WILLIAM GARY, JR.

v. DOCKET NO. 94-MBOT-381

STATE COLLEGE AND UNIVERSITY SYSTEMS

OF WEST VIRGINIA

D E C I S I O N

Grievant William Gary, Jr., alleges he was misclassified effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) , as a Central Office Courier, Pay Grade 6. Grievant seeks as relief classification as a Postal Worker, Pay Grade 8, effective January 1, 1994, and backpay from January 1, 1994. (See footnote 2)

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

Findings of Fact.

1. Grievant is employed at the State College and University Systems of West Virginia Central Office.

2. In 1991, all higher education classified employees were asked to complete a Position Information Questionnaire ("PIQ"). 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. Grievant completed a PIQ in 1991.

3. Grievant was classified as a Central Office Courier, Pay Grade 6, effective January 1, 1994.

4. Grievant's primary job duties are weighing and posting mail, sorting mail and delivering mail to employee offices, preparing express mail packages as needed, transporting Central Office staff from the office to the State Capitol and back when the legislature is in session, providing messenger services daily, maintaining inventory of office and conference room supplies, ordering supplies from the stock room and picking them up from the stock room, distributing supplies to staff, organizing materials in storage, moving furniture, assisting in maintaining inventory list of office equipment and furniture, assisting with set-up for conferences and cleaning up, and assisting occasionally with

copying, telecopying, bulk mailing, and switchboard relief. About once a week he chooses an overnight express mail service and prepares packages for delivery by the chosen service, but usually the secretaries perform this duty, and Grievant simply makes surethe package is placed in the correct service box. Two or three times a week he posts 300 to 500 envelopes at a time, using a postage machine which feeds and stamps the envelopes at a rate of 200 envelopes in 10 to 20 seconds. He spends about one hour each day weighing and posting mail. He records the amount of postage used for one department.

5. Grievant is not accountable or responsible for a budget.

6. The Central Office Courier Job Title received 1207 total points from the following degree levels in each of the thirteen point factors (See footnote 3) : 2.5 in Knowledge; 2.0 in Experience; 1.5 in Complexity and Problem Solving; 1.0 in Freedom of Action; 1.0 in Scope and Effect, Impact of Actions; 1.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 1.0 in Intrasystems Contacts, Nature of Contact; 3.0 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; 1.0 in Physical Coordination; 2.0 in Working Conditions; and 4.0 in Physical Demands. Joint Exhibit D.

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 § 4.19; 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 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". 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 in Mercer Decisions issued by this Grievance Board is upon the point factors the grievant is challenging. (See footnote 4) 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 theposition fits in the higher education classified employee hierarchy must also be evaluated. In addition, this system must by statute be uniform across all higher education institutions; therefore, the point factor degree levels are not assigned to the individual, but to the Job Title. W. Va. Code § 18B-9-4; Burke, supra. A 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, Docket No. VR-88-006 (Mar. 28, 1989).

Finally, whether a grievant is 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 Descriptions or PIQ's at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 194 W. Va. 97, 459 S.E.2d 374 (1995); Burke, supra. However, no interpretation or construction of a term used in the Job Evaluation Plan (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. Watts v. Dept. of Health and Human Res., 195 W. Va. 430, 465 S.E.2d 887 (1995). The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. (See footnote 5)

B. Application of the Point Factor Methodology

The following table shows the differences between the degreelevels assigned Grievant's Job Title in the point factors he challenged, and the degree levels he argued he should have received.

	SE			IC	EC		
	KN	CPS	NA	BR	NC	NC	PC
Central Office Courier	2.5	1.5	1	1	1	1	1
Gary Argument	4	2	2	5	3	2	3

(See footnote 6)

Joint Exhibit D. Each of the point factors challenged by Grievant will be addressed separately below.

1. Knowledge

The Job Evaluation Plan ("the Plan") defines Knowledge as:

> This factor measures the minimum level of education equivalency and/or training

> typically required for an incumbent to reach acceptable occupational competence on the job. The factor considers the technical, theoretical, and/or mechanical skills required, and the complexity and diversity of the required skills.

Grievant argued he should have received a degree level of 4.0, rather than a degree level of 2.5, because he needs more than basic math skills to keep track of numbers. Grievant received a half-level in this point factor because he is required to hold a chauffeur's license.

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

> Job requires junior high school level education as might normally be acquired through up to 9 years of schooling, which provides the incumbent with the ability to read, write, and perform arithmetic procedures, understanddirect written instruction, and receive and transmit simple information. Requires knowledge of basic work rules, procedures or operations, and ability to operate equipment and machines.

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

> Job requires basic knowledge of grammar, spelling, punctuation, and simple mathematical functions like percentages, ratios, etc., as might normally be acquired through attainment of a high school diploma or GED.

A degree level of 4.0 is defined in the Plan as:

> Job requires basic knowledge in a specific area typically obtained through a business, technical or vocational school as might normally be acquired through up to 18 months of education or training beyond high school.

Grievant's supervisor and second-level supervisor marked different degree levels on the PIQ, with one of them marking a 2.0, and the other marking a 3.0. (See footnote 7) Patricia Hank, Human Resources Director at Southern West Virginia Community and Technical College and JEC member, stated that the basic math skills used by Grievant can be acquired by the end of the ninth grade.

> Although it may generally be accepted that possession of a diploma or GED would enhance an individual's ability to master the duties of his position, this factor is intended to measure only the minimum requirements for an entry level employee to perform the job at an acceptable level, keeping in mind that a training period would be necessary for all employees. Perkins v. Bd. of Trustees/WVU-Parkersburg, Docket No. 94-MBOT-733 (Oct. 31, 1996). As in virtually all cases, an employee with a higher degree of education might perform the duties with a shorter training period and offer the employer other benefits of additional knowledge.

Deavers, et al., v. Bd. of Trustees, Docket No. 94-MBOT-914 (Dec. 10, 1996). Grievant must be able to take written and oralinstruction, and be able to read the postage meter. He is not required to produce written documents, or communicate instructions, other than to order supplies from the stock room or, occasionally, a vendor. He presented no evidence that he must perform mathematical functions such as percentages and ratios; rather the evidence was that the only math skill he uses is

basic addition. Grievant has not proven he should have received a higher degree level. See also, Lovely, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-762 (Nov. 27, 1996).

2. Complexity and Problem Solving

The Plan defines Complexity and Problem Solving as:

> 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.

Grievant argued he should have received a degree level of 2.0 rather than a degree level of 1.5. Half-levels are not defined in the Plan. Ms. Hank explained that the JEC assigned half-levels when "the position was performing significant portions of duties and responsibilities in both levels, i.e.: part in 2 and part in 3, hence a 2.5." Respondent's Exhibit 2.

A degree level of 1.0 is defined in the Plan as:

> Routine problems are encountered involving simple solutions. Simple, standardized instructions (usually oral) covering all important aspects of the assignment are provided to the employee. Very little judgment is required by the position. Tasks are clear-cut and procedures well defined.

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 in the comparison of numbers or facts.

Grievant argued that he makes basic decisions about what needs to be done when he is performing mail duties, stocking supplies, and making daily runs, and that he has to exercise judgment. He admitted that degree level 1.0 also describes some of his duties. He stated he has a work schedule he follows. He explained that staff requests go through his supervisor, who then assigns him the task in writing, stating when the task needs to be completed. He stated that if he cannot complete the task in the assigned time, he goes to his supervisor.

Ms. Hank stated that degree level 1.0 fits most of Grievant's job. She pointed out that because Grievant must follow a work schedule and meets with his supervisor several times a day, this also reduces the level of Complexity and Problem Solving.

Grievant's duties are generally routine, are covered by simple, standardized instructions, and

require simple solutions. He does the mail every day in the same way, sorting and weighing out-going mail and placing the postage on as shown on the meter, and sorting in-coming mail and delivering it. When he makes deliveries or transports passengers, he does so because someone has requested he do so, and he performs this duty in the same fashion each time. His testimony did not indicate whether he must exercisejudgment in maintaining office and conference room supplies, or organizing the storage room, rather than following simple standardized instructions. Clearly, many of Grievant's duties fall within a degree level of 1.0, but he received credit for some work at a degree level of 2.0. Grievant has not proven he should have received a higher degree level.

3. Scope and Effect

Scope and Effect is defined in the 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 consists of two parts, Impact of Actions and Nature of Actions. Grievant challenged the degree level received in Nature of Actions only, arguing he should have received a degree level of 2.0, rather than a 1.0 in Nature.

A degree level of 1.0 in Nature is defined in the Plan as:

> Work provides limited or routine support-type services to others in a timely manner. Decisions are infrequent and errors could result in minor inconveniences and costs within the affected area.

A degree level of 2.0 in Nature 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.

Grievant argued his job description requires accuracy and reliability. This is not evaluated in applying this point factor. Ms. Hank pointed out that Grievant's job duties were evaluated considering responsibility and impact with regard to the overall mission of the higher education systems. She stated Grievant's work affects his department, and errors can be corrected without causing a problem.

"As noted in previous decisions interpreting the Plan, interpretation of these similarly-worded provisions involves a subjective value judgment, which is an inherent element of the function of position classification. Hastings [v. Bd. of Trustees, Docket No. 94-MBOT-943 (May 28, 1996)]; Jessen [v. Bd. of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995)]." Miller v. Bd. of Directors, Shepherd College, Docket No. 94-MBOD-495 (Oct. 29, 1996). Further, it is clear that Grievant provides a routine support-type service to others. He has not proven he should have received a higher degree level.

4. Breadth of Responsibility

Grievant argued he should have received a degree level of 5.0,rather than a 1.0 in Breadth of Responsibility. Grievant is not responsible for the budget, nor is he formally accountable for a functional area. His duties fall within a degree level of 1.0. See Burke, supra; and Floyd v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-932 (June 14, 1996).

5. Intrasystems Contacts

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

> appraises the responsibility for working with or through other people within the SCUSWV [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 point factor consists of two parts, Level of Contact and Nature of Contact. Grievant is challenging the degree level received in Nature only. Grievant argued he should have received a degree level of 3.0, rather than a 1.0 in Nature. A degree level of 1.0 in Nature is defined in the Plan as:

> Routine information exchange and/or simple service activity; requires common courtesy (e.g., furnishing or obtaining factual information, ordering supplies, describing simple procedures).

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

> Moderate tact and cooperation required; communication is largely of a non-controversial nature and handled in accordance with standard practices and procedures (e.g., explaining simple policies and procedures, coordinating/scheduling complex meeting or conference arrangements.)

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

> Substantial sensitivity and cooperation required; discussions are frequently controversial and require some delicacy (e.g., project interactions, interpretation of complex policies, resolution of somewhat difficult problems.)

Grievant's PIQ states he communicates about transportation requests, supplies needed, and postage needs. Ms. Hank stated Grievant receives requests from several people, which is routine information exchange. Grievant presented no evidence that his contacts involve more than routine information exchange.

6. External Contacts

External Contacts is defined in the Plan as:

> 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 Nature of Contact and Level of Contact, and Grievant is again challenging the degree level received in Nature only. He argued he should have received a degree level of 2.0, rather than a 1.0. The definitions are nearly identical to those of the degree levels in Intrasystems Contacts, Nature, and need not be reproduced here.

Grievant explained his communications involve taking documents to various persons to obtain signatures, which requires responsibility and trust. Grievant, however, is not convincing anyone to sign documents; he is delivering them for signature and returning them to the Central Office. This communication isroutine information exchange. He also talks to vendors on occasion to obtain price quotes and order supplies, which, as Ms. Hank pointed out, also falls within a degree level of 1.0. Grievant failed to prove he should have received a higher degree level.

7. 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.

Grievant argued he should have received a degree level of 3.0, rather than a 1.0. A degree level of 1.0 is defined in the Plan as:

> Work requires normal level of ability common in almost every job, such as writing, sorting, filing/reviewing text materials, and/or occasional use of office equipment without any demand for speed.

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 in the Plan 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 argued he posts 300 to 500 letters at a time, three times a week, and it requires skill to monitor the postage machine to assure the letters are feeding properly, and that all are posted. He stated the machine feeds 200 letters in 10 to 20seconds. Ms. Hank pointed to the fact that Grievant stated he is not required to work with speed.

Grievant presented no evidence that he must work with speed and accuracy as is required to fall within the degree level 3.0 definition. See Barber, et al., v. Bd. of Trustees, W. Va. Univ., et al., Docket No. 94-MBOT-872 (Oct. 31, 1996). His testimony shows that his duties fall within a degree level of 1.0. Although the piece of equipment he is monitoring is working with a high degree of speed, he is not required to work with any demand for speed, nor is accuracy and regularity of motions required.

C. Summary

Grievant failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning his Job Title, or in assigning the degree levels in the point factors to his Job Title. Because the point factor analysis does not result in a change in any degree levels, a comparison of Grievant's duties to those found in the Generic Job Description for the Job Title sought is not necessary.

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 classifi cations 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 heis not properly classified. 156 C.S.R. 1 § 4.17. 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).

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 Job Evaluation Committee's decision that Grievant is a Central Office Courier, Pay Grade 6, is not clearly wrong or arbitrary and capricious.

5. The Job Evaluation Committee's assignment of degree levels to the point factors for the Job Title Central Office Courier is neither clearly wrong nor arbitrary and capricious.

Accordingly, the grievance of William Gary, Jr., is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha 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 ap propriate court.

BRENDA L. GOULD

Administrative Law Judge

Dated: March 31, 1997

Footnote: 1

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: 2

A Level IV hearing was held on November 25, 1996. This matter became mature for decision on January 6, 1997, with the receipt of Respondent's Proposed Findings of Fact and Conclusions of Law. Grievant presented oral argument at the conclusion of the hearing, and declined to submit written argument.

Footnote: 3

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: 4

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).

Footnote: 5

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: 6

These headings are shorthand for the following point factors: KN is Knowledge; CPS is Complexity and Problem Solving; SE, NA is Scope and Effect, Nature of Actions; BR is Breadth of Responsibility; IC, NC is Intrasystems Contacts, Nature of Contact; EC, NC is External Contacts, Nature of Contact; and PC is Physical Coordination.

Footnote: 7

The PIQ does not indicate which level supervisor made which marks.