DAVID ARIGAN, et al.,

Grievants,

v. Docket No. 03-HE-240

MARSHALL UNIVERSITY,

Respondent.

D E C I S I O N

David Arigan, Carol Skaggs, Paul Benford, Charles Newton, and Deborah Watson ("Grievants"), employed by Marshall University ("MU"), filed grievances on July 8, 2003, in which they asserted "point values and job classifications assigned were misapplied or misinterpreted and needs to be re-evaluated." For relief, Grievants requested they "be reclassified and made whole in every way, to an equitable pay grade, based on job knowledge, experience, and overall job requirements. . . back pay [from] June 24, 2003."

Decisions from levels one, two, and three stated that relief could not be granted at the institutional level. Appeal to level four was made in August 2003. The grievances were consolidated by Order dated September 11, 2003, and held in abeyance pending health issues incurred by a number of Grievants. A hearing was held in the Grievance Board's Charleston office on October 7, 2004, at which time Grievants represented themselves and MU was represented by Senior Assistant Attorney General Jendonnae L. Houdyschell. The case became mature for decision upon receipt of proposed findings of fact and conclusions of law filed by the parties on or before November 19, 2004. (See footnote 1)

The following facts are derived from the record developed at level four.

Findings of Fact

1. The higher education system in West Virginia has utilized the "Mercer" job classification system since January 1, 1994. Under this system the Job Evaluation Committee ("JEC"), composed of thirteen human resource specialists from the state institutions, review Position Information Questionnaires ("PIQs"), detailed job descriptions completed by employees, and assign point factors in twelve categories to arrive at a total number of points for the position. The Mercer system has twenty-five pay grades, each with a minimum and

maximum point range. Positions are reviewed individually, but are assigned a classification and pay grade by job title. Therefore, while some individual differences in duties may exist, all employees holding the same job title will be placed in the same pay grade.

2. In late 2000, the JEC determined that a review of the physical plant job families was warranted. Employees completed new PIQ's in February of 2001. The review was eventually completed, and changes implemented in July 2003.

3. Grievants Skaggs and Watson are employed by MU as Supervisors in Central Receiving in the Purchasing and Materials Management Department, at pay grade 14. Their pay grade and classification remained unchanged as a result of the 2003 review.

4. Grievant Newton was employed as a Shipping/Receiving Assistant Lead, pay grade 10, prior to 2003. As a result of the JEC review, this classification was elevated to Receiving and Inventory Assistant Lead, pay grade 12.

5. Grievants Benford and Arigan, employed as Shipping/Receiving Assistants, pay grade 9, were reclassified as Receiving and Inventory Assistants at pay grade 10. 6. Grievants contest a number of point factor allocations, and their resultant pay grade determinations. They also believe that Glenna Racer, a Compensation Analyst at MU and JEC representative, may have unjustly influenced their classification designations due to the fact that her spouse is the assistant director of purchasing.

Discussion

A. Burden of Proof and Standard of Review

The burden of proof in misclassification/compensation grievances is on the grievant to prove by a preponderance of the evidence that he is not properly classified/compensated. 156 C.S.R. 1 § 4.21; W. Va. Code § 29-6A-6(e). See Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995). Because the Mercer system is largely a "quantitative" system, in which the components of each job are evaluated using the point factor methodology, the focus 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). A higher education grievant may prevail by demonstrating his classification was determined in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehab./ Div. of Rehab. Serv., Docket No. VR-88-006 (Mar. 28, 1989).

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 fitsin 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/compensated is almost entirely a factual determination. As such, the JEC's interpretation and explanation of the point factors and generic job descriptions or PIQ's at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 194 W. Va. 97, 459 S.E.2d 374 (1995); Burke, supra. However, no interpretation or construction of a term used in the Job Evaluation Plan (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. Watts v. Dep't of Health and Human Res. 195 W. Va. 430, 465 S.E.2d 887 (1995). The higher education employee thus will have to overcome a substantial obstacle to establish that he is misclassified/compensated.

B. Application of the Point Factor Methodology

Grievants do not challenge their classification titles, only the pay grades to which they are assigned. Because Grievants challenge different point factors, it will be necessary to review them individually.

Carol Skaggs - Supervisor, Central Receiving

Knowledge

The Job Evaluation Plan ("the Plan") defines Knowledge as: This factor measures the minimum level of education equivalency and/or training typically required for an incumbent to reach acceptable occupational competence on the job. The factor considers the technical, theoretical, and/or mechanical skills required, and the complexity and diversity of the required skills.

Grievant argued she should have received a degree level of 6.0 rather than a 4.0. A degree level of 4.0 is defined in the Plan as:

Job requires basic knowledge in a specific area typically obtained through a business, technical or vocational school as might normally be acquired through up to 18 months of education or training beyond high school.

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

Job requires a thorough knowledge of a professional discipline or technical specialty as would normally be acquired through a relevant baccalaureate education program. Knowledge of principles, concepts, methodology of a highly technical, professional, or administrative occupation is indicative of this level.

___Grievant Skaggs asserts that a Bachelors degree is necessary for the supervisory position, and that she was not given adequate credit for the accounting work she is required to perform. Grievant holds a B.A. in History. Margaret Buttrick, Chair of the JEC testified that upon review of Grievant's PIQ, the committee determined that the employee would need more than a high school education, some vocational background or training, and strong accounting skills, but a baccalaureate degree would not be required.

No testimony was elicited to support Grievant's assertion, and it is rejected. At best, there is only the opinion of Grievant, and "[s]uch [opinion] statements standing alone merely show disagreement with Respondent's conclusion, but offer no reason to accept Grievant's position rather than Respondent's." Riggs v. Bd. of Trustees, Marshall Univ.,Docket No. 94-MBOT-711 (Apr. 29, 1996). Grievant failed in meeting her burden of proof on this point factor.

Experience

The Plan defines Experience as:

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 argues she should have received a degree level of 6.0 rather than a 4.0.

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

Over two years and up to three years of experience.

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

Over four years and up to six years of experience.

Grievant opined that four to six years of experience on the job was necessary to perform the supervisory duties. Ms. Buttrick testified that the duties relating to inventory control, management, computer literacy, and safety regulations required of Grievant was adequately covered by the 4.0 degree level. Again, Grievant did not offer any evidence to support her claim on this point factor.

Scope and Effect

___The Plan defines this factor, which is subdivided into Impact of Actions, and Nature of Action, 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 system, 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 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 small institution. In making these interpretation, assume that the incumbent would have normal knowledge, experience and judgment, and that errors are not due to sabotage, mischief or lack of reasonable attention and care.

Grievant challenges only the Impact section of this point factor. Grievant argues she should have received a degree level of 3.0 rather than a 2.0.

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

Work affects either an entire work unit or several major activities within a department.

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

Work affects the operations of more than one school or division of a specialized school, branch campus, community college or baccalaureate-level institution with an operating budget of <$13M; a school or division of 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 more than $50M; or a moderate-size department within a doctoral-level institution with an operating budget of more than $200M.

___It is Grievant's position that any errors she makes could have a substantial impact on other departments. Ms. Buttrick concurred that Grievant's work does affect several major activities in the division of finance, but does not, in and of itself, impact the entire institution, therefore, a level 2.0 was appropriate. Grievant failed to establish that the JEC evaluation of this factor was clearly wrong.

Indirect Supervision

This factor measures the job's responsibility for the indirect supervision of subordinates. Only the formal assignment of such responsibility to a job should be considered; informal work relationships should not be considered. Indirect supervision takes into account the number of subordinates under the position's line of authority but who do not directly report to it. The number of subordinates should be reported in full-time equivalents (FTEs).

Grievant argues she should have received a degree level of 2.0 rather than a 1.0.

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

No indirect supervisory responsibility; has formal authority over lead and/or nonsupervisory personnel only.

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

Directs and coordinates the work of a unit or department, including direct supervision over first-line supervisors and indirect supervision over non-supervisors who are under the

position's line of authority.

Grievant asserts that she supervises the lead workers. Ms. Buttrick testified that the level 1.0 was correct because Grievant's PIQ indicated that she exercised no indirect supervisory duties. Grievant's misperception appears to be that she supervises the leadworker who in turn supervises the assistants. However, the lead worker has no supervisory authority, and Grievant has no indirect supervisory duties.

Deborah Watson- Supervisor of Receiving/MU Medical School

Knowledge

The Job Evaluation Plan ("the Plan") defines Knowledge as:

This factor measures the minimum level of education equivalency and/or training typically required for an incumbent to reach acceptable occupational competence on the job. The factor considers the technical, theoretical, and/or mechanical skills required, and the complexity and diversity of the required skills.

Grievant argued she should have received a degree level of 6.0 rather than a 4.0. A degree level of 4.0 is defined in the Plan as:

Job requires basic knowledge in a specific area typically obtained through a business, technical or vocational school as might normally be acquired through up to 18 months of education or training beyond high school.

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

Job requires a thorough knowledge of a professional discipline or technical specialty as would normally be acquired through a relevant baccalaureate education program. Knowledge of principles, concepts, methodology of a highly technical, professional, or administrative occupation is indicative of this level.

___As with Grievant Skaggs, Grievant Watson opined that a degree level of 6.0 was required for her position.___Margaret Buttrick testified that, as with Grievant Skaggs, upon review of Grievant's PIQ, the committee determined that the employee would need more than a high school education, some vocational background or training, and strong accounting skills, but a baccalaureate degree would not be required. Ms. Buttrick furthernoted that the level of

knowledge is the amount of knowledge needed for entry level replacement for this position, not that which Grievant has acquired. Grievant failed to prove the JEC erred in allocating this position a degree level 2.0 in Knowledge.

Complexity & Problem Solving

___The Plan defines this factor 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 3.5 rather than a 3.0. **(See footnote 2)** **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, reference, and procedures for application, and adapt standard methods to fit variations in existing conditions.

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

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

Grievant testified that she is sometimes faced with difficult problems, such as getting bills paid, but also noted that practices and procedures were available to assist her, with some judgment required to interpret the policies and procedures. Ms. Buttrick testified that the 3.0 degree level acknowledged the difficulties encountered by Grievant, and that a higher level requiring analytical skills would not fit her duties. Grievant failed to prove that the JEC's

determination of this point factor was wrong.

Freedom of Action

The Plan defines this factor 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 3.5 rather than a 2.5. A degree level of 2.0 is defined in the Plan as:

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.

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

Tasks are moderately structured with incumbent working from objectives set by supervisor. At this level, the employee organizes and carries out most of the workassignments in accordance with standard practices, policies, instructions or previous training. The employee deals with some unusual situations independently.

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

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

Grievant testified that the higher level was more accurate because she coordinates work with other departments and divisions, and prepares a quarterly report for her supervisor. Ms. Buttrick testified that Grievant's duties and responsibilities are completed independently, but are based on the application of rules and regulations, making the 2.5 designation correct.

Grievant's duties are structured and her responsibilities are specific, rather than broad. She does not engage in development of objectives, deadlines, and projects. Grievant has failed to prove that she exercises freedom of action at the 4.0 level.

Scope - Impact and Nature

The Plan defines this factor 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 system, 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 pointsof 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 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 small institution. In making these interpretations, assume that the incumbent would have normal knowledge, experience and judgment, and that errors are not due to sabotage, mischief or lack of reasonable attention and care.

Grievant contests both the Impact and Nature divisions of this factor. The JEC awarded Grievant a 2.0 in Impact, and a 3.0 in Nature. Grievant argues that she should have been granted a 3.0 in Impact, and a 4.0 in Nature.

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

Work affects either an entire work unit or several major activities within a department.

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

Work affects the operations of more than one school or division of a specialized school, branch campus, community college or baccalaureate-level institution with an operating budget of <$13M; a school or division of 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 more than $50M; or a moderate-size department within a doctoral-level institution with an operating budget of more than $200M.

Grievant asserted that her work has an effect on the entire school of Medicine. Ms. Buttrick testified that the impact of Grievant's work was within the division of finance, notthe entire school. Grievant failed to prove the JEC's allocation in this point factor was incorrect.

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

Work provides guidance to an operation, program, function or service that affects many employees, students or individuals. Decisions and recommendations made involve non-routine situations within established protocol, guidelines, and/or policies. Errors could easily result in moderate costs and inconveniences, within the affected area.

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

Work contributes to or ensures the effectiveness of operations or services having significant impact within the institution and involves application of policies and practices to complex or important matters. Errors could easily result in substantial cost, inconveniences, and disruption of services within the affected area.

Grievant argues that a 4.0 would better define the Scope-Nature of her work because any errors she makes can have a significant impact across the institution. The receiving and handling of hazardous materials was cited as an example. Ms. Buttrick noted that Grievant is not actually responsible for the shipping and storing of chemicals as she spends the majority of her time at the computer. She further explained that scope and effect means that “where you sit is there something that you would do that could absolutely impact the University and cause it to be shut down”. Because Grievant works within established guidelines and

policies, the JEC determined level 3.0 to be appropriate, and Grievant has failed to prove that it was incorrect.

Internal Contacts - Nature and Level

The Plan defines this factor as: This factor appraises the responsibility for working with or through other people within the SCUSWV to get results. Consider the purpose and level of contact encountered and on a regular, recurring and essential basis during operations. Consider whether the contact involves furnishing or obtaining information, explaining policies or discussing controversial issues. This factor considers only those contacts outside the job's immediate work area.

Grievant challenges both the Nature and Level of this point factor. The JEC awarded the position a 2.0 in Nature and Level, and Grievant asserts that she should have received a 3.0 in both.

A degree level of 2.0 in Nature 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.)

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 interaction, interpretation of complex policies, resolution os somewhat difficult problems.)

In support of her claim, Grievant testified that she must talk with doctors who are leaving MU regarding what equipment they make take with them. She defined her role as providing options based upon policies and procedures. Ms. Buttrick acknowledges that Grievant needs to exercise tact, but notes that her work with them is not of a controversial nature since the Vice President makes the final decision. Grievant has failed to prove that she is entitled to a 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 in Level is defined in the Plan as:

Supervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central office.

Grievant testified that department chairpersons and professors advise her if orders were anticipated, or request her assistance in ordering. Ms. Buttrick noted that Grievant's PIQ did not mention chairpersons, and she had been given appropriate credit for her interactions with faculty.

The JEC is required to consider the information the employee includes in her PIQ. Since there was no mention of department chairpersons on Grievant's PIQ, it could not be considered. In any event, it does not appear that her interaction with those individuals involves their administrative capacity. Grievant failed to prove that she is entitled to a higher degree level in this point factor.

<u>External Contacts - Nature and Level</u>

The Plan defines this factor 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 contact involves furnishing or obtaining information, influencing others or negotiation.

Grievant challenges both the Nature and Level of this point factor. The JEC awarded the position a 2.0 in Nature and 3.0 in Level. Grievant asserts that she should have received a 4.0 in both.

A degree level of 2.0 in Nature is defined in the Plan as: Moderate tact and cooperation required; communication is largely of non-controversial nature and handled in accordance with standard practices and procedures (e.g., explaining simple policies and procedures, coordinating/scheduling complex meetings or conference arrangements.)

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

Diplomatic/negotiative interaction on complex and important issues; tact, diplomacy and persuasion usually required (e.g., problem-solving discussions about key issues which have substantial impact on the organization.)

Grievant testified that she engages in outside contacts when she attends business meetings and works to resolve computer problems. She additionally noted that she helps individuals from other schools understand the fixed asset module. Ms. Buttrick again acknowledged that Grievant needs to exercise moderate tact, but testified that there was no information on her PIQ to indicate that she must deal with sensitive issues on a regular basis, a requirement for a degree level of 4.0. Grievant failed to prove this allocation was incorrect based upon the information available to the JEC.

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

Students, parents, alumni, faculty of institutions outside the systems, sales engineers, higher-level product representatives, recruiters and/or prospective students.

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

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

Grievant testified that she works with colleges and universities both in and outside West Virginia. Ms. Buttrick testified that 3.0 was appropriate since Grievant does notnegotiate contracts. Grievant failed to prove that she is entitled to the higher degree level in this point factor.

<u>Physical Coordination</u>

The Plan defines this factor as:

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

Grievant was given a level of 2.0, and asserts that she should have been given a 3.0.

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

Work requires simple hand/eye operations and some accuracy and regularity of motions, such as set-up and operation of basic instruments or equipment, and/or the occasional use of standard hand or power tools with minimal speed requirements.

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

Work requires some speed and accuracy of hand/eye coordination in the use of somewhat complicated instruments, equipment or hand or power tools requiring some speed and adeptness.

Grievant testified she needs good eye/hand coordination for using the computer and other equipment, and that she is sometimes required to move skids. Ms. Buttrick testified that Grievant's PIQ indicated that she spends over 50% of her time in a normal office setting, and there is no evidence that she is required to use power tools. Grievant did not establish that she is required to utilize speed in the use of equipment, or that she usepower tools. The eye/hand coordination required for computer usage is adequately covered by level 2.0.

Physical Demands

The Plan defines this factor as:

This factor considers the physical demands of the job as measured by the exertion placed on the skeletal, muscular and cardiovascular systems of the incumbent. 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 was awarded a degree level of 1.0, and argues that 3.0 would be more accurate.

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 3.0 is defined in the Plan as:

Moderate physical effort required involving long periods of standing, walking on rough surface, bending and/or stooping; periodic lifting of moderately heavy items (overs 25 and up

to 50 pounds.)

Grievant testified that she was required to know the proper posture and be able to bend, stoop, stretch, crouch and crawl when looking for property tags while taking physical inventory. Ms. Buttrick testified that Grievant's PIQ does not include any bending, lifting, or carrying. Because Grievant's PIQ does not support a level of 3.0, she has failed to prove the JEC decision was wrong.

Charles R. Newton - Shipping/Receiving Assistant Lead

Freedom of Action

The Plan defines this factor 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 he should have received a degree level of 3.0 rather than a 2.5. A degree level of 2.0 is defined in the Plan as:

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.

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

Tasks are moderately structured with incumbent working from objectives set by 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.

Grievant testified that the higher degree level was appropriate because he acts as supervisor when she is absent, and he sets up the annual yard sale. Ms. Buttrick noted that

Grievant does assume supervisory duties, but not always, and that he was granted the half degree to compensate for that work. Because Grievant does not function independently the majority of the time, and his work is structured with standard operating procedures to be followed, it cannot be determined that Grievant is entitled to the higher degree level.

External Contacts - Nature

The Plan defines this factor 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 contact involves furnishing or obtaining information, influencing others or negotiation.

Grievant challenges only the Nature portion of this point factor. The JEC awarded the position a 1.0 in Nature and Grievant asserts that he should have received a 2.0.

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 non-controversial nature and handled in accordance with standard practices and procedures (e.g., explaining simple policies and procedures, coordinating/scheduling complex meetings or conference arrangement.)

Grievant testified that he contacts outside vendor and companies to clarify who placed an order, or provided a purchase order or p-card number before the material could be shipped. Ms. Buttrick testified that the duties Grievant performs are perfectly described in level one. While Grievant does have outside contact, the subject matter discussed is the routine exchange of information, which requires common courtesy, but is not of a controversial nature, necessitating tact and cooperation. Grievant has failed to prove the JEC designation of 1.0 was incorrect.Physical Coordination

The Plan defines this factor as:

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

Grievant was given a 2.0 in this point factor, and asserts that he should have been given a 4.0.

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

Work requires simple hand/eye operations and some accuracy and regularity of motions, such as set-up and operation of basic instruments or equipment, and/or the occasional use of standard hand or power tools with minimal speed requirements.

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

Work requires skill, accuracy or other manual actions involving rapid physical motions and closely coordinated performance on or with office equipment; or a high degree of manual skill and exactness in the use of hand instruments or equipment.

Grievant cited the equipment he uses, and that he must be creative in unloading trucks to avoid damage, in support of his request for a degree level of 4.0. Ms. Buttrick noted that Grievant's PIQ refers to his need to make accurate computer entries, and the eye/hand coordination necessary to safely operate delivery truck and materials handling equipment. The information provided by Grievant led the JEC to determine that he did not spend a great deal of time moving equipment, and that the computer accuracy wasemphasized. Based on these factors, a degree level of 4.0 is not supported by the evidence.

David Arigan - Shipping/Receiving Assistant

<u>Knowledge</u>

The Plan defines Knowledge as:

This factor measures the minimum level of education equivalency and/or training typically required for an incumbent to reach acceptable occupational competence on the job. The factor considers the technical, theoretical, and/or mechanical skills required, and the complexity and diversity of the required skills.

Grievant argues he should have received a degree level of 4.0 rather than a 3.5. A degree level of 3.0 is defined in the Plan as:

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

A degree level of 4.0 is defined by the Plan as:

Job requires basic knowledge in a specific area typically obtained through a business, technical or vocational school as might normally be acquired through up to 18 months of education or training beyond high school.

Grievant asserts that he should have been granted a 4.0 in this point factor based upon the fact that he must have a broad knowledge to run heavy equipment, use a computer, locate information, and to unload a truck. Ms. Buttrick testified that the JEC considered that the job required a valid driver's license, a certified fork lift operator's license, certification in handling hazardous materials, and safety training, which the members believed warranted the 3.5 designation. Grievant has failed to prove that any ofhis duties require up to 18 months of education or training beyond high school, which would support his claim for the higher point level.

Experience

The Plan defines Experience as:

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 argues he should have received a degree level of 5.0 rather than a 3.0.

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

Over one year and up to two years of experience.

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

Over three years and up to four years of experience.

Grievant testified that he believes more than three years of experience is necessary for this position. The JEC determined that 5.0, or more than three years of experience was too high for an entry level position, and that 3.0 was appropriate. Grievant offered no evidence to support his claim.

Breadth of Responsibility

The Plan defines this factor as:

This factor describes the variety of specific functional areas in which the job may have formal and ongoing accountability. In reviewing this factor, consider the level of in- depth knowledge required as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulation.

The JEC awarded this classification a 1.0, and Grievant argues that a 3.0 better fits his duties. A degree level of 1.0 is defined in the Plan as:

Accountable for only immediate work assignments but not for a functional area.

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

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

Grievant testified that he generally disagreed with this factor. Ms. Buttrick testified that this factor measured actual accountability for a functional area, and that most employees were given a 1.0. Comparatively, Ms. Buttrick stated that her position had been awarded a 2.0 in this factor. Grievant failed to prove that he should have a higher degree level in this point factor.

Physical Coordination

The Plan defines this factor as:

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

Grievant was given a 2.0 in this point factor, and asserts that he should have been given a

3.0.

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

Work requires simple hand/eye operations and some accuracy and regularity of motions, such as set-up and operation of basic instruments or equipment, and/or the occasional use of standard hand or power tools with minimal speed requirements.

A degree level of 3.0 is defined in the Plan as: Work requires skill, accuracy or other manual actions involving rapid physical motions and closely coordinated performance on or with office equipment; or a high degree of manual skill and exactness in the use of hand instruments or equipment.

Grievant testified that his variety of duties, including operating trucks and forklifts, and typing, support the higher degree level. Ms. Buttrick testified that Grievant's PIQ indicated that approximately half of his time is spent at the computer, and that his other concerns were covered by other factors. Grievant has failed to present evidence to support a degree level of 3.0 in this point factor.

Paul Benford-Shipping/Receiving Assistant

<u>Complexity & Problem Solving</u>

___The Plan defines this factor 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 he should have received a degree level of 3.0 rather than a 2.0. 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.

___Grievant testified that the higher level was correct because he must keep current with federal regulations and guidelines regarding hazardous materials. Ms. Buttrick testified that Grievant has procedures to follow, and is not responsible for complex issues, solutions, or decisions. Grievant has failed to prove that he is required to exercise resourcefulness or originality to deal with somewhat complex problems. While the handling of hazardous material is a valid concern, and he must be knowledgeable about them, Grievant is not required to exercise independent judgment and find solutions to complex issues. Grievant has failed to prove the JEC erred in assigning a 2.0 degree level to this point factor.

Freedom of Action

The Plan defines this factor as:

This factor measures the degree to which the position is structured as is determined by the types of control places 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 he should have received a degree level of 3.0 rather than a 2.0. A degree level of 2.0 is defined in the Plan as: 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.

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

Tasks are moderately structured with incumbent working from objectives set by 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.

Grievant asserts that he works independently when his supervisor is away. Ms. Buttrick testified that Grievant works independently, but has an immediate supervisor available to answer questions. The evidence establishes that Grievant performs his duties within structured guidelines. There is no evidence to support a higher degree level.

Breadth of Responsibility

The Plan defines this factor as:

This factor describes the variety of specific functional areas in which the job may have formal and ongoing accountability. In reviewing this factor, consider the level of in- depth knowledge required as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations.

The JEC awarded this classification a 1.0, and Grievant argues that a 3.0 better fits his duties.

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

Accountable for only immediate work assignments but not for a functional area.

A degree level of 2.0 is defined in the Plan as: In-depth knowledge of an accountability for one function area as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations.

Grievant simply opined that he should have a 2.0 in this point factor. Ms. Buttrick reiterated her testimony given to Grievant Arigan regarding this point factor. Grievant failed to prove that the higher point level was proper.

External Contacts - Nature and Level

The Plan defines this factor 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 contact involves furnishing or obtaining information, influencing others or negotiation.

Grievant challenges both the Nature and Level of this point factor. The JEC awarded the

position a 1.0 in Nature and 2.0 in Level. Grievant asserts that she should have received a 2.0 for Nature and 3.5 for Level.

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 non-controversial nature and handled in accordance with standard practices and procedures (e.g., explaining simple policies and procedures, coordinating/scheduling complex meetings or conference arrangement.)

Grievant testified that he works with many people on campus in the performance of his duties. Ms. Buttrick testified that based upon Grievant's PIQ, his position requires the provision of routine information, but did not require tact. Grievant failed to prove that the JEC determination in this point factor was incorrect.

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

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

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

Students, parents, alumni, faculty of institutions outside the systems, sales engineers, higher-level product representatives, recruiters and/or prospective students.

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

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

Grievant testified that he communicates with representatives of universities, both in and outside the state, sales representative, the EPA, manufacturers, repairmen and various other people. Ms. Buttrick testified that 2.0 was appropriate and Grievant was credited with all the individuals he mentioned. Grievant failed to prove that he is entitled to the higher degree level in this point factor.

Physical Coordination

The Plan defines this factor as:

This factor assesses the amount of psychomotor skill involved in performing the job. Consider the complexity of the body movement, and need for close visual attention regularly required by the job in performing the work.

Grievant was given a level of 2.0, and asserts that she should have been given a 3.0.

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

Work requires simple hand/eye operations and some accuracy and regularity of motions, such as set-up and operation of basic instruments or equipment, and/or the occasional use of standard hand or power tools with minimal speed requirements.

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

Work requires some speed and accuracy of hand/eye coordination in the use of somewhat complicated instruments, equipment or hand or power tools requiring some speed and adeptness.

Grievant based his request for a higher degree level in this point factor on the fact that he uses power tools in the performance of his duties. Ms. Buttrick testified that based upon the information provided in Grievant's PIQ, he was classified properly at level 2.0. Grievant failed to prove that he is entitled to the higher degree level.

C. Concern regarding Ms. Racer

Grievants express concern regarding Compensation Analyst Glenna Racer's objectivity in assigning their degree levels, due to her spousal relationship with an Assistant Director of Purchasing. Ms. Buttrick testified at level four that Ms. Racer was one of ten JEC members who voted on the PIQs, and she had not attempted to influence any other members. Ms. Buttrick noted that rather than review the PIQs herself, as would generally be appropriate, Ms. Racer had requested the JEC review them.

Grievants' wariness is understandable; however, it appears from Ms. Buttrick's testimony that Ms. Racer acted properly throughout the process. It must also beremembered that Shipping and Receiving employees are assigned throughout the state institutions, and all are assigned the same pay grade. Thus, Grievants should be reassured that no undue influence

was exercised by their local JEC member.

D. Summary

Grievants perform tasks essential to the daily functioning of MU, and reasonably they want to be credited accordingly. However, the classification system requires a broad view of all personnel employed to ensure fair and equitable treatment. In this case, Grievants offered virtually no evidence to support their claims for higher degree levels. Some examples were provided, but essentially what was presented was a difference of opinion. Grievants failed to prove by a preponderance of the evidence that the JEC had erred in assigning the degree levels to the contested point factors. Of course, should their duties and responsibilities change in the future, they may request a classification review.

In addition to the foregoing findings of fact and discussion, it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. The burden of proof in misclassification/compensation grievances is on the grievant to prove by a preponderance of the evidence that he is not properly classified/compensated. 156 C.S.R. 1 § 4.19; W. Va. Code § 18-29-6. See Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995). 2. Because the Mercer system is largely a "quantitative" system, in which the components of each job are evaluated using the point factor methodology, the focus 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 factordegree 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).

3. A higher education grievant may prevail by demonstrating his classification was determined in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehab., Div. of Rehab. Serv., Docket No. VR-88-006 (Mar. 28, 1989).

4. The JEC's interpretation and explanation of the point factors and generic job descriptions or PIQ's at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 194 W. Va. 97, 459 S.E.2d 374 (1995); Burke, supra.

5. Grievants have failed to prove by a preponderance of the evidence that the degree levels the JEC assigned to the contested point factors for their positions were erroneous or arbitrary and capricious.

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the "circuit court of the county in which the grievance occurred." Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 29-6A-7 (1998).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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

DATE: JANUARY 5, 2005 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

.Grievants Gregory Harmon and Tommy Burchell withdrew their grievances during the level four hearing.

Footnote: 2 ***The Mercer system does not include half degree levels; however, the JEC has determined that when the position duties include factors from two levels a half degree will be awarded.***