VICKI SHULTZ,

Grievant,

v. **Docket No. 94-MBOT-773**

BOARD OF TRUSTEES/
WEST VIRGINIA UNIVERSITY,

Respondent.

DECISION

Grievant alleges she was misclassified as an Admissions Assistant II, effective January 1, 1994, in the "Mercer reclassification" (See footnote 1). She seeks as relief to be reclassified as an Admissions Assistant III at Pay Grade 13 or higher, with back pay to January 1, 1994. In addition to challenging the job title she received, Grievant has also challenged specific "point factors" (See footnote 2) used in the Mercer classification system. A level four hearing was held in the Grievance Board's office in Morgantown, West Virginia, on October 18, 1996. (See footnote 3) This matter became mature for decision on November 29, 1996, the deadline for submission of the parties' fact/law proposals. Respondent did not file any written post-hearing submissions.

The following findings are appropriately made from the record developed at level four.

Findings of Fact

1. Grievant is employed by West Virginia University ("WVU") in the department of Admissions and Records in the International unit, which deals exclusively with admission applications of students from other countries. Effective January 1, 1994, she was classified as an Admissions Assistant II at Pay Grade 10.

2. In 1991, all higher education classified employees, including Grievant, were asked to complete a Position Information Questionnaire (PIQ) prior to the Mercer reclassification. Employees were to describe their job duties and responsibilities, along with the minimum qualifications for their

positions, on the PIQ by answering a series of questions designed to elicit this information. Grievant completed a PIQ in 1991. However, Grievant's job duties changed prior to implementation of the new classification system, and an updated description of her duties, dated October 12, 1992, was submitted, which position description was the basis for her January 1, 1994, classification.

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

4. The degree levels for each point factor in a job title were used to arrive at a numerical point total, which determined each job's Pay Grade.

5. The majority of Grievant's work involves evaluation of admission applications from foreign students. If essential information is missing, she must request it. Grievant must evaluate foreign credits and grade point averages, translating them into WVU's system to determine admission eligibility. She determines the equivalency of foreign credentials by using reference books regarding various countries' education requirements. She confers with her immediate supervisor in deciding whether the student should be admitted.

6. Grievant spends a smaller portion of her time (about 20%) counseling and advising students regarding admission requirements, immigration regulations, and general information concerning WVU. She must also evaluate financial information submitted by prospective students to insure that immigration requirements are met.

7. The Admissions Assistant II job title received a total of 1476 points under the Mercer system, which falls within Pay Grade 10. The point range for Pay Grade 10 is from 1475 to 1560 points. 8. The Admissions Assistant III job title received 1846 total points, placing it in Pay Grade 13. The point range for Pay Grade 13 is from 1756 to 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 she is not properly classified. 156 C.S.R. 1 § 4.17; W.Va. Code § 18-29-6. Burke

v. Bd. of Directors, Fairmont State College, Docket No. 94- MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job she feels she 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 her burden of proof in a Mercer grievance merely by showing that the grievant's job duties better fit one job description than another, because the Mercer classification system does not use “whole job comparison.” It is largely a “quantitative” system, in which the components of each job are evaluated separately by applying the point factor methodology contained in the Job Evaluation Plan (hereinafter “Plan”). Therefore, the focus in Mercer grievances for this Board is upon the point factors the grievant is challenging. (See footnote 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. The system must by statute be uniform across all higher education institutions; therefore, the point factor degree levels are not assigned to the individual, but to the job title. W. Va. Code §18B-9-4; Burke, supra. A Mercer grievant may prevail by demonstra ting her reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehabilitation, Div. of Rehabilitation Services and W. Va. Civil Serv. Comm'n., Docket No. VR-88-006 (Mar. 28, 1989).

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

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

separately in detail.

B. Application of the Point Factor Methodology

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.

The Admissions Assistant II job title received a 3.0 degree level for this point factor, Admissions Assistant III received a 5.0, and Grievant believes she is entitled to a 6.0.

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 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:

> 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 ofa highly technical, professional, or administrative occupation is indicative of this level.

Grievant argues that a bachelor's degree is required to perform her duties, because she must have knowledge not only of WVU admissions standards, but of grading and educational systems around the world. She believes that the research and investigative skills she utilizes to evaluate foreign credentials can only be obtained through such a college program, although she did not indicate what particular degree would be pertinent to her duties.

Respondent believes that the degree level assigned to the Admissions Assistant II job title was

appropriate. Teresa Crawford, Senior Compensation Analyst at WVU and a JEC member, testified on behalf of Respondent. Although she did not individually address the point factors challenged by Grievant, she stated that she believed that the degree levels contained in the data line for the Admissions Assistant II job title were an accurate reflection of the average qualifications of all incumbents in the title. Averaging was used to determine the common level of abilities of incumbents to be placed in a particular classification, and "incumbents with a lower level received the advantage of incumbents with a higher level when there were more incumbents in the classification with a higher level on this factor." R. Ex. 1. Grievant introduced PIQs of other employees who were ultimately slotted into the Admissions Assistant III classification, and most of them stated that a high school education was sufficient to perform their duties. However, this evidence only shows that these employees may have benefitted from the averaging process, not that every individual in the Admissions Assistant III job title has a high school education. Grievant's supervisor, Donald Delgado, testified that, if he were posting her position, he would require a bachelor's degree. Ms. Crawford stated that, in order to make a bachelor's degree a requirement for Grievant's particular position, the entire JEC would have to meet and make that decision. (See footnote 6) For the usual duties of an Admissions Assistant II, she believed a high school education was adequate.

There is no question that there are complexities involved in the evaluation of foreign educational credentials in order to determine their transferability to an American university. However, Grievant clearly stated that there are reference and guide books which she utilizes in order to make most of these determinations. She has not provided convincing evidence that a bachelor's degree, or even an associate's degree, would be terribly helpful in assisting her in performing her duties, much less that such a degree is required. Grievant was given credit for having one to two years of relevant, directly related experience under the Experience point factor, which she did not contest. Grievant's unique knowledge and understanding of evaluation of foreign educational and grading systems has been gained through on-the-job experience, not from formal education. The qualities she believes are necessary to perform her job, such as learning ability, writing skills, and research abilities, would not necessarily be obtained through a college program. Grievant did not prove by a preponderance of the evidence that she was improperly evaluated on this point factor.

2. Complexity and Problem Solving

The Plan defines Complexity and Problem Solving as:

> This factor measures the degree of problem-solving required, types of problems encountered, the difficulty involved in identifying problems and determining an appropriate course of action. Also considered is the extent to which guidelines, standards and precedents assist or limit the position's ability to solve problems.

Grievant's job title received a 2.5 degree level for this factor, the Admissions Assistant III title received a 3.0, and Grievant argues entitlement to a 4.0.

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

> Problems encountered require the employee to make basic decisions regarding what needs to be done, but the employee can usually choose among a few easily recognizable solutions. Established procedures and specific instructions are available for doing most work assignments, with some judgment required to interpret instructions or perform basic computation work such as in the comparison of numbers or facts.

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.

Half levels were awarded for this point factor in situations when most incumbents' duties did not fit completely into one level or the other, and a substantial number of duties were performed at both levels. R. Ex. 1. Grievant's argument for a higher degree level isbased upon the situations she encounters when trying to translate credentials into American standards, which calls for individual decisions to be made on a case-by-case basis whether to waive a particular requirement and/or whether to admit the student. The reference books and equivalency guidelines usually provide assistance, but there are some situations which require a “judgment call,” such as when the student has foreign credits that are not comparable to American credits. If there is no information on a particular country's system, or the information provided is conflicting, Grievant goes to Mr. Delgado. Another type of problem Grievant described involves calculating whether the student will have sufficient financial support while in the U. S. to obtain a VISA. This requires Grievant to calculate the

student's finances using a computer program which converts the foreign currency figures into American dollars. If the student has sufficient finances, the Admissions office issues a form, which he or she takes to the appropriate government agency.

The 2.5 degree level which was allocated to Grievant's job title recognizes the situations which she has described. Most of the time, Grievant looks to the references available to her when translating credentials and making admission decisions, which is covered by the degree level 2.0 definition. However, she sometimes deals with situations which require more research, exercise of judgment, and adaptation of the guidelines to variations in a particular student's circumstances. It cannot be found that the JEC was clearly wrong or arbitrary and capricious in its evaluation of her job at a 2.5, which recognizes the various types of problems she encounters.

3. 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.

The Admissions Assistant II job title received a 2.0 degree level, Admissions Assistant III received a 2.5, and Grievant requests a 3.0 degree level for this point factor.

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.

Grievant does not believe that her duties are accurately described by the level 2.0 definition, because she works independently on a daily basis, consulting her supervisor only when she has exhausted available resources. According to her supervisor, Ms. Shultz personally makes admission decisions, sometimes with his assistance and sometimes without it, which is something that others in

her job title do not do. Grievant argues that her independence and decision-making ability entitle her to a higher level than 2.0.

As described in Respondent's witness' written testimony, this point factor measures the limitations on a position's freedom to make decisions or take action. “The more structured the position, the lower the degree level credited. The more autonomous andunstructured, the higher the level credited.” R. Ex. 1. Mr. Delgado testified that he and Grievant make admission decisions together; the only time she is authorized to make them alone is when he is away. Grievant also stated that any questions she cannot answer are referred to Mr. Delgado, along with difficult decisions regarding whether to admit a particular student under unusual circumstances. The evidence indicates that Grievant's autonomy is only occasional, such as when her supervisor is not there. Accordingly, it cannot be determined that the level 2.0 assigned to her job title is not reflective of her usual job duties.

4. Scope and Effect

Scope and Effect is defined in the Job Evaluation Plan as:

> This factor measures the scope of responsibility of the position with regard to the overall mission of the institution, and/or the West Virginia higher education systems, as well as the magnitude of any potential error. Decisions regarding the nature of action should consider the levels within the systems that could be affected, as well as Impact on the following points of institutional mission: instruction, instructional support, research, public relations, administration, support services, revenue generation, financial and/or asset control, and student advisement and development. In making these judgments, consider how far-reaching is the impact and of what importance to the institution and/or higher education systems is the work product, service or assignment. Decisions regarding the impact of actions should take into account institutional scope and size as reflected by operating budget, student enrollment and institutional classification. Also, consideration should be given for the possibility that a unit, program or department within a large institution may be equivalent in size to multiple units, programs or departments within a smaller institution. In making these interpretations, assume that the incumbent would have normal knowledge, experience and judgment, and that errors are not due to sabotage, mischief or lack of reasonable attention and care. This point factor has two aspects, Impact of Actions and Nature of Actions. Grievant has only contested the degree level she received for Impact, which was a 1.0. The Admissions Assistant III job title received a 2.0, and Grievant argues entitlement to a 3.0.

A degree level of 1.0 in Impact is defined in the Plan as “[w]ork is limited to immediate work function and short-term situations.” A degree level of 2.0 is defined as “[w]ork affects either an entire work unit or several major activities within a department.”

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.

Grievant argues that the decisions she makes and the information she provides to prospective students can affect many departments at WVU. Errors made by her in calculating grade point averages or in transferring credits could cause a student to fail to begin classes or graduate on time. The information she gives to students, if incorrect, could cause a prospective student to decide not to attend WVU, which that individual may use to influence others not to attend the university.

This factor measures the purpose of the employee's work product as it relates to the overall mission and operations of the institution. R. Ex. 1. The purpose of Grievant's job is to evaluate applications and decide whether foreign students will be admitted to WVU. International admissions is one of four admission units within the Admissions and Recordsdepartment, and it does not appear that Grievant's work has any particular impact upon the other units within the department. Accordingly, Grievant has not established entitlement to any higher degree level. The occasional error involving a foreign student would not affect the operation of other departments at WVU. Grievant has not provided evidence that she has any formal responsibility for her department as a whole. She is responsible only for her own assigned work duties, so she was properly evaluated at a level 1.0 for Impact. See Martin v. Bd. of Trustees, 94-MBOT-658 (March 28, 1997).

5. Intrasystems Contacts

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

> [A]ppraises the responsibility for working with or through other people within the [State College and University Systems of West Virginia] to get results. Consider the purpose and level of contact encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, explaining policies or discussing controversial issues. This factor considers only those contacts outside the job's immediate work area.

This factor is also divided into two aspects, Nature of Contact and Level of Contact. Grievant does not dispute the degree level she received for Level. Grievant's job title received a 1.0 for Nature, Admissions Assistant III received a 2.0, and she requests that she be given a 3.0.

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 as:

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

The 3.0 degree level in Nature is defined 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).

For Level of Contact, which Grievant did not challenge, she received credit for contacts with staff and faculty outside her immediate work unit. She explained that her communications with such people normally result from questions regarding the status of a particular student's application. Also, Grievant is questioned about decisions she has made about granting or not granting equivalency credit to a student. She believes that these dealings require delicacy and that they can become complex when she must explain the differences between educational system standards in other countries.

The communications Grievant has described involve only the exchange of information. Answering questions about students or applications does not really call for cooperation on Grievant's part; she merely answers the question and provides the requested information. If the decision has already been made on the application, Grievant is only providing factual information, as set forth in the level 1.0 definition. Although there may be some occasions when she must explain admission policies to the person making an inquiry, Grievant did not provide any information regarding how often this occurs. Therefore, she has not provided sufficient evidence to prove that she has regular, recurring, and essential communications within the level 2.0 definition. She has not established that such contacts are ever controversial in any way, so she is not entitled to any higher degree level.

6. External Contacts

External Contacts is defined in the Plan as:

> This factor appraises the responsibility for working with or through other people outside the SCUSWV to get results. Consider the purpose and level of contact

> encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, influencing others or negotiation.

As with the previous point factor, External Contacts is divided into Nature and Level, and Grievant contests the degree level she received for Nature of Contact, a 2.0. She argues she should have received the 3.0 degree level allocated to the Admissions Assistant IIIs. The degree level definitions for External Contacts, Nature, are exactly the same as those set forth above under Intrasystems Contacts.

Most of Grievant's external contacts are with the foreign students whose applications she processes. She believes that “substantial sensitivity” is required when trying to explain the complex policies and procedures involved with credential evaluations, especially since the applicants are from other countries and may have language or cultural barriers that impede their comprehension.

It would be difficult to say unequivocally that Grievant's discussions with foreign students are “frequently controversial”, and it would appear that the level 2.0 definition for Nature seems to encompass these communications. In answering potential students' questions, Grievant would be called upon to explain admissions policies and procedures, and it would not appear that this would normally become controversial. “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 positionclassification.” Miller v. Bd. of Directors, Docket No. 94-MBOD-495 (Oct. 29, 1996) (citing cases). The undersigned finds that the JEC's allocation of a level 2.0 to Grievant's position for External Contacts, Nature, was not clearly wrong nor arbitrary and capricious.

C. Summary

The Grievant did not prove by a preponderance of the evidence that the JEC was clearly wrong or arbitrary and capricious in its allocation of degree levels to her position for the point factors challenged. Accordingly, she has not established entitlement to a higher pay grade or different job classification.

Conclusions of Law

1. The governing boards are required by W.Va. Code § 18B-9-4 to establish and maintain an equitable system of job classification for all classified employees in the higher education system.

2. The burden of proof in a misclassification grievance is on the grievant to prove by a preponderance of the evidence that she is not properly classified. 156 C.S.R. 1 § 4.19.

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

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

5. Grievant did not prove that she should have been classified as an Admissions Assistant III.

6. Neither Grievant nor the Admissions Assistant II job title were incorrectly evaluated with regard to the point factors challenged.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the circuit court of the county in which the grievance occurred, and such appeal must be filed within thirty (30) days of receipt of this Decision. W. Va. Code § 18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

DATE: May 1, 1997 _____ **V.**

DENISE MANNING

Administrative Law Judge

Footnote: 1

The reader is referred to Burke v. Bd. of Directors, Fairmont State College, Docket No. 94- MBOD-349 (Aug. 8, 1995), for a discussion of the background of the Mercer reclassification project, the procedural history of the Mercer grievances, and the definitions of various terms of art specific to the Mercer reclassification.

Footnote: 2

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

Footnote: 3

This grievance was previously consolidated with another, under the title "Margaret Lamb, et al. v. Bd. of Directors/Trustees." Ms. Lamb withdrew her grievance subsequent to the level four hearing.

Footnote: 4

A grievant may challenge any combination of point factor degree levels, so long as she clearly identifies the point factor degree levels she is challenging, and this challenge is consistent with the relief sought. See Jessen, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-1059 (Oct. 26, 1995); and Zara, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-817 (Dec. 12, 1995).

Footnote: 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

The on-going responsibility of ensuring that job evaluation is accomplished in compliance with statutory and regulatory requirements rests with the JEC. 128 C.S.R. 62 § 11.