

**WILLIAM F. JULIAN,**

**Grievant,**

**v. DOCKET NO. 94-MBOD-779**

**BOARD OF DIRECTORS,**

**FAIRMONT STATE COLLEGE,**

**Respondent.**

### **DECISION**

This is a grievance, initiated in July of 1994, by William F. Julian (Grievant) challenges his classification effective January 1, 1994, as a Director/Residence Life, Pay Grade 19, by the Board of Directors, Fairmont State College (Respondent), under the Job Evaluation Plan (JEP) for the State College and University Systems of West Virginia developed by William M. Mercer, Inc. (Mercer Plan). [\(See footnote 1\)](#)

A Level IV evidentiary hearing was conducted in the Grievance Board's office in Morgantown, West Virginia, on May 21, 1996. This matter became mature for decision with the receipt of Respondent's written post-hearing submission on June 20, 1996. Grievant did not file any post-hearing submission.

Grievant seeks a Pay Grade 20, and back pay. The "Statement of Grievance" provides:

I believe I should be classified above [Pay] Grade 19 as a Director of Residence Life. The skills required to do this job is [sic] grossly undervalued by the Mercer study which has used 1950's personnel policies that are outdated in the 1990's. I do serve students and that should be important in Higher Educ.

Grievant asserts his position was not correctly evaluated on four of thirteen factors in the JEP's "Point Factor Methodology." The process under which Grievant was reclassified, effective January 1, 1994, began with completion of a Position Information Questionnaire (PIQ). PIQs are highly-

structured documents, 17 pages in length, on which individual employees describe the duties of their position, as well as certain minimum qualifications required to carry out their duties. PIQs are essentially position descriptions that were primarily developed to facilitate the job evaluation process. Employees were further asked to rate various aspects of their position, under a scale set forth in the Mercer Plan. The mechanics of this Job Evaluation Plan are generally referred to as the "Point Factor Methodology." PIQs were reviewed by the immediate supervisor and one level of management above the immediate supervisor, before being considered by the Job Evaluation Committee (JEC). The JEC consists of representatives from human resources and classified staff and is responsible for "review of classification decisions across the system." § 11.5, 128 C.S.R. 62 (1994).

Once all PIQs were completed, the JEC met as a committee and determined the application and interpretation of the various point factors contained in the JEP [\(See footnote 2\)](#) while conducting the process of reviewing the PIQs and assigning values to each factor. After reviewing the PIQs, the JEC assigned the following degree levels to the Director/Residence Life position:

#### FACTOR DEGREE LEVEL

Knowledge	7.0
Experience	4.0
Complexity and Problem Solving	4.0
Freedom of Action	4.0
Scope and Effect - Impact of Actions	4.0
Scope and Effect - Nature of Actions	5.0
Breadth of Responsibility	2.0
Intrasystems Contact - Nature of Contact	2.0
Intrasystems Contact - Level of Contact	3.0
External Contacts - Nature of Contact	3.0
External Contacts - Level of Contact	3.0
Direct Supervision - Number of Direct Subordinates	5.0

Direct Supervision - Level of Supervision	6.0
Indirect Supervision - Number of Indirect Subordinates	5.0
Indirect Supervision - Level of Supervision	2.0
Physical Coordination	1.0
Working Conditions	1.0
Physical Demands	1.0

Using a mathematical equation, which is not at issue in this case, the foregoing levels were calculated to award these positions a total of 2,672 total points, equating to a Pay Grade 19 position. The Point Score Range for Pay Grade 19 is 2574 to 2755.

### **DISCUSSION**

Because grievances challenging pay or classification are not disciplinary in nature, grievant has the burden of proving by a preponderance of the evidence that he has been misclassified. 156 C.S.R. 1 §4.17 (1989). See, W. Va. Code §18-29-6 ¶ 5; Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). A "Mercer" grievant may prevail by demonstrating his reclassification was made in an arbitrary and capricious manner. See, Kyle v. W. Va. State Bd. of Rehabilitation, Div. of Rehabilitation Services and W. Va. Civil Serv. Comm'n., Docket No. VR-88-006 (Mar. 28, 1989). The higher education employee challenging his classification thus will have to overcome a substantial obstacle in attempting to establish that he is misclassified. [\(See footnote 3\)](#)

Whether Grievant is properly classified is substantially a factual determination that must be made on a case-by-case basis. Burke, supra. See, Snider v. W. Va. Bureau of Environment, Docket No. 95-DEP-306 (Sept. 29, 1995). Determinations of the JEC regarding application of the Mercer Plan's point factor methodology are essentially questions of fact. As such, the JEC's interpretation and explanation of the point factors and Generic Job Description at issue will be given great weight unless clearly erroneous. See, Tennant v. Marion Health Care Foundation, 459 S.E.2d 374 (W. Va. 1995); Burke, supra. Likewise, subjective determinations of the JEC regarding application of the JEP'S point factor methodology to an employee or group of employees are entitled to deference

when being reviewed by this Grievance Board. However, such subjective determinations may nonetheless be found to be arbitrary and capricious if not supported by a rational basis, or to be clearly wrong if there is no substantial evidence in the record supporting the finding or, review of the evidence of record makes it clear that a mistake has been made. Jessen v. Bd. of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995). See Frymier- Halloran v. Paige, 458 S.E.2d 780, 788 (W. Va. 1995); Bd. of Educ. v. Wirt, 192 W. Va. 568, 453 S.E.2d 402 (1994); Kyle, *supra*.

These standards must now be applied in reviewing the JEC's decision. In particular, Grievant challenges the degree levels assigned to the Director/Residence Life position under Factor 1, Knowledge; Factor 2, Experience; Factor 6, Breadth of Responsibility; and Factor 7, Intrasystems Contacts. These point factors will be discussed in order, with the exception of Factor 6, Breadth of Responsibility, which will be discussed first.

### **Factor 6, Breadth of Responsibility**

Factor 6, Breadth of Responsibility, is defined in the JEP 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. [Examples of some functional areas within the following divisions would include:(1) Student Services--Housing, Admissions, Financial Aid, Counseling; (2) Business and Finance--Purchasing, Auditing, Grants and Contracts, Bursar.]

Each position was assigned one of the following five degree levels:

A = 1     Accountable for only immediate work assignments                      but not for a functional area.

B = 2     In-depth knowledge of and accountability for                      one functional area as measured by the                      incumbent's ability to answer detailed and                      complex questions relative to policies,                      procedures, laws and regulations.

C = 3     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.

D = 4 In-depth knowledge of and accountability for three functional areas as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations.

E = 5 In-depth knowledge of and accountability for four or more functional areas as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations.

The JEC evaluated the Breath of Responsibility requirement for the Director/Residence Life position at Level "B" or 2. Grievant marked an "D" or 4. However, at the Level IV hearing, Grievant asserted his position should have been assigned an "E" or 5 under Breath of Responsibility.

Under section III, duties and responsibilities, of the PIQ, employees were asked to:

List and explain the most important duties and responsibilities of the position. Be complete, but not too wordy. Indicate the average percentage of time spent performing each separate job duty. Consider work performed over a 12 month period. The percentages should total 100%. Please describe only those duties that take up **at least 5% of the incumbent's time.** (emphasis in original.)

(R. Ex. 3)

Grievant reported the following information:

<u>Duties and Responsibilities</u>		<u>% of Time</u>
1. Director of Residence Life		65%
2. Residence Hall Judicial System Supervision		5%
3. Counselor for students <a href="#">(See footnote 4)</a>	10%	4. Fraternity Advisor <a href="#">(See footnote 5)</a>
		10%
5. "Provide personal counseling to students" <a href="#">(See footnote 6)</a>	10%	

With the exception of number two, Grievant alleges that each of the above areas are different functional areas. The JEC credited Grievant with one functional area, residence life. At the Level IV evidentiary hearing, Grievant testified:

I think I should be [at an] "E," which would be a 5. Because I think I have in depth knowledge about housing, counseling, ADA, and fraternity advising. That's four different areas, because I'm adding counseling. I also do counseling, personal counseling, at times.

"In-depth knowledge" possessed by an incumbent in a given area does not convert it into a functional area as defined by the JEP. Furthermore, Brian Wilmoth, JEC member and Director of Human Resources at West Liberty State College, testified that simply working and performing certain duties within a function does not mean that one is accountable for that function. As noted in Burke, supra, "[t]he PIQ Summary By Job Family (R. Ex. 8) shows that most Job Titles received a 1.0 for Breadth of Responsibility. Those positions with a 'Manager' or 'Director' in the title received the 2.0's and 3.0's, and only a handful of positions received a 4.0 or 5.0 for this factor. Those positions receiving a 4.0 or 5.0 were in the top administrative levels of Associate Dean, Assistant Vice-President and Dean."

At the Level IV evidentiary hearing, Grievant transformed item number three, and asserted that "If it wasn't for me, Fairmont State College wouldn't have an ADA program". However, later in the hearing, Grievant acknowledged that another employee at the college was the coordinator for ADA; that he refused to accept the coordinator's position; that ADA has at least four components, including student services, academics, facilities, and employment; and that while he works in one of these areas, he is not responsible for all of these areas.

Grievant also failed to prove by a preponderance of the evidence, that his fraternity advising and counseling duties should be considered functional areas separate from his residence life functional area and related duties. Furthermore, Grievant testified that counseling is not a "major responsibility," and that he does not perform much counseling anymore because he does not have the time.

While Grievant has much responsibility, he has not proven that the JEC interpretation was clearly wrong or arbitrary and capricious.

### **Factor 1, Knowledge**

The JEP explains Factor 1, Knowledge, as follows:

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.

The PIQ directed each employee to "indicate the lowest level of education and/or training usually required to understand and perform the work. Tell us what is required, not the incumbent's own educational level. Do not include job-related experience because that is covered in the next

question." Under this section, the JEC evaluated the knowledge requirement for the Director/Residence Life position at Level "G" or 7. The JEP contains the following description of this level:

Job requires a broad or in-depth body of knowledge such as would normally be acquired through a Master's education program that is directly related to the type of work being performed. Advanced knowledge in a particular field of expertise with the skill in applying this knowledge to difficult and complex work assignments is characteristic of this level.

On his PIQ, Grievant rated the knowledge requirement for his position at Level "G" or 7. However, at the Level IV hearing, Grievant testified the Director/Residence Life position should be rated an "H" or 8, the highest level. This level is defined as follows:

Job requires substantial professional and administrative knowledge in a singular advanced professional discipline as would normally be acquired through a doctoral education program, or requires broad knowledge within multiple fields such as would be attained from education programs covering several specialized disciplines. Knowledge at this level would typically qualify the incumbent as an expert or authoritative source of knowledge and enable the incumbent to develop and recommend policies and programs which impact a large and complex organization.

Even though the JEC concurred with the degree level Grievant marked on his PIQ for knowledge, a "G" or 7, he failed to explain why his position should be rated an "H" or 8. Grievant testified:

Under knowledge I believe I should be an eight. Although I don't have a doctor's degree, my positions, my three positions that I do, require broad knowledge over a wide range of things that I have to do over three multiple fields of housing, ADA, and fraternity advising. And you know, so that's my statement on it. I don't know, they, what did they rank me on that? On knowledge? To survive for twenty-five years in those three items that I handle, you have to have something on the ball. So I think I have some knowledge on how to do my job.

Grievant failed to provide a basis or sufficient evidence for his assertions. The JEC rated the Director/Residence Life position at the second highest degree level in the Knowledge category. Grievant failed to prove by a preponderance of the evidence that the Director/Residence Life position exceeds the seventh degree level under Knowledge, or that the JEC's decision was clearly wrong or arbitrary and capricious.

## **Factor 2, Experience**

Factor 2, Experience, is defined by the JEP 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.

The JEP uses the following degree levels:

A or 1 = No experience or up to six months of experience.

B or 2 = Over six and up to twelve months of experience.

C or 3 = Over one year and up to two years of experience. D or 4 = Over two years and up to three years of experience.

E or 5 = Over three years and up to four years of experience.

F or 6 = Over four years and up to six years of experience.

G or 7 = Over six years and up to eight years of experience.

The JEC evaluated the experience requirement for the Director/Residence Life position at Level "D" or 4. Grievant marked an "B" or 2. At the Level IV hearing, Grievant stated that his position requires "at least four years of experience." Grievant did not explain the basis for his belief, or provide any evidence substantiating his claim. Therefore, this issue need not be addressed further.

### **Factor 7, Intrasystems Contacts**

Factor 7, Intrasystems contacts, measured both the Nature of Contact, and the Level of Regular, recurring, and essential contact together by utilizing a matrix. Intrasystems contacts is defined in the JEP 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 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.

#### **a. Nature of Contact**

The JEC evaluated the Nature of Contact, of Intrasystems Contacts, for the Director/Residence Life position at Level "B" or 2, which indicates:

Moderate tact and operation required; communication is largely of a non-controversial nature and handled in accordance with standard practices and procedures (e.g., explain in simple policies and procedures, coordinating/scheduling complex meeting or conference arrangements).



However, under Nature of Contact, Grievant marked a "D" or 4, the highest degree level, on his PIQ, which indicates:

Diplomatic/negotiative [sic] interactions 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).

The only example of diplomatic interactions given by Grievant, was getting the fraternities and sororities to agree on a thirteen page document entitled "Greek Relationship Statement". (Level IV, Gr. Ex. 3). However, Grievant failed to provide any evidence concerning how often this task is required or occurs. Grievant also failed to prove how this task has a "substantial impact on the organization."

#### b. Level of Contact

The JEC evaluated the Level of Contact, of Intrasystems Contacts, for the Director/Residence Life position at Level "C" or 3. The JEP contains the following seven degrees for Level of Contacts:

A = Limited to immediate associates and own supervisor within immediate office, unit, or related units.

B = Staff and faculty outside the immediate work unit.

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

D = Deans or Directors in an institution or Assistant Directors in the Systems' Central Office.

E = Associate/Assistant Vice Presidents or Systems' Central Office Directors that report to the Senior Administrator.

F = Vice Presidents or Systems' Central Office Senior Administrator.

G = Presidents, Chancellors and/or Board Members.

Under Level of Contact, Grievant marked an "F" or 6, the highest degree level, on his PIQ. When Grievant was asked, on his PIQ, to list with whom does the position regularly communicate, what is

normally discussed, and how often does it occur, he reported the following information:

<u>Who (Title of Official)</u>	<u>Communicate About What</u>	<u>How Often</u>
1. Division Chairperson	Students needs and service	daily
2. All Four Vice Presidents	Housing, counseling, budgets, planning, and mission statements	weekly
3. Other Residence Life	Housing policies, rules, programming, trends, and 2-3 colleges	every Directors at other legal aspects months

While Grievant also testified he meets with the President "on occasion." However, 3-5 times a year, or "on occasion" is not regular and recurring. Grievant also failed to demonstrate how this contact is essential to the Director/Residence Life position. In summary, Grievant failed to prove that the JEC's Intrasystems Contacts evaluation of the Director/Residence Life position is clearly wrong or arbitrary and capricious.

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

**Findings of Fact**

1. Grievant, an employee of Fairmont State College, was classified in the Mercer reclassification as a Director of Residence Life, Pay Grade 19, effective January 1, 1994.
2. All classified employees were asked to complete a Position Information Questionnaire ("PIQ") prior to the reclassification. The employees were to describe their job duties and responsibilities, and the job requirements on the PIQ, by answering a series of questions designed to elicit this information. Grievant filled out a PIQ in 1991.
3. Under the JEP positions are evaluated under a "point factor methodology" wherein point values are assigned to thirteen "job evaluation factors": (1) Knowledge; (2) Experience; (3) Complexity and Problem Solving; (4) Freedom of Action; (5) Scope and Effect; (6) Breadth of Responsibility; (7) Intrasystem Contacts; (8) External Contacts; (9) Direct Supervision Exercised; (10) Indirect Supervision Exercised; (11) Physical Coordination; (12) Working Conditions; and (13) Physical

Demands. 128 C.S.R. 62 § 2.27 (1994).

4. The JEC rated the Director/Residence Life position a 7.0 in Knowledge, a 4.0 in Experience, a 3.0 in Intrasystems Contact (Level of Contact), and a 2.0 in Intrasystems Contact (Nature of Contact) and Breadth of Responsibility.

5. To be assigned to the next higher pay grade under the Respondent's Job Evaluation Plan, the Director/Residence Life position would have to be evaluated at levels which would generate a minimum 2756 total points.

In addition to the foregoing narrative and findings of fact, the following conclusions of law are appropriate in this matter.

### **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. Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995).

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; Burke, supra.

3. Determinations of the Job Evaluation Committee regarding application of the Mercer Plan's point factor methodology are essentially questions of fact. In that regard, the JEC's interpretation and explanation of the point factors and PIQs at issue will be given great weight unless clearly erroneous. Burke, supra. See generally, Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W. Va. 1995). Likewise, subjective determinations of the JEC regarding application of the Mercer Plan's point factor methodology to an employee or group of employees are entitled to deference when being reviewed by this Grievance Board. However, such subjective determinations may nonetheless be found to be arbitrary and capricious if not supported by a rational basis, or to be clearly wrong if there is no substantial evidence in the record supporting the finding or, review of the evidence of record makes it clear that a mistake has been made. Jessen v. Bd. of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995). See Frymier- Halloran v. Paige, 458 S.E.2d 780, 788 (W. Va. 1995); Bd. of Educ. v. Wirt, 192 W. Va. 568, 453 S.E.2d 402 (1994); Kyle v. W. Va. State Bd. of Rehabilitation, Docket No. VR-88-006 (Mar. 28, 1989).

4. Grievant did not demonstrate that the JEC was clearly wrong or acted in an arbitrary or capricious manner in assigning the Director/Residence Life position: (1) a "G" or 7 for Knowledge; (2)

a "D" or 4 for Experience; (3) a "C" or 3 for Breadth of Responsibility; (4) a "B" or 2 for Intrasytems Contact, Nature of Contact; and (5) a "C" or 3 for Intrasytems Contact, Level of Contact.

5. Grievant failed to establish by a preponderance of the evidence that the Director/Residence Life position should have been classified at a Pay Grade 20.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Marion 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.

Dated: August 15, 1996 \_\_\_\_\_

JEFFREY N. WEATHERHOLT  
ADMINISTRATIVE LAW JUDGE

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[Footnote: 1](#)

*This grievance was among over 540 grievances filed following completion of the "Mercer" reclassification project. For a more detailed recitation of the procedural history involving these grievances, see the "background" section of this Board's decision in Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995).*

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[Footnote: 2](#)

*According to the definitions set forth in Respondent's regulations, a "factor" is: "One of thirteen elements used to evaluate jobs." 128 C.S.R. 62 § 2.27 (1994). The thirteen factors are listed as knowledge, experience, complexity and problem solving, freedom of action, breadth of responsibility, scope and effect, intrasytems contacts, external contacts, direct super- vision exercised, indirect supervision exercised, working condi- tions, physical coordination and physical demands. 128 C.S.R. 62 § 2.27 (1994). The Mercer Plan submitted into evidence by Respondent lists only twelve factors, with physical coordination and physical demands combined as Factor Twelve. Some factors, such as scope and effect, were further broken down into two or more elements so that each position was ultimately assigned point values in eighteen categories.*

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[Footnote: 3](#)

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

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[Footnote: 4](#)

On the PIQ, Grievant reported:

*Counselor for the Handicapped and all students: Provide counseling services primarily to handicapped students to ensure their full participation in all college academic and social activities and to meet all the requirements of Federal legislation. Provide vocational and personal counseling, tutoring, remedial study and testing adaptations. Maintain personal files and reports on each student.*

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[Footnote: 5](#)

On the PIQ, Grievant reported:

*Advisor to the Interfraternity and Inter-panhellenic Councils - Provide supervision and training to the officers of five fraternities and five sororities in their involvement of social activities at the college. Implement policies and procedures to the fraternities to ensure compliance with all college rules and regulations.*

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[Footnote: 6](#)

On his PIQ, Grievant did not report any duties under this heading.