

ANN M. LESTER

v. Docket No. 94-MBOD-815

**BOARD OF DIRECTORS,
FAIRMONT STATE COLLEGE**

DECISION

Grievant alleges she was misclassified effective January 1, 1994, in the "Mercer reclassification." [\(See footnote 1\)](#) Specifically, Grievant challenges her classification as Student Program Advisor at Pay Grade 16, and she argues that she is entitled to classification as Coordinator/ Student Program Services, which would be an institution-specific title. She also believes the appropriate Pay Grade for her position is 17, and she seeks as relief to be reclassified as requested effective January 1, 1994, with backpay to that date. Grievant has also challenged the degree levels her Job Title received in several point factors. A level four hearing was held on September 5, 1996, and this matter became mature for decision on September 30, 1996, with receipt of the parties' fact/law proposals.

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

Findings of Fact

1. Grievant was employed at Fairmont State College in October of 1991 when the Mercer reclassification project began. The evidence available at level four did not reveal how long she had been employed by the institution prior to 1991.
2. In 1991, all higher education classified employees were asked to complete a Position Information Questionnaire ("PIQ"), prior to implementation of the Mercer reclassification. Employees were asked to describe the duties, responsibilities and requirements for their positions on the PIQ by answering a series of questions. Grievant filled out a PIQ in 1991.
3. Grievant was classified in the Mercer reclassification as a Student Program Advisor at Pay Grade 16.
4. The Student Program Advisor Job Title received the following degree levels in each of the

thirteen point factors [\(See footnote 2\)](#): Knowledge, 6.0; Experience, 3.0; Complexity and Problem Solving, 3.5; Freedom of Action, 4.0; Scope and Effect/Impact of Actions, 4.0; Scope and Effect/Nature of Actions, 3.0; Breadth of Responsibility, 1.0; Intrasystems Contacts/Nature of Contact, 2.0; Intrasystems Contacts/Level of Contact, 3.0; External Contacts/Nature of Contact, 3.0; External Contacts/Level of Contact, 3.0; Direct Supervision Exercised/Number, 3.0; Direct Supervision Exercised/Level, 2.0; Indirect Supervision Exercised/Number, 1.0; Indirect Supervision Exercised/Level, 1.0; Physical Coordination, 1.0; Working Conditions, 1.0; Physical Demands, 1.0.

5. Grievant's daily duties involve the administration and management of student employment programs, advising the "Women's Panhellenic and Inter-Panhellenic" (a group of fraternity/sorority organizations), administering the College Level Examination Program ("CLEP"), maintaining and disseminating student organization information, and administration of the student judiciary procedure for student misconduct and grievances.

6. Grievant had a bachelor's degree and nineteen years of experience in student affairs before assuming her current position.

7. Grievant's position could be filled by an individual with a bachelor's degree and one to two years of directly related experience.

8. Grievant's intrasystems contacts are with vice presidents, department chairs, and faculty, and usually involve budgetary matters. When a department chair has exceeded the allocated budget for a student program, Grievant must use moderate tact to deal with correcting that individual's error. Also, when there are problems with student employees, Grievant must intervene and attempt to settle any dispute between the student and the faculty or department member to whom they are assigned. This most often requires moderate tact and cooperation; additional sensitivity is only required on occasion when dealing with a particularly difficult person.

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 § 4.17; 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." It is largely a "quantitative" system, in which the components of each job are evaluated using the point factor methodology developed by the JEC and adopted by the governing boards. Therefore, the focus in Mercer grievances for this 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 and W. Va. Civil Serv. Comm., Docket No. VR-88- 006 (Mar. 28, 1989).

Finally, whether grievants are 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 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 Resources, 465 S.E.2d 887 (W. Va. 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. Institution-Specific Coordinator/Student Program Services

Institution-specific titles are job titles occupied by only one incumbent at one institution, and they are referred to in 131 C.S.R. 62. Grievant testified at level four that her position is unique due to the fact that her duties are multi-faceted and are not limited to only advising student programs. She believed that her additional responsibilities in the areas of student employment, CLEP test

administration, management and administration of budgets, and as student judiciary officer would place her position in a higher pay grade than other Student Program Advisors. Correspondence from Grievant's supervisor also reflected the contention that her position was unique because of her responsibility for five unrelated areas of student affairs. However, neither Grievant nor Respondent introduced any evidence regarding the duties and responsibilities of other individuals in her assigned classification which would provide a basis for comparison. Accordingly, there is insufficient information upon which to base a conclusion that Grievant was misclassified.

Nevertheless, as stated above, the Mercer system is a quantitative system which does not evaluate each individual's position by comparison of overall job descriptions. Therefore, Grievant will not meet her burden of proof in showing that she was misclassified without challenging specific point factors as applied to her Job Title. An analysis of the point factors challenged by Grievant follows.

C. Application of the Point Factor Methodology

Grievant challenged the degree levels her Job Title received in the point factors Knowledge, Experience and Intrasystems Contacts, Nature. An analysis of each factor challenged is set forth 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.

The Student Program Advisor Job Title received a degree level of 6.0 in Knowledge, and Grievant alleges she is entitled to a 7.0.

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.

A degree level of 7.0 is defined as:

Job requires a broad or in-depth body of knowledge such as would normally be acquired through a Master's education program that is directly related to the type of work being performed. Advanced knowledge in a particular field of expertise with the skill in applying this knowledge to difficult and complex work assignments is

characteristic of this level.

Grievant's argument regarding this point factor seems to be based mainly upon supposed information she received (from a source unspecified) that, if her position were posted, it would be filled by an individual with a masters degree. The only other supporting evidence for this proposition was found in Grievant's appeal documents. In a memorandum dated March 9, 1994, Kenneth E. Kelly, Vice President for Student Affairs (and Grievant's supervisor) stated "[w]ith the addition of the campus-wide judicial coordinator role, and the expansion of the scope of her other duties, this position has evolved to a 'masters degree preferred' level professional position." Conversely, in her level four testimony, Grievant stated that her position could be filled by an individual with a bachelor's degree and related experience, although she believed that a masters degree may be preferred.

Dan Starlipper, a JEC member and Human Resources Director at Shepherd College, testified at level four on behalf of Respondent. He noted that Grievant's PIQ reflected that the minimum level of education for her position was a bachelors degree, and her testimony did not persuade him otherwise.

Grievant has not specified in what area of study a masters degree would be needed to perform her job duties. Moreover, she has not established that her position was not properly evaluated with regard to the Knowledge point factor. The Knowledge factor, by definition, measures the minimum level of education required for the job--a bachelors degree in this instance--which was grievant's knowledge level. Even if a masters degree were preferred, it would not be the minimum level of education required to perform the job.

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 3.0 in this point factor, and she desires a 4.0. A degree level of 3.0 is defined in the Plan as "[o]ver one year and up to two years of experience," and a degree level of 4.0 is defined as "[o]ver two years and up to three years of experience."

Grievant's level four testimony is somewhat contradictory with regard to this point factor. She first testified that, if the position were filled by an individual with a bachelors degree, at least two years of

experience would be needed, due to the multi-faceted nature of the job. However, under cross examination, she stated that the position would likely be advertised at a level 3.0, or between one and two years of experience. "[T]he minimum amount of experience required to perform the essential duties of a position represents a subjective determination regarding which reasonable people may reach different conclusions." Jones v. Bd. of Trustees, Docket No. 94-MBOT-978 (Feb. 29, 1996) [citing Zara v. Bd. Of Trustees, Docket No. 94-MBOT-817 (Dec. 12, 1995)].

Mr. Starliper noted that Grievant marked on her PIQ that six to twelve months of experience was sufficient for the position. He testified that, because other incumbents in the same job title had more experience, Grievant was given additional credit in the Experience point factor. This is known as the "averaging process" whereby all the PIQs of incumbents in a Job Title were evaluated; if the degree levels in a particular point factor varied, all the degree levels listed by incumbents for that factor were averaged to develop the appropriate level for the Job Title. In a case such as Grievant's, she received the benefit of the averaging process, according to Mr. Starliper.

Grievant has not demonstrated that the JEC acted in an arbitrary and capricious manner or was clearly wrong in assigning a degree level of 3.0 in the Experience point factor to her job title or to her position.

3. Intrasytems Contacts

Intrasytems 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 point factor has two aspects, Nature of Contact and Level of Contact. Grievant challenged only the degree level her Job Title received for Nature of Contact. Student Program Advisors received a 2.0 degree level, and Grievant argues that she is entitled to a 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 is defined as follows:

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.)

In Grievant's testimony regarding this factor, she made several references to situations involving contact with students. It should be noted that students are defined as "external" contacts in the Plan, so Grievant's testimony regarding students is not relevant to this discussion of Intrasystems Contacts.

Grievant's most frequent intrasystem contacts are with vice presidents, department chairs, and faculty members. Both in her testimony and in her PIQ, she described her communications with department chairs as involving budgetary matters, such as when the department has exceeded its allocated budget. In such a situation, Grievant stated that she would have to be tactful in assisting the chairperson who had made an error in exceeding the budget. She also must deal with supervisors of student workers when a student exhibits problem behavior affecting his or her work. Grievant believed that these situations call for "sensitivity," because she must help people correct their mistakes.

Grievant has not demonstrated that the situations with which she deals rise to the level of calling for "substantial sensitivity" or are "frequently controversial." She has provided no examples of complex policies she must interpret or difficult problems she must resolve. Although Grievant gave examples of situations wherein people have made mistakes or have possibly behaved inappropriately, she has failed to explain why these situations would become difficult or complex. Mr. Starliper's testimony on this point factor was also of little assistance; he merely stated that grievant deals only with public documents and does not see sensitive materials.

Because of the scant evidence presented regarding this point factor, and also because Grievant did state in her testimony several times that "tact" was required of her, she did not prove that her position was incorrectly classified with regard to Intrasystems Contacts.

D. Summary

Grievant did not prove by a preponderance of the evidence that she should have been classified in the institution-specific title of Coordinator/Student Program Services. She also did not prove that the JEC was clearly wrong or acted in an arbitrary and capricious manner in its assignment of degree levels to the thirteen point factors for her Job Title.

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 classifications for all classified employees in higher education.
 2. The burden of proof in a misclassification grievance is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.17. The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).
 3. The Job Evaluation Committee's interpretation and explanation of the Generic Job Description and point factors will be given great weight unless clearly wrong, where the proper classification of a grievant is almost entirely a factual determination. See Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W. Va. 1995); Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995).
 4. Grievant did not prove by a preponderance of the evidence that she should have been classified in an institution-specific title of Coordinator/Student Program Services at a Pay Grade 17.
 5. Grievant did not prove by a preponderance of the evidence that the JEC was clearly wrong or acted in an arbitrary and capricious manner when it applied the point factor methodology to her Job Title.
 6. Grievant was not misclassified as a Student Program Advisor at a Pay Grade 16.
- Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Marion County or 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 appropriate court.

DATE: November 18, 1996

DENISE MANNING

Administrative Law Judge

[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.