THOMAS OGLE

v. Docket No. 94-MBOD-431

BOARD OF DIRECTORS/WEST VIRGINIA STATE COLLEGE

D E C I S I O N

Grievant, Thomas Ogle, alleges that he was improperly classified as a Broadcast Engineer at Pay Grade 17 under the "Mercer reclassification". Grievant challenges specific point factors which he argues support his request for classification as Chief Broadcast/Distribution Engineer, Pay Grade 21, with backpay, effective January 1, 1994, the date the classification system was implemented. (See footnote 1) A level four hearing was conducted on November 26, 1996, and the matter became mature for decision with the submission of post-hearing fact/law proposals by the parties on or before March 7, 1997.

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

Findings of Fact

1. Grievant is employed by the Board of Directors (Respondent) at West Virginia State College. He is assigned to the West Virginia Educational Network (Ed-Net).

2. Prior to January 1, 1994, Grievant's job title was Chief Broadcast/Distribution Engineer. 3. In 1991, all higher education classified employees, including Grievant, were asked to complete a Position Information Questionnaire (PIQ) prior to the reclassification. Employees were to describe their job duties and responsibilities and the job requirements on the PIQ, by answering a series of questions designed to elicit this information.

4. Due to a later employment date and subsequent review of his position, Grievant completed a PIQ in March 1993.

5. As a result of the Mercer reclassification, Grievant was classified as a Broadcast Engineer at Pay Grade 17.

6. Grievant's primary job duties prior to January 1, 1994, generally consisted of operating and

maintaining the radio and television studios and the RF and campus distribution systems (40% of his time) (See footnote 2) , acting as technical director, cameraman, floor director, audio engineer, or completing tape playback and video tape editing, for productions and programming emanating from Ed-Net (20%), acting as system administrator for the IBM RS/6000 computer system (15%), scheduling maintenance for equipment (15%), and assisting in planning and development (10%).

7. The Broadcast Engineer job title received 2255 total points from the following degree levels in each of the thirteen point factors (See footnote 3) : 6.0 in Knowledge; 4.0 in Experience; 3.5 in Complexity and Problem Solving; 3.5 in Freedom of Action; 2.0 in Scope and Effect, Impact of Actions; 3.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 2.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level; 2.0 in External Contacts, Nature of Contact;2.0 in External Contacts, Level; 3.0 in Direct Supervision Exercised, Number; 4.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 4.0 in Physical Coordination; 2.0 in Working Conditions; and 3.0 in Physical Demands.

8. The point range for Pay Grade 21 is from 2954 points to 3169 points.

Discussion

A. Burden of Proof

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 §4.17; W.Va. Code §18-29-6. Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job 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, without also identifying which point factors he is challenging, and the degree level he believes he should have received. (See footnote 4) While some “best fit” analysis of the definitions of the degree levels is involved in determining which degree level of a point factor should be assigned, where the position fits in the higher education

classified employee hierarchy must also be evaluated. In addition, this system must bystatute be uniform across all higher education institutions; therefore, the point factor degree levels are not assigned to the individual, but to the job title. W.Va. Code §18B-9-4; Burke, supra. A Mercer grievant may prevail by demonstrating his reclassification was made in an arbitrary and capricious manner. See Kyle v. W.Va. State Bd. of Rehabilitation, Div. of Rehabilitation Services and W.Va. Civil Serv. Comm'n, Docket No. VR-88-006 (Mar. 28, 1989).

Finally, whether a grievant is properly classified is almost entirely a factual determination. As such, the Job Evaluation Committee's (JEC) interpretation and explanation of the point factors and generic job descriptions at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W.Va. 1995); Burke, supra. However, no interpretation or construction of a term used in the Job Evaluation Plan (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. Watts v. Dept. of Health and Human Resources, 465 S.E.2d 887 (W.Va. 1995). The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. (See footnote 5)

B. Application of the Point Factor Methodology

Grievant challenges the degree levels received in the point factors Experience, Complexity and Problem Solving, Freedom of Action, Scope and Effect /Impact of Actions and Nature of Actions, Breadth of Responsibility, Intrasystems Contacts/Nature of Contact and Level, and External Contacts/Nature of Contact and Level. Following are the degree levels assigned by the JEC to thepoint factors for the Broadcast Engineer job title which Grievant contests, and the degree levels which Grievant argues would place him in the correct pay grade.

Experience

The Plan defines experience as “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.” See Jones, et al. v. Bd of Trustees/West Virginia University, Docket No. 94-MBOT-978 (Feb. 29. 1996).

The JEC awarded the position of Broadcast Engineer a degree level of 4.0 in this factor, defined by the Plan as “[o]ver two years and up to three years of experience.” Grievant argues that his work is more accurately reflected by a degree level of 7.0, defined by the Plan as “[o]ver six years and up

to eight years of experience."

Grievant stated that the higher degree level was based upon his abilities which he believed were necessary to satisfactorily perform the duties of this position. He noted that his work covers the continental United States via satellite signal and other technology including digital television. He also stated that some danger was involved in that he works with equipment generating 3000 watts of electricity. He concluded that the higher level of experience provided a good foundation for the position and allowed him to prioritize activities and make quick decisions.

Respondent asserts that this factor measures the minimum level required to perform the duties of the position at the entry level, and that while prior experience is useful to insure a good employment history, it is not necessary to measure this factor. JEC member Patricia Hank testified that much of Grievant's testimony related to education for which he was credited under the point factor "Knowledge". She concluded that employees are expected to need a period of time to learnthe specifics of their work, and that with more than two years experience, Grievant could learn the workings of the EdNet system during his probationary period.

The minimum amount of experience required to perform the essential duties of a position represents a subjective determination upon which reasonable minds may differ. Zara v. Bd. of Trustees, Docket No. 94-MBOT-817 (Dec. 12, 1995). In the present case it is clear that Grievant must possess a considerable amount of knowledge and skill in order to effectively complete his duties. Grievant is credited, and does not contest his rating of 6.0 in the point factor "Knowledge". This degree level reflects a requirement that he possess a baccalaureate degree which implies "[k]nowledge of principles, concepts, and methodology of a highly technical, professional, or administrative occupation . . . ."

Grievant did not actually deny that the level of education and up to three years of experience, as reflected in the JEC's allocation of a 4.0 degree level in experience, was an inadequate combination for entry-level performance in this job, but rather mistakenly argues that a degree level of 7.0 would more accurately reflect his personal abilities which provided a good foundation to comfortably perform his duties and responsibilities. Unfortunately, the JEC did not evaluate the personal credentials of incumbents, and assigned degree levels to positions, not individuals, based upon minimum qualifications and taking into consideration that every new employee has a learning curve while adjusting to the new assignment. Therefore, the JEC's rating for Experience cannot be deemed

clearly wrong.

Complexity and Problem Solving

The Plan defines Complexity and Problem Solving as “the degree of problem-solving required, types of problems encountered, the difficulty involved in identifying problems anddetermining an appropriate course of action. Also considered is the extent to which guidelines, standards and precedents assist or limit the position's ability to solve problems.”

The JEC assigned the position of Broadcast Engineer a degree level of 3.5. The Plan does not define half levels which were assigned when the position duties and responsibilities fell partially within the lower degree level and partially within the next higher degree level.

A degree level of 3.0 is defined by the plan as:

[p]roblems encountered can be somewhat complex and finding solutions to problems may require some resourcefulness and originality, but guides, methods and precedents are usually available. Diversified guidelines and procedures must be applied to some work assignments. Employee must exercise judgment to locate and select the most appropriate guidelines, references, and procedures for application, and adapt standard methods to fit variations in existing conditions.

A degree level of 4.0 is defined as:

[p]roblems encountered are complex and varied due to incomplete and/or conflicting data. General policies, procedures, principles, and theories of specific professional disciplines are available as guidelines; however, these guides may have gaps in specificity or lack complete applicability to work assignments. Employees must utilize analytical skills in order to interpret policies and procedures, research relevant information, and compare alternative solutions.

Grievant argues that he should have received a degree level of 6.0, defined by the Plan as:

[p]roblems encountered are extremely complicated and require considerable resourcefulness and originality. Various strategies are examined to determine most feasible approach to resolution of problems. Long-range planning to resolve extraordinary problems is almost always required of positions at this level to attain desired goals. Advanced analysis which requires the employee to solve unusual and complex problems taking information from many different sources is required. Employee will often use initiative andresourcefulness in deviating from traditional methods, proposing new policies, and researching trends.

Grievant supports his claim to the highest degree level of Complexity and Problem Solving by noting that he engages in long range planning for new technology, and that he is faced with situations involving non-technical individuals which may require that he implement an immediate solution. Ms. Hank testified that Grievant's primary focus is on short term duties, what is to be done in the next few days or weeks, rather than on long term matters. She also noted that while Grievant is faced with situations which require that he use analytical skills to interpret policies and procedures, he may also confer with numerous co-workers for advice and direction. Ms. Hank also stated that Grievant has set options from which he may choose to resolve a given situation. For example, if a video transmission is substandard he may be able to correct the fault, rely only on the audio transmission, or terminate the transmission.

This factor does not measure the intricacy and complexity of the tasks performed, but measures the types of problems encountered in the performance of tasks. It evaluates how problems are discovered and addressed, and the degree of decision making required. See Wise v. Bd. of Directors/W.Va. State College, Docket No. 94-MBOT-401 (Jan. 30, 1997). Grievant's PIQ establishes that the majority of his duties involves the maintenance and operation of equipment. Undoubtedly, complex technical problems arise in which Grievant must devise a plan for the equipment to meet the specified and unique purposes of EdNet's customers. It is also accepted that from time to time the equipment will malfunction and that Grievant must correct the situation. However, the performance of these daily duties is aided by a limited number of options for resolution as well as procedures and guidelines as to how the system may be used. Although Grievant may berequired to compare and choose among alternative solutions, it does not appear that any significant portion of his work involves long-range planning or extraordinary problems. Without denying that Grievant must utilize some resourcefulness from time to time, there is no evidence that he regularly must deviate from traditional methods or propose new policies to complete his tasks.

The Grievance Board is reluctant to second guess the JEC's decisions absent compelling evidence. Wood v. Bd. of Directors/W.Va. State College, Docket No. 94-MBOT-480 (Mar. 11, 1997). The evidence of record in this case does not establish that Grievant performs at a degree level of 6.0 in problem solving, and it may not be determined that a degree level of 3.5 was clearly wrong.

Freedom of Action

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.

The JEC assigned Broadcast Engineer a degree level of 3.5, Grievant argues that a degree level of 4.0 more accurately reflects his position.

The Plan defines a degree level of 3.0 as “[t]asks are moderately structured with incumbent working from objectives set by the supervisor. At this level, the employee organizes and carries out most of the work assignments in accordance with standard practices, policies, instructions or previous training. The employee deals with some unusual situations independently.”

The Plan defines a degree level of 4.0 as:[t]asks are minimally structured with incumbent working from broad goals set by the supervisor and established institutional policies. The employee and supervisor work together to establish objectives, deadlines and projects. The employee, having developed expertise in the line of work, is responsible for planning and carrying out the assignment; resolving most of the conflicts which arise; and coordinating the work with others. The employee keeps the supervisor informed of progress and potentially controversial matters. Completed work is checked only to determine feasibility, compatibility with other work, or effectiveness in meeting the objectives of the unit.

Grievant requests the higher degree level primarily based upon the fact that he must exercise discretion to determine whether a transmission meets on-air quality. He notes that this is a serious matter because both he, personally, and the station may be fined for working out of specification. Ms. Hank stated that Grievant's discretion is actually very limited in this matter because the transmissions must meet Federal Communications Commission requirements.

While Grievant must monitor the quality of the transmissions to ensure they meet minimum standards, he does not determine the standards. Although he must exercise due diligence in maintaining the quality, this work appears to fall more within standard operating procedures. While this aspect of his work is performed with virtually no direct supervision, it is strictly controlled by federal regulations. Thus, it entails a significant amount of responsibility but actually allows little freedom of action. Grievant has failed to meet his burden of proof on this point factor.

Scope and Effect

Scope and Effect is defined in the Job Evaluation Plan as:

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 thesystems 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.

Scope and Effect is divided into two subdivisions, Impact of Actions and Nature of Actions. Broadcast Engineer was awarded a degree level of 2.0 in Impact, defined by the Plan as “[w]ork affects either an entire work unit or several major activities within a department.” Grievant argues that he should have received a degree level of 3.0, defined by the Plan as:

[w]ork 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 $19M-$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.

Grievant argued that the higher degree level is warranted because his failure to satisfactorily maintain and operate the equipment could affect other institutions both in and outside West Virginia,

which might be utilizing EdNet's services for teleconferences or class presentation. Ms. Hanktestified that 2.0 was proper because Grievant's decisions are usually limited to the application of standard or accepted practices.

EdNet is considered a work unit and as such it affects part of the operations of several departments through higher education institutions; however, this point factor measured Grievant's position, not the work unit. Because this point factor considers that any errors that are made are not due to sabotage, mischief or lack of reasonable attention and care, malfunctions which might occur would likely be remedied within a short period of time. Those schools which might be affected by a malfunction would reasonably incur minimal harm. Should a transmission be interrupted or even cancelled, EdNet's clients would suffer some inconvenience, but it would not impair the operations of that school. Therefore, while Grievant's work clearly affects his entire work unit, it cannot be determined that his work affects the operations of the institutions addressed at degree 3.0. A degree level of 2.0 was correct for Impact.

The JEC awarded Broadcast Engineer a degree level of 3.0 for Scope and Effect/Nature, defined by the Plan as:

[w]ork 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.

Grievant argues that he is entitled to a degree level of 5.0, defined as:

[w]ork involves planning, developing, and operating a major program or service having a broad impact within the institution by solving critical operational problems or developing and/or implementing new procedures and concepts. Work also involves extensive and consequential support, development, or recommendation of majorobjective, policies, programs or practices. Errors could easily result in major costs, problems and disruptions within the affected area.

Grievant asserts that EdNet sells time which equals money and that if he did not properly perform his duties, costly damage could occur to the studio, satellite, and other equipment. Respondent argues that Grievant's work contributes to the accuracy, reliability and acceptability of EdNet's services, but that his decisions are usually limited to application of standard practices. Respondent

perceives that errors would result in some reasonable costs or inconveniences, such as a lost class, but does not consider losses incurred as a result of technological breakdown.

The evidence of record does not support a finding that Grievant engages in planning or developing a major program or service having a broad impact. Further, it appears that a degree level of 5.0 was awarded to directors and high level administrators. See Wise, and Wood, supra. Grievant does not fall within either category. It cannot be determined that the JEC was clearly wrong to assign Broadcast Engineer a degree level of 3.0 in Scope and Effect/Nature.

Breadth of Responsibility

The Plan defines Breadth of Responsibility as:

the variety of specific functional areas in which the job may have formal and ongoing accountability. In reviewing this factor, consider the level of in-depth knowledge required as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations. [Examples of some functional areas within the following divisions would include: (1)Student Services--Housing, Admissions, Financial Aid, Counseling; (2) Business and Finance--Purchasing, Auditing, Grants and Contracts, Bursar.]

The JEC assigned Grievant a degree level of 1.0, defined as "[a]ccountable for only immediate work assignments but not for a functional area." Grievant argues that he is entitled to adegree level of 4.0, defined as: "[i]n-depth knowledge of and accountability for three functional areas as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations."

It is well established that this factor only gives credit to those employees who have formal financial accountability for an area. See Riggs v. Bd. of Trustees, Docket No. 94-MBOT-711 (Apr. 29, 1996). Grievant misinterpreted the definition of this point factor and claimed the three functional areas for which he is responsible are the telephone bridge, the studio systems, and the broadcast uplink transmitter and satellite receivers. Grievant does not assert that he has any financial accountability; therefore, a degree level of 1.0 is proper for this point factor.

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 [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.

Intrasystems Contacts is subdivided into Nature of Contact and Level of Regular, Recurring, and Essential Contact. The JEC awarded Broadcast Engineer a degree level of 2.0 in Nature of Contact, which is defined in the Plan as “[m]oderate tact and cooperation required; communication is largely of a non-controversial nature and handled in accordance with standard practices and procedures (e.g., explaining simple policies and procedures, coordinating/scheduling complex meeting or conference arrangements.)” Grievant requests a degree level of 3.0, defined as“[s]ubstantial sensitivity and cooperation required; discussions are frequently controversial and require some delicacy (e.g. project interactions, interpretation of complex policies, resolution of somewhat difficult problems.)”

Grievant stated that the higher degree level was appropriate because he exercises substantial sensitivity when he contacts instructors or conference participants to explain why a transmission was cut off. Ms. Hank stated that moderate tact and cooperation would be sufficient in that Grievant need only extend an explanation of what is a largely noncontroversial matter.

Although some participants are undoubtedly upset when a transmission is interrupted, Grievant's only responsibility is to explain why the situation occurred. Grievant has not shown that the JEC was clearly wrong, arbitrary or capricious in assigning a degree level of 2.0 to Intrasystems Contacts/Nature.

The JEC awarded Broadcast Engineer a degree level of 2.0 in Level of Regular, Recurring and Essential Contact, defined in the Plan as “[s]taff and faculty outside the immediate work unit.” Grievant requests a degree level of 4.0, defined as “Deans or Directors in an institution or Assistant Directors in the System's Central Office.” Grievant states that he works with students, instructors, WVSC President Carter, and President Carter's assistant John Hendrickson with some regularity. He is also likely to give tours or answer questions for other officials. Ms. Hank testified that Grievant's primary contacts are instructors, and that contacts with officials are neither regular, nor essential to his duties.

Based upon the evidence of record, it appears that Grievant's Intrasystems Contacts which are regular, recurring, and essential to his position are limited to instructors. There is no evidence that he communicates regularly with higher level institutional or System administrators. It cannotbe

determined that the JEC erred in assigning Broadcast Engineer a degree level of 2.0 in this point factor.

External Contacts

External Contacts is defined in the Plan as:

> This factor appraises the responsibility for working with or through other people outside the SCUSWV to get results. Consider the purpose and level of contact encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, influencing others or negotiation.

This factor consists of two parts, Nature of Contact and Level of Regular, Recurring and Essential Contact. The JEC awarded the position of Broadcast Engineer a degree level of 2.0 in Nature of Contact, defined in the Plan as "[m]oderate tact and cooperation required; communication is largely of a non-controversial nature and handled in accordance with standard practices and procedures (e.g., explaining simple policies and procedures, coordinating/scheduling complex meeting or conference arrangements.)" Grievant requests a degree level of 3.0, defined as: [s]ubstantial sensitivity and cooperation required; discussions are frequently controversial and require some delicacy(e.g., project interactions, interpretation of policies, resolution of problems.)

Grievant asserts that his contacts outside the system require substantial sensitivity because discussions are frequently delicate and require the resolution of problems. Ms. Hank testified that Grievant's contacts are primarily with client institutions who are preparing programs to be broadcast by EdNet and involve only the transfer of information which may be accomplished with moderate tact and cooperation. The evidence supports a finding that Grievant's regular, recurring, and essential contacts involve subject matter which is largely non-controversial in nature and handledin accordance with standard practices and procedures. It cannot be determined that the JEC erred in assigning Broadcast Engineer a degree level of 2.0 in External Contacts/Nature.

The JEC awarded the positions of Broadcast Engineer a degree of 2.0 in External Contacts/Level, defined in the Plan as "[g]eneral public, visitors, and/or service representatives and vendors." Grievant requests a degree level of 4.0, defined as "[m]id-level representatives of government agencies, professional contacts with other colleges and universities outside the system." Grievant

asserts that he maintains contact with both local and network news organizations, mid-level representatives from government, businesses and other colleges, and the Governor and Senator John D. Rockefeller, from time to time. He concedes that these contacts are not regular, recurring, or essential. Because these contacts are not regular or essential, it may not be determined that Grievant is entitled to a degree level of 4.0 in this point factor.

D. Summary

___Grievant has failed to prove that the JEC was clearly wrong or acted in an arbitrary and capricious manner in the allocation of degree levels in the referenced point factors. Because there is no change in the point factors, Grievant is not entitled to assignment to a higher pay grade or title.

In addition to the foregoing facts and narration it is appropriate to make the following formal conclusions of law.

Conclusions of Law

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

2. The burden of proof in a misclassification grievance is on the Grievants to prove by a preponderance of the evidence that they are not properly classified. 156 C.S.R. 1§4.1. Elkins v. Southern W.Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

3. Determinations of the JEC regarding application of the Plan's point factor methodology are essentially questions of fact. In that regard, the JEC's interpretation and explanation of the point factors and PIQs at issue will be given great weight unless clearly erroneous. Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995).

4. Subjective determinations of the JEC regarding application of the Plan's point factor methodology are entitled to deference when being reviewed by the Grievance Board. Miller v. Bd. of Directors, Docket No. 94-MBOD-495 (Oct. 29, 1996).

5. Grievant failed to prove by a preponderance of the evidence that the Job Evaluation Committee's assignment of the position Broadcast Engineer to pay grade 17 was clearly wrong or arbitrary and capricious.

6. Grievant has failed to prove that his duties and responsibilities warrant different

classification and/or compensation at any higher pay grade.

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia County, and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should notbe so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

Date: June 10, 1997 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

The reader is referred to Burke, et al. v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995), for a discussion of the background of the Mercer reclassification project, the procedural history of the Mercer grievances, and the definitions of various terms of art specific to the Mercer reclassification.

Footnote: 2

The record does not reflect the meaning of "RF".

Footnote: 3

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: 4

A grievant may challenge any combination of point factor degree levels, so long as he clearly identifies the point factor degree levels he is challenging, and this challenge is consistent with the relief sought. See Jessen, et al. v. Bd. of Trustees, W.Va. Univ., Docket No. 94-MBOT-1059 (Oct. 6, 1995); and Zara, et al., v. Bd. of Trustees, W.Va. Univ., Docket No. 94-MBOT-817(Dec. 12, 1995).

Footnote: 5

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