**ROSE MARIE PAYNE,**

**Grievant,**

**v. DOCKET NO. 94-MBOD-372**

**BOARD OF DIRECTORS/WEST VIRGINIA STATE COLLEGE,**

**Respondent.**

## DECISION

**Rose Payne submitted a grievance challenging her classification as a Program Assistant I in Pay Grade 12 during the "Mercer reclassification." (See footnote 1) She seeks the title Administrative Associate and Pay Grade 14. She also challenges the point factor degree level ratings used to evaluate her position. The point factors challenged are: Experience; Complexity and Problem Solving; Freedom of Action; and Scope and Effect/Impact of Actions.**

**Grievant was classified under the Job Evaluation Plan for State College and University Systems of West Virginia ("Plan"). The Plan was developed by the Respondent's Job Evaluation Committee ("JEC") with assistance from a private consultant, William M. Mercer, Inc. A Level IV hearing was conducted in this Board's office in Charleston, West Virginia, on August 20, 1996. This matter became mature for decision on September 11, 1996, following the receipt of timely post-hearing submissions from Respondent. Ms. Payne apparently declined to submit post-hearing written argument, although offered the opportunity. For administrative reasons, this case was reassigned for decision on December 6, 1996 to the undersigned Administrative Law Judge, who was present at the Level IV hearing, though not presiding.**

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

## FINDINGS OF FACT

**1 1. All classified employees were asked to complete a Position Information Questionnaire ("PIQ") prior to the reclassification. PIQs are individual position descriptions developed to facilitate the job evaluation process. PIQs are detailed, 17 page documents on which individual employees described the duties of their position, as well as certain minimum qualifications required to carry out their duties. Employees were also asked to rate various aspects of their position by comparison with definitions nearly identical to those set forth in the Plan. The PIQ was reviewed, commented upon, and signed by the employee's supervisor, and the supervisor's supervisor. Ms. Payne filled out a PIQ in 1991.**

**2 2. Ms. Payne is employed by West Virginia State College ("WVSC") as a Program Assistant I working in the EducationalNetwork ("EdNet").**

**3 3. EdNet is located on the WVSC campus, and serves all higher education institutions in West Virginia by providing satellite distance education, video production services, teleconference downlinking services, audio-conferencing and technical support services. EdNet also provides these services to state agencies outside the higher education system. EdNet was created in 1987. It operates 14 hours per day, and is the only uplink facility in the State higher education system. EdNet generates a large part of its own funds.**

**4 4. Ms. Payne performs administrative tasks and also technical support tasks for production of programs. Her duties (with approximate percentages of her time in parentheses) include: fiscal account management, including invoicing clients and purchasing supplies, processing payroll information, and entering expenditures and figuring account balances (40%); operation of studio, control room, and telephone conferencing equipment, and set construction (30%); scheduling productions work for EdNet staff (10%); maintaining equipment and supply inventories, and maintaining and tracking a videotape library (10%); clerical tasks such as composing and/or typing and proofreading letters, taking dictation, making travel arrangements, and disseminating information (10%); and following up on contracts; contacting state, federal and private organizations; and supervision of student and temporary workers, including signing time sheets and payroll documents for students. 5 5. At its inception, EdNet had to formulate guidelines in terms of its technical requirements. EdNet continually adjusts its procedures due to changing clients, technology, vendors, and projects.**

**Rate schedules exist by which charges for particular services provided may be generally determined. There were and are guidelines and requirements governing purchasing procedures, the maintenance of financial records, and State contracting procedures.**

**6 6. During the times in question the five revolving accounts and five appropriated fund accounts maintained by Ms. Payne were not computerized. Each account is a separate line item account. Ms. Payne decides from which account to expend monies for specific items. For example, two different accounts can be used for equipment expenditures. Ms. Payne follows WVSC guidelines in handling accounts, and would have to receive permission from the Fiscal Affairs Office to transfer monies between accounts.**

**7 7. Ms. Payne submits budget information to the Fiscal Affairs office, on a form, and apparently without review or signature by anyone else. The form asks for amounts budgeted for the next fiscal year for specific line items, such as salary, benefits, equipment, repairs, office supplies, and hospitality. Ms. Payne bases the amounts she enters on historical information and plans for the upcoming year. Ms. Payne is told projected equipment and repair needs in weekly staff meetings, and locates information on costs of equipment and repairs herself in order to appropriately set account amounts. If funding in addition to assigned budgets becomes necessary, the EdNet Director would procure it. Ms. Paynekeeps the EdNet Director informed as to amounts remaining in specific accounts.**

**8 8. Ms. Payne sets work schedules for the office in conjunction with the Operations Manager, and may assign some clerical or administrative tasks to EdNet staff, such as copying, filing, answering phones, or maintaining notebooks of information. The Operations Manager maintains the calendar schedule with respect to classes, while Ms. Payne maintains the schedule with respect to productions.** (See footnote 2) **Ms. Payne assigns projects to all EdNet staff, in terms of downlinking teleconferences, editing and tape duplication, studio productions, and uplinking state agencies with television networks.**

**9 9. Ms. Payne had no experience with television production when she began working, but at that time her job was secretarial and EdNet did not provide television services. Ms. Payne had five years' experience as a bookkeeper prior to taking her job at EdNet. She is currently taking accounting classes.**

**10 10. The Program Assistant I title received 1709 total points, while the Administrative**

**Associate title received 1972 total points under the Plan. The point range for Pay Grade 12 is from 1655 through 1755 points. The point range for Pay Grade 14 is from 1866 to 1984 points. Jt. Ex. F.**

## DISCUSSION

**The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that he or she is not properly classified. 156 C.S.R. 1 §4.19; W. Va. Code § 18- 29-6. Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant must identify the job he or she feels is being done. Elkins v. Southern W. Va. Community College, Docket No. 90- BOD-124 (Mar. 4, 1991). The grievant must also identify which point factor degree levels are challenged. This is because the Mercer reclassification system is not based upon whole job comparisons. Rather, the Mercer system is largely a quantitative system in which the components of each job are analyzed separately. The components are then evaluated using the point factor methodology contained in the Plan. Burke, supra. A grievant may challenge any combination of point factor degree levels, so long as he or she clearly identifies the ones being challenged, and this challenge is consistent with the relief sought. See Zara v. Bd. Of Trustees, Docket No. 94-MBOT-817 (Dec. 12, 1995); and Jessen v. Bd. Of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995).**

**Some "best fit" analysis is involved in determining which degree level of a point factor should be assigned. However, this system must by statute be uniform across all higher education institutions. Therefore, the point factors are not assigned to the individual, but to the job. Burke, supra. In order to maintain the integrity of the overall classification scheme, the "best fit" must be determined in relation to other similar positions. Theindividual grievant's case must be analyzed with reference to where the position fits in the higher education classified employee hierarchy.**

**In this case, whether Ms. Payne is properly classified is almost entirely a factual determination. As such, the JEC's interpretation and explanation of the point factors at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W. Va. 1995); Burke, supra. Of course, no interpretation or**

**construction of a term is necessary where the language is clear and unambiguous. See Watts v. Dept. Of Health & Human Resources, 465 S.E.2d 887 (W. Va. 1995). A Mercer grievant may prevail by demonstrating his or her reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehab., Docket No. VR-88-006 (Mar. 28, 1989).**

**Ms. Payne challenged her ratings in several of the factors analyzed in assigning her title and pay grade. Each point factor which is subject to dispute in this grievance will be addressed separately.**

**A. 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.**

**Ms. Payne was assigned level 2 in this factor, which is defined in the Plan as "[o]ver six and up to twelve months ofexperience." Level 3 is defined in the Plan as "[o]ver one year and up to two years of experience." Ms. Payne seeks assignment of level 4, which is defined as "[o]ver two years and up to three years of experience."**

**Ms. Payne stated that she believed a new employee would need at least two years of experience in secretarial duties, computer usage, and other administrative tasks, and also in the accounting field and in television production and communications. These different areas are all parts of her responsibility. She said that she uses secretarial and computer skills in her administrative work. She claimed she uses accounting knowledge in her maintenance of accounts for EdNet, although she also testified that she is currently taking accounting classes. She stated that she uses the experience she has gained in this position in performing her technical assistance duties in the television production and communications field.**

**Respondent's main witness was Ms. Margaret Robinson Buttrick, Human Resources Administrator for the State College and University Systems, and Chair of the JEC since its inception. She stated that this factor is intended to assess the minimum entry-level experience required for a new person to attain minimum competency after a reasonable training period. Ms. Buttrick stated that two factors, Experience and Knowledge, were separately evaluated and must be analyzed in reference to each other to ensure that credit is**

**not given in both factors inappropriately. She testified that, in this case, the JEC determined that six to twelve months ofexperience was sufficient when combined with the Knowledge factor requirement of an Associate's degree or a general equivalent of that degree. She also pointed out that Ms. Payne herself had learned her television and communications skills on the job.**

**While Ms. Payne asserted her belief that six to twelve months' experience would be inadequate preparation for this position, she did not address whether having obtained an Associates' degree would alter her belief as to the minimum amount of experience necessary. 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). However, an unsubstantiated difference of opinion is insufficient to prove that the JEC's opinion was clearly wrong.**

**No evidence was presented regarding the educational or experiential content of Associate's degree level knowledge. Similarly, there was no evidence that obtaining an Associate's degree would not prepare one adequately for this position, particularly after one obtained six to twelve months of experience and also had a reasonable on-the-job training period. Where such evidence is lacking, the JEC must be presumed to have properly assessed the minimum requirements of the position. Ms. Payne failed to prove that the JEC was clearly wrong in its assignment of level 2 in the Experience factor.**

**B. 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.**

**Ms. Payne was assigned level 2.5 in this factor, which is between the defined levels of 2 and 3. Level 2 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.**

**Level 3 is defined in the Plan as:**

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

**Ms. Payne asserts that level 3 should be assigned because EdNet is a unique department. She states that complex problems are encountered almost daily, giving as examples rescheduling staff if one person cannot report to work; deciding which account to use in paying for items; reconciling accounts with the Business Office, which is always several months behind; and convincing new vendors to adhere to State purchasing guidelines.**

**Ms. Buttrick stated that Ms. Payne has many guidelines andprecedents to use in her work. Reconciling accounts and maintaining accounts and balances are covered by guidelines; the Director is responsible for budgetary matters, and Ms. Payne is merely providing support services, not solving complicated budgetary or technical problems. The fact that EdNet may be a unique department is not a consideration, because Ms. Payne merely provides support services, Ms. Buttrick stated.**

**The problems solved by Ms. Payne in the performance of her duties are not usually complex, when compared with the types of problems addressed by all employees of the entire higher education systems. Most of the examples given show problems with very limited options available for resolution. Ms. Payne has a limited number of accounts available from which to choose, and the accounts are "line item" accounts which have strict limits on use. Use of debit, credit and balance sheets, and general bookkeeping or accounting principles, in addition to institutional standards regarding financial matters, all restrict the latitude Ms. Payne may exercise in solving problems with the accounts. Scheduling is circumscribed by the number of employees available, as well as their respective jobs and the needs at hand.**

**Understanding procedures which must be followed to process various types of documents, performing basic computation work in completing forms, and understanding which procedure applies have been found to be within the definition of level 2. Barber v. Bd. of Trustees, Docket No. 94-MBOT-872 (Oct. 31, 1996). Non-routine problems encountered by an employee have been properly assigned to level 2in this factor, as well. Payne v. Bd. of**

**Directors, Docket No. 94- MBOD-787 (Sept. 19, 1996).**

**Most of Ms. Payne's problem solving seems to best meet the level 2 definition in this factor. However, she was given some credit for level 3 problem solving when the JEC assigned the intermediate rating to her position. Ms. Payne has not shown that the JEC was clearly wrong, arbitrary or capricious in assigning level 2.5 in Complexity and Problem Solving.**

**C. 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.**

**Ms. Payne was assigned level 2.5 in this factor, which is between the defined levels of 2 and 3. At level 2:**

> **Tasks are structured to the extent that standard operating procedures serve as a gauge to guide the employee's work. The employee can occasionally function autonomously with the immediate supervisor available to answer questions. Questionable items are referred to the immediate supervisor.**

**The definitions in the Plan show that at level 3:**

> **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. Ms. Payne asserts that she should be assigned level 3 in Freedom of Action because she works independently with little supervision. She processes payments and charges items to different accounts independently. She occasionally gives office or administrative assignments to EdNet staff, such as copying and filing, and sometimes decides which staff will perform production work, based on the production requirements, the schedule, and personalities and expertise of staff available. She composes and sends letters to clients regarding available services and procedures, and charges for services. She also fills out budget information forms which are sent to the Fiscal Affairs Office without any review or signature, to Ms. Payne's knowledge.**

**Ms. Buttrick stated that Ms. Payne's freedom of action in performing her tasks is limited by purchasing procedures, contract requirements, fee schedules, and other such guidelines. She stated that Ms. Payne has limited freedom in spending EdNet monies, as line item budgets**

**limit spending from that account for that specific item, and permission from the Fiscal Affairs Office is required before funds can be moved from one line item account to another. Freedom of action in production work is limited because others, such as production engineers, have responsibility for the production. Finally, Ms. Buttrick stated that Ms. Payne does not develop policy or procedure, and does not negotiate contracts herself. Rather, the maintenance contracts which Ms. Payne oversees are originally created during the equipment bid process, which follows State contract bidding procedures and is overseen byothers.**

**Due to her presence at EdNet's inception, Ms. Payne likely set up many of the clerical systems used by EdNet and many of the office procedures used. It seems clear that EdNet now functions fairly smoothly through adherence to consistent approaches taken in handling financial accounts, client informational contacts, and scheduling. Ms. Payne clearly works with great independence, and is quite proficient and professional. However, she does have standard operating procedures to govern most or all of her work, and limited options for choosing solutions, as noted under the preceding discussion section. Under those circumstances, assignment of level 2 might be appropriate. See Perkins v. Bd. of Trustees, Docket No. 94-MBOT-733 (Oct. 31, 1996), Flenniken v. Bd. of Trustees, Docket No. 94-MBOT-1020 (July 19, 1996) and Barber v. Board of Trustees, Docket No. 94-MBOT-872 (Oct 31, 1996). Here, Ms. Payne's position was still given credit for some level 3 work, by the JEC's assignment of the intermediate rating. Ms. Payne has not shown that the JEC was clearly wrong, arbitrary or capricious in assigning level 2.5 in the Freedom of Action factor.**

**D. SCOPE AND EFFECT/IMPACT OF ACTIONS:**

> **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, andstudent advisement and development. In making these judgments, consider how far-reaching is the impact and of what importance to the institution and/or the 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.

Ms. Payne was assigned level 2 in Impact of Actions, which is defined in the Plan as "[w]ork affects either an entire work unit or several major activities within a department." Ms. Payne seeks assignment of either level 3 or level 4 in Impact of Actions. Level 3 is defined in the Mercer 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 <$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.

Level 4 of Impact of Actions is defined in the Mercer Plan as:

> Work affects the entire operations of a specialized school, branch campus, community college or baccalaureate-level institution with an operating budget of <$13M; more than one school of [sic] 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 ofmore than $50M; or a major department within a doctoral- level institution with an operating budget of more than $200M.

In support of her position, Ms. Payne testified that errors in processing payroll information might result in a person not being paid; that errors in processing an order might result in the inability of EdNet to do a production, or to televise a class as scheduled; that her errors in running production equipment could result in poor quality programming; and that scheduling errors could result in double-booking production or broadcasting times, or in having no staff to produce a program. Each of these could create substantial cost, inconvenience and disruption for EdNet and the department, institution or agency involved.

Ms. Buttrick stated that this factor measures how a position affects the mission of an institution. She stated that the EdNet Director is responsible for EdNet and would get the higher level rating under this part of Scope and Effect (See footnote 3), and that Ms. Payne's work impacts only EdNet itself.

**EdNet clearly has some effect on all or most higher education institutions in terms of their delivery of instructional services, the root mission of the entire system. However, EdNet has only a limited impact in this regard, as only a small proportion of classes are televised or otherwise included in the distance learning program. Compared to the number of students and classes which are taught in the traditional manner, the distance learningprograms are of lesser importance. Each institution would continue instructional services, even if EdNet ceased operations entirely.**

**Ms. Payne's individual work does not have the same impact as the entire EdNet system. Ms. Payne's work supports the services and programs provided by EdNet. While Ms. Payne's work impacts the EdNet unit, it is likely that any errors she makes would be corrected before they had any effect on EdNet's services or customers. Only in a diffuse and indirect manner can Ms. Payne's work be said to impact institutions outside of EdNet. Such remote impact is not appropriately measured by this factor. When measuring "the scope of responsibility of the position," Ms. Payne is not responsible for EdNet, she is responsible for carrying out her duties. The JEC was not clearly wrong in assigning level 2 under Scope and Effect/Impact of Actions.**

## SUMMARY

**As the JEC was not shown to have been clearly wrong, arbitrary or capricious in assigning any of the point factor degree levels challenged by Ms. Payne, no changes in the points assigned to her position can be made. As no change in title is appropriate without a corresponding change in points, it is unnecessary to address the comparison of her job duties with the generic job descriptions for the titles Administrative Associate and Program Assistant. To perform that comparison would be to resort to the less quantitative, less objective classification method of "whole job comparison," abandoning the point factor methodology which the JECadopted.**

## 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 or she is not properly classified. 156 C.S.R. 1 § 4.19.**

**3. Determinations of the Job Evaluation Committee("JEC") regarding application of the Mercer Plan's point factor methodology are essentially questions of fact. In that regard, the JEC's interpretation and explanation of the point factors and PIQs at issue will be given great weight unless clearly erroneous. Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). See generally, Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W. Va. 1995).**

**4. Subjective determinations of the JEC regarding application of the Mercer Plan's point factor methodology to an employee or group of employees are entitled to deference when being reviewed by this Grievance Board. Such determinations may nonetheless be found to be arbitrary and capricious if not supported by a rational basis, or to be clearly wrong if there is no substantial evidence in the record supporting the finding or if review of the evidence makes it clear that a mistake has been made. Burke, supra. See Frymier-Halloran v. Paige, 458 S.E.2d 780, 788 (W. Va. 1995); Bd.of Educ. v. Wirt, 192 W. Va. 568, 453 S.E.2d 402 (1994); Kyle v. W. Va. State Bd. of Rehab., Docket No. VR-88-006 (Mar. 28, 1989).**

**5. The JEC's assignment of degree levels to the point factors Experience, Complexity and Problem Solving, Freedom of Action, and Scope and Effect/Impact of Actions for Ms. Payne's position is neither clearly wrong nor arbitrary and capricious.**

**Accordingly, this Grievance is DENIED.**

**Any party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropri ate court.**

**JENNIFER J. MEEKS**

**Administrative Law Judge**

**Dated: January 8, 1997**

---

***Footnote: 1***

***The reader is referred to Burke v. Bd. of Directors, 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. All classified positions in the West Virginia higher education system were reclassified during this project.***

---

***Footnote: 2***

***Some classes require production work at and through EdNet, while others do not because they have their own studios at their own institutions which require only an EdNet engineer's assistance to produce. The difference apparently hinges on where the set is located, and whether the set is created by EdNet at its own studio.***

---

***Footnote: 3***

***The EdNet Director was assigned level 7 in Scope and Effect/Impact of Actions, and the Manager/Operator of EdNet was assigned level 3. Jt. Ex. F.***