Each seeks to be classified as a Purchasing Agent, Pay Grade 16, effective January 1, 1994, and backpay to January 1, 1994. (See footnote 3) A LevelIV hearing was held on June 15, July 18, and August 29, 1995. This matter became mature for decision with the receipt of written argument of the parties on October 4, 1995.

Grievants' sole argument was because their job duties were the same as those of a co- worker, Shirley Whitlow, who was classified effective January 1, 1994, as a Purchasing Agent, Pay Grade 16, they should hold the same Job Title and Pay Grade.

The following Findings of Fact are properly made from the record developed at Level IV.

Findings of Fact.

1. Each Grievant is employed by Marshall University. Grievants were classified in the Mercer reclassification as Purchasing Assistant II's, Pay Grade 12, effective January 1, 1994.

2. All classified employees were asked to complete a Position Information Questionnaire ("PIQ") prior to the reclassification. The employees were to describe their job duties and responsibilities, and the job requirements on the PIQ, by answering a series of questions designed to elicit this information. Each Grievant filled out a PIQ in 1991.

3. A co-worker of Grievants, Shirley Whitlow, is classified as a Purchasing Agent, Pay Grade

16.

4. Grievants' job duties are very similar to those of Shirley Whitlow. Grievants' and Shirley Whitlow's primary job duties prior to January 1, 1994, were preparing bid documents and recommending awards, preparing and processing purchase orders for signature for particular departments, processing change orders, contacting vendors for prices and negotiating with vendors, working with individuals at Marshall University to make surespecifications on purchases were correct, checking purchase orders for accuracy and completeness, and entering data from the purchase orders into the computer. They also reviewed purchasing procedures and recommended changes, and trained work study students and new Purchasing Assistants. In addition, Grievants Smith and Simmons attended pre-bid meetings on construction contracts.

5. Prior to January 1, 1994, Shirley Whitlow had been given authority to sign purchase orders ("signature authority") up to $400.00, and in the absence of the Director and Assistant Director of Purchasing, she had unlimited signature authority. Fifteen percent of Ms. Whitlow's job was signing purchase orders.

6. Prior to January 1, 1994, none of the Grievants had signature authority for any dollar amount.

7. If the degree levels of the point factors assigned to Grievants were changed so that Grievants received a degree level of 6.0 in Knowledge, 2.0 in Intrasystems Contacts, Nature of Contact, a 2.0 in Intrasystems Contacts, Level of Contact, a 2.0 in External Contacts, Nature of Contact, and a 1.0 in Physical Coordination, Grievants' total points would change from 1682 points to 1810 points. R Ex 1. (See footnote 4)

8. The point range for a Pay Grade 16 is from 2114 points to 2254 points. R Ex 1.

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 she is not properly classified. 156 C.S.R. 1 §4.17; 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 she feels she is doing. 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 her burden of proof in a Mercer grievance merely by showing that the grievant's job duties better fit one job description than another, without also identifying which point factors degree levels she is challenging. (See footnote 5) 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 factors are not assigned to the individual, but to the job. 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 Board of Rehabilitation, Div. of Rehabilitation Services and W. Va. Civil Serv. Comm'n., Docket No. VR-88-006 (Mar. 28, 1989). Finally, in this case, whether Grievants are 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 Description at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Foundation, 459 S.E.2d 374 (W. Va. 1995); Burke, supra. The higher education employee challenging his classification thus will have to overcome a substantial obstacle in attempting to establish that he is misclassified. (See footnote 6)

B. Comparison of Generic Job Descriptions

To develop Generic Job Descriptions for Job Titles, the JEC read the PIQ's submitted by all persons in the state higher education system in that classification, looking for similarities and differences in the PIQ's. The duties shown on the Generic Job Description are those duties most frequently appearing on the PIQ's, and are considered the common duties of that job. The duty which occurred most often or had the highest percentage of time, or combination thereof, is listed first. Generic Job Descriptions were developed after January 1, 1994, that is, after employees were notified of their classifications.

The Generic Job Descriptions for Purchasing Assistant II (R Ex 3) and Purchasing Agent (R Ex 5) are as follows:

PURCHASING ASSISTANT II

General Function: Prepares requisitions and maintains records on supplies and materials.

Characteristic Duties and Responsibilities:

- Analyzes departmental requests for supplies and determines amount to order and vendors to contact.

- Prepares for approval procurement contract, invitation for bids, or proposals in final form for prescribed materials, supplies, and/or services.

- Assists in determining method of procurement such as direct purchase or bid.

- Contacts outside vendors to secure pricing and availability of requested articles.

- Verifies that purchased materials are received and that both quantitative and qualitative specifications are met.

- Maintains computerized procurement information, such as items or services purchased, cost, product quality or performance, etc.

- May assist in conducting periodic inventories.

Job Specifications:

Knowledge/Skills/Abilities:

Knowledge of applicable purchasing regulations.

Good written and oral communications skills.

Good mathematical skills.

Ability to use computer software packages including word processors and data bases.

The knowledge, skills, and abilities listed above are typically acquired through the following levels of education and experience. However, any equivalent combination of education and/or experience is acceptable which provides an applicant the listed knowledge, skills, and abilities and the capability to perform the essential functions of the job.

Education:

Business, technical or vocational school education of up to 18 months beyond high school.

Experience:

Two years of related experience.

Licensure:

None.

PURCHASING AGENT

General Function:

Evaluates and negotiates contracts and purchases; facilitates compliance with both state and federal regulations.

Characteristic Duties and Responsibilities:

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Evaluates special commodities and services issued on requisitions and ensures timely and appropriate fulfillment of requirements to include both routine and specialized procurement.

. Secures sealed bids, evaluates and makes recommendations for awards.

. Acts as both a liaison and resource person to suppliers.

. Assists in the development of specifications on major and unique procurements and subcontracts.

. Assists in the development and use of new practices and procedures.

. May participate in the training and development of other purchasing agents.

. May supervise lower-level purchasing personnel.

Job Specifications:

Knowledge/Skills/Abilities:

Extensive knowledge of federal and state purchasing policies and procedures.

Knowledge of general purchasing practices.

Knowledge of contracts and contract administration.

Excellent oral and written communication skills and mathematical skills.

The knowledge, skills, and abilities listed above are typically acquired through the following levels of education and experience. However, any equivalent combination of education and/or experience is acceptable which provides an applicant the listed knowledge, skills, and abilities and the capability to perform the essential functions of the job.

Education:
Bachelor's degree in Business Administration or a related field.

Experience:
Two years of related experience.

Licensure:
None.

A comparison of job duties to the Characteristic Duties and Responsibilities found in the Generic Job Descriptions for Purchasing Assistant II and Purchasing Agent show that Grievants and Shirley Whitlow perform duties listed in both. As Grievants pointed out, in at least one instance, the job duties and responsibilities listed in both Generic Job Descriptions are the same, only the words used are different. For example, there is no apparent distinction between the phrase "[c]ontacts outside vendors to secure pricing and availability of requested articles", and "[a]cts as both a liaison and resource person to suppliers." Curiously, although it is a key distinction between Grievants' job and Shirley Whitlow's, as will be addressed below, neither Generic Job Description mentions signature authority as a distinction between the two jobs.

However, to compare the jobs of Purchasing Assistant II and Purchasing Agent, requires a comparison not just of the Generic Job Descriptions, but also of the degree levels assigned to the two positions in each point factor.

C. Application of the Point Factor Methodology

Following are the differences in the degree levels assigned the point factors for the two relevant Job Titles:

	SE	SE	IC	IC	EC				
	KN	CPS	FA	IA	NA	NC	LVL	NC	PC (See footnote 7)
Purchasing Assistant II	4.0	2.5	2.5	2.0	2.0	1.0	3.0	1.0	2.0
Purchasing Agent	6.0	4.0	3.5	5.0	3.0	2.0	2.0	2.0	1.0

R Ex 2.

Grievants did not specifically identify the point factors they believed should have been assigned a different level in the evaluation of their positions. Grievants argued, however, that they should have been classified as Purchasing Agents, Pay Grade 16; therefore, these Grievants must prove by a preponderance of the evidence that they should have received the same degree level in each point factor as a Purchasing Agent. (See footnote 8)

Grievants argued their job duties and responsibilities are the same as those of Shirley Whitlow. Respondent argued that a key distinction between Ms. Whitlow and Grievants was Ms. Whitlow's signature authority. Respondent's witnesses testified that Ms. Whitlow would have received a higher degree level in the point factors complexity and problem solving, freedom of action, and scope and effect, due to her authority to sign purchase orders which would financially obligate Marshall. Grievants presented no evidence to rebut this explanation.

Respondent did not address why the Purchasing Agent Job Title (Ms. Whitlow) would have received a higher degree level than Purchasing Assistant II (Grievants) in the point factors knowledge, internal contacts/nature of contact, and external contacts/nature ofcontact. Respondent's witnesses merely opined that both Grievants and Ms. Whitlow were properly classified.

1. Complexity and Problem Solving

The Job Evaluation Plan (R Ex 1; See also Burke, supra.) describes Complexity and Problem Solving as follows:

> 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.

A degree level of 4.0, as assigned to Purchasing Agent, is defined in the Job Evaluation Plan as:

> Problems encountered are complex and varied due to incomplete and/or conflicting data. General policies, procedures, principles, and theories of specific professional disciplines are available as guidelines; however, these guides may have gaps in specificity or lack complete applicability to work assignments. Employee must utilize analytical skills in order to interpret policies and procedures, research relevant

information, and compare alternative solutions.

Grievants received a degree level of 2.5 in this point factor. A degree level of 2.5 is not specifically defined, but means the job duties and responsibilities fell between a 2.0 and a 3.0. A degree level of 2.0 is defined in the Job Evaluation 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 in the comparison of numbers or facts.

A degree level of 3.0 is defined in the Job Evaluation 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 mustbe 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.

As Respondent pointed out, the responsibility of signature authority should affect this point factor because the person signing the purchase order must decide whether the purchase order is in order and should be signed. This adds an additional layer of problem- solving over and above that required in preparing the purchase order. It is appropriate that Ms. Whitlow received a higher degree level than Grievants in this point factor. Grievants did not argue they should have received a 3.0 or 3.5.

2. Freedom of Action

The Job Evaluation 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 received a 2.5 for this point factor. Shirley Whitlow received a 3.5.

The definitions in the Job Evaluation Plan show that at a degree level of 2.0:

> 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.

The definitions in the Job Evaluation Plan show that at a degree level of 3.0:

> 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. The definitions in the Job Evaluation Plan show that at a degree level of 4.0:
>
> Tasks are minimally structured with incumbent working from broad goals set by the supervisor and established institutional policies. The employee and supervisor work together to establish objectives, deadlines and projects. The employee, having developed expertise in the line of work, is responsible for planning and carrying out the assignment; resolving most of the conflicts which arise; and coordinating the work with others. The employee keeps the supervisor informed of progress and potentially controversial matters. Completed work is checked only to determine feasibility, compatibility with other work, or effectiveness in meeting the objectives of the unit.

Again, the responsibility of signature authority should affect this point factor because the person signing the purchase order has more control over her work than Grievants. Grievants prepare the purchase orders for signature. The person signing the purchase order controls whether Grievants' work is complete. Grievants did not prove their job duties rise to the same degree level as that of someone with signature authority, a 3.5.

3. Scope and Effect

Scope and Effect is defined in the Job Evaluation Plan as:

> This factor 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 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, student 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 departments 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 reasonable attention and care. Respondent correctly pointed out that this factor is affected by the ability of an individual to obligate Respondent financially. Grievants received a 2.0 in Scope and Effect, Impact of Actions, and a 2.0 in Scope and Effect, Nature of Actions. Ms. Whitlow received a 5.0 in Impact of Actions, and a 3.0 in Nature of Actions.

A degree level of 2.0 in Scope and Effect, Impact of Actions, is defined in the Job Evaluation Plan as:

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

A degree level of 5.0 in Scope and Effect, Impact of Actions, is defined in the Job Evaluation Plan

as:

> Work affects the entire operations of a graduate or baccalaureate-institution with an operating budget of $13-$18M; more than one school or division of a graduate or baccalaureate-level institution with an operating budget of $19-$25M; a school or division of a graduate-level institution with an operating budget of more than $50M; or several departments within a doctoral-level institution with an operating budget of more than $200M.

While it is unclear from the evidence that a Purchasing Agent would properly fall within the 5.0 degree level in Scope and Effect, Impact of Actions, Grievants' job duties do not rise to that degree level. Grievants' job duties seem to fall squarely within the 2.0 degree level of the Purchasing Assistant II.

A degree level of 2.0 in Scope and Effect, Nature of Actions, is defined in the Job Evaluation Plan as:

> Work contributes to the accuracy, reliability, and acceptability of processes, services, or functions. Decisions are limited to the application of standardized or accepted practices and errors could result in some costs and inconveniences within the affected area. A degree level of 3.0 in Scope and Effect, Nature of Actions, is defined in the Job Evaluation Plan as:
>
> Work provides guidance to an operation, program, function or service that affects many employees, students or individuals. Decisions and recommendations made involve non-routine situations within established protocol, guidelines, and/or policies. Errors could easily result in moderate costs and inconveniences within the affected area.

The person signing the purchase order makes the final decision as to whether the purchase order is correct, and obligates the institution financially. Accordingly, errors in making that decision could result in more cost and inconvenience than errors made by Grievants in their work. Grievants did not prove their job duties rise to the same degree level as that of someone with signature authority, 3.0.

D. Summary

Grievants proved that their job duties are essentially the same as Ms. Whitlow's, except for signature authority, and signature authority is not listed as a Characteristic Duty and Responsibility in the Purchasing Agent Generic Job Description. Grievants did not prove, however, that they should have received the same degree level as a Purchasing Agent in the point factors complexity and problem solving, freedom of action and scope and effect. Even if Grievants were given the same degree level as a Purchasing Agent in all point factorsexcept those three, Grievants would not be in a Pay Grade 16 (R Ex 1). (See footnote 9) Grievants did not prove they should be classified as

Purchasing Agents, Pay Grade 16.

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 she is not properly classified. 156 C.S.R. 1 §4.17. The grievant asserting misclassification must identify the job she feels she 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).

3. The Job Evaluation Committee's interpretation and explanation of the Generic Job Description and 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 Foundation, 459 S.E.2d 374 (W. Va., 1995); Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995). 4. The Job Evaluation Committee's interpretation of the Generic Job Description and point factors assigned to Purchasing Agent, Pay Grade 16, is not clearly wrong.

5. Grievants failed to establish by a preponderance of the evidence that they should have been classified as Purchasing Agents, Pay Grade 16.

Accordingly, these grievances are **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Cabell 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. 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.

BRENDA L. GOULD

Administrative Law Judge

Dated: January 31, 1996

Footnote: 1

The Docket Numbers for the Grievants consolidated into this matter are 94-MBOT- 847 (Marsha Simmons), 94-MBOT-1036 (Yetta Evans), and 94-MBOT-854 (Stephanie Smith).

Footnote: 2

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: 3

Ms. Simmons is no longer an employee of Respondent; therefore, any relief to which she would be entitled would be retroactive only.

Footnote: 4

Respondent's Level IV Exhibits will be referred to as "R Ex __", with the Exhibit Number appearing in the blank.

Footnote: 5

A Grievant may challenge any combination of point factor degree levels, so long as she clearly identify the point factor degree levels she is challenging, and this challenge is consistent with the relief sought. See Jessen, et al., v. Bd. of Trustees, West Virginia Univ., Docket No. 94-MBOT-1059 (Oct. 26, 1995); and Zara, et al., v. Bd. of Trustees, West Virginia Univ., Docket No. 94-MBOT-817 (Dec. 12, 1995).

Footnote: 6

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.

Footnote: 7

These headings are shorthand for the following point factors: KN is Knowledge; CPS is Complexity & Problem Solving; FA is Freedom of Action; SE, IA is Scope and Effect, Impact of Actions; SE, NA is Scope and Effect, Nature of Actions; IC, NC is Intrasystems Contacts, Nature of Contact; IC, LVL is Intrasystems Contacts, Level of Regular, Recurring, and Essential Contact; EC, NC is External Contacts, Nature of Contact; PC is Physical Coordination. 128 C.S.R. 62 § 2.27, and 131 C.S.R. 62 § 2.27 list the 13 point factors. See also, Burke, supra.

Footnote: 8

Grievants are held to this standard because they did not identify which point factors they were challenging.

Footnote: 9

Neither party addressed the two categories where Purchasing Assistant II received a higher degree level than Purchasing Agent (Intrasystems Contacts, Level, and Physical Coordination), or three of the categories where the reverse was true (Knowledge, Intrasystems Contacts, Nature of Contact, or External Contacts Nature of Contact). In making the calculation of total points, not only did the undersigned assume Grievants received higher degree levels in these latter three categories, but also assumed Grievants received the lower degree levels assigned to Purchasing Agent in the categories Intrasystems Contacts, Level, and Physical Coordination. Again, this type of analysis is called for in this case only because these Grievants did not identify which point factors they were challenging.