PATSY BEE

v. DOCKET NO. 94-MBOT-946

BOARD OF TRUSTEES,

WEST VIRGINIA UNIVERSITY - PARKERSBURG

D E C I S I O N

Grievant Patsy Bee alleges she was misclassified effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) as an Administrative Secretary-Senior, Pay Grade 12. Grievant seeks as relief classification as an Executive Secretary to the President ("Exec Secretary"), Pay Grade 16 (See footnote 2) , effective January 1, 1994, and backpay from January 1, 1994. Grievant challenges the degree levels received in Knowledge, Experience, Complexity and ProblemSolving, Freedom of Action, Scope and Effect/Impact of Actions, Intrasystems Contacts/Level of Contact, External Contacts/Nature of Contact and Level of Contact, and Direct Supervision Exercised/Number of Subordinates and Level of Supervision. (See footnote 3)

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

Findings of Fact

1. In 1991, all higher education classified employees were asked to complete Position Information Questionnaires ("PIQ's"). 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.

2. Grievant has been employed at West Virginia University - Parkersburg ("WVU-P") since 1979, and completed a PIQ in 1991. She is employed in the President's Office, and her supervisor is Debra Richards. Ms. Richards is classified as an Executive Secretary to the President. (See footnote 4)

3. Grievant was classified as an Administrative Secretary- Senior ("Senior"), Pay Grade 12, effective January 1, 1994.

4. On January 1, 1994, Grievant's primary job duties (withthe percentage of time she spent performing each duty shown in parenthesis) were typing, transcribing, photocopying, handling printing, and maintaining filing system (20%); serving as receptionist for the President's office, screening visitors, answering telephone calls, directing the caller or visitor to the appropriate person, answering inquiries, and taking messages (15%); scheduling the President's appointments and making arrangements for meetings (13%); opening and sorting the President's mail according to priority, logging in mail receipt, and preparing outgoing mail (8%); preparing form letters to acknowledge receipt of gifts to WVU-P Foundation (5%); composing and modifying form letters, and drafting correspondence (5%); contacting travel agency for travel information, making reservations for the President's travel, and preparing travel reimbursement forms (5%); taking minutes of meetings and preparing them for distribution (5%); providing group word processing, E-Mail and electronic calendar training and assistance to employees (5%); assisting in producing and generating reports, and compiling data based on basic research techniques (5%); initiating requests for maintenance and service of office equipment (5%); other duties as assigned (5%); and, ordering flowers following office policy and ordering supplies (4%).

5. Grievant is required to use National Travel Service to make travel reservations under certain conditions, and she is required to follow the state travel regulations when arranging travel and when completing travel reimbursement forms. President Eldon Miller tells her how much he can spend on travel when hetells her he needs to travel to a particular place.

6. Grievant has guidelines to follow regarding who gets to see the President, what to do with callers who will not tell her the purpose of their call, what meetings have priority, and how the President wants to use his time. When there is a conflict in scheduling between two priority meetings, she does not choose which meeting the President will attend; he makes the decision. Grievant may also ask her supervisor for assistance on scheduling problems. If Grievant can answer the caller's question, she does so.

7. Grievant obtains information from others to fill in the blanks and send form letters to donors upon receipt of a donation and to employees upon receipt of their resignation.

8. When President Miller needs an informational report for one of the associations of which he is a member, or a memorandum to WVU-P administrators, he sometimes just tells Grievant what points he wants in the document, and she drafts it. Sometimes he tells her to send it out without his

review.

9. The research Grievant does consists of looking for information in files which the President has asked her to find, and President Miller generally tells her where to look for the materials.

10. Grievant checks the schedules of a number of people before proposing a date for a conference. She calls various conference centers in the area chosen for the conference to obtain information, and then provides the information to those who will choose the location. Once a location is chosen and an agenda set,she works with the conference center to reserve rooms, develop menus, and arrange other similar conference details. She puts the conference materials together and makes the proper number of copies of materials. She attends conferences and signs people in.

11. Grievant has daily contacts with Deans and Directors, or their secretaries, to ask them to attend meetings on behalf of the President, to schedule appointments with the President, to obtain information, and to relay messages. Sometimes the Deans call her to obtain information about the meetings they are to attend on behalf of the President. Many Deans and Directors at WVU-P do not have a secretary.

12. Grievant has daily contacts with the Business Manager at WVU-P with regard to obtaining funds from the WVU-P Foundation for the President's travel and conference attendance fees, and obtaining budget information. The Business Manager is at the Dean or Director level. He is the Treasurer of the WVU-P Foundation, which is a private corporation, however, it is part of his role as Business Manager to act as a Foundation Officer.

13. President Miller serves as Chairman of the Board of the Community Colleges of Appalachia ("CCA"). The Board is composed of one college President from each of the 13 member states. If President Miller needs to get information to a Board member, or obtain Board members' views on an issue, he tells Grievant to call the Presidents and relay the information or ask the Presidents their opinions. Sometimes she talks to the Presidents' secretaries, but usually, the secretary will put her through to thePresident. If she is asking the President's opinion, she needs to talk to the President directly. Presidents call and ask her about the annual CCA conference arrangements. When setting dates for the conference, she usually needs to talk directly to the Presidents. Each year the conference is hosted by a different President. She must contact that President to determine what he wants at the conference, how much the President is willing to pay toward conference events, and to arrange tours for spouses. Since the funding usually comes from a

Foundation account, the Presidents handle this themselves. She also must have confirmation from the President of the amount he has agreed to pay.

14. Annually, Grievant contacts speakers for CCA conferences to explain the contracts they must sign to receive speaking fees, to make sure they sign the contracts, and to obtain information on the time they can be available to speak. President Miller contacts the more prominent speakers for this purpose.

15. Grievant is the contact person for obtaining information on conference arrangements she is responsible for scheduling.

16. Grievant has cyclical contact with Jack Russell and Carrie Morningstar, both of whom are managers at the Appalachian Regional Commission, regarding information on the CCA in connection with grants to the CCA. The CCA does not always receive grant money, but when it does, she has contacts at this level in a pattern of once every week or two for two to three months at a time, then no contact for two to three months.

17. Grievant supervises one student worker who works 12 hoursper week.

18. The Senior Job Title received 1730 total points from the following degree levels in each of the thirteen point factors (See footnote 5) : 4.0 in Knowledge; 4.0 in Experience; 2.5 in Complexity and Problem Solving; 2.5 in Freedom of Action; 2.0 in Scope and Effect, Impact of Actions; 2.0 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; 1.0 in External Contacts, Nature of Contact; 3.0 in External Contacts, Level of Contact; 1.0 in Direct Supervision Exercised, Number; 1.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 3.0 in Physical Coordination; 2.0 in Working Conditions; and 1.0 in Physical Demands. Respondent's Exhibit 3.

19. The point score range for a Pay Grade 12 is from 1655 through 1755 total points. The point score range for a Pay Grade 13 is from 1756 through 1865 total points. Respondent's Exhibit 2.

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, DocketNo. 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". 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 6) 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 madein 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 point factors 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 7)

C. 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 challenged, the degree levels assigned the Exec Secretary Job Title, and the degree levels Grievant argued she should have received. SE IC EC EC DSE

DSE

KN EX CPS FA IA LVL NC LVL NUM LVL (See footnote 8)

Senior 4 4 2.5 2.5 2 2 1 3 1 1

Exec Secretary 5 5 3 3 3 4 2 4 2 3.5

Grievant's

Argument 5 6 3 4 3 4 2 5 2 2

Respondent's Exhibit 3.

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

1. Knowledge

The Job Evaluation Plan ("the Plan") defines Knowledge as:

> This factor measures the minimum level of education equivalency and/or training typically required for an incumbent to reach acceptable occupational competence on the job. The factor considers the technical, theoretical, and/or mechanical skills required, and the complexity and diversity of the required skills.

Grievant's Job Title received a degree level of 4.0, and Grievant argued she should have received a degree level of 5.0, as did the Exec Secretary Job Title. A degree level of 4.0 is defined in the Plan as:

> Job requires basic knowledge in a specific area typically obtained through a business, technical or vocational school as might normally be acquired through up to 18 months of education or training beyond high school.

A degree level of 5.0 is defined in the Plan as:

> Job requires broad trade knowledge or specific technical or business knowledge received from a formal registered apprentice or vocational training program or obtained through an associate's degree of over 18 months and up to 3 years beyond high school.

Grievant believed the type of work she performs requires extensive knowledge, and she did not believe someone just out of high school or with a few months of training could do the job. She stated one would acquire advanced keyboarding skills to achieve speed and accuracy, office practices and procedures, advanced knowledge, good people skills, and other secretarial skills in the course of acquiring an Associate's Degree. She did not indicate whether these same skills could also be acquired in 18 months of post-high school secretarial schooling. She later stated she learned how to

deal with people in her work experience.

Grievant's PIQ, which was signed by her supervisor, lists an Associate's Degree in Secretarial Science or equivalent work experience as the minimum level of knowledge, and notes that knowledge and experience using word processing, micro-computer equipment and various computer software applications, typing speed of 65 words per minute, shorthand speed of 80 words per minute, and skill in English grammar and in dealing with people are required. Grievant's supervisor stated if she were replacing Grievant, she would not consider an application from someone with less than an Associate's Degree. She admitted, however, that the Human Resources Director recruits for the position according to the criteria identified by the supervisor.

Margaret Robinson Buttrick, Human Resources Administrator forthe State College and University Systems of West Virginia and JEC Chair, explained that this point factor measures the minimum qualifications necessary to be able to enter into the job, understanding there is a six month training period, or probationary period. She stated this training would provide the desired level of word processing skills. She opined that working in a president's office is no different from working in any other office. She further pointed out that the JEC, not the supervisor, sets the minimum qualifications for the Job Title. She stated every supervisor has varying ideas of what the minimum should be, which is why the minimum was determined by a committee of individuals with a Human Resources background, which considered the typical educational standard for the position.

While the undersigned cannot accept Mrs. Buttrick's statement that a president's office is no different from any other office, it is obvious the skills noted by Grievant can be acquired through post-high school experience, and that at least some, if not all of them could be acquired in 18 months of secretarial school training beyond high school. Although Grievant noted a need to know office practice and procedure, her supervisor is in charge of the office, not Grievant. Grievant has not proven an Associate's Degree is required in order to be able to learn to perform her duties.

2. Experience

The Plan defines Experience as follows:

> This factor measures the amount of prior directly related experience required before entering the job. Previous experience or training should not be credited under this factor if credited under Knowledge. Grievant's Job Title received a degree level of 4.0 in this point factor, and Grievant argued she should have received a degree level of 6.0. A degree level of 4.0 is defined in the Plan as "[o]ver two years and up to three years of experience." A degree level of 5.0 is defined in the Plan as "[o]ver three years and up to four years of experience." A degree level of 6.0 is defined in the Plan as "[o]ver four years and up to six years of experience."

Grievant stated this much experience is needed because of the level of secretarial support needed by the executive officer of the college. She stated she must be able to work on multiple tasks and set work priorities. She explained she learned how to transcribe, how to set up meetings, how to deal with a lot of people, and how to deal with angry people in her previous jobs. Grievant admitted on cross-examination that she chose this experience level because this was what was on her old Position Description. She did not indicate what level of Knowledge was required on the old Position Description. She conceded that someone with three years of responsible secretarial experience possibly could be qualified, if they held an Associate's Degree. She described responsible experience as a variety of executive secretarial functions, such as scheduling, travel, and dealing with multiple tasks and demanding schedules.

Grievant's PIQ lists the minimum experience required as five years responsible secretarial experience, three years experience using word/processing and micro-computer equipment, and two years experience using computer data-bases. President Miller marked adegree level of 4.0 on the PIQ. Grievant's supervisor stated if she were replacing Grievant, she would be looking for someone with four to six years of experience.

Mrs. Buttrick noted that this point factor also measures the minimum experience needed to perform the job at an entry level. She opined that in dealing with the public, experience does not matter.

Nothing in the record shows how long it takes to acquire the skills necessary to perform the duties of the position. The record merely reflects a difference of opinion about how much experience is needed to be able to learn to perform Grievant's duties. Even the old Position Description merely represents the opinion of the person or persons who prepared it. Further, it appears that Grievant's supervisor's opinion is based upon her preference, not a minimal requirement.

The minimum amount of experience required to perform the essential duties of a position represents a subjective determination upon which reasonable minds may differ. Zara v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-817 (Dec. 12, 1995). The undersigned cannot find from the evidence that the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level of 4.0 in this point factor.

3. 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 theextent to which guidelines, standards and precedents assist or limit the position's ability to solve problems.

Grievant's Job Title received a degree level of 2.5, and Grievant argued she should have received a degree level of 3.0. The JEC assigned a half-level (0.5) in this point factor and in Freedom of Action, "where the position was performing significant portions of duties and responsibilities in both levels, i.e.: part in 2 and part in 3, hence a 2.5." Respondent's Exhibit 1.

A degree level of 2.0 is defined in the Plan 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 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.

Ms. Richards stated Grievant works directly with President Miller, providing assistance in setting up conferences for regional organizations, drafting correspondence related to CCA, and making complex travel arrangements for the President. She described the state travel policies used by Grievant as quite complex, noting that when the President's plans change, she must sometimes request waivers of the regulations after the fact. She believed Grievant'sjob duties were more complex than those of any other secretary at WVU-P.

Mrs. Buttrick pointed out that Grievant must follow the state travel regulations, and she has guidelines from Ms. Richards. She noted that National Travel Service makes the travel arrangements for Grievant. She stated Grievant makes basic decisions about what needs to be done, there are recognizable solutions, she drafts basic correspondence, and she believed if she has a problem she goes to her supervisor. She stated Grievant is not making complex or high-level decisions. She stated rescheduling the President's travel is not a complex duty, rather it merely involves getting something to fit into his schedule. She stated initially that a 2.5 was appropriate for this position, then

stated she might lower the degree level somewhat for Grievant's duties, but she did not indicate to what degree level.

> Initially, it is important to point out that this point factor does not evaluate the difficulty of the job itself. One of the key questions in applying this point factor is whether the employee must make decisions about how to solve a problem, and if so, whether the number of possible solutions is limited by some policy, regulation, or procedure. In Gregg, et al., v. Bd. of Trustees, W. Va. Network for Educational Telecomputing, Docket No. 94- MBOT-863 (Dec. 18, 1996), in order to identify the source of errors, the grievants had to learn to recognize an error message on the computer screen, determine the computer language used in the error message, and then determine what the message meant. This was not a simple task, and sometimes required the grievants to go through a number of steps. However, a seemingly complex job did not equate to a high degree level in this point factor, because the grievants learned how to perform this task with education and experience, had reference manuals available which provided all the information necessary to determine the source of the problem, and could refer problems they had not encountered before to someone else.Martin, et al., v. Bd. of Trustees, W. Va. Univ., et al., Docket No. 94-MBOT-658 (March 28, 1997). While Grievant has proven the travel regulations are complex and make her job more difficult, the regulations set forth exactly how to proceed in order to be reimbursed for travel. If Grievant has a question about the regulations, she can call on the Travel Management Office for assistance. Significantly, travel is a small portion of Grievant's duties.

When trying to schedule a meeting or event, it can certainly be frustrating and time consuming to juggle schedules, but for purposes of applying this point factor, it is simply a matter of getting a number of available dates from all those who are to be involved, and finding a date when everyone is available. If after gathering and comparing all the information (a degree level of 2.0), no date is available, then the solution is to start over and get new dates, or see if anyone can change other plans to make the original dates work. Grievant is not responsible for deciding who should change other plans so she can schedule an event.

When scheduling a conference, Grievant determines what conference centers are located in the area chosen for the conference, calls for certain information on the conference centers, and presents the information to others so they can decide where to hold the conference. When a location and agenda are chosen, she calls the conference center to reserve rooms to fit the agenda and the number of potential attendees. While she must be careful to ask the appropriate questions, record the correctinformation, and reserve the necessary meeting rooms, this is not a task which requires a lot of decision-making on Grievant's part.

Grievant noted on her PIQ that she must deal with matters which require confidentiality, but she did not explain how this impacts on this point factor. It would seem Grievant would simply not disclose certain information. She also noted on her PIQ problems in word processing training, but she did not

explain what problems are encountered and how she deals with them. Finally, she noted on her PIQ that she must deal tactfully or diplomatically with difficult people who call or visit the President's Office, so as not to offend them. While this may be difficult at times, and require thought and self-control, it would not seem to be a complex problem on its face.

While some of Grievant's duties may well fall within a degree level of 3.0, a review of the percentage of time she spends performing all her duties reveals that most of them are routine secretarial duties which require very basic decision-making or total reliance on previous training. She received credit for some decision-making at a degree level of 3.0. She has not proven that a 3.0 is a better fit for all her duties. (See footnote 9) 4. 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 degree level of 2.5, and Grievant argued she should have received a degree level of 4.0. 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 stated she encounters unusual situations with the President's travel. She stated she has

handled more travel reports than anyone else at WVU-P, and other secretaries, and even Dina Braniff, an Accountant at WVU-P who handles travel questions at WVU-P, ask her for assistance. She stated travel complications arise frequently, because the President's schedule may change, and he may stay a longer or shorter period of time than anticipated, which causes problems with the guidelines, and she frequently must contact the Travel Management Office and get authorization to accept the changes. She stated that President Miller sets objectives, and Ms. Richards sets the objectives for how the work is to be accomplished in the office. She stated that when someone wishes to meet with the President she has the freedom to go ahead and schedule the meeting, or to refuse to schedule a meeting with the President and refer them elsewhere. If a conflict arises in the President's schedule, she stated she reschedules where possible, but that the President decides which event takes priority where both events are priorities.

Ms. Richards believed a degree level of 3.0 was the proper degree level for Grievant's position. Ms. Richards sets thegeneral direction for how work is accomplished in the office.

Mrs. Buttrick pointed out that Grievant has standard procedures to guide her work, and Ms. Richards is there to answer any questions she has. She noted that while Grievant makes the President's travel arrangements, she does not decide when or where he will travel, and she must follow travel regulations. She concluded that when there is a conflict in the President's schedule, she does not decide which meeting takes priority, but refers to standard guidelines which tell her which meeting takes priority. She explained that degree level 4.0 was the beginning of professional level positions.

Grievant's job duties do not fall within a degree level of 4.0. She receives assignments, and her job is structured by this. She acts on the mail which arrives each day, and the telephone calls and visitors which arrive each day. She follows established precedents, policies, procedures, laws and regulations. Grievant must follow the travel regulations, and she has guidelines to follow regarding who gets to see the President, and what meetings have priority. She drafts simple responses to correspondence following office procedure. She drafts sentences for memoranda and informational reports as directed by President Miller, based upon his direction as to what he wants the document to say. She usually, if not always, has no freedom to decide what should be placed in correspondence. She also transcribes letters from dictation. While she sends certain form letters and flowers without being told each time to do so, these actions are triggeredby a particular event and a standard

procedure which she follows. She has little freedom to act independently. Grievant has not proven any other degree level is a better fit for her duties.

5. 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 is challenging the degree level received in Impact only. Grievant's Job Title received a degree level of 2.0 in Impact, and Grievant argued she should have received a degree level of 3.0.

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

> Work affects either an entire work unit or several major activities within a department. 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 Institution with 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.

Mrs. Buttrick stated Grievant's duties affect only the work in the President's Office, and any other departments where there might be an extension of that, but they do not have a major impact on the institution. She stated employees who have responsibility are the ones who receive the higher degree levels.

Grievant is providing secretarial support services to the President. She is performing the tasks assigned to her by the President or her supervisor. She does not decide the content of any

documents she prepares, the President does. She has little decision-making authority. While she makes decisions which can affect others outside the office, such as who sees the President, these decisions are based upon guidelines set by the President and her supervisor. Grievant has not proven her work has an impact beyond providing secretarial services to the President.

6. 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 SCUSWV [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 also consists of two parts, Nature of Contact and Level of Regular, Recurring and Essential Contact. Grievant is challenging the degree level received in Level only. She argued she should have received a degree level of 4.0, rather than a 2.0. A degree level of 2.0 in Level is defined in the Plan as, "[s]taff and faculty outside the immediate work unit." A degree level of 3.0 is defined in the Plan as, "[s]upervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office." A degree level of 4.0 in Level is defined in the Plan as, "Deans or Directors in an institution or Assistant Directors in the Systems' Central Office."

Grievant stated she has daily contact with Deans and Directors, not their secretaries, to schedule meetings. She stated she sometimes talks to the secretary for the Dean of Academic Affairs to schedule meetings, but if he has a question about an event the President wants him to attend, he may call her himself and she provides him with the information on the event. She stated she also has daily contact with the Business Manager to obtain cash advances for travel from the WVU-P Foundation account, or to obtain information about budgets. Her PIQ lists her contacts outside her work area as Deans and Directors daily to furnish and obtaininformation, "specific tasks," set appointments, and relay messages, faculty and staff weekly, and staff of other colleges and the central office monthly.

Ms. Richards affirmed Grievant's testimony, and noted that many of the Deans and Directors at WVU-P do not have secretaries. She stated that many of the budget inquiries Grievant would make would be based upon her own judgement, rather than asking the Business Manager a question the

President had told her to ask.

Sandy Swisher, Director of Human Resources at WVU-P, stated she believed Grievant's contacts fall within a degree level of 2.0. She explained that when Grievant talks to a Dean or Director and provides needed information, she is not developing policy or a response based upon the contact, thus this contact is not necessary for her to perform her job.

Mrs. Buttrick at first stated that a degree level of 2.0 was appropriate for this position, then later opined that Grievant's contacts fall within a degree level of 1.0, because most of her contacts are with the persons in her work area to get her work done. However, she also stated that this point factor measures "the highest level of contact that the position is normally required to have in order to perform the essential functions of the job" (Respondent's Exhibit 1); that "you can't list your line of authority" on the PIQ; this point factor talks about contacts outside the work unit; and the employee "gets no credit" for contacts in the chain of command. Further, Mrs. Buttrick noted that a Receptionist received a degree level of 2.0 in Level ofContact. Mrs. Buttrick's opinion that a 1.0 is appropriate is, accordingly, disregarded. She stated that when Grievant is taking messages or referring calls, these are not her contacts, but are the contacts of the person for whom the message is taken or to whom the call is referred. She pointed out that if a secretary can provide the information needed when contacting a Dean's office, the contact is with a secretary, not a Dean.

Grievant has proven she has daily contacts with Deans and Directors, including the Business Manager, in their official capacities, in order to perform her secretarial support duties. These are regular, recurring and essential contacts with Deans and Directors. See Black v. Bd. of Directors, W. Va. State College, Docket No. 94-MBOD-967 (Apr. 17, 1997). Grievant has proven she should have received a degree level of 4.0.

7. External Contacts

External Contacts is defined in the Plan as:

> This factor 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.

Like the previous point factor, External Contacts is comprised of Nature of Contact and Level of Regular, Recurring and Essential Contact. Grievant is challenging the degree levels received in both parts. She argued she should have received a degree level of 5.0 in Level, rather than a 3.0. A

degree level of 3.0 in Level is defined in the Plan as:

> Students, parents, alumni, faculty of institutions outside the systems, sales engineers, higher-level product representatives, recruiters and/or prospective students.

A degree level of 4.0 in Level is defined in the Plan as:

> Mid-level representatives of government agencies, professional contacts with other colleges and universities outside the systems.

A degree level of 5.0 in Level is defined in the Plan as:

> Substantially prominent persons (e.g., community leaders, business and industry leaders) and officials of government agencies, financial agencies, and other important constituents.

Grievant noted she frequently speaks with Presidents of colleges located outside West Virginia about the annual CCA conference. She stated they contact her to find out when the conference will be held, and to tell her what events they want to have scheduled at the conference. She contacts them to provide them with information President Miller wants them to have. She stated that she has tried to leave messages with one President's secretary, but she will not let her leave any messages. She said many times the secretary will not be attending and is not familiar with what she needs to know.

Grievant also noted her contacts with persons who will be speakers at the conference. She stated she has contacts with their secretaries, but she must make contact with them directly to get their signature on the contract they must sign. She further stated that she must explain the contract to speakers, and provide them with so much detailed information about the contracts and the agenda, that it is easier to speak to the speaker than to leave amessage. She said that usually when she tries to leave a message, the secretary will stop her because of the detail she is providing, and let her talk to the speaker.

She stated she also talks to Directors of college organizations with which the President is involved, such as North Central Consulting and the Council of North Central Two Year Colleges.

Grievant's PIQ lists her frequent contacts as government officials, outside agencies and businesses, sales representatives, students, and the general public. Grievant marked degree levels 2.0, 3.0, 4.0, and 5.0 on her PIQ, and President Miller marked degree level 4.0.

Ms. Richards stated Grievant has daily contact with government officials, representatives of outside agencies, and businesses, as she answers the telephone in the President's office. She stated

Grievant would answer the caller's inquiry herself as often as she would take a message. She stated Grievant often contacts the Presidents of other colleges serving as hosts for the CCA conferences, rather than their secretaries, or because the secretary refers her to the President because the secretary is not able to help her. She stated when Grievant is setting up conferences, her contact would normally be with a manager or sales manager.

Ms. Swisher stated a degree level of 3.0 was appropriate because several students and parents go to the President's Office, and part of Grievant's job is to serve as a receptionist, toreceive information and decide what to do with the person.

Mrs. Buttrick explained this point factor "only gives credit for external contacts that are necessary in order for the position to complete the essential functions of the job." Respondent's Exhibit 1. She stated, looking at Grievant's PIQ, she thought her contacts were at a degree level of 2.0. She stated other Presidents were calling the office to talk to the President, not Grievant, so these would not be contacts with Grievant. She stated it is not necessary for Grievant to talk to them in order to perform any of her duties, except being the receptionist. Both she and Ms. Swisher speculated that the Presidents of other institutions would not be placing the call themselves. She did not address Grievant's contact with host Presidents, or regarding conference details, except to say this would be a degree level 1.0 under Nature.

The undersigned concludes that Grievant does not have regular contacts with Presidents of other colleges. When she speaks to Presidents merely to take a message for President Miller, this is not her contact with the President in his capacity as a President. He is someone calling to speak to President Miller. However, she does speak to them in their capacities as Presidents when she speaks with host Presidents and when she provides information about the CCA conference and in scheduling it. Although these contacts represent a very small part of her duties, they are an essential part of her duties of providing secretarial support to the President, and they recur annually. However, these contacts whichoccur only during a brief period once a year are not regular contacts. See Bennett v. Bd. of Trustees, W. Va. School of Osteopathic Medicine, Docket No. 94-MBOT-719 (Dec. 5, 1996); and, Reedy v. Bd. of Directors, W. Va. State College, Docket No. 94- MBOD-721 (Nov. 4, 1996).

Likewise, Grievant's contacts with managers of the Appalachian Regional Commission are so sporadic that they cannot be called regular. Grievant's contact with speakers for the CCA is also not

regular. Grievant has not proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level of 3.0. By the same token, Respondent did not prove Grievant should have received a degree level of 2.0.

Grievant argued she should have received a degree level of 2.0 in Nature, rather than a 1.0. A degree level of 1.0 in Nature is defined in the Plan as:

> Routine information exchange and/or simple service activity; requires common courtesy (e.g., furnishing or obtaining factual information, ordering supplies, describing simple procedures).

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

> Moderate tact and cooperation required; communication is largely of a noncontroversial 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's PIQ states:

> Secretary will have frequent contact with individuals from outside the institution. This includes telephone conversations and correspondence. A high level of accuracy, good judgment, attention to detail, and complete confidentiality is required. An appropriate demeanor, congeniality, and a mature positive attitude isneeded in order to project the proper image of the college and the Office of the President.

Grievant's external contacts occur when she is acting as a receptionist, and scheduling meetings. Grievant screens callers, which requires her to ask them questions to determine the reason for their call. If they insist on speaking with the President, but refuse to tell her what they want, she must explain to them that they cannot speak to the President. She speaks with persons who are upset, and it is a part of her job to not further irritate them, and to try to help them if she can, either by answering their inquiries or referring them to someone other than the President who can help them. Curiously, the Receptionist Job Title received a degree level of 3.0 in Nature. Respondent's Exhibit 3, and testimony of Mrs. Buttrick. Although much of Grievant's contact does indeed involve routine information exchange, it is not accurate to say that she need only exercise common courtesy. Grievant has proven she should have received a degree level of 2.0 in Nature.

8. Direct Supervision Exercised

> This factor measures the job's degree of direct supervision exercised 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 point factor consists of two parts, Number of Direct Subordinates, and Level of Supervision. Grievant is challengingthe degree level received in both parts. She argued she should have received a degree level of 2.0 in Number, rather than a 1.0. A degree level of 1.0 is defined in the Plan as no direct subordinates. A degree level of 2.0 is defined in the Plan as one direct subordinate.

Grievant pointed to her supervision of one student worker and the word processing training she conducts for other employees.

Mrs. Buttrick stated the student worker was not essential, because the office would not close down without the student worker, and she does not work enough hours to qualify for one FTE. She noted that most offices have a student work-study, and it is the exception that the student worker is essential. She stated that supervision means the authority to hire, fire, and do performance evaluations, and when Grievant is conducting training, the trainees are not in subordinate jobs which report to her, therefore, the training is not counted in applying this point factor.

The training conducted by Grievant is not considered in the application of this point factor. By definition, this point factor considers only the "formal assignment" of supervisory responsibility; "informal work relationships should not be considered." When Grievant is training other employees, she is not supervising them. She is teaching them word processing skills. They are still supervised by the same person who normally supervises them. The definition of this point factor provides that, "[t]he number of subordinates should be reported in full-time equivalency (FTE) and not head count." The student worker does notequal one full-time subordinate because she only works 12 hours a week. Grievant has not proven she should have received a degree level of 2.0 in this point factor.

Grievant argued she should have received a degree level of 3.0 in Level, rather than a 1.0. A degree level of 1.0 in Level is defined in the Plan as:

> Minimal or no responsibility for the work of others; however, may provide functional guidance to student workers or lower-level employees on a non-essential basis.

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

> Responsible for directing and monitoring the work of student workers essential to the operations of the unit.

A degree level of 3.0 in Level is defined in the Plan as:

> Lead control over non-exempt employees performing the same work as this job. Lead

responsibility includes training, assigning tasks, checking the work of others, and insuring supplies and tools are provided at the work site.

Mrs. Buttrick explained that lead control means the employee has lead control over other employees doing the same job. She stated the training Grievant does is not lead control. This testimony is consistent with the plain meaning of "supervisory responsibility" and the definition of a degree level 3.0. Grievant has no formal supervisory responsibility when she is conducting training, and has not proven she should have received a higher degree level.

C. Summary

Grievant proved that if her position were rated individually, she should have received a degree level of 4.0 in IntrasystemsContacts/Level of Contact, rather than a 2.0, and a degree level of 2.0 in External Contacts/Nature of Contact, rather than a 1.0. These changes add 68 points to the point score total for an Administrative Secretary Senior of 1730 points, for total points of 1798, which places Grievant in a Pay Grade 13.

Respondent argued that Grievant's individual duties would result in a lower degree level than her Job Title received in Intrasystems Contacts/Nature of Contact: a 1.0, rather than a 2.0. The Receptionist Job Title received a degree level of 2.0 in Nature. Grievant's contacts with Deans or Directors involve scheduling meetings, as well as furnishing and obtaining information. Respondent did not prove that a 1.0 is a better fit than a 2.0. Respondent may place Grievant in the appropriate Job Title in that Pay Grade.

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. CommunityCollege, 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 an Administrative Secretary-Senior, Pay Grade 12, is clearly wrong. Grievant's duties place her in a Pay Grade 13.

Accordingly, the grievance of Patsy Bee is **GRANTED IN PART AND DENIED IN PART**. Respondent is ordered to place Grievant Bee in a Job Title in Pay Grade 13, effective January 1, 1994, and to pay her backpay in the amount of the difference between the salary she would have received had she been placed in a Pay Grade 13 on January 1, 1994, and the amount actually received, if any.

Any party may appeal this Decision to the Circuit Court of Kanawha County, or 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.

BRENDA L. GOULD

Administrative Law Judge

Dated: June 30, 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 Pay Grade for this Job Title was initially a 15, but was changed to a 16 effective August 16, 1996, when the Job Evaluation Committee discovered an error in the data line. Rather than correct the error retroactively, everyone in the Job Title was given a 5% pay raise. See Richards, et al., v. Bd. of Trustees, W. Va. Univ. - Parkersburg, et al., Docket No. 94-

MBOT-730 (June 24, 1997).

Footnote: 3

Level IV hearings were held on December 18, 1996, and March 13, 1997. This matter became mature for decision on June 13, 1997, upon receipt of Grievant's post-hearing written submission.

Footnote: 4

Ms. Richards also grieved her classification. Her grievance was denied on June 24, 1997 (Richards, et al., v. Bd. of Trustees, W. Va. Univ. - Parkersburg, et al., Docket No. 94-MBOT- 730).

Footnote: 5

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: 6

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: 7

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: 8

These headings are shorthand for the following point factors: KN is Knowledge; EX is Experience; CPS is Complexity and Problem Solving; FA is Freedom of Action; SE/IA is Scope and Effect/Impact of Actions; IC/LVL is Intrasystems Contacts/Level of Contact; EC/NC is External Contacts/Nature of Contact; EC/LVL is External Contact/Level of Contact; DSE/NUM is Direct Supervision Exercised/Number of Subordinates; and, DSE/LVL is Direct Supervision Exercised/Level of Supervision.

Footnote: 9

Grievant argued that her job was more complex than that of another secretary at WVU-P in a higher classification, and others classified as Exec Secretary. While it is understandable that Grievant would look around her and wonder why another secretary is in a higher Pay Grade when Grievant works harder than she does, this classification system involves a comparison of the degree levels one would receive in each point factor. Just because a small part of Grievant's job is more complex than that of someone else does not mean the total points she achieves in all point factors, or even that point factor, will be higher. Further, degree levels were assigned to Job Titles, not individuals. Anindividual might well receive a lower degree level in Complexity than her Job Title received, but if that individual's total points placed her in the Pay Grade for that Job Title, she assumes the degree levels assigned in each point factor to the Job Title. Thus it is not

possible to look only at one point factor in comparing duties and responsibilities.