ARLENE FERGUSON

v. DOCKET NO. 94-MBOT-1001

BOARD OF TRUSTEES,

MARSHALL UNIVERSITY

D E C I S I O N

Grievant Arlene Ferguson alleges she was misclassified effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) . Grievant seeks as relief a higher Pay Grade for her classification of Parking Enforcement Officer, Pay Grade 11, effective January 1, 1994; and backpay from January 1, 1994.

A Level IV hearing was held on September 18, 1996. This matter became mature for decision on October 3, 1996, with the receipt of the last of the parties' Proposed Findings of Fact and Conclusions of Law.

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

Findings of Fact.

1. Grievant is employed at Marshall University ("MU"). 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. She revised it in 1994 to reflect changes made in her duties in 1993.

3. Grievant was classified as a Parking Enforcement Officer, Pay Grade 11, effective January 1, 1994.

4. Grievant's primary job duties (with the percentage of time she performs these duties in parenthesis) are scheduling employee work hours, assigning duties to, and supervising the work of subordinates, interviewing and hiring part-time employees, and training employees (25%); patrolling parking areas to enforce parking regulations, issuing parking citations, and maintaining citation

records (25%); assisting in selling parking permits, collecting fines, and scheduling motor pool vehicles, and data entry (25%); collecting money from meters and depositing money (10%); planning and carrying out parking area maintenance, and assisting with design of future parking areas (10%); and, filling in for Parking Manager in her absence (5%).

5. In carrying out her duties, Grievant follows MU's parking rules and regulations.

6. Grievant supervises two Parking Attendants and two part- time student assistants.

7. The Parking Enforcement Officer Job Title received 1602total points from the following degree levels in each of the thirteen point factors (See footnote 2) : 3.0 in Knowledge; 3.0 in Experience; 2.0 in Complexity and Problem Solving; 2.0 in Freedom of Action; 2.0 in Scope and Effect, Impact of Actions; 2.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 2.0 in Intrasystems Contacts, Nature of Contact; 3.0 in Intrasystems Contacts, Level of Contact; 2.0 in External Contacts, Nature of Contact; 3.0 in External Contacts, Level of Contact; 3.0 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 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 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. 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 EvaluationCommittee'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 4)

B. Application of the Point Factor Methodology

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

	SE	IC	EC		
	CPS	FA	IA	NC	NC
Parking Enforcement Officer	2	2	3	2	2
Ferguson Argument	3	3	7	3	3

(See footnote 5)

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

1. 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's Job Title received a degree level of 2.0, which 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 she should have received a degree level of 3.0, which is defined in the 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 must be 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.

Grievant argued she should have received a higher degree level in this point factor than the parking office assistant, who also received a degree level of 2.0, because the parking office assistant has no supervisory responsibilities. She did not elaborate on the parking office assistant's duties. She also argued she should receive more than a 2.0 because she fills in forher supervisor when she is on leave. She stated, however, that when filling in for her supervisor, she defers decisions to her supervisor when possible. She characterized the decisions she makes as basic the majority of the time.

On her PIQ, Grievant gave as examples of the common types of problems faced and the course of action taken to solve them:

> Angry motorists who have received citations or had vehicles towed are explained the parking rules and regulations and options open to them.
>
> Coordinating work schedules.
>
> Help coordinate parking lot maintenance.
>
> Outside businesses with parking concerns due to lack of parking.

Margaret Robinson Buttrick, Human Resources Administrator for the State College and University Systems of West Virginia and JEC Chair, stated Grievant makes basic decisions. She stated parking rules and regulations are made available to parking users, and are used by Grievant.

Grievant provided no detail about her job duties. She failed to provide any explanation of what is involved in coordinating parking lot maintenance, dealing with outside businesses regarding parking, training and supervising employees, or interviewing and hiring part-time workers, from which the

undersigned can conclude that a 3.0 is a better fit. Based upon the information provided, it appears when Grievant is dealing with angry motorists, the solution is clear and limited to explaining the parking rules and regulations and their options to them. When coordinating work schedules, there are a limited number of easily recognizable solutions. When patrolling parking areas, selling permits,collecting fines and money from meters, and entering data, Grievant's work is controlled by standard procedures and MU's parking rules. Grievant provided no information about the parking office assistant's duties from which the undersigned can evaluate whether Grievant should have received a higher degree level than she did, but Grievant has not proven, based upon her own duties, that she should have received a degree level of 3.0.

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 degree level of 2.0, which is defined in the Plan as:

> Tasks are structured to the extent that standard operating procedures serve as a gauge to guide the employee's work. The employee can occasionally function autonomously with the immediate supervisor available to answer questions. Questionable items are referred to the immediate supervisor.

Grievant argued she should haver received a degree level of 3.0, which is defined in the Plan as:

> Tasks are moderately structured with incumbent working from objectives set by the supervisor. At this level, the employee organizes and carries out most of the work assignments in accordance with standard practices, policies, instructions or previous training. The employee deals with some unusual situations independently.

Grievant argued she works independently most of the time withlittle supervision. She stated she can refer problems to her supervisor.

Mrs. Buttrick stated there is a lot of structure to Grievant's work. She stated Grievant utilizes standard operating procedures in issuing citations, selling parking permits, and in reviewing the work of employees.

Many employees work independently. This does not mean they fall within a degree level of 3.0. In many instances it means their tasks are so routine that they need no supervision, and their duties fall

within a degree level of 1.0. Grievant provided no detail about how she knows what to do each day. Many of her duties are controlled by parking rules and regulations. What she does each day appears to be somewhat routine (patrolling parking areas), and somewhat determined each day by how many customers appear at, or perhaps telephone, the parking office and what they need. As to Grievant's other duties, Grievant provided no information on how she receives her assignments from which the undersigned can conclude that she should have received a degree level of 3.0 in this 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, andstudent 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 Impact of Actions only. She argued she should have received a degree level of 7.0, rather than a 2.0 in Impact, because the Police Officer II Job Title received a 7.0, and that's the Job Title she believed she would hold had she not been moved to the parking office 100% of the time in 1993. She opined that her duties are the same as they were as a Police Officer II (under the old classification system), except that she has the additional duty of working outside. Grievant's belief that she would have been classified as a Police Officer II in the Mercer reclassification is based solely upon the fact that she was classified as a Police Officer II prior to the Mercer reclassification. She presented no evidence of the duties of a Police Officer II under the new classification system.

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

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

A degree level of 7.0 in Impact is defined in the Plan as:

> Work affects the entire operations of a graduate-level institution with an operating budget of more than $50M; or more than one school or division of a doctoral-level institution with an operating budget of more than $200M.

Mrs. Buttrick stated that because of changes in the law and in the classification of employees, Grievant's old title of Police Officer II is not the same as the Police Officer II under the Mercer classification system. She stated that Police Officers are no longer Public Safety Officers, but are truly Police Officers, who go through training at the State Police Academy and have a permit to carry a gun and arrest authority, all of which is much different from Grievant's job duties. She stated Grievant's work affects the work of the parking unit, but would not have further institutional impact.

Grievant offered no evidence that her duties are so similar to those of a Police Officer II that she should have received the same degree level. In order to properly evaluate whether Grievant should have received some other degree level based upon her duties, the undersigned must know MU's budget. Neither party supplied this key information. However, Grievant's duties appear to the undersigned to fall within a degree level of 2.0. She is not responsible for the parking office, but is responsible for performing her duties within the parking unit or department, which is one of many services offered by MU. Grievant has failed to prove she should have received a higher degree level.

4. 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 of Contact only.

Grievant's Job Title received a degree level of 2.0 in Nature, which 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.)

Grievant argued she should have received a degree level of 3.0 in Nature, which 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 argued there are several controversial things about parking permits which she must explain when selling permits. She admitted that on a daily basis her contacts would fall within a degree level of 2.0, but under certain circumstances would fallwithin a 3.0. On her PIQ Grievant stated she communicates with Deans, Department Heads, Directors, Vice Presidents, Presidents, faculty and staff daily about information, complaints and service requests.

Mrs. Buttrick stated that nearly every employee must at times exercise substantial sensitivity, but this point factor, and External Contacts, evaluate the employee's normal contacts, which is what is meant by use of the terms regular, recurring and essential.

Grievant presented no facts in support of her opinion that her "discussions are frequently controversial," or that she must use more than moderate tact. Rather, the PIQ and Grievant's testimony indicate that Grievant explains parking rules and receives information needed to issue parking permits, which is routine information exchange, a degree level of 1.0. See Lovely, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-762 (Nov. 27, 1996). Grievant does talk to people about complaints, which may be why she received a higher degree level, but she did not elaborate on her role in dealing with complaints, nor did she explain what "service requests" are. She admitted that in her opinion, most of her contacts are within a 2.0. At a degree level of 2.0, some contacts can be controversial, but they are largely non-controversial. This seems to fit even Grievant's opinion testimony. Grievant failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level of 2.0. 5. 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, and Grievant is again challenging the degree level received in Nature of Contact only.

Grievant's Job Title received a degree level of 2.0 in Nature of Contact, and she argued she should have received a degree level of 3.0. The degree level definitions are nearly identical to those

for Intrasystems Contacts, Nature of Contact, and will not be repeated here. Grievant's argument was the same as her argument under Intrasystems Contacts. Her PIQ states she has daily contact with the general public, governmental agencies and vendors about information, complaints and service requests; and weekly contact with the city judge about appeals and towing problems. Mrs. Buttrick had nothing further to add.

Except for her contact with the city judge, the Nature of Grievant's External Contacts is the same as her Intrasystems Contacts. Grievant provided no evidence that her contact with the city judge falls within a degree level of 3.0. Grievant failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning her Job Title a degree level of 2.0.

C. Summary

Grievant failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning her Job Title, or in assigning the degree levels in the point factors to her Job Title.

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 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 Parking Enforcement Officer, Pay Grade 11, 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 Parking Enforcement Officer is neither clearly wrong nor arbitrary and capricious.

Accordingly, the grievance of Arlene Ferguson is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or 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: February 6, 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

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 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: 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.

Footnote: 5

These headings are shorthand for the following point factors: CPS is Complexity and Problem Solving; FA is Freedom of Action; SE, IA is Scope and Effect, Impact of Actions; IC, NC is Intrasystems Contacts, Nature of Contact; and, EC, NC is External Contact, Nature of Contact.