MARY WILSON

v. DOCKET NO. 94-MBOT-835

BOARD OF TRUSTEES,

MARSHALL UNIVERSITY

D E C I S I O N

Grievant Mary Wilson alleges she was misclassified effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) . Grievant seeks as relief a Pay Grade 17, 18 or 19 for her classification of Manager Parking and Transportation D, Pay Grade 16, effective January 1, 1994; and backpay from January 1, 1994.

A Level IV hearing was held on September 18, 1996. This matter became mature for decision on October 2, 1996, with the receipt of the last of the parties' Proposed Findings of Fact and Conclusions of Law.

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

Findings of Fact.

1. Grievant is employed at Marshall University ("MU"). 2. In 1991, all higher education classified employees were asked to complete a Position Information Questionnaire ("PIQ"). Employees were to describe their job duties and responsibilities and the job requirements on the PIQ, by answering a series of questions designed to elicit this information. Grievant completed a PIQ in 1991. She revised it in 1993 to reflect changes in her job duties, and to emphasize some duties.

3. Grievant was classified as a Manager Parking and Transportation D, Pay Grade 16, effective January 1, 1994.

4. Grievant's primary job duties (with the percentage of time she performs these duties in parenthesis) are supervising parking employees; enforcing, developing and implementing traffic and parking policies and procedures; coordinating the re-design of existing parking areas and designing new parking areas; purchasing parking signs, meters and traffic control devices; and collecting and

accounting for revenues (60%); and, operating the motor pool, including scheduling and billing for use of motor pool vehicles, maintaining a separate motor pool account, and establishing vehicle maintenance and repair programs; and maintaining title and registration records for all state vehicles at MU, and acting as contact person for selling, purchasing, licensing and titling all state vehicles at MU (40%).

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

6. The Manager Parking and Transportation D Job Title received 2173 total points from the following degree levels in eachof the thirteen point factors (See footnote 2) : 6.0 in Knowledge; 3.0 in Experience; 4.0 in Complexity and Problem Solving; 3.5 in Freedom of Action; 3.0 in Scope and Effect, Impact of Actions; 4.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 2.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level of Contact; 2.0 in External Contacts, Nature of Contact; 3.0 in External Contacts, Level of Contact; 2.0 in Direct Supervision Exercised, Number; 3.5 in Direct Supervision Exercised, Level; 2.0 in Indirect Supervision Exercised, Number; 2.0 in Indirect Supervision Exercised, Level; 1.0 in Physical Coordination; 1.0 in Working Conditions; and 1.0 in Physical Demands. Joint Exhibit D.

Discussion

A. Burden of Proof

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.19; W. Va. Code § 18-29-6. Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

A grievant is not likely to meet his burden of proof in aMercer grievance merely by showing that the grievant's job duties better fit one job description than another, because the Mercer classification system does not use "whole job comparison". The Mercer classification system is largely a "quantitative" system, in which the components of each job are evaluated using the point factor methodology. Therefore, the focus in Mercer Decisions issued by this Grievance Board is upon the point factors the grievant is challenging. (See footnote 3) While some "best fit" analysis of the

definitions of the degree levels is involved in determining which degree level of a point factor should be assigned, where the position fits in the higher education classified employee hierarchy must also be evaluated. In addition, this system must by statute be uniform across all higher education institutions; therefore, the point factor degree levels are not assigned to the individual, but to the Job Title. W. Va. Code § 18B-9-4; Burke, supra. A Mercer grievant may prevail by demonstrating his reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehabilitation, Div. of Rehabilitation Services, Docket No. VR-88-006 (Mar. 28, 1989).

Finally, whether a grievant is properly classified is almost entirely a factual determination. As such, the Job Evaluation Committee's ("JEC") interpretation and explanation of the pointfactors and Generic Job Descriptions or PIQ's at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 194 W. Va. 97, 459 S.E.2d 374 (1995); Burke, supra. However, no interpretation or construction of a term used in the Job Evaluation Plan (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. Watts v. Dept. of Health and Human Res., 195 W. Va. 430, 465 S.E.2d 887 (1995). The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. (See footnote 4)

B. Application of the Point Factor Methodology

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

	SE IA	IC BR	IC NC	IC LVL
Manager Parking and Transportation	D	3	1	2 2
Wilson Argument	7	3	3	3

(See footnote 5)

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

1. 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, Impact of Actions and Nature of Actions. Grievant challenged the degree level received in Impact of Actions only. She argued she should have received a degree level of 7.0, rather than a 3.0 in Impact, stating only that she thought her level of responsibility was higher than a 3.0.

A degree level of 3.0 in Impact 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 Institutionwith 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.

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

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

Margaret Robinson Buttrick, Human Resources Administrator for the State College and University Systems of West Virginia and JEC Chair, stated parking and transportation would not have total institutional impact as is required to fit within a degree level of 7.0. She stated parking and transportation was a department or division within a graduate-level institution.

In order to properly evaluate Grievant's assignment in Impact of Actions, the undersigned must know MU's budget. Neither party supplied this key information. Mrs. Buttrick's testimony tends to indicate that MU is a "graduate-level institution with an operating budget of more than $50M." As such, Grievant would have received credit under the definition of a degree level 3.0 for affecting "a major department within a graduate-level Institution with an operating budget of more than $50M." In order to fall within a degree level of 7.0, Grievant's work would have to affect the entire operations of

MU. While parking is important to everyone at MU, it is one of many services. Grievant's job does not affect the entire operations at MU within the meaning of this point factor. Grievant has failed in meeting her burden of proof.

2. Breadth of Responsibility

Grievant argued she should have received a degree level of 3.0, rather than a 1.0 in Breadth of Responsibility, because she is responsible for parking and transportation, and performs some duties to keep track of revenues and expenses. The extent of Grievant's role in tracking revenues and expenses was not made clear. However, it is clear that 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).

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

This point factor consists of two parts, Level of Contact and Nature of Contact. Grievant is challenging the degree levels received in both parts.

Grievant argued she should have received a degree level of 3.0, rather than a 2.0 in Level. A degree level of 2.0 in Level of Contact is defined in the Plan as "[s]taff and faculty outside the immediate work unit." A degree level of 3.0 in Level is defined inthe Plan as:

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

Grievant listed her contacts on her PIQ as the President's office monthly about parking and motor pool vehicles; Vice Presidents weekly about parking and motor pool vehicles, revenues, etc.; faculty and staff daily about parking and motor pool vehicles; and the Travel Management Office and the Secretary of Arts and Education as needed about purchasing and authorization of state vehicles and justifications for MU. Grievant stated she does not speak directly to the Secretary of Arts and Education, but speaks with her staff.

Mrs. Buttrick testified that the Travel Management Office is an External Contact. She also stated that it is not necessary to have verbal contact with the office of the Secretary of Arts and Education

unless there is a problem with the purchase, which would be infrequent, and this would not be regular, recurring and essential.

No evidence was presented that Grievant has contacts with any of the persons listed within a degree level of 3.0. She may be arguing she should receive a 3.0 as an average between a 2.0 and some higher degree level. The Plan does not indicate that this is the way this point factor works, and Grievant did not seek a higher degree level. Grievant failed to prove she should have received a degree level of 3.0.

Grievant argued she should have received a degree level of3.0, rather than a 2.0 in Nature. 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.)

Grievant argued she must use a different level of diplomacy with the various persons she deals with. She stated she must be sensitive to the MU President's position when he calls her, and do as he asks, even if she is busy.

Mrs. Buttrick stated that this point factor does not consider the contact with MU's President Grievant described, because it considers only that contact necessary to "get the job done."

Grievant's example of her contact with the MU President cannot be considered because she did not indicate either in her testimony or on her PIQ that she has regular, recurring and essential contact with him. Nothing in her testimony or on her PIQ support a finding that her "discussions are frequently controversial," or that she must use more than moderate tact. Grievant failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning this degree level.

C. Summary

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

Finally, Grievant argued it is not equitable that she is responsible for parking and transportation, while at West Virginia University ("WVU") parking is one department and transportation is a separate

department. Grievant stated her duties are the same as those of two positions at WVU, the Supervisor of the Motor Pool, Pay Grade 16, and the Manager/Parking Office, Pay Grade 17; and, therefore, she should be in a Pay Grade 17. However, Mrs. Buttrick pointed out Grievant's job differs from the Manager/Parking Office in Direct Supervision Exercised and External and Intrasystems Contacts. The Manager/Parking Office also received a higher degree level in Scope and Effect, Impact of Actions, which likely reflects the differences in the budget and classification of WVU and MU; and Grievant received higher degree levels in Indirect Supervision than the Manager/Parking Office. Joint Exhibit D. While in a whole job comparison system one might find the two jobs sufficiently similar to be placed in the same classification, the point factor methodology requires evaluation of every point factor. The differences between the two jobs in the noted point factors was significant enough to place the Manager/Parking Office in a higher Pay Grade than Grievant's Job Title, and Grievant has not proven she should have received higher degree levels in any point factor.

The following Conclusions of Law support the decision reached.

Conclusions of Law

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

2. The burden of proof in a misclassification grievance is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.17. The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

3. The Job Evaluation Committee's interpretation and explanation of point factors will be given great weight unless clearly wrong, where the proper classification of a grievant is almost entirely a factual determination. See Tennant v. Marion Health Care Found., 194 W. Va. 97, 459 S.E.2d 374 (1995); Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94- MBOD-349 (Aug. 8, 1995).

4. The Job Evaluation Committee's decision that Grievant is a Manager Parking and Transportation, Pay Grade 16, 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 Manager Parking and Transportation is neither clearly wrong nor arbitrary and capricious.

Accordingly, the grievance of Mary Wilson is **DENIED**.

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

BRENDA L. GOULD

Administrative Law Judge

Dated: February 6, 1997

Footnote: 1

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

Footnote: 2

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

Footnote: 3

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

Footnote: 4

This discussion is not intended to address challenges to the way the Mercer system as a whole is set up, that is, challenges to the methodology.

Footnote: 5

These headings are shorthand for the following point factors: SE, IA is Scope and Effect, Impact of Actions; BR is Breadth of Responsibility; IC, NC is Intrasystems Contacts, Nature of Contact; and, IC, LVL is Intrasystems Contacts, Level of

Contact. Respondent's post-hearing submission erroneously states that Grievant challenged the degree level received in External Contact, Nature of Contact, and that she did not challenge the degree level received in Intrasystems Contacts, Level.