THOMAS HALE,

Grievant,

v. **Docket No. 94-MBOD-1026**

BOARD OF DIRECTORS/
WEST VIRGINIA STATE COLLEGE,

Respondent.

DECISION

Grievant, Thomas Hale, alleges that he was misclassified in the "Mercer" reclassification system. (See footnote 1) Effective January 1, 1994, Grievant was classified as a Postal Worker at Pay Grade 8, and alleges he should have been classified as a Postal Worker/Lead at Pay Grade 10. In addition to contesting the job title he was given, Grievant has also challenged specific point factors (See footnote 2) used in the Mercer system. Grievant requests that, if this grievance is granted, his new classification be effective January 1, 1994, with back pay to that date.

A level four hearing was held in this Grievance Board's office in Charleston, West Virginia, on November 12, 1996. Thereafter, this matter became mature for decision on December 30, 1996, upon receipt of Respondent's proposed findings of fact and conclusions of law; Grievant declined to submit written proposals. The following factual findings are appropriately made from the record developed at level four.

Findings of Fact

1. Grievant has been employed in the mail room for West Virginia State College since 1981. When the Mercer classification system was implemented, he was classified as a Postal Worker at Pay Grade 8, effective January 1, 1994.

2. In 1991, all higher education classified employees, including Grievant, were asked to complete a Position Information Questionnaire (PIQ) prior to the Mercer reclassification. Employees

were to describe their job duties and responsibilities, along with the minimum qualifications for their positions, on the PIQ by answering a series of questions designed to elicit this information. Grievant completed a PIQ in 1991.

3. During the job evaluation process, whereby the Mercer classification system was applied to each individual higher education employee, “data lines” of particular degree levels for each point factor were developed for each job title in the system. Employees with similar duties were grouped together in a job title for purposes of developing this data line. The final step of the classification process was the “slotting” of each employee into the job title which most closely fit his or her duties. 4. The degree levels for each point factor in a job title were used to arrive at a numerical total, which determined each job's Pay Grade.

5. Generic job descriptions were developed for the various job titles within the higher education system in 1994 after the implementation of the reclassification system. These descriptions were compiled by looking at the common duties and responsibilities of all incumbents in each job title as reflected on the PIQs. Generic job descriptions were not used in the classification process; they were not meant to serve as position descriptions and are merely a compilation of the common duties performed by persons in the particular job title.

6. Grievant's chief responsibilities are the processing and distribution of incoming mail and the preparation and delivery of outgoing mail which goes to the U. S. Post Office. He is charged with making sure that all mail is directed to the appropriate place, that mail is properly labeled and packaged, and assisting students and college employees in following U. S. Postal Service procedures.

7. The Postal Worker job title received a total of 1374 points under the Mercer system, placing it in Pay Grade 8. The point range for Pay Grade 8 is from 1321 to 1394 points.

8. The Postal Worker/Lead job title received a total of 1550 points under the Mercer system, placing it in Pay Grade 10. The point range for Pay Grade 10 is from 1475 to 1560 points.

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 he is not properly classified. 156 C.S.R. 1 § 4.17; W.Va. Code § 18-29-6. Burke

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 grievant is not likely to meet his burden of proof in a Mercer grievance 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.” It is largely a “quantitative” system, in which the components of each job are evaluated separately by applying the point factor methodology contained in the Job Evaluation Plan (hereinafter “Plan”). Therefore, the focus in Mercer grievances for this Board is upon the point factors the grievant is challenging. (See footnote 3) 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. The 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 Mercer grievant may prevail by demonstrating his reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehabilitation, Div. of Rehabilitation Services and W. Va. Civil Serv. Comm'n., Docket No. VR-88-006 (Mar. 28, 1989).

Finally, 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 factorsat issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W. Va. 1995); Burke, supra. However, no interpretation or construction of a term used in the Plan (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. Watts v. Dept. of Health and Human Resources, 465 S.E.2d 887 (W. Va. 1995). The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. (See footnote 4)

In accordance with the foregoing discussion, a grievant must show that he was slotted into the wrong job title, that the point factor degree levels assigned to his job title are incorrect, or that he is entitled to an individual data line because of the unique nature of his position. In order to determine if Grievant was misclassified, the point factors and degree levels disputed must be discussed

separately in detail.

B. Application of the Point Factor Methodology

Although Grievant appears to allege that he should have been slotted into the Postal Worker/Lead job title, he has challenged some point factors which do not differ for the two titles. The degree level Grievant's job title received and the level to which he believes he is entitled will be discussed and compared.

1. Experience

The Plan defines Experience as follows:

> 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.

The Postal Worker job title received a degree level of 1.0, which is defined in the Plan as “[n]o experience or up to six months of experience.” Grievant requests the same level 2.0 rating that the Postal Worker/Lead title received, which is “[o]ver six and up to twelve months of experience.”

Grievant testified at level four that six to twelve months of experience would be necessary for a person in his position to learn the U. S. Postal regulations which govern his duties. He personally worked for one year in the mail room as a student worker prior to being hired full-time. Grievant had no knowledge of mail room or postal work prior to his student work, and he testified that he learned his job through this “hands-on” experience. No additional training was given to him after he became a full-time employee.

Respondent presented the testimony of Brenda Nutter, a Human Resources Administrator and JEC member, to rebut Grievant's allegations. She explained that the Plan contemplates a “learning curve” period of several months for every person in a new job, which is not included in the minimum experience requirement. She believed that Grievant's duties could be performed by someone with zero to six months of experience.

Grievant has admitted that he learned postal procedures by on-the-job training, and he had no prior experience when he was hired as a student worker. Therefore, only the “learning curve” period would be sufficient for a new employee to learn Grievant's job. “While it would be advantageous to the employer . . . for new employees to report for work at a fully functional level, this situation is not attainable as a practical matter.” Deavers v. Bd. of Trustees/Bd. of Directors,Docket No. 94-MBOT-

914, at 12 (Dec. 10, 1996). Grievant was appropriately assigned a level 1.0 for Experience.

2. 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's job title received a 2.0 degree level, which is defined 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.

He believes his position entitles him to a level 4.0, which the Plan defines as follows:

> 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.

The basis of Grievant's argument on this point factor is the extremely limited contact he has with his immediate supervisor, whom he sees only when she signs his leave slips. However, the level of Freedom of Action is not measured by supervisor contact; rather it measures controls and limitations, from whatever sources, on the employee's actions. On his PIQ and in his testimony, Grievant stated that he must adhere to the guidelines and standards set by the Postal Service, whichmakes his duties very repetitive. Ms. Nutter agreed with the JEC's evaluation of Grievant at level 2.0, noting that there is little need for supervision due to the structured nature of his work tasks. “An employee whose tasks are extremely structured and routine may function virtually without supervision, because the position calls for very few or no decisions or choices to be made.” Kretzmer v. Bd. of Directors, Docket No. 94-MBOD-751 at 16 (Feb. 6, 1997).

Not only does the evidence support evaluation of Grievant's position at level 2.0, but Grievant also has failed to provide evidence that any of his duties fall within the purview of the level 4.0 definition. An important portion of that definition is that “the employee and supervisor work together to establish

objectives, deadlines and projects." There is absolutely no evidence that Grievant does this, and he has not met his burden of proof on the Freedom of Action point factor.

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. This point factor has two features that are measured individually, which are Nature of Actions and Impact of Actions. Grievant has only challenged the degree level he received for Nature of Actions, which was a 2.0, and he alleges entitlement to a level 3.0 rating.

A degree level of 2.0 in Nature of Actions is defined in the 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 is defined 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.

Because he advises many, if not all, departments on how to properly do mailings, Grievant believes his recommendations, if incorrect, can inconvenience many people. He testified that all departments depend on his advice to comply with postal regulations. Ms. Nutter did not believe Grievant's duties merited a higher level rating, because the recommendations he makes are not "non- routine situations" as defined in level 3.0.

Grievant's mail room responsibilities can easily be characterized as contributing to the accuracy and reliability of the college's mail service, but do not rise to the level of "providing guidance," which

connotes a higher level of responsibility which Grievant has not demonstrated. While he may provide some guidance to others who need advice on postal procedures which must be followed, Grievant does not “provide guidance” to the mail room itself. Naturally, he believes any errors on his part could have serious results. However, while such errors “are of serious nature and concern to individual employees”, if there is little to no effect on the institution as a whole, thehigher degree levels are not warranted. Titus v. Bd. of Trustees/Bd. of Directors, Docket No. 94- MBOT-659 (Dec. 31, 1996). The evidence does not prove that the JEC's evaluation of Grievant on this factor was clearly wrong or arbitrary and capricious.

4. Intrasystems Contacts

Intrasystems Contacts is defined in the Plan as a factor which:

> [A]ppraises the responsibility for working with or through other people within the [State College and 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. This factor considers only those contacts outside the job's immediate work area.

This factor is measured with regard to Level of Regular, Recurring, and Essential Contact, and Nature of Contact. Grievant has only challenged the level 2.0 rating he received for Level of Contact, and he is seeking a level 3.0. A degree level of 2.0 in Level of Contact is defined in the Plan as “[s]taff and faculty outside the immediate work unit.” A degree level of 3.0 is “[s]upervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office.”

It is undisputed that Grievant has continuous and regular communications with staff and faculty of the college, whom he advises regarding mailing policies and procedures. When a “bulk” mailing must be done, which Grievant says is quite often, he must explain the procedures to follow, calculate the costs, and supervise the department's employee, usually a student or secretary, in putting the mailing together. “Sometimes”, Grievant will work with the supervisor of the department doing the bulk mailing, and this is the only example of contact within the level 3.0 definition which Mr. Hale mentioned. His contact with supervisors is infrequent, and “it is the Grievant's typical and regular contact that is considered, not unusual and infrequent situations.” Perkins v. Bd. of Trustees,Docket No. 94-MBOT-474 at page 17 (March 12, 1997). Therefore, Grievant was appropriately evaluated in

this point factor at level 2.0.

5. Physical Coordination

Physical Coordination is defined in the Plan as:

> This factor assesses the amount of psychomotor skill involved in performing the job. Consider the complexity of body movements, speed/timing of movements, precision of movements, and need for close visual attention regularly required by the job in performing the work.

The Postal Worker job title received a 2.0, and Grievant claims he should have received a 3.0. A degree level of 2.0 is defined in the Plan as:

> Work requires simple hand/eye operations and some accuracy and regularity of motions, such as set-up and operation of basic instruments or equipment, and/or the occasional use of standard hand or power tools with minimal speed requirements.

A degree level of 3.0 is defined as:

> Work requires some speed and accuracy of hand/eye coordination in the use of somewhat complicated instruments, equipment or hand or power tools requiring some speed and adeptness.

Grievant's argument for the higher degree level is based upon his operation of postal equipment which weighs and posts mail. He alleges that speed and accuracy are required in running such machines so that the mail will go out in a timely fashion. Ms. Nutter agreed that some speed and accuracy would be necessary, but Grievant's testimony did not lead her to believe that these machines are “complicated.” She also explained that, in applying the classification system and keeping in mind the hierarchy of positions, level 3.0 or “mid-level” positions in this factor were reserved for individuals whose jobs are largely technical in nature.

This point factor measures the fine motor skills required to perform an employee's duties. While Grievant has provided some evidence that speed may be required so that the mail will go outon time, he did not explain how the equipment works. Accordingly, it is not possible to ascertain whether it is complicated at all, let alone whether it is sufficiently complex that skill is needed to operate it quickly and accurately at the same time. Therefore, the Grievant has failed to meet his burden of proof regarding this point factor.

6. Direct Supervision Exercised

It is unclear whether Grievant challenged this point factor. However, he did discuss at level four

how he “advises” numerous students regarding mailings and mail room procedures, even though he is not technically their supervisor. The Plan defines this point factor as follows:

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

Grievant has admitted that he is not formally assigned any subordinates. Therefore, he cannot be entitled to any credit for Direct Supervision.

C. Summary

The evidence does not establish that Grievant or his job title were incorrectly evaluated in any point factor challenged, and he has not proven that he was misclassified on January 1, 1994.

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 classification for all classified employees in the higher education system. 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 § 4.19.

3. Determinations of the Job Evaluation Committee (“JEC”) regarding application of the Mercer Plan's point factor methodology are essentially questions of fact. In that regard, the JEC's interpretation and explanation of the point factors at issue will be given great weight unless clearly erroneous. Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). See generally, Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W.Va. 1995).

4. Subjective determinations of the JEC regarding application of the Mercer Plan's point factor methodology to an employee or group of employees are entitled to deference when being reviewed by this Grievance Board. Such determinations may nonetheless be found to be arbitrary and capricious if not supported by a rational basis; they may also be clearly wrong if there is no substantial evidence in the record supporting the finding or if review of the evidence reveals that a mistake has been made. Burke, supra. See Frymier-Halloran v. Paige, 458 S.E.2d 780, 788 (W.Va. 1995).

5. The JEC's evaluation of Grievant in the challenged point factors was not clearly wrong nor arbitrary and capricious.

6. The JEC's assignment of degree levels to the point factors for the Postal Worker job title was not clearly wrong nor arbitrary and capricious.

7. Grievant was properly classified under the Mercer system as of January 1, 1994.

Accordingly, this grievance is **DENIED.**

Any party may appeal this Decision to the Circuit Court of Kanawha County or the circuit court of the county in which the grievance occurred, 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.

DATE: March 21, 1997 _____ **V.**

DENISE MANNING

Administrative Law Judge

Footnote: 1

The reader is referred to Burke 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: 2

The thirteen point factors are set forth in 128 C.S.R. 62 § 2.27 and 131 C.S.R. 62 § 2.27. Burke, supra.

Footnote: 3

A grievant may challenge any combination of point factor degree levels, so long as she clearly identifies 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, 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).

Footnote: 4

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.