ROBERT PAYNE,

Grievant,

v. **Docket No. 94-MBOT-710**

BOARD OF TRUSTEES/
WEST VIRGINIA UNIVERSITY,

Respondent.

DECISION

Grievant, Robert Payne, alleges he was improperly classified during the "Mercer" reclassification of higher education employees. (See footnote 1) Effective January 1, 1994, he was classified as a Bus Driver I at Pay Grade 8, and he seeks to be classified as a Bus Driver II at Pay Grade 10 or some other classification in a higher pay grade. In addition to challenging his job title, Grievant has also challenged specific point factors used in the Mercer system. (See footnote 2) If this grievance is granted, Grievant seeks back pay and benefits in the new classification to January 1, 1994. A level four hearing was held in the offices of this Grievance Board in Morgantown, West Virginia, on January 10, 1997. This matter then became mature for decision upon receipt of the parties' proposed findings of fact and conclusions of law on March 4, 1997.

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

Findings of Fact

1. Grievant has been employed by West Virginia University ("WVU") since 1991. Effective January 1, 1994, he was classified as a Bus Driver I at Pay Grade 8.

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.

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 total, which determined each job's Pay Grade.

5. Grievant drives buses used on the WVU campus to transport students, faculty, staff and guests to various locations around campus. A large part of his responsibility is to drive a buswhich transports students late at night after the PRT (See footnote 3) closes down. He also spends a smaller percentage of his time (somewhere between 5% and 25%) driving a motor coach bus for long distance trips, such as out-of-town football games and other sporting events or competitions. Grievant is also expected to perform some routine maintenance and cleaning of the buses he drives.

6. In order to drive the motor coach, Grievant is required to maintain a Class “B” commercial driver's license (“CDL”), which is obtained by taking tests administered by the Division of Motor Vehicles. Experience is not required to be eligible to take the CDL tests.

7. The Bus Driver I job title received a total of 1334 points under the Mercer system, placing it in Pay Grade 8. The point range for Pay Grade 8 is from 1321 to 1394 points.

8. The Bus Driver II job title received 1555 total points, placing it in Pay Grade 10. The point range for Pay Grade 10 is from 1475 to 1560 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 § 4.17; 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 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 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 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'n., 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 Plan (which provides the definitions of point factors and degree levels) isnecessary 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 5)

In accordance with the foregoing discussion, a grievant must show that he was slotted into the wrong job title, that the point factor degree levels assigned to his job title are incorrect, or that he is entitled to an individual data line because of the unique nature of his 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. 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 2.0 for this point factor, which is defined in the Plan as "[o]ver six and up to twelve months of experience." He believes he should have received a 4.0, which is defined as "[o]ver two years and up to three years of experience." Mr. Payne testified that he had no bus driving experience prior to his employment with WVU, but he had been a truck driver for 35 years. Although he admitted that experience is not necessary to pass the CDL test for bus driving, he believed that it would take at least two years of experience to be able to competently handle a motor coach, due to its immense size and weight. Respondent presented the testimony of Teresa Crawford, Senior Compensation Analyst at WVU and a JEC member. Ms. Crawford explained that the Experience point factor looks at the minimum level of experience, considering a short period of on-the-job training, which would be necessary to perform the job's duties. She believed that a CDL (for which Grievant was credited under the Knowledge factor) combined with about one year of experience would be the minimal qualifications for a bus driver, so Grievant was appropriately evaluated.

Although Mr. Payne believed that two years of experience would enable a bus driver to be more comfortable handling the vehicle, he did not state that it would not be possible to perform his job duties with a CDL and one year of experience. He has not proven that the JEC was mistaken in its evaluation of him in this point factor, nor that its decision was arbitrary and capricious.

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 received a 1.5 degree level for this factor. Ms. Crawford explained that half levels were awarded in some point factors when employees were performing a substantial portion of duties in both degree levels. A degree level of 1.0 is defined in the Plan as:

> Routine problems are encountered involving simple solutions. Simple, standardized instructions (usually oral) covering all important aspects of the assignment are provided to the employee. Very little judgment is required by the position. Tasks are clear-cut and procedures well defined.

A degree level of 2.0 is defined 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.

Mr. Payne requests that he be awarded a degree level of 3.0, which is defined in the Plan as follows:

> Problems encountered can be somewhat complex and finding solutions to problems may require some resourcefulness and originality, but guides, methods and precedents are usually available. Diversified guidelines and procedures must be applied to some work assignments. Employee must exercise judgment to locate and select the most appropriate guidelines, references, and procedures for application, and adapt standard methods to fit variations in existing conditions.

___Grievant's testimony regarding this factor focused on his driving of the motor coach on long distance trips. If the bus were to break down, Mr. Payne would have to deal with the situation. This would involve making the passengers comfortable and getting them other transportation, if necessary, and calling a local mechanic to make the repairs if he could not do it himself. Also, Grievant must handle unruly students who ride his bus at night, which may involve putting a person off the bus.

Ms. Crawford did not believe that Grievant provided examples of “complex” problems which he encounters on any regular basis. His testimony also did not indicate to her that he finds himself in situations where he must decide which one of a number of policies should be followed. She believed that his description of his duties fell within the 1.5 degree level given.

Grievant's duties fall comfortably between the level 1.0 and 2.0 definitions. His daily bus runs and maintenance work are routine, and any problems encountered would call for fairly simple solutions, such as removing a person from the bus. When he is on a long distance trip, Mr. Paynemust occasionally make some basic decisions and exercise some judgment, but he understands the options available to him. He has been appropriately evaluated at level 1.5.

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.

As with the previous point factor, the Bus Driver I job title was given a 1.5 degree level, and Grievant is requesting a level 4.0. The definitions in the Plan show that at a degree level of 1.0:

> Tasks are substantially structured with the employee receiving clear, detailed and specific instructions from the immediate supervisor or where tasks are so highly routine that they simply require following standardized instructions or procedures without ongoing, on-site supervision. The work is checked for accuracy, adequacy, and adherence to instructions and established procedures by the supervisor or through established monitoring systems. The employee consults with the supervisor on matters not covered in the original instructions or guidelines.

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 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 determinefeasibility, compatibility with other work, or effectiveness in meeting the objectives of the unit.

Grievant believes he is entitled to the higher level because he works alone. He is given a weekly schedule by his supervisor, which he executes daily by himself. Also, he believes that his long distance trips fall within the level 4.0 description, because sometimes the group he is transporting may want to make changes in the original trip plan. He may offer suggestions and plan how they will get to their destination, which decisions are not questioned by his supervisor.

Respondent's witness explained that this factor measures what procedures are in place to dictate how the work is done. Ms. Crawford stated that Mr. Payne's daily duties are governed by specifically set procedures, limiting his freedom to make choices or decisions about how to accomplish his work. “Objectives” refers to long-term projects, not daily tasks. Since Mr. Payne knows what he is to do each day, i.e. driving a bus on a set schedule to set locations, his freedom is quite limited.

Respondent's position is consistent with the Plan's definitions and other Mercer decisions of this Board. A grievant who is not involved in making ultimate decisions regarding policies and procedures

and does not set goals or objectives is not entitled to a 4.0 degree level for Freedom of Action. Kretzmer v. Bd. of Directors, Docket No. 94-MBOD-751 (February 6, 1997). The situations described by Mr. Payne on long distance trips are not everyday situations, nor do they involve establishing objectives or goals. He is not entitled to any higher degree level for this factor.

C. Summary

___Grievant did not prove by a preponderance of the evidence that he was improperly evaluated in the point factors challenged. He also failed to establish that he should have been classified as aBus Driver II. As Ms. Crawford noted, the Bus Driver II job title encompassed individuals working in a supervisory capacity, and Grievant did not challenge the degree levels he received for the factors which gave credit for supervision. Therefore, the evidence does not prove that he was incorrectlly classified.

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 he 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 and PIQs 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 to deference 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. Paige, 458 S.E.2d 780, 788 (W.Va. 1995). 5. The JEC's evaluation of Grievant in the point factors Experience, Complexity and Problem Solving, and Freedom of Action was not clearly wrong nor arbitrary and capricious.

6. Grievant was appropriately classified as a Bus Driver I as of January 1, 1994.

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: April 21, 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

The PRT is the personal rapid transit system, a motorized electronic "rail" system, used on the WVU campus to transport students to various campus locations.

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.