

JOHN RICHARDSON,

Grievant,

v. DOCKET NO. 94-MBOT-798

BOARD OF TRUSTEES/MARSHALL UNIVERSITY,

Respondent.

DECISION

John Richardson submitted a grievance challenging his classification as an Upholsterer in Pay Grade 12. He seeks Pay Grade 14. Grievant was classified by the Respondent Board of Trustees ("BOT") under the Job Evaluation Plan ("Plan" or "Mercer Plan") for State College and University Systems of West Virginia. The Job Evaluation Plan was developed by the Respondent's Job Evaluation Committee ("JEC") with assistance from a private consultant, William M. Mercer, Inc."

[\(See footnote 1\)](#)

A Level IV hearing was conducted in this Board's office in Charleston, West Virginia, on September 9, 1996. This matter became mature for decision on September 24, 1996, following receipt of timely post-hearing submissions from the parties. Grievant argues that his pay grade should be the same as that for lead trades worker titles within his job family. Grievant specifically challenges the degree level ratings received in several point factors used to evaluate his position and assign it a pay grade under the Plan. The point factors challenged are: Knowledge; Experience; Complexity and Problem Solving; Freedom of Action; Intrasystems Contacts; and External Contacts.

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

FINDINGS OF FACT

1 1. All classified employees were asked to complete a Position Information Questionnaire ("PIQ") prior to the reclassification. PIQs are detailed documents, 17 pages in length, on which individual employees described the duties of their position, as well as certain minimum qualifications required to

carry out their duties. PIQs are thus essentially position descriptions developed to facilitate the job evaluation process. In addition to descriptions, employees were asked to rate various aspects of their position under a definitional scale nearly identical to that set forth in the Plan. The PIQ was reviewed, commented upon in writing as needed, and signed by the employee's supervisor, and the supervisor's supervisor. Grievant filled out a PIQ in 1991. 2 2. Grievant is employed by Marshall University ("MU") as an Upholsterer, and has been employed as such since 1987.

3 3. Grievant is the only person employed as an Upholsterer within the higher education system.

4 4. Grievant's job duties include repairing, upholstering, refinishing, and relaminating furniture and fixtures. Grievant measures, cuts and sews cloth and foam; applies padding and cloth to frames, tailoring it to suit; repairs and/or remodels furniture frames; maintains tools and makes minor repairs to tools; cleans, repairs and touches up exposed wood; estimates and projects needs, requisitioning and receiving supplies and organizing them; fabricates frames; applies formica; picks up and delivers work; prepares estimates and various documentation; trains and supervises temporary help; and cleans and maintains the shop area. Grievant must keep inventories and order materials. Work is done primarily for Resident Services, and occasionally for other departments of MU.

5 5. Grievant's supervisor is and was Cliff Curry, Supervisor/Building Craftsmen. Mr. Curry's secretary is Bonnie Ross. Lola Stratton is the Business Manager for Resident Services.

6 6. Grievant researches costs of materials needed, and prepares a requisition form. Ms. Stratton then prepares a purchase order. Grievant may be given the purchase order to pick up materials from a local vendor, or materials may be shipped. Ms. Stratton signs the purchase orders. She also will pick materials for large jobs where a purchase order is not used. 7 7. Either Mr. Curry, Ms. Ross or Ms. Stratton informs Grievant about jobs needing to be done, or sends him work orders. Between 1991 and 1994, when persons outside Resident Services called him, Grievant generally decided independently whether and when he could perform the requested work, and communicated the decisions to those persons directly.

8 8. There are standard diagrams which can be used in estimating material.

9 9. Grievant must train other persons to help him. Grievant has no formal supervisory authority over these persons, however.

DISCUSSION

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that he or she is not properly classified. 156 C.S.R. 1 §4.19; W. Va. Code § 18- 29-6. Burke, v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant must identify the job he or she feels is being done. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991). The grievant must also identify which point factor degree levels are challenged. This identification is necessary because the Mercer reclassification system is not based upon "whole job comparisons." Rather, the Mercer system is largely a "quantitative" system in which the components of each job are analyzed separately. The components are then evaluated using the point factor methodology contained in the plan. Burke, supra, at 20. A grievant may challenge any combination of point factor degree levels, so long as he or she clearly identifies the ones being challenged, and this challenge is consistent with the relief sought. See Zara v. Bd. Of Trustees, Docket No. 94-MBOT-817 (Dec. 12, 1995); Jessen v. Bd. Of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995).

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

In this case, whether Grievant is properly classified is almost entirely a factual determination. As such, the JEC's interpretation and explanation of the point factors at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W. Va. 1995); Burke, supra. Of course, no interpretation or construction of a term is necessary where the language is clear and unambiguous. See Watts v. Dept. Of Health & Human Resources, 465 S.E.2d 887 (W.Va. 1995). A Mercer grievant may prevail by demonstrating his or her reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehabilitation, Docket No. VR-88-006 (Mar. 28, 1989). However, the grievant will have to overcome a substantial obstacle in attempting to establish that he or she is misclassified.

Grievant challenged his ratings in several of the factors analyzed in assigning his pay grade. Each point factor which is subject to dispute in this grievance will be addressed separately.

A. KNOWLEDGE:

This factor is defined in the Mercer Plan 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.

(Jt. Exh. F. All definitions herein are quoted from the same exhibit, except as otherwise noted.)

Grievant was assigned level 4, which is defined 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 seeks assignment of level 5, which is defined in the Mercer Plan as:

Job requires broad trade knowledge or specific technical or business knowledge received from a formal registered apprentice or vocational training program or obtained through an associate's degree of over 18 months and up to 3 years beyond high school.

Grievant testified that he obtained 1080 hours of industrial carpentry training in junior high school and high school, and also finished one year of a two year degree. Grievant's PIQ indicated that no vocational training was required, but that knowledge of several trades, in addition to upholstery knowledge, was needed. He testified that knowledge of the various work skills involved was required. In addition, knowledge of estimating, dealing with customers and vendors, ordering, and keeping inventories is necessary. He also has to know what things can be reused, and must know more advanced techniques not taught in upholstery school, such as creating patterns.

Respondent's witness were Brian Warmuth, Human Resource Administrator for West Liberty State College and a JEC member, and Jackie Hoppe, Associate Director of Human Resources for Marshall University. Mr. Warmuth noted that Grievant's own training, obtained in high school, was not unusual for persons in trades positions. A level 4 rating is typical of such positions. It was explained that the JEC did not give double credit for training. Either training was credited under Knowledge, or under Experience, but the same time was not counted under both factors. In addition, on-the-job orientation for a new employee is not included in the Knowledge or Experience factors.

Although he is the only Upholsterer employed by the higher education system, Grievant's position can be compared to other trades. Other trades workers received a level 4 rating in Knowledge. Jt. Exh. G. Grievant did not explain why the types of knowledge required in his position could not be

obtained by level 4 education and training. Grievant failed to show that his position was substantially different from other trades positions, or that it required substantially more training.

B. EXPERIENCE:

The Plan defines Experience as follows:

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

Grievant was assigned level 3, which is defined in the Plan as "[o]ver one year and up to two years of experience." Level 4 in this point factor is defined by the Plan as "[o]ver two years and up to three years of experience." Grievant seeks assignment of level 5, which is defined by the Plan as "[o]ver three years and up to four years of experience."

Grievant's arguments are similar to those raised under the Knowledge factor, above. In addition, he stated that experience is needed to perform the broad variety of work beyond upholstery, such as refinishing and rebuilding furniture and working with formica. Grievant testified that he needs experience in this position because there are no other employees within the higher education system who are knowledgeable about this work. He must therefore be self-sufficient, he explained. Grievant testified that he had one year of experience when he started his own upholstery business in 1977. He only did simple projects starting out, and could learn by doing. He opined that one must do the job right the first time in his current position. Respondent relied on the arguments and explanations given above under Knowledge, and the fact that Grievant had started an upholstery business with only one year's experience.

The minimum amount of experience required to perform the essential duties of a position represents a subjective determination upon which reasonable minds may differ. Zara, supra. Even were this not true, Grievant has failed to show that more than one year of experience would be necessary for one to perform adequately at entry level, particularly when the new employee would have up to 18 months of formal training as well. The fact that Grievant started his own business with less training, and apparently succeeded as he kept the business for ten years, is telling. Grievant's suggestion that one could better afford to learn through mistakes in a self-employed capacity rather than as a higher education classified employee is not adequate justification for a higher rating. Grievant has failed to carry his burden of proof on this point.

C. 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 was assigned level 2, which 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.

Grievant seeks assignment of level 3, which 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 there is no handbook for him to follow. He claims that no manuals, policies or procedures exist, and that there are no reference materials on specific furniture repairs. His supervisor is without substantive knowledge of his trade, and thus Grievant must research and solve problems independently, he stated. He testified that he contacted paint companies and auto refinishers for help in solving a problem many years ago, when he had his own business. He also observed that foam was wearing out quickly, investigated availability of more durable foams, and has begun ordering more durable foam within the last year. The only other example of problem-solving given was determining that foam would be less subject to chemical breakdown if wrapped in dacron. However, Grievant did not explain how the problem was identified or solved, and whether he identified or solved this problem himself. Respondent noted that there are generally known procedures which govern trades, and that the problems encountered by Grievant are not complex enough to move him into a higher rating level. He is expected to know the standard operating procedures which apply to his work, and would seldom encounter a problem totally unique from those previously addressed. Grievant makes basic decisions within a structured environment, generally. His rating took into account that Grievant must occasionally locate other sources of information

independently.

Even if problems are complex, where solutions available are limited, the same problems occur repeatedly, and there are guides, methods and precedents usually available by which to solve them, assignment of level 2 is not arbitrary & capricious. Mitchell, supra. In Payne v. Bd. of Directors, Docket No. 94-MBOD-787 (Sept. 19, 1996), buildings and grounds work involving landscaping was rated at level 2. There, a special license was required to operate heavy equipment, which showed that duty was not routine. Also, grievants repaired equipment, and mixed, applied and stored chemicals. Similarly, in Jones v Bd. of Trustees, Docket No. 94- MBOT-978 (Feb. 29, 1996), prior experience of journeyman Plasterers/Masons provided them with “methods and precedents” to use in deciding a course of action in addressing non-standard situations, and the non-standard situations thus did not prove they should have been assigned a rating higher than level 2.5. In evaluating this factor, “[the Respondent’s] explanation is entitled to great weight, unless it is contrary to the plain meaning of the language in the Job Evaluation Plan, or is inherently unreasonable.” Jones, supra. See Watts, supra; Burke, supra.

In accord with the above cases, it appears that Grievant generally works at level 2 in the Complexity and Problem Solving factor, although he may occasionally encounter unusual problems which fall under the level 3 definition. Grievant’s evidence did not indicate that his level 3 work was even regularly encountered. Indeed, his evidence of specific problems showed that unusual problems are the rare exception rather than the rule. Consequently, it cannot be said that the JEC was clearly wrong or arbitrary and capricious in assigning level 2.

D. 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 was assigned level 2.5 in this factor, which Respondent explained was an intermediate rating between the defined levels 2 and 3. The definitions in the Plan show that at level 2:

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

Questionable items are referred to the immediate supervisor.

The definitions in the Plan show that at level 3:

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

Grievant seeks assignment of level 4, which is defined 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 stated that, as his supervisor is without substantive knowledge of upholstery and furniture repair and refinishing, he receives only administrative supervision. Grievant determines how to perform the work himself, and his work is not checked. The supervisor only tells Grievant what jobs have been requested, and sets deadlines for completion. The supervisor is seen, at most, once a week, and his office is across campus from Grievant's location.

Respondent explained that this factor measures how the position is structured in terms of supervision and controls placed on making decisions about assignments. Mr. Warmuth noted again that structure is provided through standard operating procedures, which need not be written. A person in Grievant's position is expected to know and follow such procedures. He also noted that Grievant is without any kind of budget responsibility, other than general instruction to limit costs as much as possible. While Grievant may prepare requisitions, he neither prepares purchase orders nor signs them. The supervisor schedules activity, resolves conflicts, and can exercise budgetary control, all of which limit Grievant's activities, as do precedent, policy and procedure. Still, Grievant was given some credit for autonomy by being given the intermediate 2.5 rating.

Grievant's work is quite skilled, obviously. However, it is also governed by standard procedures and practices. Grievant certainly functions autonomously most of the time regarding his substantive work. However, his supervisor is involved in assigning his tasks and setting deadlines, as well as in administrative and budgetary matters. It appears that Grievant works under both the level 2 and level 3 definitions some of the time.

By contrast, it is clear that “[d]egree levels of 4.0 and 5.0 would be assigned to positions in the top group, such as the administrative group, the top managers and directors” when ratings in this factor are compared across the higher education system. Burke, supra. See also Jt. Exh. G. Grievant is not entitled to a level 4 rating.

An examination of other decisions shows that, in similar fact situations, level 2.5 has been found an appropriate rating. In Jones, supra, journeyman-level craftsmen performed duties under limited supervision and their options were inherently narrowed by established methods of their craft. It was found that level 2.5 was assigned appropriately even where the supervisor deferred to the grievants regarding specific methods and means by which projects were completed. In Jones, as in this case, the supervisor determined priorities by assigning work orders or projects to the grievants. In Payne, supra, Respondent's witness explained that an employee with a level 3 rating “would not receive daily assignments from the supervisor, and would have very moderate or limited supervision.” Payne at 21.

Overall, Grievant's situation is nearly identical to that of the Jones grievants. He works primarily within a level 2 definition, with occasional work in the level 3 definition. Grievant has not proven that the JEC's assignment of level 2.5 in the factor Freedom of Action did not appropriately credit him for the independence with which he sometimes works. He is appropriately rated in this factor.

E. INTRASYSTEMS CONTACTS:

Intrasystems Contacts is defined in the Plan as a factor which:

appraises the responsibility for working with or through other people within the [State College and University Systems of West Virginia] to get results. Consider the purpose and level of contact encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, explaining policies or discussing controversial issues. This factor considers only those contacts outside the job's immediate work area.

(Emphasis in original.) This factor is analyzed in two parts, Nature of Contact ("Nature") and Level of Regular, Recurring and Essential Contacts ("Level"). Grievant challenges his rating in both parts.

1. NATURE OF CONTACT:

Grievant was assigned level 1 in Nature, 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).

Grievant seeks level 2 in Nature, which 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 coordinates his work with others, primarily his "customers" such as the business manager of Resident Services, department Directors and/or their staffs, and the President's wife. He discusses selections of materials, explaining differences and persuading these people as to what choices are best. Between 1991 and 1994, he discussed with his "customers" whether he could perform requested work and, if so, when it could be scheduled.

Respondent stated that Grievant is in a service position, and is not required to resolve disputes. Any disagreements can be referred to his supervisor. His contacts involve factual, non- personal issues which merely require courtesy. Grievant responded that, as his supervisor knows nothing about upholstery or materials, disputes cannot in fact be referred to him. "Unlike the Level of Contact element, the Nature of Contact element clearly involves a subjective determination regarding the amount of tact and sensitivity required to perform the essential duties of a particular position." Miller v. Bd. Of Directors, Docket No. 94-MBOD-495 (Oct. 29, 1996). Deference must be given to the JEC's determinations in subjective value judgments.

Here, even were a subjective determination not involved, Grievant has failed to show that the JEC was clearly wrong in assigning Grievant level 1 in Nature. The fact that Grievant attempts to guide the choice of material made by others does not mean that negotiation is a required part of his job. While he may seek to persuade, such activity remains in the realm of routine information exchange as Grievant presents factual information regarding durability and other qualities. Information on whether jobs can be performed and scheduling them is also factual. Grievant has not shown that the JEC was clearly wrong or arbitrary and capricious in assigning a level 1 rating in Nature.

2. LEVEL OF CONTACTS:

Grievant was assigned level 2 in Level, which is defined in the Plan as "[s]taff and faculty outside the immediate work unit." Grievant seeks level 3, which is defined in the Plan as:

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

Most of Grievant's regular, recurring and essential contacts are within his own unit. At best, he speaks with staff level persons in other departments on occasions when he is performing work for those other departments. "When Grievant's discussions with a Director's Office are such that he does not need to talk to the Director, but can resolve the issue by dealing with a member of the Director's staff, the fact that the Director may answer the telephone and help him does not make this an essential contact with the Director. These are contacts with staff." Wilkinson v. Bd. Of Trustees, Marshall Univ., Docket No. 94-MBOT-765 (Aug. 26, 1996.) Barber v. Bd of Trustees, supra. Grievant did not submit evidence showing how often he has contact with persons in other departments, or how much contact he has with those persons. He did show that 25% of his upholstery and repair and refinishing work is done for departments other than his own. This is not the same as saying that he contacts those other departments directly on a regular basis. Their orders may be communicated through Grievant's supervisor, the Business Manager, in writing or in some other fashion. They may sometimes leave the choice of materials to Grievant or to the Business Manager. At any rate, Grievant has not shown that the JEC was clearly wrong in crediting him for contact he may have with persons in other departments by assigning level 2.

F. EXTERNAL CONTACTS/NATURE:

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.

(Emphasis in original.) Like Intrasystems Contacts, this factor is also evaluated in two parts, Nature of Contact ("Nature") and Level of Regular, Recurring and Essential Contact. Grievant challenges only his Nature rating.

Grievant was assigned level 1 in Nature of Contact, 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).

Grievant seeks level 2 in Nature of Contact, which is defined in the Plan as:

Moderate tact and cooperation required; communication is largely of a noncontroversial 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 noted that, in contacts with sales representatives, he has had to convince them to take back flawed material and replace it with acceptable quality goods. Respondent noted that this contact is really factual, rather than negotiation. Respondent also stated that the supervisor can resolve complex issues or disputes, so no more than common courtesy is required for Grievant's position. Similar positions received a level 1 rating, too. Moreover, occasional contact is not the measure, only typical contacts were considered.

It seems clear that Grievant's typical contacts with vendors and sales persons are factual exchanges of information regarding products or materials. Convincing a vendor to provide acceptable merchandise on rare occasions does not merit a higher rating, because such contact is not regular, and may not rise above convincing the vendor of the factual situation. Such contact may not be an essential part of Grievant's job duties. Grievant has not shown that the JEC was clearly wrong, arbitrary or capricious in assigning him level 1 in Nature of External Contacts.

SUMMARY

Grievant has not shown that the JEC was clearly wrong, arbitrary or capricious in assigning his point factor ratings. Thus, the points awarded to his position in the Mercer Plan reclassification remain unchanged, and he has failed to show that he should have been placed in a different pay grade.

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 § 4.19.
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 v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). See generally, Tennant v.

Marion Health Care Found., 459 S.E.2d 374 (W. Va. 1995).

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

5. The Job Evaluation Committee's assignment of degree levels to the point factors Knowledge, Experience, Complexity and Problem Solving, Freedom of Action, Intrasystems Contacts/Nature, Intrasystems Contacts/Level, and External Contacts/Nature for Grievant's position is neither clearly wrong nor arbitrary and capricious.

Accordingly, this Grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County 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.

JENNIFER J. MEEKS

Administrative Law Judge

Dated: November 8, 1996

[Footnote: 1](#)

The reader is referred to Burke v. Bd. Of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995) for a discussion of the background of the Mercer Plan mass reclassification project, the procedural history of the grievances arising from the

reclassification, and the definitions of some terms of art specific to the Mercer Plan reclassification.