BARBARA JEAN BLACK

v. DOCKET NO. 94-MBOD-967

BOARD OF DIRECTORS,

WEST VIRGINIA STATE COLLEGE

D E C I S I O N

Grievant Barbara Jean Black alleges she was misclassified effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) , as a Human Resource Assistant II ("HRA II"), Pay Grade 13. Grievant seeks as relief classification as a Human Resource Assistant III ("HRA III"), Pay Grade 14, 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. 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 was employed in the Human Resources Office at West Virginia State College ("WVSC"), and completed a PIQ in 1991.

2. Grievant was classified as a Human Resource Assistant II, Pay Grade 13, effective January 1, 1994.

3. On January 1, 1994, Grievant's primary job duties (with the percentage of time she spent performing each duty shown in parenthesis) were maintaining sick and annual leave records and reporting usage to the payroll office and supervisors (15%); receiving employment applications, forwarding applications to the selection committee, and providing information about the interviewing process (8%); making sure information for advertising positions is accurate, and making contacts to purchase advertising (8%); providing employment information on retiring, resigning or suspended employees to various departments (7%); typing, filing, and answering mail and telephone inquiries

(7%); scheduling and administering mass clerical testing, grading tests, and notifying applicants by form letter of test score (5%); verifying employment information when lenders call (5%); checking accuracy and completeness of the INS form for new employees, and checking identification (5%); explaining policies and directing employees toproper policies and procedures in handbook (5%); creating and maintaining confidential personnel records on employees (5%); maintaining a resource bank of qualified applicants (5%); supervising and training student workers (5%); disbursing, collecting, reviewing and retaining probationary employee evaluations (5%); designing forms for gathering information for reports (5%); providing information on previous years of service on new employees (5%); and, serving on college committees, assisting with coordination of Employee Service Awards, and other duties (5%).

4. Grievant's supervisor sets the objectives and goals for the Human Resources department.

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

6. Grievant has daily contact with Vice Presidents, Assistant Vice Presidents, Directors, Assistant Directors, staff and faculty, regarding policies, procedures, interviewing, advertisements, sick and annual leave, all types of leave information and requests, and serving on committees. Her primary contact with Vice Presidents involves discussing questions she has about personnel matters or advertisements for positions, and questions they have about personnel matters.

7. Grievant contacts ministers and retired faculty in connection with the Employee Service Awards program, and only when the employee being honored has a contact with them.

8. The HRA II Job Title received 1828 total points from thefollowing degree levels in each of the thirteen point factors (See footnote 3) : 4.0 in Knowledge; 4.0 in Experience; 2.5 in Complexity and Problem Solving; 2.5 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; 2.0 in External Contacts, Level of Contact; 2.0 in Direct Supervision Exercised, Number; 3.5 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 3.0 in Physical Coordination; 2.0 in Working Conditions; and 1.0 in Physical Demands. Respondent's Exhibit 2.

9. The point score range for a Pay Grade 13 is from 1756 through 1865 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 § 4.19; 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 adequaterebuttal 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 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 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

Grievant challenged the degree levels received in Knowledge, Experience, Complexity and Problem Solving, Freedom of Action, Scope and Effect/Nature of Actions, Breadth of Responsibility, Intrasystems Contacts/Nature and Level of Contact, and External Contacts/Level of Contact. (See footnote 6) The following table shows thedifferences between the degree levels assigned Grievant's Job Title in the point factors she challenged, the degree levels assigned the HRA III Job Title, and the degree levels she argued she should have received.

	KN	EX	CPS	FA	SE NA	IC BR	NC	IC LVL	EC LVL
HRA II	4	4	2.5	2.5	2	1	2	3	2
HRA III	5	4	2.5	3	2	1	2	3	3
Black Argument	6	6	5	5	4	5	3	6	5

(See footnote 7)

Respondent's Exhibit 2. 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's Job Title received a degree level of 4.0 in Knowledge, and she argued she should have received a degree level of 5.0 or 6.0. 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.

A degree level of 6.0 is defined in the Plan as:

> Job requires a thorough knowledge of a professional discipline or technical specialty as would normally be acquired through a relevant baccalaureate education program. Knowledge of principles, concepts, and methodology of a highly technical, professional, or administrative occupation is indicative of this level.

Grievant argued she should have received a 6.0 because she must make decisions, work independently, and she has to be able to think and analyze. Grievant's supervisor and second-level supervisor agreed on her PIQ that a 6.0 fit the job requirements. Grievant's second-level supervisor was not called as a witness to testify as to the basis for her opinion, and whether this was the minimum level required or her preference.

Grievant's supervisor, Barbara Rowe, Director of Human Resources at WVSC, completed a review of Grievant's position after completion of the PIQ, and after Grievant had been notified in late 1993 that her classification would be HRA III. Grievant appealed that classification, and upon further review, the JEC not only denied her appeal, but placed her in the lower Pay Grade classification of HRA II. On this subsequent review, Ms. Rowe rated Grievant's position at a degree level of 5.0 in Knowledge, and noted that Grievant's position still fell within a Pay Grade 14. Ms. Rowe was called by Respondent as a witness, but was not asked by either party to address the Knowledge point factor. Margaret Robinson Buttrick, Human Resources Administrator for the State College and University Systems of West Virginia and JEC Chairwoman, testified that the HRA II Job Title was an entry-level position, and that a Bachelor's Degree would only be needed for human resources professionals such as a Director or Representative. She felt that someone with 18 months of training could perform the duties listed on the PIQ.

Grievant presented no evidence that she must possess a thorough knowledge of a professional discipline or technical specialty, or that she applies principles, concepts, and methodology of the human resources profession. In order to find that Grievant should be assigned a degree level of 5.0, the undersigned would have to make a finding that the JEC was clearly wrong or acted in an arbitrary and capricious manner. Nothing in the evidence suggests arbitrary and capricious action. The evidence which the undersigned must weigh in deciding whether the JEC was clearly wrong is Grievant's opinion, her supervisors' opinion, one of whom is a human resources professional, and Grievant's duties.

Opinion testimony standing alone, offered by a grievant or her supervisor, is insufficient to prove the JEC was clearly wrong. See Riggs v. Bd. of Trustees Marshall Univ., Docket No. 94-MBOT-711 (Apr. 29, 1996). It is understandable that a grievant would have a different opinion about the amount

of education and experience needed to perform her job duties. In this case, even though Ms. Rowe is a human resources professional, she did not support heropinion with a description of what it is Grievant must do in performing her duties which makes an Associate Degree necessary. Her opinion is simply different from that of Mrs. Buttrick, who is also a human resources professional. Ms. Rowe's opinion is therefore entitled to no more weight than that of any other supervisor. The undersigned cannot find the JEC was clearly wrong based upon this evidence. Grievant further presented no evidence from which the undersigned can draw a conclusion that more than 18 months of education beyond high school would be needed to be able to perform any of her duties. Grievant has not proven the JEC was clearly wrong in assigning a degree level of 4.0.

2. 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.

Grievant's Job Title received a degree level of 4.0 in Experience, and she argued she should have received a degree level of 6.0. A degree level of 4.0 is defined by the Plan as "[o]ver two years and up to three years of experience." A degree level of 5.0 is defined in the Plan as "[o]ver three years and up to four years of experience." A degree level of 6.0 is defined in the Plan as "[o]ver four years and up to six years of experience."

Grievant argued that over four and up to six years is the amount of experience usually advertised by other employers. On her PIQ Grievant marked a degree level of 6.0, and noted that five of those years would be needed at the institution. Her PIQ listed thetype of experience as:

> Training in Personnel practices, policies and procedures and laws. Experience in dealing with individuals of diverse backgrounds. Must be tactful and sensitive. Ability to communicate orally and in writing in order to deal with individuals of all levels. Ability to meet deadlines with completeness and accuracy. Ability to collect and analyze data for reports.

One of Grievant's supervisors marked a degree level of 5.0 on Grievant's PIQ, and the other made no adjustment. Ms. Rowe rated Grievant at a 3.0 in her subsequent evaluation, and did not testify regarding this point factor.

Mrs. Buttrick pointed out that a position cannot receive credit in Experience if it received training credit under Knowledge, and that if an individual without the necessary education had a lot of

experience, that experience could be substituted for education. She noted that job advertisements are not a good gauge in and of themselves, because one also has to know the type of classification system used. She also testified that she sees lots of job advertisements, and had not seen any Human Resource Assistant jobs advertised that would require more than four years of experience, or a higher level of knowledge than was assigned the HRA II Job Title. She stated the consulting firm used by higher education to develop the classification system was able to tell the JEC if it was under or over-valuing a job in relation to its place in the market, and if this was the case on a particular job, the JEC would go back through the PIQ's in the Job Title and reevaluate them. She concluded that the Knowledge and Experience levels assigned the HRA II Job Title were thereforeappropriate.

Once again, Grievant presented no evidence to support her opinion regarding the amount of experience needed. Grievant's testimony regarding advertised experience requirements must be disregarded because she did not state what knowledge level was required in the noted advertisements, and Mrs. Buttrick's testimony indicates that the experience level noted by Grievant in advertisements is not universal. The undersigned can cite no facts which support overturning the JEC's decision as clearly wrong or arbitrary and capricious.

3. 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 2.5 in Complexity and Problem Solving, and she argued she should have received a degree level of 5.0. Half-levels are not defined in the Plan, but Mrs. Buttrick explained that the JEC awarded half-levels in this point factor and in Freedom of Action when the lower degree level would not give the employees in the Job Title enough credit, because at times the duties would fall within the next higher degree level.

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 easilyrecognizable solutions. Established procedures and specific instructions are available for doing most work assignments, with some judgment required to interpret instructions or perform basic computation work such as in the comparison of numbers or facts.

A degree level of 3.0 is defined in the 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.

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

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

A degree level of 5.0 is defined in the Plan as:

> Problems encountered involve unusual circumstances, variations in approach, and incomplete or conflicting data. Employees exercise considerable analytical, valuative and reasoning skill in researching information and developing new methods to perform work assignments or optimum solutions to problems. The development of new programs, procedures or methods are typical end results of the problem-solving process. Determination of the effectiveness of a policy or practice may be involved at this level.

Grievant argued she must exercise analytical skills and know what she is doing, she has to make decisions based upon good judgment, and she tries to develop new methods and procedures to try to alleviate problems. She noted that she had developed several forms which are used by the Human Resources Office;however, she developed almost all of these forms prior to 1988.

Mrs. Buttrick stated that she understood from Grievant's testimony that she encountered general problems and had guidelines and methods available to apply to problem solving. She concluded that at times, Grievant makes basic decisions, such as when she is simply sharing information, and noted that some problems are referred to Grievant's supervisor. She stated that a degree level of 5.0 describes the duties of Directors and Administrators.

While Grievant may indeed develop new methods and procedures at times, this is not a "typical end result" of her problem- solving. Most of her work day is spent performing tasks for which there are guidelines or standard procedures in place, and are not the types of tasks which require the application of a professional discipline. When dealing with personnel problems, she may encounter new and complex problems, but she can refer difficult problems to her supervisor. She received credit for some problem- solving at a degree level of 3.0, but she has not proven her duties fall within a

higher degree level so often that a 2.5 assignment is clearly wrong or arbitrary and capricious.

4. 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 2.5 in Freedom of Action, and she argued she should have received a degree level of 5.0. The definitions in the Plan show that at a degree level of 2.0:
>
> Tasks are structured to the extent that standard operating procedures serve as a gauge to guide the employee's work. The employee can occasionally function autonomously with the immediate supervisor available to answer questions. Questionable items are referred to the immediate supervisor.

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

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

The definitions in the Plan show that at a degree level of 4.0:

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

The definitions in the Plan show that at a degree level of 5.0:

> Virtually all tasks are unstructured; assignments are in terms of setting objectives within strategic planning goals. At this level, the employee has responsibility for planning, designing and carrying out programs,projects and studies; employee sets goals and objectives for a major unit, program, or department. Approval from higher supervision may be necessary only in terms of financial impact and availability of funds, but little reference to detail is discussed with the next level supervisor. Work review concerns matters such as fulfillment of goals and objectives.

Grievant argued she has responsibility for planning, designing and carrying out programs, projects and studies, and sets goals and objectives for a major unit, program or department. However, her supervisor testified that it is she who sets the goals and objectives for the department.

Mrs. Buttrick stated that Grievant's duties are general, standard procedure type activities. She

stated that Grievant's supervisor is the person who decides to make changes in the methods and procedures followed. She stated Grievant has a higher level of Freedom of Action in the performance of her leave tracking duties, but that it does not rise to a level of 5.0. She stated that Directors received a 5.0. She noted that Grievant's supervisor sets the objectives for the unit, and reviews and provides limited supervision as necessary.

Grievant has not proven she sets objectives, or otherwise that her tasks are so unstructured as to fall within a degree level of 5.0. It is clear from the detail provided in her PIQ, as set forth in Finding of Fact Number 3, that Grievant must perform specific tasks, and that in performing these tasks she must follow guidelines and standard procedures. Her job is structured, her supervisor sets the goals and objectives for the department, and questionable items may be referred to her supervisor. Grievant did not explain how she knows what has to be done each day, or how she goes about performing her duties. Absent this detail, the undersigned can only use her duty listing to evaluate this point factor. It appears that, while Grievant may have some flexibility on which task to perform first, certain tasks would have priority, and there are deadlines which must be met. For example, maintaining sick and annual leave records would appear to have a deadline prior to each payroll, and would have some priority. Advertising positions and receiving and forwarding employment applications would have some priority assignment because positions need to be filled quickly. Grievant receives assignments in the form of requests for information and assistance which come to her, and she has certain duties which she performs on a regular basis. When she is checking for information on advertisements, grading tests, verifying employment information, and checking INS forms, for example, these would appear on their face to be duties for which she could use a checklist. All of this adds structure to Grievant's job, and fall within a degree level of 2.0. See Hardee, et al., v. Bd. of Directors, Concord College, et al., Docket No. 94-MBOD-373 (Jan. 10, 1997). It also appears that some of Grievant's duties are less structured, and may fall within a degree level of 3.0. She received credit for some work at a degree level of 3.0. Grievant did not prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level which recognizes that some duties are within a degree level of 3.0, while others are within a degree level of 2.0.

5. 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 is challenging the degree level received in Nature only, arguing she should have received a degree level of 4.0, rather than a 2.0.

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.

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

> Work provides guidance to an operation, program, function or service that affects many employees, students or individuals. Decisions and recommendations made involvenon-routine situations within established protocol, guidelines, and/or policies. Errors could easily result in moderate costs and inconveniences within the affected area.

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

> Work contributes to or ensures the effectiveness of operations or services having significant impact within the institution and involves application of policies and practices to complex or important matters. Errors could easily result in substantial costs, inconveniences, and disruption of services within the affected area.

Grievant argued that if employee information did not get to the payroll office in a timely manner, someone could be paid who was no longer on the payroll; if she had not developed a form, and if she did not complete it, bills could be paid for advertising which did not occur; and that without the resource bank she developed, services could be disrupted.

Mrs. Buttrick stated that Grievant's supervisor would receive a higher degree level in this point factor because Grievant is at a lower level in the organizational chart, and her impact affects only her

unit or department. It contributes to accuracy of a service. She noted that Grievant has no supervisory or administrative control over Human Resources on the campus.

"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). It is not inconsistent with the language used, and taking into account the hierarchy in the departments, to say that the work performed by Grievant is better described as contributing "to the accuracy, reliability, and acceptability of" the service provided by the department, rather than contributing "to . . . the effectiveness of operations or services." See Wood v. Bd. of Directors, W. Va. State College, Docket No. 94-MBOD-480 (March 11, 1997); Hughes v. Bd. of Trustees, W. Va. School of Osteopathic Medicine, Docket No. 94-MBOT-1002 (Jan. 28, 1997); Gregg, et al., v. Bd. of Trustees, W. Va. Network for Educational Telecomputing, Docket No. 94-MBOT-863 (Dec. 18, 1996); and Henry, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-1024 (July 31, 1996). See also, Perkins v. Bd. of Trustees, W. Va. Univ. - Parkersburg, Docket No. 94-MBOT-733 (Oct. 30, 1996) ("[e]rrors or failure to complete her duties would be identified prior to the point where the entire unit would be adversely affected"). Grievant has not proven she should have received a higher degree level in this point factor.

6. Breadth of Responsibility

Grievant argued she 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 she formally accountable for a functional area. Her 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).

7. 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 also consists of two parts, Nature of Contact and Level of Contact, and Grievant

challenged the degree levels received in both parts. She argued she should have received a degree level of 6.0 in Level, rather than a 3.0.

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

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

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

> Deans or Directors in an institution or Assistant Directors in the Systems' Central Office.

A degree level of 5.0 in Level is defined in the Plan as:

> Associate/Assistant Vice Presidents or Systems' Central Office Directors that report to the Senior Administrator.

A degree level of 6.0 in Level is defined in the Plan as:

> Vice Presidents or Systems' Central Office Senior Administrator.

Grievant stated that if a Vice President sends something to the Human Resources Office which Grievant has a question about, she talks directly to him if it involves a confidential matter, butotherwise, she might talk to his secretary. She stated most of her contact is with persons within the Human Resources Office and with employees, but that Directors and Vice Presidents do call to discuss information.

Ms. Rowe testified that Grievant speaks to the Vice President, or whoever is the department head, if she has a question about an advertisement for a position, and to obtain information when an employee leaves WVSC.

Grievant listed her daily contacts on her PIQ as Vice Presidents, Assistant Vice Presidents, Directors, Assistant Directors, staff and faculty. Her PIQ states she talks to them about policies, procedures, interviewing, advertisements, sick and annual leave, all types of leave information and requests, and serving on committees.

Mrs. Buttrick pointed out that Grievant stated she talks with Vice Presidents about advertising positions, and all aspects of advertising comprise only about 16% of Grievant's time. She stated when Grievant is telling the department that changes need to be made in the advertisement, she believed Grievant could speak to a secretary.

The undersigned finds only 8% of Grievant's time involves advertising for vacant positions, rather

than 16% as Mrs. Buttrick stated, but she spends another 7% providing information to departments when an employee leaves. Grievant admitted she can sometimes speak to a secretary, but not always, and her supervisor confirmed this. Although Grievant's contact with Vice Presidentsdoes not comprise a large percentage of her time, it is recurring. The undersigned finds it is also regular and essential contact. Grievant's job is to provide services related to employment from the time a position is advertised until the employee leaves WVSC. Accordingly, advertising and providing information when an employee leaves are key parts of her job which routinely occur. Compare Braniff v. Bd. of Trustees, W. Va. Univ.- Parkersburg, Docket No. 94-MBOT-865 (Sept. 30, 1996); and Barber, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-872 (Oct. 31, 1996). In fact, Grievant's PIQ states that her contact with Vice Presidents occurs daily. Grievant has proven she has regular, recurring and essential contact at the Vice President level. Rating her position individually, she should have received a degree level of 6.0 in Level.

Grievant's Job Title received a degree level of 2.0 in Nature, and she argued she should have received a degree level of 3.0. 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.)

Although Grievant marked a degree level of 2.0 on her PIQ, she testified that most things are controversial. Her supervisormarked a degree level of 3.0 on Grievant's PIQ, but testified that a 2.0 was a better fit. She stated that the Human Resources Office lets people come in and vent, but usually the contact was not controversial.

Mrs. Buttrick stated that at times there are controversial matters encountered, but in the normal course of work in a Human Resources Office, most contacts are noncontroversial in nature, and standard practices and procedures are used in dealing with various situations.

A degree level of 2.0 allows for some controversial contacts. In order to prove a degree level of 3.0 is a better fit, Grievant would have to prove that her contacts are better characterized as "frequently controversial" rather than "largely of a non- controversial nature." She does not have the

types of contacts listed as examples under a degree level of 3.0. Looking at the type of contact listed on her PIQ, and at Grievant's duties and responsibilities in relation to these contacts, they appear to either fall within a degree level of 1.0, as routine information exchange, or a 2.0, as explaining simple policies and procedures. Grievant failed to prove she should have received a degree level of 3.0.

8. 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 othersor negotiation.

This point factor also consists of Nature and Level of Contact. Grievant is challenging the degree level received in Level only, arguing she should have received a degree level of 5.0, rather than a 2.0. A degree level of 2.0 in Level is defined in the Plan as:

> General 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.

A degree level of 5.0 in Level is defined in the Plan as:

> Substantially prominent persons (e.g., community leaders, business and industry leaders) and officials of government agencies, financial agencies, and other important constituents.

Grievant argued that retired WVSC professors and ministers are substantially prominent persons, and stated she speaks to these persons when preparing for the Employee Service Awards, but only when the employee being honored has a connection to them. She also stated that businesses would call and ask her for information about the Employee Service Awards. On her PIQ Grievant listed her contacts daily as publications, "professional public," general public, employment agencies, lenders, and other higher education institutions. She did not explain what "professional public"means.

Mrs. Buttrick stated Grievant would work with the general public, visitors, and others who might

come to the office. She stated applicants for jobs are members of the general public. She noted the Employee Service Awards program comprises only 5% of Grievant's time, and therefore her contact with ministers and retired faculty would not be regular and recurring. She stated that on a daily basis, Grievant's testimony indicated that she had very little contact with persons outside of higher education, except for applicants and persons accepting newspaper advertisements.

Grievant spends less than 5% of her time on the Employee Service Awards, and stated she contacts ministers and retired faculty only when the employee being honored has a contact with them. She did not indicate how often this occurs. Regardless of whether these persons are properly characterized as substantially prominent persons, Grievant has not proven these contacts are regular or recurring.

C. Summary

Grievant proved that if her position were rated individually, she should have received a degree level of 6.0 in Intrasystems Contacts, Level of Contact. This change adds 54 points to the point total for her Job Title. However, she also admitted she does not supervise any employees, and would have received lower degree levels in Direct Supervision. If Grievant received a degree levelof 1.0 in Number of Subordinates, and a 2.0 in Level of Supervision as she argued was appropriate (See footnote 8) , this would reduce the point total by at least 48 points. (See footnote 9) This results in a net change of 6 points, which does not affect the Pay Grade. Because the point factor analysis does not result in a change in Pay Grade, Grievant has not proven she was misclassified, and a comparison of Grievant's duties to those found in the Generic Job Description for the Job Title sought is not necessary. See Riggs, supra.

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 isperforming. 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 Human Resource Assistant II, Pay Grade 13, 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 Human Resource Assistant II is neither clearly wrong nor arbitrary and capricious.

Accordingly, the grievance of Barbara Jean Black 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: April 17, 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 July 24, 1996. The deadline for submission of post-hearing written argument was extended at the request of Grievant from September 30, 1996, to November 4, 1996, and this matter became mature for decision on that date, after neither party submitted post-hearing 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

Grievant admitted she does not supervise anyone, and if her position were rated individually she would receive a degree level of 1.0 in Direct Supervision Exercised/Number of Subordinates, rather than a 2.0; and asserted she would receive a 2.0 in Level of Supervision because she supervises student workers, rather than the 3.5 her Job Title received.

Footnote: 7

These headings are shorthand for the following point factors: KN is Knowledge; EX is Experience; CPS is Complexity and Problem Solving; FA is Freedom of Action; SE/NA is Scope and Effect/Nature of Actions; BR is Breadth of Responsibility; IC/NC is Intrasystems Contacts/Nature of Contact; IC/LVL is Intrasystems Contacts/Level of Contact; and EC/LVL is External Contacts/Level of Contact.

Footnote: 8

It is clear Grievant would have received a degree level of 1.0 in Number. Because she does not supervise any full-time equivalent employees or students, if the undersigned were to decide on the proper degree level in Level of Supervision, it is likely Grievant would receive a 1.0 in this part also.

Footnote: 9

Respondent did not explain how to determine the number of points assigned to a 3.5 in Level, and the Plan does not explain this. The Plan also does not allow for a 1.0 in Number and a 2.0 in Level. The undersigned has accordingly determined the minimum change by assuming a 1.0 and 2.0 would equate to a 2 in the Plan matrix, and ignoring the half-

level assigned the Job Title in Level, so that a 2.0 and 3.0 were received by the Job Title, which equates to a 6.0 on the matrix. A 6 equals 125 points and a 2 equals 77 points. The difference between the two is 48 points.