HARRY AREFORD,

Grievant,

v. **Docket No. 94-MBOT-469**

BOARD OF TRUSTEES/
WEST VIRGINIA UNIVERSITY,

Respondent.

DECISION

Grievant 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 Motor Pool Fleet Attendant at Pay Grade 10, and he seeks to be classified as an Assistant Supervisor, Motor Pool at Pay Grade 14, which would be an institution-specific title. 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 27, 1997. This matter then became mature for decision on March 20, 1997, the deadline for submission of the parties' proposed findings of fact and conclusions of law.

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 1973 in theTransportation Department. Effective January 1, 1994, he was classified as a Motor Pool Fleet Attendant 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.

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's primary responsibility is management of the fleet of motor pool vehicles, which are available for use by university employees. When people call and request a vehicle, he determines which car they will be given and informs them of policies and procedures regarding use of motor pool vehicles. Grievant is responsible for monitoring the mileage and usage of each vehicle, so that older cars will only be used for short trips. He maintains mileage records and a log book of scheduled trips.

6. When problems with vehicles occur on the road, Grievant must inform the customerwhat to do with the vehicle, such as calling a tow truck. He knows what he is to tell people in each type of situation. If a vehicle unexpectedly becomes unavailable, Grievant may have to rearrange the scheduling of other vehicles.

7. Most of Grievant's work is governed by set policies and procedures, and he frequently works independently. He sometimes handles unusual situations on his own.

8. Grievant is responsible for making sure that vehicles are in proper working order when assigned, so that mechanical problems do not cause customers any inconvenience.

9. An institution-specific job title is one created for a job title which exists only at one institution.

10. The Motor Pool Fleet Attendant job title received a total of 1545 points under the Mercer system, placing it in Pay Grade 10. The point range for Pay Grade 10 is 1475 points 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 showingthat 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 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. 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 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 HumanResources, 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)

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. 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 2.5 degree level for this factor, and he claims entitlement to a 3.0. According to Respondent's witness, Teresa Crawford, a senior compensation analyst at WVU and JEC member, half levels were awarded for some point factors when significant portions of both definitions applied, but the higher level was not entirely appropriate.

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

> Problems encountered require the employee to make basic decisions regarding whatneeds 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.

As set forth in the foregoing findings, Grievant's argument for the higher degree level is based upon problems customers may experience with vehicles, to which he must respond. However, he testified that, although the policies and procedures are not written, he knows what they are and, therefore, what he is to tell customers in each situation. He stated that mechanical problems occur approximately once per week, and he must tell the customer what to do with the vehicle. Approximately ten times per year, he must deal with a situation where a customer wrecks a vehicle, and he must give them instructions as to where to leave it for repairs.

Ms. Crawford testified that level 3.0 would be inappropriate for Grievant, because he provided no

examples of situations which require him to select the most appropriate procedures to follow. She felt that the majority of his work fell within the level 2.0 definition.

Grievant has not met his burden of proof on this point factor. He has clearly testified that he knows the proper policies and procedures to follow, and most of his work is routine. There is no evidence demonstrating that Grievant must exercise resourcefulness and originality to accomplish his everyday duties, so evaluation at a 2.5 degree level was not clearly wrong or arbitrary andcapricious.

2. 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.

Grievant's job title received a 2.5 degree level in this factor, and he argues he should have received a level 3.5.

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.

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 determine feasibility, compatibility with other work, or effectiveness in meeting the objectives of the unit. Grievant testified that his supervisor has directed him to deal with unusual situations independently. They may discuss his management of a situation after the fact in order to assess whether to follow the same procedure in the future. However, Grievant provided no examples of such situations nor discussed how often they occur. Respondent's witness opined that Grievant did not qualify for a higher degree level,

> because, although he may work independently, he does not work with his supervisor to set objectives.

The key issue in measuring this point factor is “whether the employee has the option to make decisions on [his] own if and when such situations arise.” Kretzmer v. Bd. of Directors, Docket No. 94-MBOD-751 (Feb. 6, 1997) (citations omitted). The fewer policies, rules, etc., which are in place to limit decision-making authority, the higher level of Freedom of Action the employee exercises. It is also well-established that this point factor does not measure the degree of hands-on supervision afforded the employee. See Kretzmer, supra, and Barber v. Bd. of Trustees, Docket No. 94-MBOT-872 (Oct. 31, 1996). Grievant's testimony is somewhat ambiguous; it is unknown what “unusual situations” are or whether they differ from the situations he described previously, in which he knows exactly what policies and procedures to follow.

There is evidence of record indicating that Grievant does function with a degree of autonomy due to the structured nature of his work. However, his supervisor stated on Grievant's PIQ that the two of them must work very closely together on a daily basis to ensure efficient operation of the motor pool. In addition, the level 3.0 definition provides that “the employee deals with some unusual situations independently.” Accordingly, the JEC's determination that Grievant's duties fall within both the level 2.0 and level 3.0 definitions is supported by the evidence presented.

3. 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 factor has two aspects which form a matrix; they are Nature of Action and Impact of Actions. Grievant has only challenged the 2.0 degree level he received for Nature, arguing entitlement to a level 4.0.

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

> Work contributes to the accuracy, reliability, and acceptability of processes, services, or functions. Decisions are limited to the application of standardized or accepted practices and errors could result in some costs and inconveniences within the affected area.

A degree level of 3.0 in Nature of Actions is defined as:

> Work provides guidance to an operation, program, function or service that affects many employees, students or individuals. Decisions and recommendations made involve non-routine situations within established protocol, guidelines, and/or policies. Errors could easily result in moderate costs and inconveniences within the affected area.

Level 4.0 for Nature of Actions is defined as:

> Work contributes to or ensures the effectiveness of operations or services having significant impact within the institution and involves application of policies and practices to complex or important matters. Errors could easily result in substantial costs, inconveniences, and disruption of services within the affected area.

Grievant contends that his actions can cause inconvenience to customers of the motor pool, if he commits an error in scheduling or provides a vehicle which is not in proper working order. Ms. Crawford explained that this factor refers to the primary purpose of the position and why it exists. In this case, Grievant is to provide cars to university employees in an efficient manner and manage the motor pool fleet. She believed level 2.0 was appropriate for his position.

It is quite clear that Grievant's management of the motor pool, if done well, contributes to the reliability and acceptability of that service offered to university employees. There is no evidence whatsoever which indicates that Grievant's work “provides guidance,” involves decisions regarding “non-routine situations,” or involves services “having significant impact” or “complex or important matters.” He was correctly assigned a level 2.0 for Nature of Action.

C. Grievant's Supervisory Duties

The undersigned believes that some discussion is necessary regarding Grievant's allegations that he performs some supervisory duties. In his testimony and on his PIQ, Grievant has stated that for two hours and 45 minutes at the end of each day, he supervises the two mechanics for the motor pool after the supervisor, Denzil Banks, leaves. He also alleges that he is supervisor for these employees when Mr. Banks is on vacation. He contends that he assigns work to the mechanics if they complete what had been assigned to them by Mr. Banks.

Teresa Crawford testified that she conducted an on-site interview of the grievant to determine if he was properly evaluated. She stated that Grievant had no formal supervisory responsibility overthe mechanics, who work fairly independently. It was her understanding from Mr. Banks that they normally have enough work to finish the day and do not need any hands-on supervision after he leaves.

Although Grievant testified as a rebuttal witness, he did not say that Ms. Crawford was mistaken regarding his supervisory authority. Of more importance, however, is the fact that, although there are two point factors that measure supervision, Grievant did not challenge either one. Accordingly, it is impossible for the undersigned to utilize this evidence to determine if Grievant was misclassified. As stated above, the focus in Mercer grievances is upon the challenged point factors. Grievant's argument, although unclear, seems to be that he should somehow be compensated for supervision, but without a challenge to the supervision point factors. Therefore, it would seem that he is calling for a “whole job” type of analysis or comparison, which would ignore the point factor methodology adopted by the JEC and is inappropriate here. See Payne v. Bd. of Directors, 94- MBOD-372 (Jan. 8, 1997).

D. Summary

Grievant did not meet his burden of proof regarding the point factors he challenged, and he did not prove he was misclassified. Grievant was assigned the appropriate values for Complexity and Problem Solving, Freedom of Action, and Scope and Effect--Nature. He did not challenge Direct Supervision Exercised, Number or Level, so he has not proven any entitlement to credit for supervision of other employees.

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 educationsystem.

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 Complexity and Problem Solving, Freedom of Action and Scope and Effect--Nature, was not clearly wrong nor arbitrary and capricious.

6. In reviewing Mercer classification decisions of the JEC, the Grievance Board will not use whole job comparison, abandoning the point factor methodology. See Payne v. Bd. of Directors, 94-MBOD-372 (Jan. 8, 1997).

7. Grievant was appropriately classified as a Motor Pool Fleet Attendant as of January1, 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: June 11, 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

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: 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.