SUSAN MARTIN, et al.,

v. **DOCKET NO. 94-MBOT-658**

BOARD OF TRUSTEES,

WEST VIRGINIA UNIVERSITY, et al.

D E C I S I O N

Grievants Susan Martin, Joan Ullom, Leisa Teeters, V. Jean Huffman, Margaret Jenkins, Peggy Blosser, Kathy Watson, Debra Brock, Robert Covert, and Karen Kerens (formerly Dice) (See footnote 1) each alleges he or she was misclassified effective January 1, 1994, in the "Mercer reclassification" (See footnote 2) . Grievants Martin, Ullom, Teeters, Huffman, Jenkins, and Covert seek as relief to be classified as Accounting Assistant II, Pay Grade 14 ("AA II"), and backpay. The remaining Grievants seek as relief to be classified as Accounting Assistant I, Pay Grade 12 ("AA I"), and backpay. As alternative relief, Grievants Martin, Teeters and Huffman seek to be classifiedas Accountant, Pay Grade 16 ("ACTT"); Grievant Covert seeks to be classified as AA I; Grievants Blosser, Watson, Brock and Kerens seek to be classified as Accounting Clerk III, Pay Grade 14 ("AC III"); and Grievant Teeters seeks an Institution Specific Job Title. Each Grievant challenges the degree levels received in several point factors. (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 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 thisinformation. Grievant Martin was hired into her position in late 1993, and signed a Position Description, which is similar to a PIQ, at that time which listed her duties. Her predecessor in the position, Tammy McPherson completed a PIQ in 1991. Grievants Ullom, Teeters, Huffman, and Jenkins completed PIQ's in 1991. Grievant Ullom updated her PIQ in 1994. Grievant Teeters revised

her PIQ in 1994 to reflect changes in her duties which occurred in 1993. Grievant Huffman revised her PIQ to emphasize certain areas. Grievants Blosser, Watson, Brock, Covert and Kerens signed PIQ's completed by Michael Beto in 1991, who at that time supervised Grievants Brock and Covert, and was the second-level supervisor of Grievants Blosser, Watson and Kerens; and they signed Position Descriptions in 1993, which were also completed by Mr. Beto.

2. Grievants Martin, Ullom, Teeters and Huffman were classified as AA I's. The remaining Grievants were classified as Accounting Clerk II's, Pay Grade 10 ("AC II").

3. Grievant Martin is employed at West Virginia University ("WVU"), and her work location is the Anatomy Department, Health Sciences Center, School of Medicine.

4. Grievant Ullom is employed in the Business Office at West Virginia Northern Community College ("WVNCC").

5. Grievant Teeters is employed in the Business Office at West Liberty State College ("WLSC").

6. Grievant Huffman is employed in the Business Office, Department of Institutional Advancement, at WVU, in Printing Services/Publications/News Services, which is a self-supportingrevenue unit.

7. Grievant Jenkins is employed in the Business Office at Potomac State College ("PSC").

8. Grievants Blosser, Kerens, Watson, Brock and Covert are employed in the Bursar's Office at WVU ("the Bursar's Office Grievants"). Their duties are identical, but the percentage of time each spends performing particular duties varies.

9. None of the Grievants is responsible for any department, and none is accountable for the budget of any department. Grievant Martin is not accountable for grant funds.

10. Grievant Martin's primary job duties (See footnote 4) are recording revenues and expenses in 33 fund accounts to maintain records of the fund balances for departmental use, advising the department head of fund balances, advising grant investigators (See footnote 5) of balances in grant funds, monitoring expenditures to make sure the department is not overspending its budget and that department personnel are spending grant funds in a timely manner, entering data, advising department personnel on state and federal regulations regarding use of funds and best use of funds, comparing department fund records against financial records maintained by the Comptroller's Office for accuracy and researching invoices to determine source of discrepancies, preparing reports on

fund balances and expenditures when requested and for the annual report, and devising and revisingforms using DOS (70%); signing documents to authorize purchases and payments, verifying that orders have been received, sending documents to the proper person for payment, and entering purchase data into the computer (10%); calculating and monitoring overhead and personnel charges to be allocated to various grants, and assisting her supervisor in processing employee personnel action forms (10%); mailing monthly billing for laboratory services, depositing collections in accounts, and drafting the operating budget for accounts (5%); drafting department budgets (2%); and filling in for her supervisor and other employees (3%).

11. To draft budgets, Grievant Martin reviews expenditures in each line item over the preceding two to three years, reduces expenditures in line items for non-recurring purchases, and increases expenditures in line items where needed. Her supervisor goes over the draft budget with her as Grievant enters the data.

12. The Comptroller's Office maintains the official financial records used by WVU for financial reporting. Those records do not provide the detail needed by grant investigators and the department head, Dr. Richard Wiggins, nor are they as current as records kept by Grievant Martin.

13. When determining what expenditures may be charged to state funds, Grievant Martin must follow state regulations governing use of funds. She has procedure manuals regarding use of the other funds received by the department. She does not interpret these regulations or procedures. If she encounters a new or unusual problem, she goes to her supervisor for assistance. 14. Grievant Martin attends one budget meeting each spring, and periodically during the rest of the year. Business Managers from other departments also attend these meetings.

15. Grievant Martin has contact with families wishing to donate human bodies to the Human Gift Registry Program only when she is filling in for an absent employee, or when that employee is busy.

16. Grievant Ullom's primary job duties are comparing the funds ledger she maintains to the State Auditor's monthly report, noting problems and inconsistencies, and correcting errors (20%); gathering data and summarizing it into management informational reports (20%); summarizing data into annual reports, operating budgets, expenditure schedules, quarterly reports, and other reports (20%); maintaining information on departmental budgets, checking for errors, problems and inconsistencies, making adjustments, and talking to departments about budgets (15%); preparing

departmental chargebacks for fund transfers (10%); monitoring fund balances (5%); verifying that all institutional travel forms are properly completed, contacting the travel service to make the service aware of scheduled travel so it can make the necessary arrangements, and contacting the State Travel Management Office for approvals and clarifications (5%); and other assigned duties (5%).

17. Grievant Ullom talks to chairpersons, or their secretaries, when they call her to see how much money is left in their budget in a line item, and she contacts them to remind themshe needs budget information.

18. Grievant Ullom contacts the Travel Management Office about travel problems or questions on travel policy, the Budget Office, Auditor's Office and Treasurer's Office about problems or questions that arise in budgets and payments, and National Travel Service about travel reservations. She talks to vendors only when she is filling in for another employee.

19. Grievant Teeters performs all administrative duties associated with the federal Perkins Student Loan Program ("PSLP") from the time a student is no longer enrolled at WLSC until she turns the student's file over to the federal agency as uncollectible. This includes preparing exit packages, conducting exit interviews, collecting borrower information, verifying reports and deposit records from the billing agency, monitoring payments, sending out delinquency letters, working out payment arrangements for delinquent accounts, turning delinquent accounts over to collection agencies, and preparing the file and completing federal forms to send the account to the federal agency as uncollectible. She performs similar duties related to the federal nursing loan program.

20. Grievant Teeters must follow federal regulations governing administration of the PSLP. She attended a conference to learn regulation requirements. If she has a question about the regulations, she calls upon others for assistance.

21. Grievant Teeters has daily contact with students and alumni about repayment of student loans, with staff of the billingagency used by WLSC to bill and accept student loan payments about borrower and payment information, and with staff of the collections agencies used by WLSC about borrower and payment information.

22. Grievant Huffman's primary job duties are allocating payments to the proper print job, posting payments into ledgers, balancing ledgers, depositing payments, preparing reports on revenues by unit, verifying the accuracy of all requisitions, invoices and purchase orders by comparing information and searching records to correct inaccurate information, comparing her

revenue records to those maintained by WVU to check for errors and locating the source of any errors, computing the amount to be billed to some customers, talking to customers regarding billing complaints and failure to pay, and searching records to check customer complaints (55%); entering data from invoices into the computer (25%); and, preparing various forms to place new employees on payroll, keeping track of leave time for employees, preparing forms showing leave balances and distributing these forms to employees, and keeping time sheets, leave slips and personnel files and reporting time to the payroll office (20%).

23. Grievant Huffman records the details of production for each unit and produces reports by unit so the managers can see changes in use of services. The records she maintains relate to revenue only. She has devised 25 to 30 forms which enable the department to keep track of operations at each copier site. She worked with other persons to develop some of these forms. Upon request, she compares revenues and searches for changes in therevenue stream to determine the reason revenues are up or down at a particular location.

24. Grievant Huffman's supervisor prepares financial statements for the department using Grievant's records. Like Grievant Martin's records, her records are more detailed and more current than the official records maintained by the Comptroller's Office; and are more useful to those managing her section.

25. Grievant Huffman monitors overages and shortages on cash registers and copiers, and decides when a copier needs repaired because it is not collecting the proper amount, and when a student worker responsible for the copier or the cash register is stealing.

26. Grievant Huffman has contact with the managers of the various revenue units in her department when they ask her to prepare revenue information for their units in a particular fashion to suit their individual needs. These managers work under the direction of the same Director and Assistant Director as Grievant. She has contact with accountants and business office staff in other departments daily, about money owed to her department by the other department. She has contact with business managers, assistant directors or directors when she has been unable to collect the debt after talking to the accountant or business office staff.

27. Grievant Huffman contacts students to try to get them to pay a bill only when they have written bad checks, and only after a certified letter is sent to the student by the assistant director.

28. Grievant Huffman supervises three student workers, whowork a total of 40 hours per week.

She hires and fires them, decides what work they will perform to assist her each day, lays out any materials they need to perform the work, and instructs them on how to perform the work. The student workers perform the same duties (and more) as would be performed by a part-time (19.5 hours per week) classified staff position, an Accounting Clerk I, if that vacant position were filled. They file, help her with billing, pull invoices and other information she needs from files, type requisitions, and place revenue information on worksheets for her use in preparing reports.

29. Grievant Jenkins' primary job duties are collecting fees from students, disbursing financial aid checks, recording all transactions on the campus computer system by entering data by account code, (See footnote 6) preparing receipts, preparing bank deposits each day and reconciling daily cash receipts to records, and computing student refunds (41%); preparing the daily revenue sheet, the cash report twice monthly, cumulative reports every six months and annually, the monthly and annual sales tax report, local hotel tax report, unpaid student accounts report, and reports on checks returned for insufficient funds (28%); receiving, counting, and entering data into the campus computer system by account code for all other money collected by college departments, preparing receipts for these funds, and preparing bank deposits (15%); depositing money in local bank accounts and writing checks on twoaccounts (3%); mailing student bills and follow-up bills, and receiving payment from state programs and allocating payment to the proper account code from a chart of accounts (3%); and miscellaneous duties such as distributing payroll checks to employees, and work study checks to students, answering inquiries on student accounts, making change, calculating calendar dates for student refund deadlines, checking the fee schedule each semester for accuracy, ordering supplies, and maintaining files (10%).

30. The job duties of the Bursar's Office Grievants are, (1) collecting student fee payments daily, applying the payments to the proper accounts, identifying transaction types by fee codes, and, balancing out each day; (2) filming and endorsing checks; (3) collecting departmental revenue weekly, counting money to make sure the deposit ticket prepared by the department is correct, notifying departments of discrepancies and trying to resolve them, and balancing and preparing deposit ticket; (4) pursuing collection on student and bookstore bad checks; (5) billing of sponsoring agencies for deferred fees, monitoring unpaid arrangements, creating letters to remind students of arrangement due dates, and printing reports; (6) entering data, distributing money to students, answering student questions, and comparing and balancing the disbursements processed in the

payment plan accounts of 1000 students against the database each month; (7) calculating total student fee bills and any refunds due, processing student withdrawals and determining proper refunds based upon guidelines which set forth the percentage to be refunded based upon the dateof withdrawal, and placing, researching and removing restrictions on student records for nonpayment of fees; (8) preparing vouchers for student loan and scholarship checks, filing them, calling students to notify them checks are in and disbursing them within 45 days in accordance with federal regulations, checking the accounts receivable book to verify payment status and the number of hours, and, answering inquiries on student payment, financial aid availability, billing, and refund status; (9) processing arrangements for deferred payments for third-party sponsors, determining validity of award/request for deferment; and, (10) miscellaneous related duties, including training temporary staff during spring and fall registration, typing, answering questions on billing and payments, mailing invoices, and verifying student payments.

31. Grievants Blosser, Watson, and Kerens spend 60% to 70% of their time disbursing student financial aid. They spend most of the rest of their time collecting student fees, collecting and preparing departmental deposits, and answering student questions about fees and financial aid. They spend one week each month on collecting, counting, reconciling and preparing departmental deposits. Grievant Kerens maintains the student restriction list. Grievants Blosser, Watson, and Kerens perform the duties numbered 5, 6 and 9, in Finding of Fact Number 30, only when Grievants Brock and Covert are not available to perform those duties.

32. Grievant Brock spends most of her time performing the duty numbered 6 in Finding of Fact Number 30, and identifyingerroneous or missing information in the student accounts receivable book and supplying the correct information to be entered into the computer. She spends about one-third of her time performing cashiering duties. She is Grievant Covert's back-up. She generally does not prepare departmental deposits, but she does assist in collecting departmental deposits.

33. Grievant Covert spends most of his time (55%) performing the duties numbered 5 and 9 in Finding of Fact Number 30, about a third of his time performing the duties numbered 7 and 8, (See footnote 7) and about 10% of his time performing cashiering duties. He is Grievant Brock's back-up. He generally does not prepare departmental deposits, but he does assist in collecting departmental deposits.

34. For two weeks each spring and each fall during registration, the Bursar's Office Grievants

train approximately 65 full-time temporary workers who perform some of the same duties as Grievants, prepare supplies and equipment for their use, and oversee their work. Some of these workers are employed for up to two months. None of these workers is formally assigned to a particular Grievant, and Grievants have no authority to hire or fire them.

35. Two to five work-study students work in the Bursar's Office and work under the direction of the Grievants. None of them is formally assigned to a particular Grievant, and Grievants haveno authority to hire or fire them. They each work from one to three hours, one to five days each week.

36. The AC II Job Title received 1484 total points from the following degree levels in each of the thirteen point factors (See footnote 8) : 3.0 in Knowledge; 3.0 in Experience; 2.0 in Complexity and Problem Solving; 2.0 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; 2.0 in External Contacts, Nature of Contact; 2.0 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; 2.0 in Physical Coordination; 2.0 in Working Conditions; and 1.0 in Physical Demands. Respondents' Exhibit 1.

37. The AA I Job Title received 1707 total points from the following degree levels in each of the thirteen point factors: 5.0 in Knowledge; 3.0 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; 2.0 in External Contacts, Level of Contact; 1.0 in Direct Supervision Exercised, Number; 1.0in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 2.0 in Physical Coordination; 2.0 in Working Conditions; and 1.0 in Physical Demands. Respondents' Exhibit 1.

38. The AA II Job Title received 1982 total points from the following degree levels in each of the thirteen point factors: 5.0 in Knowledge; 4.0 in Experience; 3.0 in Complexity and Problem Solving; 3.0 in Freedom of Action; 3.0 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; 3.0 in Intrasystems Contacts, Level of Contact; 2.0 in External Contacts, Nature of Contact;

2.0 in External Contacts, Level of Contact; 3.0 in Direct Supervision Exercised, Number; 3.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 2.0 in Physical Coordination; 2.0 in Working Conditions; and 1.0 in Physical Demands. Respondents' Exhibit 1.

39. The point score range for a Pay Grade 12 is from 1655 through 1755 total points. Respondents' 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, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant assertingmisclassification 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 9) While some "best fit" analysis of the definitions of the degree levels is involved in determining which degree level of a point factor should be assigned, where the position fits in the higher education classified employee hierarchy must also be evaluated. In addition, this system must by statute be uniform across all higher education institutions; therefore, the point factor degree levels are not assigned to the individual, but to the Job Title. W. Va. Code § 18B-9-4; Burke, supra. A Mercer grievant may prevail by demonstrating his reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. StateBd. 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 10)

B. Grievants' Challenges to the JEC Decision-Making Process

Grievants Martin and Huffman made several challenges to the way the JEC made decisions, in an effort to discount the deference given the JEC. These same challenges were made and addressed in Gregg, et al., v. Bd. of Trustees, W. Va. Network for Educational Telecomputing, Docket No. 94-MBOT-863 (Dec. 18, 1996), and need not be repeated here. As was concluded in Gregg, deference is given to the JEC because of the fact specific analysis applied. To overcome this deference the burden on Grievants is the same in this case asin any other: to show the information used by the JEC to classify these Grievants was erroneous. What is important is whether the JEC's decision is based upon a mistaken belief as to the particular employee's job duties and responsibilities. As in all Mercer grievances, where Grievants show the JEC decision was based upon a mistake of fact, the JEC may be found to be clearly wrong.

In this case, the PIQ's of Grievants Martin and Huffman correctly listed their duties and responsibilities. Grievants provided more detail in their Level IV testimony, which helped the undersigned in understanding Grievants' jobs, but did not affect the outcome on the point factor analysis.

C. Application of the Point Factor Methodology

The following table shows where there are differences in the degree levels assigned the Job Titles at issue.

	KN	EX	SE CPS	SE FA	IC IA	EC NA	DSE LVL	DSE NC	NUM	LVL (See footnote 11)
AC II	3	3	2	2	2	2	2	2	1	1
AA I	5	3	2.5	2.5	2	2	2	1	1	1

AA II	5	4	3	3	3	2	3	2	3	3
AC III	3	4	2.5	2	2	2	2	2	3	3
ACTT	6	3	3.5	3.5	5	3	3	2	1	1 Respondents' Exhibit 2.

Before addressing the individual point factors challenged, it should be noted that Grievant Ullom did not make clear which point factors she was challenging. She stated she was challenging the degree levels received in Complexity and Problem Solving, Intrasystems and External Contacts, and her testimony indicated a possible challenge to Physical Coordination. She stated she was not challenging the degree levels received in Knowledge, Scope and Effect or Direct Supervision. This is consistent with the point factor evaluation prepared by Charles Steinman of the WVNCC Human Resources Office in his recommendation to the JEC that she be placed in the AA II Job Title. Grievant referred to Mr. Steinman's evaluation several times when asked to identify the point factors challenged. Mr. Steinman also assigned a higher degree level to Grievant's duties than the AA I received in Experience, Freedom of Action, and Physical Demands. The undersigned will also consider whether Grievant has proven she should have received a higher degree level in these three point factors.

Some of Grievants' challenges will be dispensed with based upon previous cases or lack of evidence. Grievant Ullom marked a degree level 4.0 on her PIQ under Physical Coordination, and Mr. Steinman evaluated her duties at a 3.0. She presented no evidence that speed or skill are required to perform her job duties, as is necessary to achieve a degree level of 3.0 or 4.0. See Barber, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-872 (Oct. 31, 1996); and, Hughes v. Bd. of Trustees, W. Va. School ofOsteopathic Medicine, Docket No. 94-MBOT-1002 (Jan. 28, 1997). She marked a degree level of 2.0 on her PIQ under Physical Demands, and Mr. Steinman rated her duties at that level. Grievant Teeters also argued she should have received a higher degree level in this point factor. However, neither Grievant presented evidence that her job is anything but:

> physically comfortable; individual is normally seated and has discretion about walking, standing, etc. May occasionally lift very lightweight objects.

This is the degree level 1.0 definition under Physical Demands, which is the level assigned the AA I Job Title.

Grievants Teeters and Huffman challenged the degree level received in Breadth of Responsibility.

In accordance with many previous Grievance Board decisions, Grievants, like most higher education employees, were properly assigned a degree level of 1.0, because neither has responsibility for a budget. See Burke, supra; and Floyd v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-932 (June 14, 1996).

Grievant Teeters argued she was penalized because WLSC is a small school, and therefore she does not supervise any employees. She felt she would have been placed in a higher pay grade if she were supervising other employees. This general challenge can only be dealt with by determining whether Grievant has proven she should have received a higher degree level in the challenged point factors. (See footnote 12) 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.

Grievants Jenkins, Watson, Brock, and Covert argued they should have received a degree level of 5.0 in Knowledge, Grievant Kerens argued for a 4.0, and Grievant Blosser argued she should have received a 3.5. The Plan does not address half-levels, but LuAnn Moore, Senior Compensation Analyst at WVU, and non-voting JEC member, testified that the JEC assigned half-levels in this point factor only in recognition of licensing requirements for certain jobs. Grievant Blosser does not need a license to perform her duties, and accordingly, has not proven she should have received a 3.5 in this point factor.

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

> Job requires basic knowledge of grammar, spelling, punctuation, and simple mathematical functions like percentages, ratios, etc., as might normally be acquired through attainment of a high school diploma or GED.

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.

Jenkins. Grievant Jenkins pointed out that she holds an Associate's Degree. Her degree, however, is a Secretarial degree, not Accounting, although it included bookkeeping and accounting courses. She pointed to the responsibility she shoulders in handling approximately $3.8 million in cash, checks or credit card payments each year. Her supervisor and second-level supervisor agreed with Grievant's assessment on her PIQ. Neither supervisor was called as a witness to explain how they arrived at this opinion, or whether this is merely a preference.

Grievant Jenkins failed to provide evidence in support of her opinion, and accordingly, her testimony merely shows that her opinion differs from that of the JEC. This is insufficient to meet her burden of proof. See Riggs v. Bd. of Trustees Marshall Univ., Docket No. 94-MBOT-711 (Apr. 29, 1996). Further, many of Grievant's job duties are comparable to those performed by a bankteller and data entry operator, as was the case in Barber, supra. The grievant referred to in that case was also an AC II.

The Bursar's Office Grievants. Grievant Covert opined that an Associate's Degree in office management skills and/or administration would help the employee, because he needs to know how to handle himself, how to talk to someone on the telephone, what to do with documents, and how to organize. While this may indeed be helpful, Grievant did not prove that one needs to attend college level courses more than 18 months to acquire these types of skills. Grievant failed to prove that these skills could not be learned on the job rather quickly.

Grievant Kerens believed that out-of-balance situations are complex, and require critical thinking beyond a basic knowledge of mathematical functions. Mr. Beto testified he rated these positions at a degree level of 5.0 on the PIQ's, because more than basic math skills are needed to perform the required calculations. Neither identified what types of math or other courses would be necessary. While Grievant and Mr. Beto may be correct that more than "basic math" is required, this does not mean "basic knowledge in a specific area" or "broad trade knowledge or specific technical or business knowledge" is required. While the degree level 3.0 definition refers to "simple mathematical functions", it should also be kept in mind that more than "basic math" courses can be taken in high school. Grievant Kerens has not proven she should have received a higher degree level.

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.

Grievants Martin, Teeters, Huffman, Jenkins, Blosser, Brock, Covert, and Kerens argued they should have received a degree level of 4.0 in Experience. Grievant Ullom marked a degree level 4.0 on her PIQ under Experience, and Mr. Steinman evaluated her duties at a 4.0. Grievant Watson argued she should have received a 3.5. No evidence was presented that the JEC awarded half-levels in this point factor, or that it was arbitrary and capricious or clearly wrong for them to decline to do so.

A degree level of 3.0 is defined in the Plan as "[o]ver one year and up to two years of experience." A degree level of 4.0 is defined by the Plan as "[o]ver two years and up to three years of experience."

Martin. Grievant Martin presented no facts which support her opinion of how much experience is necessary to performance of her job duties. Degree level 4.0 was marked on her predecessor's PIQ, and this was agreed to on the PIQ by her supervisor, and her second level supervisor. The narrative on the PIQ states that two years of experience are needed "with University systems as pertains to accounting, policies and procedures and rules and regulations," and one year of experience is needed with micro-computer and software applications. Grievant's supervisor was not called as a witness. Her second-level supervisor was not asked how he arrived at hisopinion, but admitted to a lack of familiarity with accounting, which would make it difficult for him to independently evaluate the experience needed. Therefore, it is unknown how either arrived at the opinion it would take over two years to acquire these skills, and whether this is the minimum level required to perform the job, or just what they would prefer.

Ullom. Grievant Ullom presented no testimony to support her opinion of the amount of prior experience necessary to be able to perform her job duties at an entry level. She marked a degree level of 4.0 on her PIQ. The narrative on the PIQ states three to four years of experience is needed as follows:

> Progressively responsible knowledge in all phases bookkeeping, accounting, auditing and office procedures. Also, experience dealing with the general public and other persons in various positions throughout the college and the College and University Systems Central Office and the State Budget and Auditor's Office.

No evidence was presented that Grievant performs auditing. Grievant's supervisor testified at the hearing, but neither party asked him whether he still agreed with this assessment, how he arrived at his opinion, or whether it was simply a preference. He testified, however, that he believed she was

properly classified.

Teeters. Grievant Teeters argued she has to know the applicable federal regulations. She marked a degree level of 3.0 on her PIQ, and her supervisor concurred in this assessment, but was not called as a witness to explain the basis for her opinion. She provided no evidence to support her opinion that more than two years of experience was required to acquire the requisite familiarity with these regulations. Huffman. Grievant Huffman based her opinion upon how much on- the-job training she thought it would take to acquire "some" knowledge of the printing business. She stated an Accounting Clerk would have to work probably more than a year to learn the duties and responsibilities at that level, before moving on to her position. She believed one would have to be knowledgeable about pricing, how photographic services operates, and payroll. Grievant Huffman argued in her brief that it took her eight years of training at lower level jobs before she was qualified for her current position. The evidence does not support this assertion. The evidence may support a finding that she had this much experience prior to entry into her present position, but there is no evidence that this is the minimum experience required.

Grievant Huffman marked a degree level 4.0 on her PIQ, and her supervisor and second-level supervisor agreed with this rating. The narrative on the PIQ, explaining the type of experience needed states:

> Basic knowledge or experience in the accounting field, cash handling, payroll, etc. Individual should have good mathematical skills. Individual should have basic knowledge of university policies and procedures, must beable [sic] to determine priorities.. . .

This statement indicates that experience other than work experience is being considered, which is not what this point factor measures. Other than that, it does nothing to address how Grievant and her supervisors reached the conclusion that two to three years of experience was needed. Grievant's supervisor was called as a witness, but was not asked how she arrived at her opinion. Hersecond-level supervisor was not called as a witness. Therefore, it is unknown how either arrived at the opinion it would take over two years to acquire these skills, and whether this is the minimum level required to perform the job, or just what they would prefer. Jenkins. Grievant Jenkins noted that she has 11 years of experience, and that it is important that the person in her position be mature and responsible to be able to handle the variety and volume of work with accuracy. On her PIQ Grievant Jenkins stated two years of experience in bookkeeping, accounting, computer knowledge and

personal relations was needed, and three years of experience in cash handling was needed. Grievant's supervisor and second level supervisor agreed with her on her PIQ, but were not presented as witnesses.

The Bursar's Office Grievants. Grievant Covert stated that a minimum of two years was needed. However, he believed that with a relevant two year degree or office training in high school, two years of experience would not also be needed. The 1993 Position Descriptions state "[p]revious accounting or banking, cashiering, and computer/computer systems experience preferred."

Grievants' testimony merely shows they understandably hold an opinion different from that of the JEC on the amount of experience needed to perform their duties. This is not sufficient to meet the burden of proof. They presented no facts upon which the undersigned may rely to reverse the JEC decision. See also, Barber, supra.

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

Grievants Martin, Ullom, Huffman (See footnote 13), Jenkins, Brock, Watson and Covert argued they should have received a degree level of 3.0 in this point factor. Grievant Teeters argued she should have received a degree level of 5.0, but stated she would settle for a 3.0 or 3.5. Grievants Blosser and Kerens argued they should have received a degree level of 2.5.

Half-levels are not defined in the Plan, but as applied by the JEC, were assigned when the duties fell between two levels; that is, the duties were sometimes or somewhat within the lower degree level, and sometimes or somewhat within the next higher degree level. Deposition of Margaret V. Robinson, Grievants' Rebuttal Exhibit 4, pp. 98, 100. 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.

A degree level of 4.0 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.

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

> Problems encountered involve unusual circumstances, variations in approach, and incomplete or conflicting data. Employees exercise considerable analytical, valuative and reasoning skill in researching information and developing new methods to perform work assignments or optimum solutions to problems. The development of new programs, procedures or methods are typical end results of the problem-solving process. Determination of the effectiveness of a policy or practice may be involved at this level.

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, thegrievants 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. While many of Grievant Martin's job duties require analysis, she also performs data entry, mails bills, makes deposits, makes basic computations and compares data, none of which rises to a degree level of 3.0. In performing many of her duties which require analysis, the solutions to the problems encountered are limited by state and federal regulations and procedures. Grievant has not proven a 3.0 is a better fit for her duties.

Ullom. Grievant Ullom's explanation about how she prepares reports indicates that, while the reports may be detailed and somewhat complicated, she does not decide which data to use or how to

use it; rather, the data is always obtained from the same place, and placed on the report in the same way. She knows where to obtain the data compiled and placed by her on various reports, because she follows established, standard procedures. When she is comparing the internal report to the Auditor's report for accuracy, this involves a comparison of data. When she is checking travelreports, she is following travel policy, and checks for signatures, dates, and that mileage is correctly computed, for example. If she has a question on travel policy, she calls the Travel Management Office for help. If she encounters a problem she has never dealt with, she stated she goes to her supervisor for direction. None of this rises to a degree level of 3.0.

Teeters. Grievant Teeters did not prove any of her duties fall within a degree level of 4.0 or 5.0. Nearly every detail of her work is controlled by federal regulations, not theories of professional disciplines. While she has developed methods to reduce the delinquency rate, which may fall within a degree level of 3.0, many of her duties fall within a degree level of 2.0. When she is checking reports for accuracy, this involves a comparison of data. When she prepares exit packages and sends out delinquency letters, she follows the same procedure each time, and takes these actions based upon established procedures, all of which is within a degree level of 2.0.

Huffman. When Grievant Huffman is comparing WVU's records to her internal records, she is comparing numbers, and sometimes must do some computation work. She totals checks and prepares deposit tickets, compares invoices to payments received, verifies that bills are correct by multiplying unit prices by number of units, and enters data. None of these duties are within a degree level of 3.0, and they comprise a significant portion of Grievant's duties. Grievant did not make clear what is involved in her payroll duties, but it appears that much of this work involves collecting data andplacing it on forms, and comparing data, which also would not fall within a degree level of 3.0. Grievant Huffman shoulders a significant amount of responsibility, and many of her duties may well fall within a degree level of 3.0. However, neither she nor Grievants Martin, Ullom or Teeters have proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level which recognizes that some duties are within a degree level of 3.0, while others are within a degree level of 2.0.

Jenkins. Grievant Jenkins stated she works from guidelines, such as the college catalog, precedents and procedures, and she believes the problems encountered require resourcefulness. As an example, she stated that when money is placed in the wrong account, or if someone challenges

the amount of a deposit on a particular day, it requires resourcefulness to know which records to search. As another example, she stated that if her balance is off at the end of the day, she may have to go through hundreds of transactions and receipts to find the mistake.

Many of Grievant Jenkins' duties are routine, and fall within a degree level of 1.0, while most, including comparing data, fall within a degree level of 2.0. Whether she is collecting fees of $5.00 or $5,000.00, she is acting as a cashier. When she is checking the student's account information on the computer and his file folder, her testimony showed that she follows a set procedure which is the same each time. If federal regulations governing student financial aid change, the financial aid office informs her of these changes in the procedure to be followed. At the end ofthe day, she must count her cash, and compare that amount to the total of the amounts she has entered into the computer. If there is an error, she must compare the numbers to determine where the error occurred. When entering data, she uses a code of accounts, and she did not indicate any difficulty in determining the proper account. When preparing reports, she did not indicate that the procedure changes. While some small portion of Grievant Jenkins' duties may on occasion rise to a degree level of 3.0, her duties almost always are within a degree level of 1.0 to 2.0. She has not proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level of 2.0 as the best fit for her duties.

The Bursar's Office Grievants. Grievant Covert stated every situation is different, and the problems faced are not simple to find and fix. Grievant Kerens argued that conflicting information creates out-of-balance situations, and analytical thinking must be used to determine the cause. Mr. Beto agreed that a degree level of 3.0 described Grievants' duties, pointing to the fact that Grievants are constantly interrupted by customers. (See footnote 14) Grievants also argued that the variety of tasks performed requires them to apply diversified guidelines and procedures. While constant interruptions make it more difficult to complete assignments, this is not measured by this point factor. The assignment is still completed in the same manner, whether Grievants are interrupted or not. While they must be familiar with multiple procedures, they follow established procedures in performing their duties, as they have been trained to do. The Bursar's Office Grievants' duties are very similar to those of Grievant Jenkins. They collect and count money, prepare deposit tickets, file, monitor and distribute financial aid checks, calculate refunds from a chart, allocate fees to various activities based upon a mathematical calculation and standard procedures, and compare data.

Grievant Brock spends most of her time in a different area, however, her primary duty also involves following established procedures, entering data, comparing data, and disbursing money to students. Grievant Covert follows established procedures in performing his primary duties, compares data and facts, and disburses money to students. Grievants have not proven they should have received a higher degree level.

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.

Grievants Martin, Teeters, Huffman and Jenkins argued theyshould have received a degree level of 4.0 in this point factor; Grievants Blosser and Kerens argued they should have received a degree level of 2.5; and Grievants Brock, Watson, and Covert argued they should have received a degree level of 3.0. Grievant Ullom marked a degree level of 4.0 on her PIQ, and Mr. Steinman evaluated her duties at a 3.0.

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.

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.

Finally, 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.

Several Grievants pointed to the fact that they receive limited to no supervision. This is not determinative. Ferguson v.Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-1001 (Feb. 6, 1997). Employees who perform the same tasks each day, and do a good job, do not need daily supervision even though their duties fall within a degree level of 1.0.

Martin. Grievant Martin's tasks each day are dependent upon employee requests for information, purchase requests, shipments received, billings which must be sent, revenues received, and the deadline for submitting budget information. This adds structure to her job. Her job is also structured by the regulations and procedures applicable to the funds she monitors. She knows what is expected of her, she knows how to do her job, and she does what she is supposed to do without being told what to do each day because she is a competent employee. See Hughes, supra. Grievant Martin has not proven she should have received a higher degree level.

Ullom. While Grievant Ullom's PIQ indicates she decides which work takes priority, the tasks she performs each day are dependent upon the deadlines for various reports, what reports she receives to be checked, and telephone inquiries. Her duties are structured by the policies and procedures she follows in performing her duties. Grievant has not proven she should have received a degree level of 4.0, nor has she proven her duties fall within a degree level of 3.0 so often that she should have received that degree level rather than 2.5. See Braniff v. Bd. of Trustees, W. Va. Univ. - Parkersburg, Docket No. 94-MBOT-865 (Sept. 30, 1996); Jordan, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94- MBOT-983 (Nov. 25, 1996); and Hughes, supra. Teeters. Grievant Teeters' job is very structured by federal regulations. Her job duties follow a pattern dependent upon the school calendar and the reports she receives. Grievant has not proven she should have received a degree level of 4.0, nor has she proven her duties fall within a degree level of 3.0 so often that she should have received that degree level other than 2.5. See Braniff; Jordan; and Hughes.

Huffman. Grievant Huffman pointed out she works with the Director and Assistant Director to develop ways to improve the department's record keeping. Her supervisors have provided her with very little guidance in how to properly account for accounts receivable. She developed the proper record keeping by working with an auditor several years ago. She has developed various forms to collect information after being told by her supervisor that she wants to be able to compare and evaluate particular revenue information. This indicates she is given much responsibility and freedom in how to fulfill her duty to properly account for receivables. However, there are standard accounting

guidelines for proper record-keeping which the auditor helped her to understand and set up. Many of her duties are recurring and routine. Every Friday all revenues are totaled and deposited. She enters data into the computer when the data arrives in her office. When the WVU financial records come in to be compared, she performs that duty following the same procedures each time. When jobs arrive at her office to be billed, she compares information to make sure it is correct and mails the bills. When new employees are hired, sheprepares the forms needed by WVU at that time. When it is time to get information to payroll, she prepares the information needed at that time. She goes to her supervisor with questions. While many of her duties may well fall within a degree level of 3.0, she has not proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level which recognizes that some duties are within a degree level of 3.0, while others are within a degree level of 2.0.

Jenkins. Grievant Jenkins stated she resolves most of the conflicts which arise in her office, and sends only unruly students or students questioning college policy to her supervisor. Grievant follows standard procedures and federal regulations in performing her tasks. Every day she receives money, enters the data, balances, and prepares deposit tickets and cash reports. When payroll checks arrive in her office, she disburses them. Each month she prepares the same reports. All of this indicates that Grievant's tasks are structured as is described in degree level 2.0, and these types of duties comprise most of Grievant's duties. She may, on occasion perform at a degree level of 3.0, but she did not present any evidence that her tasks fall within a degree level of 3.0 even one-fourth of the time. Her cashiering duties are so routine that they may fall within a degree level of 1.0. Grievant has not proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level of 2.0.

The Bursar's Office Grievants. Grievants Blosser, Kerens, Watson, and Covert acknowledged their supervisor is called uponwhen they cannot solve the problem, such as, when a student's request is not allowed by the guidelines Grievants must follow. Grievant Watson stated guidelines are in place which control every duty. Grievant Covert stated he knows what he needs to do, and knows the policies, guidelines and procedures, and does not need to ask his supervisor every time he does something. Mr. Beto believed a degree level of 3.0 fit, because Grievants understand their responsibilities and try to solve problems on their own, and contact him only occasionally for assistance. Mr. Beto stated Grievants' daily work assignments are routine. He stated they respond to

what students do, or they are assigned tasks by the supervisor. Grievants failed to prove they should have received a higher degree level.

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 (as well as Intrasystems Contacts, External Contacts, Direct Supervision and Indirect Supervision) consists of two parts, which are labeled Impact of Actions and Nature of Actions. Grievant Martin argued she should have received a degree level of 3.0 in Impact, and a degree level of 3.0 or 4.0 in Nature. Grievant Teeters argued she should have received a degree level of 4.0 in Impact, and a degree level of 4.0 in Nature. Grievant Huffman argued she should have received a degree level of 4.0 in Nature, because if she did not send out bills and accurately report revenues, the department would not have any money. She also asserted that the cost accounting reports she produces render her a financial consultant, and she catches costly errors. She argued she should have received a degree level of 6.0 in Impact, because she is the only person dealing with revenues. Grievant Jenkins argued she should have received a degree level of 4.0 in Nature, because she receives and records all payments, and if she made an error it would affect the general ledger and student accounts; and a degree level of 4.0 in Impact, because her responsibility for collections affects the entire college. She stated the PSC budget is $8.8 million.

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.

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

> Work affects the entire operations of a specialized school, branch campus, community college or baccalaureate-level Institution with an operating budget of [less than] $13M; more than one school of division of a graduate or baccalaureate-level Institution with an operating budget of $13-$18M; a school or division of a graduate or baccalaureate-level Institution with an operating budget of $19-$25M; several departments within a graduate-level Institution with an operating budget of more than $50M; or a major department within a doctoral- level Institution with an operating budget of more than $200M.

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

> Work affects the entire operations of a graduate or baccalaureate-institution with an operating budget of $13-$18M; more than one school or division of a graduate or baccalaureate-level institution with an operating budget of $19-$25M; a school or division of a graduate- level institution with an operating budget of more than $50M; or several departments within a doctoral-level institution with an operating budget of more than $200M.

A degree level of 6.0 in Impact is defined in the Plan as:

> Work affects the entire operations of a graduate- or baccalaureate-level institution with an operating budget of $19-$25M; more than one school or division of a graduate-level institution with an operating budget of more than $50M; or a school or division of a doctoral- level institution with an operating budget of more than $200M.

In addressing Impact, Grievant Martin argued the JEC shouldhave decided that her work affects the operations of a moderate- size department, because she is keeping the finances afloat. It is accurate to say that Grievant's work assists the grant investigators in spending their grant money properly, and it assists the department head in monitoring department finances, but she is not "keeping the finances afloat." She is not responsible for the department or its budget. She is responsible for performing the duties assigned to her. Grievant failed to prove she should have received a higher degree level. See Hughes; Gregg, supra. Hardee, et al., v. Bd. of Directors, Concord College, et al., Docket No. 94-MBOD-373 (Jan. 10, 1997); and, Henry, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-1024 (July 31, 1996).

Grievant Teeters failed in her burden of proof in challenging Impact, because she produced no evidence of the budget or classification of WLSC. Without this information the undersigned cannot

evaluate where her duties would fit.

Grievant Huffman's duties represent one cog of many in the wheel which makes the department run. See Henry. Like Grievant Martin, she is not responsible for the department, but is responsible for carrying out her duties, which relate to only one aspect of the department. When measuring "the scope of responsibility of the position with regard to the overall mission of" WVU (emphasis added), Grievant Huffman has not proven the JEC was in error or acted in an arbitrary and capricious manner in assigning a degree level of 2.0 in Impact. See Gregg. Likewise,Grievants Teeters and Jenkins are not responsible for the department, but are responsible only for performing their tasks.

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

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

A degree level of 3.0 in Nature 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 in Nature 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.

"As noted in previous decisions interpreting the Plan, interpretation of these similarly-worded provisions [in the Nature definitions] involves a subjective value judgment, which is an inherent element of the function of position classification. Hastings [v. Bd. of Trustees, Docket No. 94-MBOT-943 (May 28, 1996)]; Jessen [v. Bd. of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995)]." Miller v. Bd. of Directors, Shepherd College, Docket No. 94-MBOD-495 (Oct. 29, 1996). It is not inconsistent with the language used, and taking into account the hierarchy in the departments, to say that the work performed by Grievants Martin, Teeters, Huffman and Jenkins is better described as contributing"to the accuracy, reliability, and acceptability of" the service provided by the department, rather than contributing "to . . . the effectiveness of operations or services." See Wood v. Bd. of Directors, W. Va. State College, Docket No. 94-MBOD-480 (March 11, 1997); Henry; Gregg; and

Hughes. See also, Perkins v. Bd. of Trustees, W. Va. Univ. - Parkersburg, Docket No. 94-MBOT-733 (Oct. 30, 1996) ("[e]rrors or failure to complete her duties would be identified prior to the point where the entire unit would be adversely affected.").

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 consists of Nature of Contact and Level of Contact. Grievant Martin argued she should have received a degree level of 3.0 in Level because she attends budget meetings attended by Directors, Business Managers, Accountants and Office Managers, including her own supervisor. Grievant Ullom marked a 4.0 on her PIQ under Level, and Mr. Steinman marked a 3.0. Grievants Huffman and Jenkins each argued she should have received a degree level of 3.0 in Level, because she works with supervisors, managers and chairpersons, and Grievant Huffman argued she should have receiveda degree level of 2.5 in Nature.

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

> Staff and faculty outside the immediate work unit.

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

> Supervisors, 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.

Martin. Grievant Martin did not explain what role she plays in attending budget meetings, and without this information, the undersigned cannot determine whether this contact is essential. She may sit quietly and take notes, and have no real interaction with the other attendees. Her supervisor sometimes attends these meetings also. It may be that her supervisor could attend instead of Grievant, but it is more helpful for Grievant to attend because she drafts the budget.

Grievant Martin's predecessor's PIQ and her Position Description state that she has weekly contact with Business Managers in the School of Medicine regarding accounting and budget transactions, and with Accountants and Office Managers regarding payment and billing of "EM" charges and other facility charges. Grievant provided no further information on these contacts. The undersigned cannot determine from this information why it is necessary for Grievant to contact these persons, and whether it is a significant part of her job duties. Grievant failed to prove the JEC's decision on this point factor was clearly wrong or arbitraryand capricious.

Ullom. Grievant Ullom's PIQ lists contacts with various Systems Central Office Staff, business offices in other state colleges, and WVNCC personnel. None of these descriptions indicate that Grievant is speaking with anyone other than staff (2.0). She stated she talks to chairpersons, or their secretaries, when they call her to see how much money is left in their budget in a line item, and she contacts them to remind them she needs budget information. It is not essential that she have contact with chairpersons, inasmuch as their secretaries may function as the contact person. She failed to prove a 2.0 was not the best fit.

Huffman. Most of Grievant Huffman's lengthy testimony indicated that her contact with managers is limited to those within her own department, which is not considered in the application of this point factor; and that occasionally she has contact with managers and directors when she cannot get their staff members to respond to her requests that their department pay its bill. This occasional contact is not regular and recurring, but rather is irregular and out of the ordinary.

At one point in her testimony, Grievant Huffman stated that she works with supervisors, managers, and chairpersons in other departments probably daily. This statement alone is inconsistent with her prior testimony. Further, when questioned about the nature of this contact, she stated she would be dealing with Potomac State, but did not indicate why; with hospital marketing, but she did not indicate why; and with human resources. Hertestimony regarding her contacts with the human resources department at WVU indicates that she would have no need to deal with the supervisor, manager or chairperson in that capacity, because she is asking general questions about employee benefits. The undersigned, accordingly, cannot give any weight to Grievant's conclusory statement. Grievant failed to prove she should have received a degree level of 3.0 in Level.

Grievant Huffman argued she should have received a degree level of 2.5 in Nature. The Plan does not indicate that a half- level is available in this point factor, and Grievant presented no

evidence that the JEC had decided to assign half-levels. Therefore, Grievant bears the initial burden of proving that the JEC was clearly wrong or acted in an arbitrary and capricious manner in declining to award half-levels in this point factor. Grievant advanced no evidence or argument in support of such a finding.

Jenkins. Grievant Jenkins listed as higher level contacts on her PIQ, the Financial Aid Director and the Housing Director. These two contacts are at a degree level of 4.0, not 3.0. (See footnote 15) Grievant provided no examples of contact at a degree level of 3.0.

6. 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 point factor also consists of Nature of Contact and Level of Contact. Grievant Martin argued she should have received a degree level of 3.0 in both Nature and Level, based upon her contact with families wishing to donate human bodies to the Human Gift Registry Program. The undersigned would be hard-pressed to find this contact to be anything but "substantially sensitive" (degree level 3.0). However, Grievant's testimony was that she has this contact only when she is filling in for an absent employee, or answers the telephone because those whose job it is to do so are busy. Accordingly, this is not an essential duty, and is not considered in applying this point factor. See Barber, supra. Grievant also pointed to her contact with vendors and students as requiring moderate tact. The undersigned finds no evidence that Grievant has contact with students or vendors.

Grievant Ullom marked a 4.0 on her PIQ in Level, and Mr. Steinman evaluated her duties at this level; and she marked a 2.0 on her PIQ in Nature, and Mr. Steinman evaluated her duties at this level. Grievant Teeters argued she should have received a degree level of 5.0 in both Level and Nature. Grievant Huffman argued she should have received a degree level of 3.0 in Level, and a degreelevel of 2.0 or 2.5 in Nature. Again, no evidence was presented that a half-level was available in this point factor, or that the JEC acted in an arbitrary and capricious manner in declining to award half-levels in this point factor.

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

> General public, visitors, and/or service representatives and vendors.

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.

Ullom. Grievant Ullom did not identify the titles of the persons she contacts at the Travel Management Office about travel problems or questions on travel policy, at the Budget Office, Auditor's Office and Treasurer's Office about problems or questions that arise in budgets and payments, or at National Travel Service about travel reservations. Without this information, the undersigned cannot conclude that Grievant speaks with mid-level representatives of governmental agencies. Staff are not mid-level representatives. Carrere v. Bd. of Directors, Southern W. Va. Community College, Docket No. 94-MBOD-1017 (Jan. 16, 1997). She explained she talks to vendors only when she is answering the telephone when filling in for another employee. This is not an essential contact. Grievant failed to prove she should havereceived more than a 2.0 in Level of Contact.

Teeters. Grievant Teeters proved she has regular, recurring and essential contact with students (See footnote 16) and alumni. The billing and collection agency staff she has contact with are vendors. She has not proven she has other external contacts. Grievant Teeters proved that she was entitled to a degree level of 3.0 in Level.

Huffman. Grievant Huffman argued she must contact students and their parents to try to collect on student debts. (See footnote 17) On her PIQ, she described the frequency of her contact with students as "not often." In her testimony she stated that students frequently write bad checks for department services; however, the first step in trying to collect is to work through WVU to place a hold on certain student records, and to send the student a certified letter. Although she prepares this letter, she does not sign it, rather the assistant director does. This is not contact between the student and Grievant. After this action, she stated she often makes telephone calls to students to try to get them to pay the bill. The undersigned cannot conclude that the JEC was clearly wrong or acted in an arbitrary and capricious manner in deciding that this occasional contact was not regular, recurring and essential.

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.)

Ullom. Grievant Ullom explained she contacts the Travel Management Office to let them know she is faxing something which requires immediate attention, or if she has a situation which is out of the ordinary and needs some clarification, apparently on the regulations. This type of "problem" is furnishing and obtaining factual information. Based upon Grievant's duties related to the Budget, Auditor's and Treasurer's Office, the undersigned concludes that the purpose of the conversations which she characterized as regarding problems, is to explain she has found an error on a report, and to provide the information needed to correct the error. This also can be properly characterized as furnishing factual information. Grievant failed to prove a 2.0 is a better fit for her discussions.

Teeters. Grievant Teeters negotiates repayment plans with students, which may fall within a degree level of 2.0. However, most of her contacts involve routine information exchange, and she did not indicate how often her contacts fall within a degree level of 2.0. She also noted that she explains federal repaymentrequirements to students when they leave WLSC, but did not prove this contact is better characterized as degree level 2.0. The undersigned cannot conclude from the evidence that a degree level of 2.0 is a better fit.

Huffman. Grievant Huffman argued she handles sensitive matters, such as some payroll matters, trying to collect money from customers, and customer complaints. Payroll matters fall within Intrasystems Contacts, not External Contacts, and she did not challenge the degree level received in Nature of Intrasystems Contacts. The undersigned agrees that trying to collect money and deal with customer complaints may indeed rise to a degree level of 2.0. However, simply answering customer billing inquiries would be routine information exchange. Although Grievant Huffman indicated she talks to customers daily, she did not distinguish between Intrasystems customers and External customers. Many of the examples of collection problems involved Intrasystems customers. Grievant described collection problems with the Book Exchange, and stated she must talk to persons in accounts payable at Ruby Memorial Hospital, but she did not indicate the frequency of these

contacts. She stated she has twice talked to an employee of Barnes and Noble, and worked with him to get the bills sent to the proper person, and to format the bills to suit their needs. Grievant failed to prove that her regular, recurring and essential External Contacts fall within a degree level of 2.0 in Nature of Contact.

7. 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 Level of Supervision and Number of Subordinates. Grievant Huffman argued she should have received a degree level of 2.0 in Number, and a degree level of 3.0 in Level. Grievants Blosser, Watson, and Kerens argued they should have received a degree level of 3.0 in both parts.

A degree level of 1.0 in Number is defined in the Plan as no direct subordinates, a 2.0 is defined as one direct subordinate, and a degree level of 3.0 is defined as two to three direct subordinates.

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. Grievants Blosser, Watson, and Kerens argued they supervise temporary workers during registration, and student workers. The definition of this point factor states that it measures the formal assignment of direct supervision over persons in subordinate jobs in the organization. Temporary workers are not persons in subordinate jobs in the organization, and therefore, by definition, are not considered in applying this point factor. Hardee, supra. Student workers are considered non-essential. Teresa Crawford, Senior Compensation Analyst at WVU, explained that student workers are essential only if the unit would not be able to achieve its goals and objectives without them. Grievants presented no evidence that the work studies are essential.

The student workers Grievant Huffman supervises are not work study students who need

something to do, or graduate assistants working in the department to fulfill their scholarship requirements. The department has chosen to hire student workers rather than fill a part-time classified staff position. Grievant testified she works over 50 hours a week. Grievant has met her burden of proving the students are essential to the operations of the unit, and Respondent failed to present any evidence to rebut this. If Grievant's position were rated individually, she should have received a degree level of 2.0 in both Number and Level. She has not proven she should have received a degree level higher than a 2.0 in Level, because, according to Grievant's testimony, these part-time employees are "student workers," which is what the degree level 2.0 definition calls for.

8. Physical Coordination

Physical Coordination is defined in the Plan as:

> This factor assesses the amount of psychomotor skill involved in performing the job. Consider the complexity of body movements, speed/timing of movements, precision of movements, and need for close visual attention regularly required by the job in performing the work.

Grievant Teeters argued she should have received a degree level of 4.0 in Physical Coordination. While Grievant pointed out the necessity of keeping loan paperwork in order, this accuracy requirement does not advance this duty in this point factor. This point factor measures psychomotor skill, not how accurate records must be kept. Further, no evidence was presented that Grievant must perform work on equipment with any level of speed or skill, and as was noted earlier in this Decision, this is necessary to a finding that Grievant should have received a degree level 3.0 or 4.0. See Barber, supra, and Hughes, supra.

D. Comparisons of Duties to Other Employees

The primary argument advanced by the Bursar's Office Grievants was that their duties were more difficult than those of Regina Compton and Janice Cunningham, who are also WVU employees in the Bursar's Office, but were classified as AA I's. Grievants were generally familiar with the duties of Ms. Compton and Ms. Cunningham, and characterized their job as data entry. It is understandable that Grievants would feel they had been unfairly placed in a lower pay grade than these employees based upon their understanding of the duties.

However, Ms. Crawford testified that Scott Ludlow, who was theController and Mr. Beto's supervisor, explained to her that Ms. Compton and Ms. Cunningham were monitoring accounts and auditing them for accuracy; and that they were not spending a large part of their time entering data,

counting money and preparing deposit slips, as the Bursar's Office Grievants do; and that this is how she presented their duties to the JEC. If duties were misrepresented to Ms. Crawford and the JEC, then Ms. Compton and Ms. Cunningham may be misclassified, but that does not make the Bursar's Office Grievants misclassified. Barber, supra.

They also compared their duties to those of Linda Elliott, an employee at Marshall University who was classified as an AA I. It appears from her PIQ that her duties are very similar to the duties of these Grievants. Respondent did not address Ms. Elliott's PIQ. The undersigned cannot ignore the fact that there are 85 employees classified as AC II's, and 134 employees classified as AA I's. Respondents' Exhibit 1. Those Grievants in this case who are classified as AA I's perform duties which are sufficiently different from those of the Grievants classified as AC II's to entitle them to higher degree levels in various point factors, and accordingly, to place them in a higher pay grade. Ms. Elliott's PIQ alone is not sufficient to prove that Grievants were treated unfairly, or that they should have received higher degree levels in any of the point factors.

Grievant Jenkins placed into evidence the PIQ of Ruth Smedley, an employee of Fairmont State College, who was classified as an AA II. Ms. Smedley's PIQ (Grievant's Exhibit 33) shows that herduties and responsibilities are very similar to Grievant Jenkins' duties. No evidence was presented as to the duties and responsibilities of the 30 other persons in the AA II Job Title. One distinction in duties is that Ms. Smedley supervises one employee, who performs some of the duties Grievant Jenkins performs, and Ms. Smedley spends between 15% and 36% of her time in supervisory activities. If Ms. Smedley's position were rated individually, she would receive higher degree levels than Grievant in Direct Supervision, and her supervisory duties may well affect other point factors as well. When classifications are based upon a point factor methodology, a minor difference in duties can affect the classification. It is not sufficient in this case to argue that the duties are nearly identical. See also, Barber, supra, Campbell-Turner, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-1035 (Jan. 1, 1996), Jordan, supra, and Hughes, supra. Further, as noted above, Grievant Jenkins' duties are very similar to those of the other Grievants classified as AC II's.

E. Summary

Grievant Teeters proved she should have received a degree level of 3.0 in External Contacts, Level. This would add eight points to the total points for an AA I of 1707 points, which is still within a

Pay Grade 12. Accordingly, no change will be made in Grievant's Job Title, pay grade, or the data line for the AA I.

Grievant Huffman proved she should have received higher degree levels in both parts of Direct Supervision Exercised. These changes would add 36 points to the total points for the AA I of1707, increasing total points to 1743, which is still a Pay Grade 12. Because these changes do not affect the Pay Grade, Grievant Huffman is properly classified, and no changes should be made to the data line.

Grievants failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning their Job Titles, or in assigning the degree levels in the point factors to their Job Titles. Because the point factor analysis does not result in a change in the pay grades, a comparison of Grievants' duties to those found in the Generic Job Descriptions for the Job Titles sought is not necessary. (See footnote 18)

Conclusions of Law

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

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

3. The Job Evaluation Committee's interpretation andexplanation 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 Grievants Martin, Ullom, Teeters, and Huffman are Accounting Assistant I's, Pay Grade 12, is not clearly wrong or arbitrary and capricious.

5. The Job Evaluation Committee's assignment of degree levels to the point factors for the Job

Title Accounting Assistant I is neither clearly wrong nor arbitrary and capricious.

4. The Job Evaluation Committee's decision that Grievants Jenkins, Blosser, Watson, Brock, Covert, and Kerens are Accounting Clerk II's, Pay Grade 10, is not clearly wrong or arbitrary and capricious.

5. The Job Evaluation Committee's assignment of degree levels to the point factors for the Job Title Accounting Clerk II is neither clearly wrong nor arbitrary and capricious.

Accordingly, the grievances of Susan Martin, Joan Ullom, Leisa Teeters, Jean Huffman, Margaret Jenkins, Peggy Blosser, Kathy Watson, Debra Brock, Robert Covert, and Karen Kerens are **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the circuit court of the county in which the grievance arose, 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: March 28, 1997

Footnote: 1

Betty Rinker's grievance was also consolidated into this matter; however, she withdrew her grievance after the hearing was completed, and her grievance was separated from this consolidated matter and dismissed from the docket of the Grievance Board.

Footnote: 2

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: 3

Nine days of hearing were held at Level IV, on October 4, 5 and 16, 1995, February 5, 6 and 7, 1996, and April 8, 16 and 17, 1996. This matter became mature for decision on October 15, 1996, with receipt of the Response to Proposed Findings of Fact and Conclusions of Law by Grievants Blosser, Brock, Watson, Covert and Kerens. Although Respondents and other Grievants requested and were granted, extensions of time to file responses, no other party submitted a response.

Respondents' counsel noted in her post-hearing written submission that an additional day of hearing had initially been scheduled for April 18, 1996, and stated that "although . . . Respondent wished to continue its case with testimony on that date, the ALJ did not allow the Respondent an opportunity to present its witness, Mr. Scot Ludlow." Counsel's remark is uncalled for and lacks candor. The record in this matter clearly reflects that when directly asked by this Administrative Law Judge late in the day on April 16, 1996, whether counsel knew if Mr. Ludlow was available to be called as a witness on April 17, 1996, counsel initially avoided answering the question, and after being directed to answer the question, and then asked the question two more times, finally admitted that she did not know whether he was available. Further, after allowing written argument on this matter, the undersigned ruled upon this matter, and that ruling was not appealed.

Footnote: 4

The percentage of time Grievants perform the listed duties is shown in parenthesis, where applicable.

Footnote: 5

Grant investigators is the term used for persons to whom federal grants are awarded.

Footnote: 6

Revenue data is entered into the statewide financial reporting system by another employee. Grievant provides this employee with the revenue information she needs to enter the data.

Footnote: 7

Grievant Covert stated he spends about one-third of his time performing "student accounting services." The undersigned has determined that duties 7 and 8 are the only ones which could be referred to as student accounting services.

Footnote: 8

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: 9

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: 10

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: 11

These abbreviations are for Knowledge, Experience, Complexity and Problem Solving, Freedom of Action, Scope and Effect/Impact and Nature of Actions, Intrasystems Contacts/Level of Contact, External Contacts/Nature of Contact, and Direct Supervision Exercised/Level of Supervision and Number of Subordinates. The degree levels assigned these Job Titles in Breadth of Responsibility, Intrasystems Contacts/Nature of Contact, External Contacts/Level of Contact, Indirect Supervision, Physical Coordination, Working Conditions, and Physical Demands are identical.

Footnote: 12

Grievant Jenkins argued in her post-hearing written submission that she should have received a higher degree level in Direct Supervision, and in Intrasystems Contacts/Nature. Neithershe nor her representative identified these point factors at the hearing as ones she was challenging, even though she was specifically asked to identify the point factors challenged. The Bursar's Office Grievants argued for the first time in their post- hearing submission that they should have received a degree level of 3.0 in Physical Demands, and for the first time in their response to Respondents' post-hearing written submission that they should have received a 3.0 in External Contacts/Level of Contact. Consistent with Grievance Board policy, these arguments, raised for the first time post-hearing, cannot be considered, as Respondent was not placed on notice prior to its case presentation that these would be issues, and to allow these arguments at this late date would be unfair. See Beckley v. Lincoln County Bd. of Educ., Docket No. 95-22-107 (Feb. 29, 1996). Grievant Jenkins also indicated at the hearing that she was challenging the degree level received in Breadth of Responsibility, but withdrew this challenge in her post-hearing written submission.

Footnote: 13

Grievant Huffman argued at the hearing that she should have received a degree level of 4.0. However, in the brief submitted on her behalf, a lower degree level of 3.0 was sought, and therefore, her claim to a degree level of 4.0 is considered abandoned.

Footnote: 14

Mr. Beto also stated he believed Grievants' duties were more complex than those of one of the employees in the office whose Job Title received a degree level of 2.5. Degree levels are assigned to Job Titles, not individuals. The fact that another Job Title received a 2.5 does not mean the duties of every person in that classification fit this degree level, and has no bearing on Grievants' classification. As will be discussed later, the duties of the employees Mr. Beto referred to appear to have been misrepresented to the JEC.

Footnote: 15

Further, the contact listed by Grievant with these two Directors (disbursement of student aid checks, refunds, payment of housing fees and dorm assignments) is not the type of contact which would typically require the Director's attention, but is typically handled by staff in the Director's Office. Grievant did not prove it is essential that she deal with Directors.

Footnote: 16

While Grievant Jenkins and the Bursar's Office Grievants have daily contact with students, they did not challenge the degree level received in this point factor. Accordingly, the undersigned cannot address whether they should have received a degree level of 3.0.

Footnote: 17

Grievant also noted her contact with auditors. This contact has occurred two or three times over 16 years, and the last such contact was in 1992. This is not regular, recurring and essential contact.

Footnote: 18

It is interesting that Respondents called three witnesses who spent much of their time explaining the differences between the various Job Titles, rather than addressing the point factors challenged, even though the Mercer system is not whole job comparison.