CAROLYN McHOLLAND

v. Docket No. 94-MBOT-734

BOARD OF TRUSTEES/

WEST VIRGINIA UNIVERSITY-PARKERSBURG

D E C I S I O N

Grievant, Carolyn McHolland, alleges she was misclassified as a Financial Aid Counselor, Pay Grade 16, under the "Mercer reclassification," and seeks to be classified as an Associate Director of Financial Aid, or another financial aid position, at Pay Grade 17, with backpay, effective January 1, 1994, the date the classification system was implemented. (See footnote 1) Grievant challenges the degree levels received in several point factors. A level four hearing was conducted on July 2, 10, and September 16, 1996, and the matter became mature for decision with the submission of post-hearing fact/law proposals by both parties on October 23, 1996.

The following Findings of Fact are properly made from the record developed at level four.

Findings of Fact

1. Grievant has been employed by the Board of Trustees (BOT), assigned to the West Virginia University-Parkersburg campus at all times pertinent to this grievance. Effective December 1, 1989, to January 1, 1994, Grievant's job title was Assistant to the Director of Financial Aid.

2. In 1991, all higher education classified employees, including Grievant, were asked to complete a Position Information Questionnaire (PIQ) prior to the reclassification. Employees wereto describe their job duties and responsibilities and the job requirements on the PIQ, by answering a series of questions designed to elicit this information.

3. As a result of the Mercer reclassification, Grievant was classified as a Financial Aid Counselor, Pay Grade 16, effective January 1, 1994.

4. Grievant's primary job duties prior to January 1, 1994, included counseling students, prospective students, and parents, regarding all aspects of financial aid; reviewing, updating, and

verifying applicant files; determining eligibility for the various financial aid programs utilizing her knowledge of state and federal regulations governing student financial aid; assisting the Director in preparing and conducting workshops at local high schools and community groups regarding financial aid; providing certification and recordkeeping services for veteran students; ensuring compliance with federal and state regulations as well as guarantee agencies affiliated with financial aid programs; and monitoring academic policies applied to financial aid recipients.

5. A position description for Financial Aid Counselor lists the general function of these employees as "[p]rovides general counseling to student applicants and recipients of financial aid, processes applications and assists in administering financial aid programs." Characteristic duties and responsibilities include: Counsels students regarding financial aid application procedures, student income verification requirements, etc., analyzes and inputs student and family financial informationfrom various documentation, determines eligibility, awards or disburses aid, reviews, interprets and ensures compliance with federal and state regulations concerning financial aid, assists in implementation of packaging, awarding, and appropriation of financial aid notification and disbursements, processes financial aid application to determine the amount for which students may be approved, assists with orientation and registration, monitors satisfactory academic progress policies, and may supervise financial aid support staff.

6. The Financial Aid Counselor job title received 2144 total points from the following degree levels in each of the thirteen point factors (See footnote 2): 6.0 in Knowledge; 3.0 in Experience; 3.5 in Complexity and Problem Solving; 4.0 in Freedom of Action; 4.0 in Scope and Effect, Impact of Actions; 3.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 2.0 in Intrasystems Contacts, Nature of Contact; 3.0 in Intrasystems Contacts, Level; 3.0 in External Contacts, Nature of Contact; 3.0 in External Contacts, Level; 1.0 in Direct Supervision Exercised, Number; 3.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 1.0 in Physical Coordination; 1.0 in Working Conditions; and 1.0 in Physical Demands.

7. The point range for Pay Grade 16 is from 2114 points to 2254 points..

8. The point range for Pay Grade 17 is from 2255 points to 2407 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 §4.1; 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 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, without also identifying which point factors she is challenging, and the degree level she believes she should have received. (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 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 factorsand generic job descriptions 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 her classification thus will have to overcome a substantial obstacle to establish that she is misclassified. (See footnote 4)

To determine whether Grievant is correctly classified, the comparison of Grievant's job duties to those of the Financial Aid Counselor requires a comprehensive review of the degree levels assigned to the two positions in the challenged point factors. B. Application of the Point Factor Methodology

Grievant challenged the degree levels received in the point factors Experience, Complexity and

Problem Solving, Intrasystems Contacts/Nature and Level, External Contacts/Level and Direct Supervision Exercised/Number. Following are the degree levels assigned the point factors for the Financial Aid Counselor, which Grievant contests, and the degree levels which Grievant argues are proper for her position and would place her in a pay grade 17 classification.

	PG-17	FAC
Experience	6	5
Complexity and Problem Solving	5	3.5
Intrasystems Contacts/Nature	3	2
Intrasystems Contacts/Level	4	3
External Contacts/Level	4	3
Direct Supervision Exercised/Number	2	1

Each of the point factors challenged by Grievant will be addressed separately.

Experience

___The Plan defines this factor as that which “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.”

___Financial Aid Counselor was credited with a degree level of 3.0, defined by the Plan as “over one year and up to two years of experience.” Grievant requests an assignment at 4.0, defined as “over two years and up to three years of experience.” ___Grievant stated that she had worked as Assistant to the Director of Financial Aid since December 1, 1989, and that prior to that she had served four and one-half years as Executive Secretary to the Dean of Students and the Director of Financial Aid. In this capacity she had a great deal of student contact and had worked with a variety of forms and programs. She opined that her work at this time was essentially that of a Financial Aid Assistant. Grievant also noted that she had gained relevant experience when she worked in the Arlington County Public Schools, where she was involved in grant writing, the receipt and distribution of funds, and worked with rules and regulations. Grievant opines that less than two years' experience would be insufficient to prepare an individual to competently perform the duties assigned to her. Respondent asserts that one to two years experience is adequate for an employee to perform at the minimal level

in this position.

___When evaluating this point factor, it is imperative to note that the incumbent's personal experience is not controlling of the degree level. Neither may an incumbent use expertise gained while in the position, which has resulted in her current high-level performance, to elevate the degree level in this point factor. The only consideration which is controlling is the minimal level of experience required for an employee to assume and satisfactorily perform the duties of the position, while allocating a reasonable period of learning time. In the present matter, Grievant works with a massive amount of rules and regulations; however, reference material and/or persons are available to her. Some expertise is also required for the presentation of information and counseling students and their parents. Grievant must also utilize organizational and management skills in the completion of her duties. It does not appear unrealistic that an entry level employee with two years experience could within a reasonable period of time satisfactorily assume these responsibilities. Grievant has failed to offer any evidence that an additional year of experience is necessary, and a difference ofopinion does not constitute a basis for upgrading a degree level. Carrere v. Bd. of Directors, SWVCC, Docket No. 94-MBOD-1017 (Jan. 16, 1997).

Complexity and Problem Solving

The Plan defines Complexity and Problem Solving as the factor which " 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."

The JEC assigned Financial Aid Counselor a degree level of 3.5 in this point factor. Half levels are not defined by the Plan but fall between the degree levels defined as follows:

A degree level of 3.0 provides that

[p]roblems 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.

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

[p]roblems 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 guideline; 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.

Grievant asserts that her duties and responsibilities warrant a degree level of 5.0, defined by the Plan as:[p]roblems encountered involve unusual circumstances, variations in approach, and incomplete or conflicting data. Employees exercise considerable analytical, valuative and reasoning skill in researching information and developing new methods to perform work assignments or optimum solutions to problems. The development of new programs, procedures or methods are typical end results of the problem-solving process. Determination of the effectiveness of a policy or practice may be involved at this level.

Grievant argues that she is entitled to the higher degree level in this point factor because she works with incomplete and conflicting data and complex federal and state guidelines and standards which require that she use analytical, valuative, and reasoning skills on a daily basis. As examples, she cites decisions she makes involving students with special circumstances. Because these students do not fit a format, she asserts that she must exercise “professional judgment” in resolving the situation. Grievant further notes that she must deal with students and their parents regarding her decisions, and that she designed a loan default management program which reduced the default rate from 30% to 10%, and that she implemented an alphabetical system for the office. Respondent argues that the Director of Financial Aid was allocated a degree level of 5.0 in this point factor. Because he bears the ultimate responsibility for the office and the decisions made by the employees therein, Respondent asserts that it would be inaccurate to award Grievant the same level.

Although Grievant faces somewhat complex situations at times, the vast majority of her work is strictly governed by guidelines and procedures, requiring that she apply the most appropriate options to individual cases. While Grievant must locate the appropriate guideline for any given situation, much of her work is routine. When she encounters situations which she cannot resolve, Grievant may refer the matter to the Financial Aid Director. Although Grievant works with multitudinous guidelines and procedures, their very number insures coverage of virtually all mattersrelating to Grievant's duties. Grievant's exercise of judgment in making decisions regarding special circumstances,

dependency overrides and veterans' benefits is adequately and properly accounted for at the 3.5 degree level.

Intrasystems Contacts

The Plan defines Intrasystems Contacts as the

> factor which appraises the responsibility for working with or through other people within 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, explaining policies or discussing controversial issues. This factor considers only those contacts outside the job's immediate work area.

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This point factor has two components, “Nature of Contact” and “Level of Regular, Recurring, and Essential Contact.” In Level, the JEC awarded Grievant a degree level of 3.0, defined by the Plan as “[s]upervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office.” Grievant asserts that 4.0, defined by the Plan as “Deans or Directors in an institution or Assistant Directors in the Systems' Central Office” best fits her position. Grievant states that she maintains regular contact with the Dean of Students regarding student appeals of Grievant's decisions relating to problems with veterans' status, independent status, eligibility, etc. Grievant further claims contacts with the Dean, in that they both serve on the Social Justice Committee. She also claims to maintain less, but regular, contact with the Academic Dean and various directors, including those in charge of handicap services, the Learning Resource Center, and testing and student success. Respondent asserts that Grievant's contacts with these individuals is sporadic, and do not occur on a regular, recurring, and essential basis. In particular, Respondent cited the testimony of the Dean of Students that she confers with Grievantapproximately 14 times a year regarding appeals, and occasionally, not on a daily or weekly basis, regarding other matters.

Grievant's interaction with the Dean of Students while in their roles as members of the Social Justice Committee cannot be considered for classification purposes because that activity is not part of duties and responsibilities in the Financial Aid Office. The remainder of the contacts may be considered essential to the specific matter at issue, and, at least some appear to be recurring, however, none may be characterized as regular because they occur erratically and only with the provocation of a student. By her own explanation, Grievant's contact with the Deans and directors are instigated by the needs or actions of students who are experiencing a non-routine situation.

Therefore, Grievant has failed to prove that she is entitled to a degree level higher than 3.0.

The JEC awarded Grievant a degree level of 2.0 in the Nature portion of this point factor. This degree is defined as "[m]oderate 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.)" Grievant argues that she is entitled to a degree level of 3.0, defined as "[s]ubstantial 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.)" Referring to her contacts with students, Grievant argues that she must deal with sensitive issues of handicaps, health conditions, and personal and family circumstances, in addition to other privacy act considerations. Respondent argues that 2.0 was appropriate for the type of Intrasystems Communications in which Grievant participates, and notes that her contact with students is considered under External Contacts, where she was awarded a 3.0. To the extent that Grievant must discuss student handicaps, health problems, or other personal and private information with the Deans and directors on campus, Grievant would only be acting to provide information, a type of contact which would require only moderate tact and cooperation. While substantial sensitivity might, or might not, be required when discussing these issues with students, they are not considered intra-system contacts and may not be considered in this point factor. Based upon the available evidence, a degree level of 2.0 is appropriate for Grievant's position.

External Contacts

This point factor is defined by the Plan as that which "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." This point factor is comprised of two sections, Nature of Contact and Level of Regular, Recurring and Essential Contact. Grievant contests only the Level of Contact.

The JEC awarded Grievant a degree level of 3.0, defined by the Plan as "[s]tudents, parents, alumni, faculty of institutions outside the systems, sales engineers, higher-level product representatives, recruiters and/or prospective students." Grievant argues that she is entitled to a degree level of 4.0, defined as "[m]id-level representatives of government agencies, professional

contacts with other colleges and universities outside the system."

Grievant testified that she engages in regular contact with mid- or upper level representatives of government agencies, including Nancy Klingler, regional trainer for the Department of Education. She engages in other similar contacts to learn of changes in and to secure interpretations of statutesand regulations. Because she is solely responsible for the Veterans' programs, Grievant states that she maintains contact with the Veterans' Affairs Liaison Representative, and with representatives of guarantee agencies for the student loan programs. Grievant estimates that she makes 3 to 5 such contacts per week. She concedes that her most frequent contacts are with students and their parents, usually several per day, but argues that the degree level must be based upon the highest level of contacts, not the level where she makes the majority of contacts. Respondent argues that a degree level of 3.0 is proper because Grievant's regular, recurring and essential contact is with students.

Although Grievant cites numerous individuals in the Departments of Education and Veterans' Affairs as contacts, the evidence does not establish that they are mid-level representatives of government agencies. On the contrary, it would appear that individuals such as a regional trainer would be lower-level, or staff, positions. Absent evidence of higher level contact, it cannot be determined that Grievant would be entitled to a degree level of 4.0 in this point factor.

Direct Supervision Exercised

This factor is defined by the Plan as that which

measures the job's degree of direct supervision over others in terms of the level of subordinate jobs in the organization, the nature of the work performed, and the number supervised. Only the formal assignment of such responsibility should be considered; informal work relationships should not be considered. Supervision of student workers may be taken into account if they are essential to the daily operation of the unit. The number of subordinates should be reported in full-time equivalency (FTE) and not head count.

This factor is also composed of two subdivisions, Number of Direct Subordinates and Level of Supervision. Grievant challenges only the Number portion. The JEC awarded Grievant a degree level of 1.0, defined in the Plan as "None". Grievant argues that she is entitled to a degree level of 2.0, defined as "One". Grievant testified that she has authority to hire one or two work-study students who are paid by the Veterans' Administration. Without these student workers, Grievant claims that

WVU-P could not service the Veterans' programs. Grievant also asserts that she supervises other Financial Aid Assistants and work-study students while the Financial Aid Director is out of the office, which she estimates to be approximately 15% of the time. She characterizes herself as a mid-level supervisor the remainder of the time. It does not appear what, if any, duties Grievant assumes in the Director's absence that she does not already perform. She concedes that the Director and the Dean of Students bear bottom line responsibility for the office. Respondent denies that the work-study student assigned to the VA programs is essential and is not a full time employee who works 37.5 hours per week.

While Grievant is authorized to hire two work-study students for the VA programs, the record indicates that generally there is only one such employee. As a student, he or she does not work full time. Although this individual is undoubtedly valuable to Grievant and the Financial Aid Office, it is unlikely that the program would cease to exist without this part-time assistance. Finally, while Grievant noted on her PIQ Job Summary that she acts as the Director in his absence, there were no specific duties or responsibilities listed to illustrate what, if anything, she does differently when the Director is out of the office, even though she listed other duties which required as little as 5% of her time. Grievant's claim that she functions as a mid-level supervisor 85% of the time is also unsupported in her listing of duties and responsibilities. Grievant clearly has a great deal of expertise and has assumed much responsibility in the Financial Aid Office; however, she does not claim to bear ultimate responsibility for its overall functioning, and there is no evidence indicating that sheis recognized as the second in command. If Grievant has assumed greater responsibility of her volition, she is not required to do so. A degree level of 1.0 is correct for this point factor.

D. Summary

___Grievant has failed to prove that the JEC was clearly wrong in its assignment of degree levels to the challenged point factors, or acted in an arbitrary and capricious manner by failing to classify her as Assistant Director of Financial Aid, at pay grade 17. (See footnote 5)

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§4.1. 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, if one exists, 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 failed to prove by a preponderance of the evidence that the Job Evaluation Committee's assignment of degree levels to the cited point factors was clearly wrong or arbitrary and capricious.

5. Grievant has failed to prove that her duties and responsibilities warrant classification as Assistant Director of Financial Aid or any classification at pay grade 17.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wood 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: February 26, 1997 _____

SUE KELLER

SENIOR 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. 6, 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

Grievant compares herself to the Associate Director at Bluefield State College for purposes of illustrating that she is misclassified. This approach is not controlling in that the Mercer system is a numerical one. That is, Grievant's position has been reviewed individually and assigned point factors. Another position which may appear similar on a PIQ, may itself be incorrectly classified, thus, it provides negligible comparative value.