WILLIAM CARRERE

v. DOCKET NO. 94-MBOD-1017

BOARD OF DIRECTORS,

SOUTHERN WEST VIRGINIA COMMUNITY COLLEGE

D E C I S I O N

Grievant William Carrere alleges he was misclassified effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) . Grievant seeks as relief classification as a Supervisor Building Services and Maintenance, a Supervisor Building Services and Security Services, or a Manager Building Services, at a Pay Grade 16, rather than his current classification as a Supervisor/Building Services, Pay Grade 15, effective January 1, 1994; and backpay from January 1, 1994. A Level IV hearing was held on June 3, 1996. This matter became mature for decision on September 10, 1996, with the receipt of Respondent's Proposed Findings of Fact and Conclusions of Law.

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

Findings of Fact.

1. Grievant is employed at the Logan campus of Southern West Virginia Community College ("SWVCC"). SWVCC has four campuses.

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 Supervisor/Building Services, Pay Grade 15, effective January 1, 1994.

4. Grievant's primary job duties (with the percentage of time he performs these duties in parenthesis) are supervising and assigning the work of building service workers assigned to building and grounds (73%); inspecting buildings and grounds and scheduling repairs (4%); coordinating

buildings and grounds projects from bidding through completion (5%); contacting vendors to obtain quotes on supplies and equipment (5%); inspecting custodial work and training new employees in custodial duties (5%); coordinating retirement of furniture and equipment, maintaining time, attendance and inventory records, requisitioning and distributing supplies and equipment, monitoring parking facilities, performing minor maintenance, and assisting with incident reports (4%); coordinating freight receiving and delivery (2%); and, assisting with budgetingand staffing (2%). (See footnote 2)

5. Grievant received no vocational or formal education beyond high school.

6. Three-fourths of Grievant's contacts outside higher education are with the general public, visitors, service representatives or vendors.

7. The Supervisor/Building Services Job Title received 2023 total points from the following degree levels in each of the thirteen point factors (See footnote 3): 3.0 in Knowledge; 5.0 in Experience; 3.5 in Complexity and Problem Solving; 3.5 in Freedom of Action; 3.0 in Scope and Effect, Impact of Actions; 3.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 2.0 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; 6.0 in Direct Supervision Exercised, Number; 4.0 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 2.0 in Physical Demands. Joint Exhibit E.

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 were appropriate.

	SE KN	IC IA	EC LVL	EC NC	EC LVL (See footnote 6)
Supr/Bldg Services	3	3	2	1	2
Carrere Argument	4 or 5	4	3	5	3

Joint Exhibit E. 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 or 5.0, rather than a 3.0.

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. A degree level of 5.0 is defined in the Plan as:
>
> Job requires broad trade knowledge or specific technical or business knowledge received from a formal registered apprentice or vocational training program or obtained through an associate's degree of over 18 months and up to 3 years beyond high school.

Grievant argued he had to be a jack of all trades, which required knowledge in many areas. Grievant's supervisor testified he would want the person filling this position to have a Knowledge level as described in degree level 5.0.

Grievant presented no evidence of how much vocational training or formal education is necessary to performance of his job duties, other than his opinion. "Such [opinion] statements standing alone merely show disagreement with Respondent's conclusion, but offer no reason to accept Grievant's position rather than Respondent's." Riggs v. Bd. of Trustees Marshall Univ., Docket No. 94-MBOT-711 (Apr. 29, 1996). Grievant has no vocational training or formal education beyond high school. His supervisor's opinion is not based upon the minimum level of education necessary, but upon his preference. Grievant failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning his Job Title a degree level of 3.0 in this point factor.

2. 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 consists of two parts, Nature of Actions and Impact of Actions. Grievant challenged the degree level received in Impact of Actions only, arguing he should have received a degree level of 4.0 rather than a 3.0.

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

> Work affects the operations of more than one school or division of a specialized school, branch campus, community college or baccalaureate-level Institution with an operating budget of less than $13M; a school or division of a graduate or baccalaureate-level Institution with an operating budget of $13-$18M; several departments within a graduate or baccalaureate-level Institution with an operating budget of $19-$25M; a major department within a graduate-level Institution with an operating budget of more than $50M; or a moderate-size department within a doctoral-level Institution with an operating budget of more than $200M.

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

> Work affects the entire operations of a specialized school, branch campus, community college or baccalaureate-level Institution with an operating budget of [less than] $13M; more than one school of division of a graduate or baccalaureate-level Institution with an operating budget of $13-$18M; a school or division of agraduate or baccalaureate-level Institution with an operating budget of $19-$25M; several departments within a graduate-level Institution with an operating budget of more than $50M; or a major department within a doctoral- level Institution with an operating budget of more than $200M.

Grievant argued the Logan campus is a branch campus. Patricia Hank, Director of Human Resources at Southern West Virginia Community and Technical College, formerly SWVCC, noted a degree level of 4.0 is the highest degree level possible for an employee of a community college, and for someone to receive that degree level, his work would have to affect all four SWVCC campuses. She explained that a branch campus is an off-site campus of a larger institution, such as West Virginia University - Parkersburg. The definitions clearly support Ms. Hank's testimony. Grievant's work does not affect the entire operations of a community college, and he has not proven he should

have received a degree level of 4.0.

3. 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 challenged the degree level received in Level of Contact only, arguing he should have received a degreelevel of 3.0, rather than a 2.0.

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 defined in the Plan as:

> Supervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office.

Grievant testified that he has contact with a Dean (degree level 4.0), who is his second level supervisor (which by definition would not be counted in applying this point factor), but presented no evidence that he ever has contacts at degree level 3.0. Grievant failed to prove he should have received a higher degree level in this point factor.

4. 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 two parts, Level of Contact and Nature of Contact. Grievant challenged the degree levels received in both parts. Grievant argued he should have received a degree level of 3.0, rather than a 2.0 in Level of Contact. He apparently argued that because he believes he has contacts at a degree level of 2.0 and 4.0, a 3.0 should be assigned to split the difference.

A degree level of 2.0 in Level is defined in the Plan as"[g]eneral public, visitors, and/or service

representatives and vendors."

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

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

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

> Mid-level representatives of government agencies, professional contacts with other colleges and universities outside the systems.

Grievant stated he has contact with Department of Health and Human Resources staff workers and Directors of the Community Work Experience Program ("CWEP") to contract for workers, takes care of the workers' time and evaluates them at the end of each month. He also testified he works with the Director of the Governor's Summer Youth Program ("SYP") during the five to six weeks during the summer when SWVCC hires workers through this Program. Grievant stated he signs the contracts with the SYP, completes all the paperwork, and disciplines SYP workers.

Ms. Hank stated the CWEP and SYP contracts come to the Human Resource office at SWVCC, apparently suggesting that some of Grievant's contacts are not necessary. She stated she sends the contract for the SYP to Grievant's supervisor for completion and for his determination of the number of workers desired. She stated the Manager of Campus Business Affairs completes the contract for the SYP, and the contract is signed by a Vice-President.

Staff at a governmental agency are not mid-level representatives. The other definitions of the degree levels do notaddress contacts with these employees. Grievant's testimony does not support a finding that his contact with the Director of CWEP is necessary. The contract is processed through the Human Resources Office, and Grievant can talk to staff about the workers' progress. Grievant failed to testify as to how often he has contact with the Director of the SYP, how many SYP workers he supervises, and what these workers do. Without this information, and based upon Grievant's testimony as a whole, the undersigned must conclude that this contact is a very minor part of Grievant's job duties, and cannot be considered essential. See Braniff v. Bd. of Trustees, W. Va. Univ. - Parkersburg, Docket No. 94-MBOT-865 (Sept. 30, 1996). Grievant has failed to prove a degree level of 3.0 is a better fit.

Grievant argued he should have received a degree level of 2.0, rather than a 1.0 in Nature of Contact.

A degree level of 1.0 in Nature of Contact 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 noncontroversial nature and handled in accordance with standard practices and procedures (e.g., explaining simple policies and procedures, coordinating/scheduling complex meeting or conference arrangements.)

Grievant argued he uses tact and diplomacy to deal with vendors, giving as an example that vendors try to talk him into telling them what other vendors have bid. He stated he also tellsvendors there is a policy which requires purchase orders, and they must be approved by someone other than him. His PIQ states he talks to vendors almost daily about their products, with governmental agencies weekly about programs, and with contractors weekly about contracts for extermination, heating and cooling, supplies and trash pick-up.

Ms. Hank stated getting bids is routine information exchange, as is supervision of the CWEP workers.

Obtaining bids or quotes from vendors and ordering supplies are routine information exchange. There is no indication from the evidence that explaining to vendors that there is a policy which requires purchase orders is more than describing a simple procedure. Grievant's communication with case workers about the CWEP program and CWEP workers is information exchange. His supervision of these workers and the SYP workers may on occasion fall within a higher degree level, although Grievant did not indicate how often. Grievant has not proven that a degree level of 1.0 is not the best description of the nature of his contact. (See footnote 7)

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 JobTitle. (See footnote 8) Because the point factor analysis does not result in a change in the pay grades, a comparison of Grievant's duties to those of the Job Title sought is not necessary. (See footnote 9)

Grievant also argued the classification system was not uniform because other institutions of similar size have Directors of Physical Plant (See footnote 10) while SWVCC does not. Ms. Hank stated the JEC did not decide what positions each physical plant at each campus should have, rather

it looked at the job duties of the persons employed at each institution and classified them based upon their existing duties. The reclassification project was designed to identify like jobs and classify them in the same title.

As has already been decided by this Grievance Board, W. Va. Code § 18B-9-4 did not require the governing boards to make every department within higher education function in exactly the same manner. The governing boards were not charged with assigningGrievant additional duties to make him a Director of Physical Plant so SWVCC would have a person in that position, or rearranging the SWVCC staff so it would need a Director of Physical Plant. Browning v. Bd. of Directors, Southern W. Va. Community College, Docket No. 94-MBOD-985 (Aug. 15, 1996).

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 he is 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 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 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 Supervisor/Building Services, Pay Grade 15, is not clearly wrongor arbitrary and capricious.

5. The Job Evaluation Committee's assignment of degree levels to the point factors for the Job Title Supervisor/Building Services is neither clearly wrong nor arbitrary and capricious.

Accordingly, the grievance of William Carrere is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Logan 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 16, 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

There was conflicting testimony on Grievant's role in maintenance of a sewage treatment plant and in directing major repairs. Whether Grievant is responsible for the sewage treatment plant and major repairs has no bearing on the challenged point factors. Therefore, it is not necessary to make factual findings on these points.

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; SE, IA is Scope and Effect, Impact of Actions; IC, LVL is Intrasystems Contacts, Level of Contact; EC, NC is External Contacts/Nature of Contact; and EC, LVL is External Contacts/Level of Contact.

Footnote: 7

If Grievant were assigned a degree level of 2.0 in this point factor, it would not add enough points to the Job Title's total points to affect his pay grade; and therefore, would not affect his classification. See Riggs v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-711 (Apr. 29, 1996).

Footnote: 8

Ms. Hank pointed out that Grievant's Job Title received a degree level of 6.0 in Direct Supervision Exercised/Number of Subordinates, which is defined as supervision of 11 or more employees, while Grievant does not supervise this many employees. Respondent did not argue that Grievant should be placed in a lower pay grade. Given the conclusions reached herein, it is not necessary to address this point factor.

Footnote: 9

Grievant argued that the supervisors over him are not qualified to supervise, and that Grievant is responsible for the bulk of the physical plant activities. He pointed out that his supervisor, Joe Blackburn holds an Accounting degree, and is a money manager, not a maintenance manager. Grievant did not state how this argument relates to any of the point factors challenged, and the undersigned sees no relationship. This argument cannot be addressed.

Footnote: 10

Curiously, this is not a Job Title sought by Grievant.