ROBBIE LAYNE,

Grievant,

v. **DOCKET NO. 98-BOT-236**

BOARD OF TRUSTEES/

MARSHALL UNIVERSITY,

Respondent.

D E C I S I O N

Grievant Robbie Layne alleges she is misclassified as an Accounting Assistant I, pay grade 12. She seeks as relief classification as an Accounting Assistant II ("AAII"), pay grade 14, and backpay. (See footnote 1)

The following Findings of Fact are properly made from the record developed at Levels II and IV.

Findings of Fact

1. Grievant is employed at Marshall University ("Marshall") in the Bursar's Officeas an Accounting Assistant I ("AAI"), pay grade 12. She has been employed in the Bursar's Office since 1990. She was classified in this Job Title effective January 1, 1994, and did not grieve her classification at that time.

2. The Bursar's Office is responsible for revenue receipt processing and refunds.

3. Grievant spends half her time assigning the proper account code to revenue from a chart of account codes, calculating student fees, distributing financial aid checks to students, reviewing student account information to verify payments and balances, advising students and others on the procedure for fee and housing assessments and the financial aid registration process, balancing revenue and receipts for deposit (daily), cashing checks, collecting fees from students, verifying deposits, and preparing receipts. She spends 15% of her time processing funds due for parking, issuing parking permits, entering data, calculating parking fees, advising students and others on

parking policies and procedures, generating a daily transaction report to account for parking revenue, and posting to departmental accounts. She spends the remainder of her time (35%) posting, verifying student hours, verifying refund amounts, voiding checks and reissuing checks in the correct amounts, and checking data entered against the trial balance and journal entries.

4. Grievant works at a window in the Bursar's Office where students come to pay their registration fees. Due to advances in Marshall's network and software since 1994, when a student comes to Grievant's window, she is able to use her computer to access information about all areas of the student's account with Marshall, and can quickly tell the student exactly where his account stands and what he needs to do to complete his registration. This means she is able to access and interpret information on student loanstatus and housing, and can relay this information to the student, and in some cases, do whatever is necessary to conclude the process for the student, so that all his financial aid is disbursed and all fees have been paid when he leaves her window. If she is not able to complete this process, she can determine what steps must be completed for the student to receive his financial aid, and who he needs to see to achieve this goal.

5. On January 1, 1994, Grievant was not performing any duties related to parking, and she could not access and check current information on student accounts to determine what a student needed to do to release funds or what fees remained to be paid.

6. Grievant talks to the Business Manager in the Athletic Office on a daily basis about the deposits sent to Grievant each day if there are any discrepancies, and about the appropriate account. She talks to the Dean of the Graduate School, the Supervisor of Housing Assignments, and supervisors and managers in the Bursar's Office, on a daily basis about student accounts. Grievant's internal contacts have not changed since January 1, 1994.

7. Grievant deals with students on a daily basis, collecting funds from them, distributing parking permits to them, explaining what their account balances are and why, and directing them to the proper place if Grievant cannot solve their problem. Students sometimes become irate about their accounts. Grievant's external contacts have not changed since January 1, 1994.

8. Grievant does not supervise any other employee. This has not changed since January 1, 1994.

9. During busy times, Grievant trains temporary workers, and directs and monitors their work. 10. Grievant works in an office setting, and can choose to sit, walk or stand. When she is

waiting on students, she can choose to sit on an elevated stool with a back, or stand. She occasionally moves boxes, but is not required to do so. This has not changed since January 1, 1994.

11. The AA I Job Title received 1707 total points from the following degree levels in each of the thirteen point factors (See footnote 2) : 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; 1.0 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.

12. 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; 3.0in 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. Respondent's Exhibit 2.

13. The point score range for a pay grade 12 is from 1655 through 1755 total points. Respondent's Exhibit 4.

Discussion

A. Burden of Proof and Standard of Review

In 1993 the West Virginia Legislature amended W. Va. Code § 18B-9-4 to provide, among other things, "an equitable system of job classifications" for classified employees of the University System of West Virginia Board of Trustees and the Board of Directors of The State College System of West Virginia (collectively "the governing boards"). As amended, W. Va. Code § 18B-9-4 required the governing boards to establish by rule and to implement a system establishing uniform classifications

in all institutions of higher education within West Virginia. This reclassification is commonly referred to as the "Mercer reclassification." (See footnote 3)

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 asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy anadequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

A higher education grievant is not likely to meet his burden of proof 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. 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).

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.

Finally, whether a grievant is properly classified is almost entirely a factual determination. As such, the Job Evaluation Committee's ("JEC") (See footnote 4) interpretation andexplanation of the point factors and Generic Job Descriptions or Position Information Questionnaires ("PIQ") 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.

A higher education employee must also demonstrate that his duties have changed in a meaningful, identifiable manner since January 1, 1994, in order to pursue a grievance over his classification. Rush v. Bd. of Directors, Docket No. 97-BOD-369 (Apr. 3, 1998). Respondent did not dispute that a number of duties had been added to Grievant's job, and the manner in which her duties are performed had changed with the addition of software programs which allow her access to student account information not previously available to her, so that she can now answer many of a student's questions about his account rather than sending him to the financial aid office or the Registrar's office. Respondent did not argue that Grievant could not pursue her grievance.

Grievant argued the Mercer classification system should consider increasedresponsibilities and efficiency, as has occurred in her case. The point factor methodology of the Mercer classification system requires an evaluation of a change in an employee's responsibilities in the context of how this affects the degree levels assigned in the point factors. Volume of work and efficiency are not considered in the application of the point factors. Grievant has not demonstrated a flaw in the classification system, but has merely demonstrated that her opinion about what aspects of a position should be evaluated is different from that of the human resource professionals who developed the Job Evaluation Plan. Gregg, et al., v. Bd. of Trustees, W. Va. Network for Educational Telecomputing, Docket No. 94-MBOT-863 (Dec. 18, 1996)

Grievant also complained that a desk audit was not performed; however, she pointed to no rule, regulation or policy which requires a desk audit. Further, Glenna Racer, a Senior Compensation Analyst at Marshall and member of the JEC, testified that she performed a desk audit by talking with Grievant for about an hour, talking to her second- level supervisor and his supervisor, and viewing Grievant's work area. She explained this is how she was taught to perform a desk audit, and this is an accepted, accurate method. See Burgraff v. Bd. of Directors, Docket Nos. 97-BOD-523/532 (Nov. 25, 1998).

B. Application of the Point Factor Methodology

Grievant argued her duties were such that, if her position were evaluated individually, she would receive higher degree levels than were assigned the AAI Job Title in the point factors Experience, Complexity and Problem Solving, Freedom of Action, Scope and Effect/Nature of Actions,

Intrasystems Contacts/Level of Contact, External Contacts/Nature of Contact, Direct Supervision Exercised/Level of Supervision, and Physical Demands. Each point factor will be addressed below. 1. Experience

The Job Evaluation Plan ("the Plan") defines Experience as follows:

> This factor measures the amount of prior directly related experience required before entering the job. Previous experience or training should not be credited under this factor if credited under Knowledge.

Grievant argued she should have received a degree level of 5.0 in Experience, rather than a 3.0. The AAII Job Title received a degree level of 4.0 in this point factor. 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." A degree level of 5.0 is defined by the Plan as "[o]ver three years and up to four years of experience."

Grievant pointed out that her supervisors in the Bursar's Office had decided three to four years of experience was needed in her position. She stated she must be familiar with four departments, financial aid, residence services, the Registrar's office, and admissions, and in addition, must deal with the graduate office and the parking office. She stated additional responsibility had been added to her job, including posting of refund checks, regular refunds, various types of checks, balancing the ledger, and closeout.

Robert Collier, Manager of Student Accounts and Grievant's second-level supervisor, testified that experience is needed in order to handle the problems which are unusual, so that the student line moves as quickly as possible and customer service goals are met. He agreed that someone would have to be employed at Marshall for a period of time in order to learn how to handle the unusual problems peculiar to Marshall. He stated he would prefer someone with more experience, and that would be best for Marshall, but he did not know whether someone with less than two years of experience could performthe job duties. He stated he and others came up with three to five years of experience based upon their own experience.

Grievant's supervisor, Jamie Henry, Supervisor of Student Accounts, testified she goes through four to five temporaries every term who have one to two years of experience; however, she noted that the type of prior experience they have had is important. She explained she needs someone who has worked long enough to have had accounting experience, computer experience, and customer service experience. She stated that someone with an Associate's Degree and one to two years of experience

could not learn to perform the duties of the position in six months.

Ms. Racer explained that this point factor is considered with the point factor knowledge to determine the minimum levels required to be able to perform the job duties after a training period. She testified that Grievant's position is an entry-level revenue processing position. She stated Grievant is able to function at an expert level, and that departments frequently ask for additional experience because it would be wonderful to hire someone to come in and perform at Grievant's level; but this is not practical.

The undersigned concludes from the testimony that Grievant has not proven more than two years of appropriate experience, combined with an Associate's Degree, is required in order to learn to perform Grievant's job duties within six months. Someone with this much experience may not be as quick as Grievant in responding to student inquiries, and may have to refer to notes in order to go through the correct steps, or ask questions of her supervisor and other employees, but this does not mean she cannot perform the duties. Certainly, it might take a very long time for someone to achieve Grievant's level of expertise, so that students are moved through the registration lines as quickly as possible,but, absent some testimony that an employee in this position absolutely has to be able to complete particular duties within a set amount of time, that is not what this point factor measures.

2. 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.

Grievant argued she should have received a degree level of 3.0 in this point factor, rather than a 2.5. The AAII Job Title received a degree level of 3.0 in this point factor. 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.

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.

This Grievance Board has looked at this point factor in many previous decisions.

> 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 islimited by some policy, regulation, or procedure. In Gregg, et al., v. Bd. of Trustees, W. Va. Network for Educational Telecomputing, Docket No. 94- MBOT-863 (Dec. 18, 1996), in order to identify the source of errors, the grievants had to learn to recognize an error message on the computer screen, determine the computer language used in the error message, and then determine what the message meant. This was not a simple task, and sometimes required the grievants to go through a number of steps. However, a seemingly complex job did not equate to a high degree level in this point factor, because the grievants learned how to perform this task with education and experience, had reference manuals available which provided all the information necessary to determine the source of the problem, and could refer problems they had not encountered before to someone else.

Martin, et al., v. Bd. of Trustees, Docket No. 94-MBOD-658 (Mar. 28, 1997).

Grievant testified that guides, methods and precedents are usually available, but she must use diversified guidelines and exercise judgment to locate and select the most appropriate guidelines, references, and procedures to fit variations in existing conditions. As an example she stated a student might have $1000 showing in a particular account, which he disputes. She must access financial aid information to determine eligibility, verify requirements have been met, and assess the registration screen to confirm the student's hours and the amount of financial aid to be released. She stated this is not an easily recognizable solution. She stated the management team emphasizes delegation of authority to each employee. She stated she routinely deals with unusual situations independently, such as counseling an international student on fee assessments and payments, which requires additional insight into the special circumstances encountered by the international student. She stated she must answer student questions regarding why their assessments are different from those of other students. She stated she does refer the worst cases to her supervisor.

Ms. Henry testified that when Grievant looks at a student account on the computerscreen she has to know what the codes mean, she has to know whether any charges are erroneous, and she has to

know how to add the various debits and credits to make sure the entries are correct and add up.

Ms. Racer agreed that the answer is not always easily recognizable, which is why she agreed that this position should receive a higher degree level than a 2.0. However, according to Grievant's PIQ, the examples given above are not the types of problems she encounters most of the time. She also performs basic computation, compares facts and numbers, issues permits, and performs basic cashiering duties. Ms. Racer stated Grievant's duties do not clearly fall within either a degree level of 2.0 or a 3.0, so she assigned her a 2.5. She pointed out that Grievant follows departmental policies and standard accounting practices, and she has guidelines and references.

Grievant compares data, which falls within a degree level of 2.0. When collecting fees, she is acting as a cashier. When she is checking the student's account information on the computer, she follows the procedure developed by someone else, and the procedure she uses depends upon the information she finds on the computer screen. While she must be familiar with multiple procedures, she follows established procedures in performing her duties, as she has been trained to do. "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." Martin, supra. Grievant has not proven it is clearly wrong or arbitrary and capricious to assign 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.

3. Freedom of Action The Plan defines Freedom of Action as:

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

Grievant argued she should have received a degree level of 3.0 in this point factor, rather than a 2.5. The AAII Job Title received a degree level of 3.0 in this point factor.

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.

Ms. Racer stated Grievant follows fairly standard operating procedures. She stated Grievant has to resolve some issues for students, but she is limited, in that she must sometimes turn the problem over to someone else for resolution. She stated Grievant knows she will be receiving revenue everyday, and will have to reconcile accounts at the end of each day. She described Grievant's job as highly structured.

Ms. Henry stated that the only "decisions" Grievant makes are how much a student owes, why they owe money, and how much of a refund the student will get and from what fund. Grievant, however, is not making these decisions; she is taking the informationshown on the students' accounts, and using standard procedures to explain to the student what the information means. She makes no decisions about whether the student owes money or will get a refund. She is interpreting information using standard procedures.

Grievant pointed to the fact that she receives 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.

Some of Grievant's tasks each day are dependent upon student requests for information. This adds structure to her job. Her job is also structured by the procedures she applies, and those duties which must be performed each day. 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. Martin, supra; See Hughes v. Bd. of Trustees, Docket No. 94-MBOT-1002 (Jan. 28, 1997). Grievant has not demonstrated it is clearly wrong or arbitrary and capricious to rate her duties at a degree level of 2.5.

4. Scope and Effect

Scope and Effect is defined in the 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 actionsshould 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 argued she should have received a degree level of 3.0 in Nature, rather than a 2.0. The AAII Job Title also received a degree level of 2.0 in this point factor.

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.

She stated an error could easily occur which would result in a major inconvenience to students and parents, and the miscalculation of a fee could result in thousands of dollars of liability to Marshall. She noted the release of electronic funds to the wrong student's account could cause a student to incur bank charges for non-sufficient funds.

Ms. Racer stated Grievant contributes to the accuracy, reliability and acceptability of processes. She stated Grievant is intimately involved in the processing of revenue andrefunds, decisions would be fairly routine, and she has standard, accepted practices she follows. She explained that most positions which received a degree level of 3.0 were supervisory positions.

Grievant has not proven her duties fall within a degree level of 3.0 under Nature of Actions. She is not providing guidance to the Bursar's Office, but is the person providing service to the students. Although she may have to check in many different areas to find an answer for a student, she follows standard policies and procedures in to do so. See Browning v. Bd. of Directors, Southern W. Va.

Community College, Docket No. 94-MBOD- 985 (Aug. 15, 1996). See, also, Stephenson, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-825 (Dec. 30, 1996), and Hardee, et al., v. Bd. of Directors, Docket No. 94-MBOD-373 (Jan. 10, 1997). She provided no comparative data to demonstrate that errors could result in costs and inconveniences more properly characterized as "moderate," as opposed to "some."

5. 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 argued she should have received a degree level of 3.0 in Level, rather than a 2.0. The AAII Job Title received a degree level of 3.0 in this point factor.

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.

The testimony offered by Grievant and her supervisor support the PIQ designation of a degree level of 3.0, as they stated Grievant talks to supervisors and managers in other departments on a daily basis. Ms. Racer did not dispute this. Grievant has proven her duties merit a rating of a 3.0 in Level of Contact.

However, Ms. Racer stated that Grievant's conversations with managers and supervisors do not fall within a degree level of 2.0 in Nature of Contact, which her Job Title received. She stated Grievant's conversations regarding deposits and student accounts is routine information exchange, a degree level of 1.0, which 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 of Contact is defined in the Plan as:

> Moderate 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 did not dispute that the Nature of her Intrasystems Contacts were at a degree level of 1.0, and they appear to be best characterized as routine information exchange, such as obtaining and providing factual information. Ms. Racer testified that if Grievant's Level of Contact were at a degree level of 3.0, and the Nature of the Contact were at a degree level of 1.0, the net result on this point factor is the same as Grievant's Job Title received with a 2.0 in Level and a 2.0 in Nature. The undersigned's review ofRespondent's Exhibit 1 indicates that this is not correct. These two changes in Intrasystems Contacts leave Grievant with a total score of 3 in Intrasystems Contacts, rather than the 4 she started out with, which finally results in a net decrease of 6 points (Respondent's Exhibit 3). (See footnote 5)

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 argued she should have received a degree level of 3.0 in both Level and Nature, rather than a 2.0 and a 1.0 respectively. Respondent conceded that a degree level of 3.0 in Level was appropriate for Grievant, due to her contact with students, and this need be addressed no further.

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 anoncontroversial nature and handled in accordance with standard practices and procedures (e.g., explaining simple policies and procedures, coordinating/scheduling complex meeting or conference arrangements.)

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

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

Grievant supported her quest for a 3.0 with testimony that students become irate and she tries to calm them down. Ms. Racer stated that Grievant has clearly defined, standard, non-controversial policies which she follows and explains. Ms. Racer opined that the Nature of Grievant's contact with students is therefore within a degree level of 2.0.

Grievant's role in talking to students who become irate is to provide them with information in a courteous manner, and to direct them to the proper place if Grievant cannot solve their problem. It may be difficult for Grievant to control herself while someone is yelling at them, but this does not change the purpose of the contact on Grievant's part, which is to provide information and explain procedures. Lovely, et al., v. Bd. of Trustees, Docket No. 94-MBOD-762 (Nov. 27, 1996). Grievant has not proven her duties fall within a degree level of 3.0 in Nature of Contact.

The change in External Contacts gives Grievant a net score of 3 in this point factor, rather than the 2 received by the AAI Job Title (Respondent's Exhibit 1), resulting finally in an additional 8 points (Respondent's Exhibit 3).

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 maybe 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 argued she should have received a degree level of 2.0 in Level, rather than a 1.0. The AAII Job Title received a degree level of 3.0 in this point factor.

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.

Grievant marked a degree level of 1.0 under Number of Subordinates, which is defined as no direct subordinates. She stated she marked a degree level of 2.0 under Level of Supervision because she trains, directs and monitors the work of temporary workers during busy periods, presumably twice a year registration.

As Ms. Racer pointed out, temporary workers are not counted in applying this point factor, because, by definition, it applies only to "subordinate jobs in the organization." Rush, supra; Martin, supra; Hardee, supra. Even if temporary workers were counted, Grievant's duties with regard to temporary workers fall squarely with the degree level 1.0 definition.

8. Physical Demands

Physical Demands is defined in the Plan in conjunction with Working Conditions as:

> This factor considers the physical demands of the job as measured by the exertion placed on the skeletal, muscular and cardiovascular systems of theincumbent. It also takes into account the quality of the physical working conditions in which the job is normally performed such as lighting adequacy, temperature extremes and variations, noise pollution, exposure to fumes, chemicals, radiation, contagious diseases, heights and/or other related hazardous conditions.

Grievant's Job Title received a degree level of 1.0 in this point factor. She argued she should have received a degree level of 3.0. The AAII Job Title also received a degree level of 1.0 in this point factor.

A degree level of 1.0 is defined in the Plan as:

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

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

> Light physical effort required involving stooping and bending; individual has limited discretion about walking, standing, etc.; occasional lifting of lightweight objects (up to 25 pounds).

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

> Moderate physical effort required involving long periods of standing, walking on rough surfaces, bending and/or stooping; periodic lifting of moderately heavy items (over 25 and up to 50 pounds).

Grievant's work in an office environment fits squarely within the definition of a degree level of 1.0. She is normally seated. When she is waiting on students, she may choose to sit on an elevated stool with a back, or stand. The fact that she chooses to stand for long periods when she is waiting on

students does not make this a requirement of her job. Further, she waits on students for long periods of time only during heavy times of the year. Even if she had to stand for long periods during registration rush, she would still have discretion about her position most of the year, which is the norm.

Grievant testified she sometimes lifts boxes, if no one is around to perform this task,but that she could call someone from the physical plant to do this. Lifting boxes is not one of Grievant's regular and recurring job duties, and is not considered in evaluating her position. Aguirre v. Bd. of Directors, Docket No. 94-MBOD-509 (May 29, 1997).

C. Summary

Grievant proved her duties rate a degree level of 3.0 in Intrasystems Contacts/Level of Contact, and External Contacts/Level of Contact. However, Respondent proved that the Nature of Grievant's Intrasystems Contacts is best characterized as a degree level 1.0. The net result of these changes is an additional 2 points, which when added to the total points for the AAI Job Title, is 1709 points. This is still within a pay grade 12.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. The governing boards are required by W. Va. Code § 18B-9-4 to establish and maintain an equitable system of job classifications 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). A higher education grievant should also identify the point factors he is challenging; otherwise, his challenge will be limited to those point factors where the degree level assigned the Job Title sought differs from the degree level assigned to grievant's Job Title. Campbell-Turner, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-1035 (Jan. 31, 1996).

3. The Job Evaluation Committee's interpretation and explanation of point factors will be given

great weight unless clearly wrong, where the proper classification of a grievant is almost entirely a factual determination. See Tennant v. Marion Health Care Found., 194 W. Va. 97, 459 S.E.2d 374 (1995); Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995).

4. The Job Evaluation Committee's decision that Grievant is an Accounting Assistant I, pay grade 12, is not clearly wrong or arbitrary and capricious.

Accordingly, this grievance is **DENIED**.

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

BRENDA L. GOULD

Administrative Law Judge

Dated: December 7, 1998

Footnote: 1

This grievance was filed on June 2, 1998. Grievant's Supervisor responded on June 3, 1998, that she could not grant the relief requested, and Grievant appealed to Level II on that same day. A hearing was held at Level II on June 12, 1998, and a decision denying the grievance was issued on June 25, 1998. Grievant appealed the Level II decision to Level IV on June 30, 1998, bypassing Level III. A Level IV hearing was held on October 20, 1998. Grievant appeared pro se, and Respondent was represented by Michael Glasser, Esquire. This matter became mature for decision on November 5, 1998, upon receipt of Respondent's post-hearing written argument. Grievant declined to submit written argument.

Footnote: 2

The thirteen point factors are set forth in 128 C.S.R. 62 § 2.27, and 131 C.S.R. 62 § 2.27. Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995).

Footnote: 3

This name is derived from the name of the company which assisted higher education in developing the classification

system, William M. Mercer, Inc.

Footnote: 4

The JEC consists of a group of individuals from various colleges and universities throughout the state, and the Systems' Central Office, many of whom are human resourcesprofessionals, who have been delegated the duty to assure that the classification system is uniform throughout the state. They are responsible for making decisions regarding whether a person is properly classified, creating new Job Titles, and making changes in the pay grade assigned to a Job Title. Between 1991 and 1994 they reviewed the position information questionnaires of every classified employee and determined what the proper classification of every employee should be.

Footnote: 5

The two degree levels from the two-part point factors are assigned a composite number in the Plan (Respondent's Exhibit 1). The composite number, and each degree level assigned to each non-two-part point factor, is assigned a numerical rating on a chart (Respondent's Exhibit 3). These numerical ratings are than added together to get total points, which for the AAI Job Title is 1707 points. The pay grades are assigned to ranges of points (Respondent's Exhibit 4).