JUANITA MITCHELL

v. **DOCKET NO. 94-MBOD-348**

BOARD OF DIRECTORS,

WEST VIRGINIA STATE COLLEGE

D E C I S I O N

Grievant Juanita Mitchell alleges she was misclassified effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) . Grievant is classified as a Supervisor Payroll Accounting, Pay Grade 16. She seeks to be classified as a Manager Payroll and Benefits, or Supervisor Payroll and Benefits, Pay Grade 18, effective January 1, 1994, backpay to January 1, 1994, and to receive damages to compensate for the aggravation she states she has suffered. Neither of these Job Titles exists within the higher education classification system. A Level IV hearing was held on October 19, 1995. This matter became mature for decision onNovember 20, 1995, the deadline for submission of proposed findings of fact and conclusions of law. (See footnote 2)

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

Findings of Fact.

1. Grievant is employed by Marshall University. She was classified in the Mercer reclassification as a Supervisor Payroll Accounting, Pay Grade 16, effective January 1, 1994.

2. In 1991, all higher education classified employees were asked to complete a Position Information Questionnaire ("PIQ") prior to the reclassification. Employees were to describe their job duties and responsibilities, and the job requirements on the PIQ, by answering a series of questions designed to elicit this information. Grievant filled out a PIQ in 1991. See Gr Ex 1. (See footnote 3)

3. Grievant's primary job duties prior to January 1, 1994, were preparation of the salaried payroll, including posting deductions, and computation of certain withholdings (38% of her time); preparation and filing of quarterly and yearly state and federal payroll tax reports, and computation and tracking of the financial data and information which is used to prepare these reports, and

preparation of social security deposits, state tax deposits, PEIA, retirement reports, labor reports, garnishmentreports, levy reports, and employee bond purchase and credit union reports (20% of her time). Other payroll related duties such as supervising the payroll office employees who prepare the payroll for non-salaried employees, setting up master files on salaried employees, auditing payroll print-outs, and posting various payroll transactions comprised over fifteen percent of Grievant's job. Her remaining significant job duty relates to employee benefits, and comprises over twelve percent of her duties. This includes explaining benefits to employees and enrolling them in various benefit plans (6% of her time), and processing retiree, resignation, termination and death forms (6% of her time).

4. Grievant does not sign the payroll tax reports, but takes them directly to the Chief Financial Officer for his signature.

5. Grievant's supervisor does not check her work, and she is not told what to do each day by her supervisor. Payroll and payroll tax reports have to be done at set regular times, and she uses state and federal policies and guidelines in preparing payroll and payroll tax reports.

6. Grievant occasionally talks to persons within the state college and university systems about issues such as a new employee's benefits and deductions, benefits generally, levies, garnishments, taking someone off payroll or leaving them on payroll, and the effect of suspensions on payroll. The same issues recur.

7. Grievant talks to persons employed at the state auditor's office, the retirement board, PEIA, the IRS, and the SocialSecurity Administration about benefits on retirement, final salary on retirement, insurance, whether the employee is still on payroll, from what account the employee is paid, employee enrollment, monthly reports, levies, and garnishments. She also receives telephone calls from employee creditors and refers them to the appropriate person.

8. The Supervisor Payroll Accounting Job Title received 2,205 total points from the following degree levels in the point factors: 6.0 in Knowledge; 3.0 in Experience; 3.0 in Complexity and Problem Solving; 3.5 in Freedom of Action; 7.0 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; 2.0 in External Contacts, Nature of Contact; 3.0 in External Contacts, Level; 3.0 in Direct Supervision Exercised, Number; 4.0 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 a 1.0 in Physical

Demands. R Ex 1.

9. The point range for a Pay Grade 16 is from 2,114 points to 2,254 points. R Ex 2.

10. The point range for a Pay Grade 18 is from 2,408 points to 2,573 points. R Ex 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 she is not properly classified. 156 C.S.R. 1 § 4.17; 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 4) While some "best fit" analysis of the definitions of the degree levels is involved in determining which degree level of a point factor should be assigned, where the position fits in the higher education classified employee hierarchy must also be evaluated. In addition, this system must by statute be uniform across all higher education institutions; therefore, the point factor degree levels are notassigned 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).

A Mercer grievant may challenge her initial classification by asserting that the JEC and governing boards should have developed another classification. A grievant taking this path, however, has a nearly insurmountable burden to prove that the JEC and governing boards abused their broad discretion in failing to create an additional classification. Burke, supra.

Finally, whether 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 at issue will be given great weight unless clearly erroneous. See Tennant

v. Marion Health Care Foundation, 459 S.E.2d 374 (W. Va. 1995); Burke, supra. The higher education employee challenging her classification thus will have to overcome a substantial obstacle to establish that she is misclassified. (See footnote 5)

B. Application of the Point Factor Methodology

Grievant challenges the degree levels received in the point factors Experience, Complexity and Problem Solving, Freedom ofAction, Scope and Effect/Nature of Actions, Breadth of Responsibility, Intrasystems Contacts/Nature of Contact, External Contacts/Nature of Contact and Level of Regular, Recurring and Essential Contact, and Direct Supervision Exercised/Level of Supervision. (See footnote 6) Following are the differences between the degree level assigned the point factors for the Supervisor Payroll Accounting Job Title, and the degree level Grievant believes she should have received in each of these point factors:

	EX	CPS	SE FA	IC NA	EC BR	EC NC	DSE NC	LVL	LVL (See footnote 7)
Supr. Payroll Acctg.	3	3	3.5	3	1	3	2	3	4
Grievant's Argument R Ex 2.	4	4	4	4	2 or 3	3	3	4	6

Grievant stated she performs duties which are also duties of a Business Manager II, Pay Grade 19, a Manager of Payroll, Pay Grade 19, and a Controller, Pay Grade 21. She argued that because persons in a higher Pay Grade perform these same duties she shouldbe in the same Pay Grade as those persons. She also stated this meant she was doing someone else's work.

Margaret Robinson, Human Resources Administrator for the State College and University Systems and Chair of the JEC, testified that the job descriptions relied upon by Grievant to demonstrate she was performing duties also performed by persons in a higher Pay Grade were drafts, and have been replaced. Accordingly, they must be disregarded by the undersigned. (See footnote 8) Grievant no doubt performs some duties also performed by persons in a higher Pay Grade. Respondent pointed out that Grievant likewise performs some duties also performed by persons in a lower Pay Grade, for example, preparation of salaried payroll and auditing of payroll are also job duties of a Payroll Representative, Pay Grade 14. The issue, however, is what degree level is appropriate in the challenged point factors for her principal job duties.

Grievant did not believe her duties were sufficiently similar to any of the noted positions to be placed in any of these Job Titles, but she believed her duties were similar to those of the Manager of Payroll at Marshall University. The PIQ placed into evidence for comparison shows that the position compared by Grievant to her own was a Manager of Payroll under the previous classification system, and does not indicate this person wasclassified in the same title in the reclassification. There are no persons in the Mercer classification Job Title Manager of Payroll. See R Ex 1. Accordingly, Grievant has failed to present evidence sufficient to support a finding that her job duties are similar to those of a Manager of Payroll.

1. Experience

The Job Evaluation Plan ("the Plan") describes the point factor 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.

(R Ex 3; See also Burke, supra.)

Grievant received a degree level of 3.0 in this point factor, which is defined by the Plan as, "[o]ver one year and up to two years of experience." She believes she should have received a degree level of 4.0, which is defined by the Plan as, "[o]ver two years and up to three years of experience."

Grievant did not address why she should have received a degree level of 4.0 rather than a 3.0 in this point factor. Her PIQ states:

> Work experience in the area of human resources or payroll. The individual should have prior experience in the issuance/explanation/coordination of benefits, and/or should be experienced in preparing payrolls and submission of various deductions generated by a payroll.

She noted "at least (1) year of experience" was needed, and marked a 3.0 on the PIQ. Her supervisor marked through the last three words of the above statement ("by a payroll"), and inserted "thr[o]u[gh] routine payroll processing", wrote in "2 to 3 yrs for payroll supervisor with direct responsibility", and marked a degreelevel of 4.0. Grievant stated she underestimated herself when she filled out her PIQ, and that as more information about how the point factors are applied has become available, she has changed her opinion about the degree levels she should have received. Respondent did not address this point factor.

"As noted by this Grievance Board in Zara v. Bd. of Trustees, Docket No. 94-MBOT-817 (Dec. 12, 1995), the minimum amount of experience required to perform the essential duties of a position

represents a subjective determination regarding which reasonable people may reach different conclusions." Jones, et al., v. Bd. of Trustees, Docket No. 94-MBOT-978 (Feb. 29, 1996). Those conclusions have at least some factual basis, however, such as evidence of what skills are a prerequisite to entering the job, and how much time it has taken Grievant or some other person to learn those skills prior to entering the job. In this case the prerequisite experience as explained in the PIQ was not disputed by Respondent. However, Grievant presented no facts which show her conclusion on the number of years it takes to acquire this experience level is more accurate than Respondent's conclusion. Further, Grievant did not show that her job duties would be difficult for someone with a bachelor's degree in accounting (a 6.0 in Knowledge as received by this position) to master in a short period of time. She has failed to meet her burden of proof on this point factor.

2. Complexity and Problem Solving

The Plan describes Complexity and Problem Solving as follows:

> 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.

A degree level of 3.0, as assigned to Supervisor Payroll Accounting 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.

Grievant seeks a degree level of 4.0, which is defined in the Plan as:

> Problems 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 guidelines; 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.

Respondent did not address this point factor.

In her PIQ, Grievant provided the following examples of the types of problems she encountered in her job, "and the course of action taken to solve these problems":

> Payroll information to place a new employee on the payroll not being received in a timely manner. Employee was either denied payment, placed on a suppl. or added to payroll. Information to remove an employee from the payroll not being received in a

> timely manner. Employee paycheck redeposited along with cooresponding [sic] deduction. After reviewing Grievant's duties, the examples given of the types of problems Grievant encounters, and the definitions in the Plan, the undersigned concludes that Grievant has not proven the types of problems she encounters clearly fall within the definition of a degree level of 4.0, or that the JEC's application of this point factor was arbitrary and capricious. The problems Grievant encounters may be complex, but the number of possible solutions is limited, the same problems recur, and guides, methods and precedents are usually available to solve the problems.

3. Freedom of Action

The Plan defines Freedom of Action as:

> This factor measures the degree to which the position is structured as is determined by the types of control placed on work assignments. Controls are exercised in the way assignments are made, how instructions are given to the employee, how work assignments are checked, and how priorities, deadlines and objectives are set. Controls are exercised through established precedents, policies, procedures, laws and regulations which tend to limit the employee's freedom of action.

Grievant's position received a degree level of 3.5 in this point factor. Grievant believes she should have received a degree level of 4.0.

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

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.

While Grievant's supervisor does not check her work or assign her every duty, her duties have to be done at set regular times, and she uses state and federal policies and guidelines in preparing payroll and payroll tax reports. Ms. Robinson stated she believed a 3.5 was appropriate for the Job Title, but Grievant's job duties alone would only support a 3.0.

It is easy to see why the JEC assigned a 3.5 to this particular Job Title. When comparing Grievant's job duties to the definitions above it is difficult to discern a distinction between the two definitions. Grievant's duties do not clearly fall within a 3.0 or a 4.0. Grievant has not proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning this Job Title a degree

level of 3.5 in this point factor.

4. 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 institutionalmission: 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.

Grievant received a degree level of 3.0 in Scope and Effect, Nature of Actions. Grievant believes she should have received a degree level of 4.0, because if she did not prepare the federal payroll reports, the IRS would penalize Respondent. If she did not do her job it could cause financial damage to the college, and could shut down the college.

A degree level of 3.0 in Scope and Effect, Nature of Actions, is defined in the Plan 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.

A degree level of 4.0 is defined in the Plan 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. Ms. Robinson testified that those persons receiving the highest degree levels in this point factor have accountability or management level responsibility. She explained that Directors, Managers and Supervisors have varying impact on the institutions, whereas custodians at all colleges and universities have the same impact on the institutions.

Grievant's arguments are without merit. They are based upon her not performing her job at all. As noted in the definition above, this is not how this point factor is applied. Grievant did not indicate she could inadvertently make an error which would result in payroll checks or tax reports not being

produced and distributed/filed. It would be difficult to imagine that this could occur, and if it did, it is the type of error which is easily caught and corrected. Grievant's job is very important to every employee and to Respondent, however, that does not mean she should have received a higher degree level. Grievant has not shown that her job duties fall within the definition of a degree level of 4.0.

5. Breadth of Responsibility

The factor Breadth of Responsibility is defined in the Job Evaluation Plan as:

> This factor describes the variety of specific functional areas in which the job may have formal and ongoing accountability. In reviewing this factor, consider the level of in-depth knowledge required as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations. [Examples of some functional areas within the following divisions would include: (1) Student Services--Housing, Admissions, Financial Aid, Counseling; (2) Business and Finance--Purchasing, Auditing, Grants and Contracts, Bursar.] A degree level of 1.0 is defined in the Plan as:
>
> Accountable for only immediate work assignments but not for a functional area.

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

> In-depth knowledge of and accountability for one functional area as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations.

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

> In-depth knowledge of and accountability for two functional areas as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations.

Grievant believes she should have received a degree level of either a 2.0 or 3.0 in this point factor. She noted that she did not fully understand the definition of this point factor, but stated she is accountable for the work done in the payroll office, not just her own work assignments. She would define the payroll office as a unit. She opined she is also responsible for benefits. The testimony indicates Grievant is one of the persons whose duty it is to explain benefit options, and assist employees in filling out the proper benefit form, but does not indicate in any way that she is responsible or accountable for benefits. She pointed out her PIQ listed five "functional areas", however, a review of the PIQ shows that four of the five items listed relate to payroll and related tax reporting, while the fifth is "issue/explain benefits".

Ms. Robinson noted the Plan's reference to functional areas as areas for which the person has

formal and on-going accountability. Although the knowledge and ability of the incumbent are considered, it is the person who is ultimately responsible for everything whichgoes on in that unit who receives credit for being accountable for a functional area. This interpretation is consistent with the definitions provided in the Plan.

It is understandable that Grievant was not sure what a functional area is. Neither the Plan nor the PIQ's fully explain this point factor, although the examples do provide guidance. While Grievant has knowledge of several areas, and is in charge of the payroll office, she is not ultimately responsible for any functional areas. She does not sign the payroll tax reports, and did not indicate that she signs payroll checks. She makes sure all the payroll work is done, but it is her supervisor, or her supervisor's supervisor who bears ultimate responsibility for any errors in Grievant's work.

Further, as noted in Burke, supra, "[t]he PIQ Summary By Job Family (R Ex 8) shows that most Job Titles received a 1.0 for Breadth of Responsibility. Those positions with a 'Manager' or 'Director' in the title received the 2.0's and 3.0's, and only a handful of positions received a 4.0 or 5.0 for this factor. Those positions receiving a 4.0 or 5.0 were in the top administrative levels of Associate Dean, Assistant Vice-President and Dean." Grievant has not proven that the JEC's application of this point factor was clearly wrong or arbitrary and capricious.

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 andUniversity 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 factor consists of two parts, Nature of Contact and Level of Regular, Recurring and Essential Contact. Grievant is not challenging the degree level received in Level of Regular, Recurring and Essential Contact. She believes she should have received a degree level of 3.0 in Nature of Contact, rather than a 2.0.

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

> Substantial sensitivity and cooperation required; discussions are frequently controversial and require some delicacy (e.g., project interactions, interpretation of complex policies, resolution of somewhat difficult problems.)

A degree level of 2.0 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 stated that most of her contacts fall within the 2.0 degree level, however, "from time to time" she must deal with areas which require substantial sensitivity. For example, dealing with a new employee's benefits and deductions, benefits generally, levies, garnishments, taking someone off payroll or leaving them on payroll, and the effect of suspensions on payroll. Grievant statedthat she has seen the same issues again and again, and dealing with these sensitive matters is routine to her.

Respondent did not address this point factor. Neither party offered examples of job duties of other Job Titles which received either degree level.

While the sensitivity which must occasionally be exercised by Grievant does fit the characterization "substantial sensitivity" better than it fits the characterization "moderate tact and cooperation required", when the entire definition of a degree level of 3.0 is read, Grievant's duties do not fall within this definition. Grievant's role in dealing with these issues is not controversial in nature, and she handles these issues in accordance with standard practices. Grievant has not proven she should have received a degree level of 3.0.

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.

This 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 both Level of Regular, Recurring and Essential Contact and Nature. She believes she should have received a degree level of 3.0 in Nature of Contact,rather than a 2.0, and a degree level of 4.0 rather than a 3.0 in Level of Contact.

A degree level of 2.0 in Nature of Contact 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.)

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

> Substantial sensitivity and cooperation required; discussions are frequently controversial and require some delicacy (e.g., project interactions, interpretation of policies, resolution of problems.)

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

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

Grievant's external contacts are with persons at various state and federal agencies regarding retirement benefits, insurance, whether the employee is still on payroll, from what account the employee is paid, employee enrollment, monthly reports, levies, and garnishments. She also receives telephone calls from employeecreditors and refers them to the appropriate person. Respondent did not address this point factor.

As to Nature of Contact, although the matters Grievant is discussing are of a confidential nature, the "communication is largely of a noncontroversial nature and handled in accordance with standard practices and procedures", rather than being "frequently controversial and requir[ing] some delicacy". Grievant's discussions thus better fit within a 2.0 than a 3.0.

As to the Level of Contact, it is unclear from the definitions where Grievant's contact with government agency representatives would fall. However, even if Grievant had received a degree level of 4.0 in this point factor, it would have added only 20 additional points to her total number of points, which is not enough to change her pay grade. Accordingly, it was not arbitrary and capricious or clearly wrong for the JEC to accord Grievant the same degree level in this point factor as other persons in this Job Title received.

8. Direct Supervision Exercised

The Plan defines Direct Supervision Exercised as:

> 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.

Grievant believes she should have received a 6.0 in Level of Supervision, rather than the 4.0 her Job Title received. The Level of Supervision needed to attain a degree level of 4.0 is defined in the Plan as:

> Direct supervision over a unit of non-exempt employees or lead responsibility over a group of exempt employees. Most of the time is spent assigning, reviewing, and checking work or eliminating normal difficulties involving standard policies, procedures, or work practices. Input would be significant in subordinate employees' performance appraisal, hire or fire decisions.

The Level of Supervision needed to attain a degree level of 6.0 is defined in the Plan as:

> Manages the operation of a unit, including general supervision over first-line supervisors (and non- supervisors, if applicable).

In between these two degree levels is a 5.0, which is defined in the Plan as:

> Direct supervision over exempt employees (and non-exempt employees, if applicable). Responsible for results in terms of costs, methods, and personnel. In a position to hire/fire or strongly recommend such personnel actions.

Respondent did not address Level of Supervision. The definitions do not make clear the distinction between "direct supervision over a unit . . .", as is provided in 4.0, and "manages the operation of a unit," as is provided in 6.0. It is determined, however, that the JEC correctly placed Grievant's duties within a degree level of 4.0, because her responsibility does not rise to the next highest level of 5.0 which indicates the supervisor is accountable.

C. Summary

Grievant failed to prove that the JEC should have created a Job Title specific to her job duties, or that the degree levelsassigned to her Job Title were clearly wrong or were assigned in an arbitrary and capricious manner.

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 she is not properly classified. 156 C.S.R. 1 § 4.17. 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).

3. The Job Evaluation Committee's interpretation and explanation of the Generic Job Description 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 Foundation, 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. A Mercer grievant may challenge her initial classification by asserting that the JEC and governing boards should have developed another classification. A grievant taking this path, however, has a nearly insurmountable burden to prove that the JEC and governing boards abused their broad discretion in failing to create an additional classification. Burke, supra. 5. The Job Evaluation Committee's assignment of degree levels in each of the point factors to Supervisor Payroll Accounting, Pay Grade 16 is not clearly wrong.

6. Grievant failed to establish that the JEC abused its discretion in deciding not to create a Job Title specific to her duties.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha 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 ap propriate court.

BRENDA L. GOULD

Administrative Law Judge

Dated: May 21, 1996

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

Grievant declined the opportunity to submit written argument.

Footnote: 3

Grievant's Level IV Exhibits and Respondent's Level IV Exhibits will be referred to as "G Ex __" and "R Ex __", respectively, with the Exhibit Number appearing in the blank.

Footnote: 4

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

Footnote: 5

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

Footnote: 6

Respondent's post-hearing written submission states Grievant challenged only the point factors Experience, Complexity and Problem Solving, Freedom of Action, Breadth of Responsibility and Scope and Effect. The record does not support this assertion.

Footnote: 7

These headings are shorthand for the following point factors: EX is Experience; CPS is Complexity & Problem Solving; FA is Freedom of Action; SE, NA is Scope and Effect, Nature of Actions; BR is Breadth of Responsibility; IC, NC is Intrasystems Contacts, Nature of Contact; EC, NC is External Contacts, Nature of Contact; EC, LVL is External Contacts, Level of Regular, Recurring, and Essential Contact; DSE, LVL is Direct Supervision Exercised, Level of Supervision. 128 C.S.R. 62 § 2.27, and 131 C.S.R. 62 § 2.27 list the 13 point factors. See also, Burke, supra.

Footnote: 8

Current Generic Job Descriptions, and PIQ's for those positions for which there is no Generic Job Description, were available to Grievant at the Grievance Board, and should also have been available at campus libraries. See Order dated March 10, 1995, Lawrence, et al., v. Bd. of Trustees, W. Va. Univ. Hosp., et al., Docket No. 94-MBOT-461.