

**GEORGE HENRY, et al.,**

**v.**

**DOCKET NO. 94-MBOT-1024**

**BOARD OF TRUSTEES,**

**WEST VIRGINIA UNIVERSITY**

**DECISION**

Grievants George Henry and Frank Brozik, Jr., each alleges he was misclassified effective January 1, 1994, in the "Mercer reclassification" ([See footnote 1](#)). Each Grievant seeks to be classified as either a Program Assistant I, Pay Grade 12, or a Program Assistant II, Pay Grade 13, effective January 1, 1994, and backpay to January 1, 1994. Grievants also challenge the degree levels received in several point factors. Five days of hearing at Level IV were held on August 14 and 28, and November 1, 2 and 11, 1995. This matter became mature for decision on January 25, 1996, with receipt of the last of the parties' responsive briefs.

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

**Findings of Fact.**

1. Grievants are employed in the Personal Rapid Transit ("PRT") Department at West Virginia University ("WVU"). The PRT provides transportation services between WVU campuses to students, faculty, staff and the general public.
2. In 1991, all higher education classified employees were asked to complete a Position Information Questionnaire ("PIQ") prior to the reclassification. 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. Each Grievant filled out a PIQ in 1991.
3. Grievants were classified in the Mercer reclassification as Work Control Technicians, Pay Grade 10, effective January 1, 1994.
4. Grievants' primary job duties prior to January 1, 1994, were coding and data entry of scheduled and unscheduled maintenance information for PRT vehicles, guideways and stations;

tracking and initiating scheduled maintenance by preparing work orders at the scheduled maintenance time and locating the proper maintenance instruction form in the appropriate manual and attaching it to the work order; following up on work orders with memoranda to the maintenance supervisor if scheduled maintenance is not performed in the month work order is produced; checking scheduled and unscheduled maintenance information for reporting errors; preparing productivity and maintenance reports; researching maintenance information in new manuals and translating recommended maintenanceschedule into PRT usage in draft maintenance procedures for new equipment; maintaining accurate information on PRT keys locations and preparing key rings for new employees; tracking and initiating scheduled maintenance for overland vehicle fleet; and setting up and scheduling employee training programs in first aid, CPR, and fire extinguisher safety.

5. Program Assistant I's and II's provide technical support and secretarial services to a major program or multiple programs. These services include research, compilation of statistical data, bookkeeping, answering questions about the program, scheduling and arranging set-up for conferences and meetings, preparing and assuring distribution of informational brochures, receiving and responding to correspondence, and drafting and finalizing reports and memos. Program Assistant II's supervise clerical support staff. Respondent's Exhibits 3, 4 and 5; Joint Exhibits E and F; Testimony of Lu Ann Moore.

6. Both Grievants have high school degrees. Grievant Brozik has no formal educational training beyond high school. Grievant Henry has two years of credits toward a college degree.

7. Both Grievants had many years of work experience in various fields prior to their employment in their present positions.

8. When Grievant Henry was first employed by WVU, Grievant Brozik assigned him tasks for a period of at least two years, training him in the duties of his present position. 9. Grievant Henry was not in the same classification as Grievant Brozik when he began his employment at WVU in 1988.

10. Grievants' contacts with supervisors and managers within higher education are with PRT maintenance supervisors, who they talk to every day about scheduled maintenance. In addition, they contact them if they find something on a work order which does not look correct to assure they have the proper information, and if scheduled maintenance is not completed when scheduled to remind them of the work order and to gently prod them to get the work done. The maintenance supervisors

do not supervise Grievants.

11. Grievants' job duties are substantially the same as those of other persons classified as Work Control Technicians. Respondent's Exhibits 1 and 2; testimony of Teresa Crawford.

12. The Work Control Technician Job Title received 1556 total points from the following degree levels in each of the thirteen point factors [\(See footnote 2\)](#): 4.0 in Knowledge; 2.0 in Experience; 2.5 in Complexity and Problem Solving; 2.5 in Freedom of Action; 2.0 in Scope and Effect, Impact of Actions; 2.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 1.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level; 1.0 in External Contacts, Nature of Contact; 1.0 in External Contacts, Level; 1.0 in Direct Supervision Exercised, Number; 1.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 2.0 in Physical Coordination; 2.0 in Working Conditions; and 1.0 in Physical Demands. Joint Exhibits C and D.

13. The point range for a Pay Grade 12 is from 1655 points to 1755 points. Joint Exhibit C.

### **Discussion**

#### **A. Burden of Proof**

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.17; W. Va. Code § 18-29-6. Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

A grievant is not likely to meet his burden of proof in a Mercer grievance merely by showing that the grievant's job duties better fit one job description than another, without also identifying which point factors he is challenging, and the degree level he believes he should have received. [\(See footnote 3\)](#) While some "best fit" analysis of the definitions of the degree levels is involved in determining which degree level of a point factor should be assigned, where the position fits in the higher education classified employee hierarchy must also be evaluated. In addition, this system must, by statute, be uniform across all higher education institutions; therefore, the point factor degree levels are not assigned to the individual, but to the Job Title. W. Va. Code § 18B-9-4; Burke, supra. 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).

Finally, whether Grievants are properly classified is almost entirely a factual determination. As such, the Job Evaluation Committee's ("JEC") interpretation and explanation of the point factors and Generic Job Descriptions at issue will be given great weight unless clearly erroneous. [\(See footnote 4\)](#). See Tennant v. Marion Health Care Foundation, 459 S.E.2d 374 (W. Va. 1995); Burke, *supra*. However, no interpretation or construction of a term used in the Job Evaluation Plan (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. Watts v. Dept. of Health and Human Resources, 465 S.E.2d 887 (W. Va. 1995). The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. [\(See footnote 5\)](#)

#### B. Comparison of Grievants' Duties to Program Assistant I and II

The Generic Job Descriptions for Program Assistant I and Program Assistant II (Joint Exhibits F and E) are attached hereto as Appendix A and Appendix B, respectively, and by this reference are made a part of this Decision. A simple comparison of the Generic Job Descriptions to the duties and responsibilities of Grievants shows that Grievants perform very few of the duties of either a Program Assistant I or II, and one of Grievants' significant duties, data entry, is not listed as a duty of a Program Assistant I or II.

The distinctive characteristics of a Program Assistant offered by Lu Ann Moore, Senior Compensation Analyst at WVU, are found in the Generic Job Descriptions, although not in the detail offered by Ms. Moore. The General Function of a Program Assistant is to provide services in support of a "major program". Ms. Moore explained that the term "program" has a particular meaning within higher education. A program typically provides some type of service to the local community or to the state, rather than just to the particular institution, and frequently receives funding through grants. Some examples of programs offered by Ms. Moore were the Extension Homemakers, 4-H, students against drunk driving, scholar's program, family and youth program, and EPSCOR in the health science center which is studying the high infant mortality rate in all 55 counties.

Accordingly, the duties of the Program Assistants revolve around the mission of the program, and involve researching, collecting and compiling data and assimilating information from the data into

brochures which the Program Assistants see are distributed to the public, or arranging and participating in conferences in which the collected data is discussed or presented orally to the public. Ms. Moore testified that Program Assistants also perform bookkeeping functions. A Program Assistant for 4-H is in charge of scheduling 4-H camps and making sure enough materials, including food, are on hand for all the children who will be in attendance.

Grievants argued the PRT could fall within the definition of "program." The PRT does not have a public education mission such as the programs examples offered by Ms. Moore, which is a significant distinction. However, even if the PRT were considered a program, Grievants' jobs duties bear no resemblance to those of a Program Assistant I or II, and they have failed to prove they should have been so classified.

C. Application of the Point Factor Methodology

Grievants challenge the degree levels received in the point factors Knowledge, Experience, Freedom of Action, Scope and Effect/Nature of Actions and Impact of Actions, Intrasystems Contacts/Nature of Contact and Level of Contact, and External Contacts/Level of Regular, Recurring and Essential Contact. Following are the differences between the degree level assigned the point factors for the Work Control Technician Job Title, the Program Assistant I Job Title, the Program Assistant II Job Title, and the degree level Grievants believe they should have received in each of these point factors:

	<u>SE</u>	<u>SE</u>	<u>IC</u>	<u>IC</u>	<u>EC</u>	<u>EC</u>	<u>DSE</u>	<u>DSE</u>					
	<u>KN</u>	<u>EX</u>	<u>FA</u>	<u>IA</u>	<u>NA</u>	<u>NC</u>	<u>LVL</u>	<u>NC</u>	<u>LVL</u>	<u>NUM</u>	<u>LVL</u>	<a href="#">(See footnote 6)</a>	
Work Control Tech		4	2	2.5	2	2	1	2	1	1	1		
Program Asst I		5	2	2.5	2	2	2	3	2	3	1		
Program Asst II	5		3	2.5	2	2	2	3	2	3	2	3.5	
Grievants' Argument		5	4	4	3	3		2	3	1	*	1	1

Joint Exhibit D. Grievants argued they should have received either a degree level of 2.0 or 4.0 under External Contacts, Level of Contact. Each of the point factors challenged by Grievants will be addressed separately below. [\(See footnote 7\)](#)

1. Knowledge The Job Evaluation Plan ("the Plan") defines the point factor 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.

A degree level of 4.0, as received by Grievants, 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 5.0, as assigned to Program Assistant I and II and sought by Grievants, is defined in the 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.

Grievants need to be generally familiar with mechanics and electronics so they have some understanding of what must be done in maintenance procedures in order to spot errors in the completed work orders and can talk to technicians and engineers when researching and drafting a change in maintenance procedure. They do not need to understand the detail so thoroughly that they could perform the maintenance themselves. They must be able to quickly and accurately enter data, and must possess excellent organizational skills.

The Generic Job Description for Program Assistant I lists five areas of knowledge, skills and abilities, and states they are typically acquired through an "[a]ssociate's degree in business or a related field", and "[s]ix months of office experience." Of those areas, obviously Grievants must possess the "[a]bility to type with speed and accuracy", in order to enter several lines of data from approximately 150 work orders per day. Grievants must possess "[k]nowledge of vocabulary, grammar, punctuation and spelling" to communicate effectively with engineers, supervisors and technicians, to initiate work orders, to spot errors in completed work orders, and to research new manuals and translate maintenance requirements into something which can be used by the PRT.

Most importantly, Grievants must possess extremely good organizational skills, including the "[a]bility to organize and coordinate activities". The maintenance tracking system used by the PRT tracks virtually every detail. The manner in which Grievants keep track of when maintenance is to be performed parallels docketing of deadlines and hearing dates maintained in law offices by a paralegal

or legal secretary.

Grievants may need some "[k]nowledge of office rules, procedures and operations" and the "[a]bility to operate office equipment and machines", but these would not seem to be essential prerequisite skills. Neither of these skills, however, would take more than 18 months of education, or a few weeks of work experience, to master. Based on this comparison, it is difficult to understand why a Program Assistant I received a degree level of 5.0 in this point factor and Grievants' Job Title received a degree level of 4.0.

Grievants have proven the JEC acted in an arbitrary and capricious manner in assigning their Job Title a degree level of 4.0 in this point factor, while assigning the Program Assistant I a degree level of 5.0. Grievants' Job Title should have received the same degree level in Knowledge as a Program Assistant I, a 5.0.

## 2. Experience

The Plan describes the point factor 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.

(R Ex 3; See also Burke, supra.)

Grievants received a 2.0 in this point factor, which is defined in the Plan as "[o]ver six and up to twelve months of experience". Grievants believe they should have received a degree level of 4.0, which is defined in the Plan as, "[o]ver two years and up to three years of experience." A degree level of 3.0 is defined in the Plan as, "[o]ver one year and up to two years of experience."

Teresa Crawford, Senior Compensation Analyst, Department of Human Resources, WVU, explained that this point factor evaluates the minimum level of experience necessary prior to entering into the job, and does not include on-the-job training. Ms. Crawford did not comment on what a normal period of on-the-job training would be. She noted that Grievant Henry was able to perform the job duty of data entry in his first day on the job. Obviously, this job is more than just data entry. Due to the unique nature of the PRT, and the detailed nature of the tasks of the job, for at least two years Grievant Henry performed limited tasks of the position as assigned to him by Grievant Brozik and under his watch, and in a lower level position than Grievant Brozik. This un rebutted evidence is sufficient to prove that Grievants' Job Title should have received a degree level of 4.0.

## 3. Freedom of Action

The Plan defines Freedom of Action as:

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

Grievants received a degree level of 2.5 in this point factor, as did the Program Assistant I and II Job Titles. They believe they should have received a degree level of 4.0.

A degree level of 2.5 is not defined in the Plan, nor was an explanation offered by Respondent's witnesses. The undersigned is left to assume that a 2.5 is between a 2.0 and a 3.0. 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.

The definitions in the Plan show that at a degree level of 3.0:

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

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.

The majority of Grievants' job duties, while difficult to master, are the same each day, and are structured by standard operating procedures. They perform research when directed to do so by their supervisor, or when a new manual arrives. They set up training courses and prepare key rings for new employees because they have been directed to do so. They do, on occasion, function autonomously in designing the key tracking system or deciding which films to rent for training courses. Grievants have failed to prove that the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level of 2.5 to their Job Title.



## 5. Scope and Effect

Scope and Effect is defined in the Job Evaluation Plan as:

This factor measures the scope of responsibility of the position with regard to the overall mission of the institution, and/or the West Virginia higher education systems, as well as the magnitude of any potential error. Decisions regarding the nature of action should consider the levels within the systems that could be affected, as well as Impact on the following points of institutional mission: instruction, instructional support, research, public relations, administration, support services, revenue generation, financial and/or asset control, and student advisement and development. In making these judgments, consider how far-reaching is the impact and of what importance to the institution and/or higher education systems is the work product, service or assignment. Decisions regarding the impact of actions should take into account institutional scope and size as reflected by operating budget, student enrollment and institutional classification. Also, consideration should be given for the possibility that a unit, program or department within a large institution may be equivalent in size to multiple units, programs or departments within a smaller institution. In making these interpretations, assume that the incumbent would have normal knowledge, experience and judgment, and that errors are not due to sabotage, mischief or lack of reasonable attention and care.

This factor consists of two parts, Impact of Actions and Nature of Actions. Grievants received a degree level of 2.0 in both Impact of Actions and Nature of Actions, as did the Program Assistant I and II Job Titles. Grievants argued they should have received a degree level of 3.0 in both parts.

A degree level of 2.0 in Impact of Actions 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 of Actions 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 less than \$13M; a school or division of a graduate or baccalaureate-level Institution with an operating budget of \$13-\$18M; several departments within a graduate or baccalaureate-level Institution with an operating budget of \$19-\$25M; a major department within a graduate-level Institution with an operating budget of more than \$50M; or a moderate-size department within a doctoral-level Institution with an operating budget of more than \$200M.

Grievants argued the PRT was a "moderate-size department", and the PRT is so important as to affect the entire operations of WVU. Grievants' duties represent one cog of many in the wheel which makes the PRT run. When measuring "the scope of responsibility of the position with regard to the overall mission of" WVU, Grievants have not proven the JEC was in error or acted in an arbitrary and capricious manner in assigning their Job Title a degree level of 2.0 in Impact of Actions.

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

Work contributes to the accuracy, reliability, and acceptability of processes, services, or functions. Decisions are limited to the application of standardized or accepted

practices and errors could result in some costs and inconveniences within the affected area.

A degree level of 3.0 in Nature of Actions 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.

Grievants are not guiding the operation, but their "work contributes to the accuracy, reliability, and acceptability of" the service provided by the PRT. Grievants argued that the decisions they make are non-routine. Grievants' job requires them to research and compile information, enter data, and decide from comparing information whether it is time for scheduled maintenance. They occasionally make decisions about the best way to organize information, or which date or film is best for a training session. Grievants did not prove that errors could result in moderate costs and inconveniences, as opposed to some costs and inconveniences. Grievants have not proven they should have received a degree level of 3.0 in Nature. Degree level 2.0 is the best fit for Grievants.

#### 6. Intrasytems Contacts

Intrasytems 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.

This factor also consists of two parts, Nature of Contact and Level of Regular, Recurring and Essential Contact. Grievants are challenging the degree level received in both Nature of Contact and Level of Regular, Recurring and Essential Contact. Grievants received a degree level of 1.0 in Nature, and 2.0 in Level. They argued they should have received a degree level of 2.0 in Nature, and 3.0 in Level of Contact, as did the Program Assistant I and II Job Titles.

A degree level of 1.0 in Nature of Contact 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 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 2.0 in Level of Contact is defined in the Plan as:

Staff and faculty outside the immediate work unit.

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

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

Grievants pointed to their contacts with the maintenance supervisors at the PRT. Respondent argued these are not degree level 3.0 contacts under Level of Contact, because these supervisors are in the same department as Grievants. Respondent's argument is supported by the very last sentence of the definition of this point factor. These contacts are within the maintenance area of the PRT, which is the same area Grievants are in. See Grievants' Exhibit A. It is not clearly wrong or arbitrary and capricious to consider the maintenance supervisors to be within the job's immediate work area. Accordingly, Grievants received no credit under either Nature or Level for this contact, and have not met their burden on this point factor.

7. External Contacts External Contacts is defined in the Plan as:

This factor appraises the responsibility for working with or through other people outside the SCUSWV to get results. Consider the purpose and level of contact encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, influencing others or negotiation.

This factor also consists of two parts, Nature of Contact and Level of Regular, Recurring and Essential Contact. Grievants are not challenging the degree level received in Nature. They argued they should have received either a degree level of 2.0 or 4.0 in Level of Contact, rather than a 1.0.

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

Extremely infrequent; virtually no contact beyond immediate work unit/area; or occasional contacts are incidental to the purpose of the job. (Emphasis added.)

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

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

A degree level of 3.0 in Level of Contact 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.

Finally, a degree level of 4.0 in Level of Contact is defined in the Plan as:

Mid-level representatives of government agencies, professional contacts with other colleges and universities outside the systems. Grievants argued they should have received credit for their contacts in scheduling training sessions for PRT personnel. These contacts are a very minor part of Grievants' duties. Grievants failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in finding these "occasional contacts are incidental to the purpose of the job."

#### D. Summary

Grievants failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner by failing to classify them as Program Assistant I's or II's. Grievants further failed to prove that the degree levels assigned to their Job Titles in the point factors Freedom of Action, Scope and Effect, Intrasystems Contacts and External Contacts were clearly wrong or were assigned in an arbitrary and capricious manner by the JEC. Grievants proved they should have received a degree level of 5.0 in Knowledge rather than a 4.0, and a 4.0 in Experience rather than a 2.0.

Respondent argued that Grievants must prove all Work Control Technicians were improperly classified in order to prevail. Although the undersigned ruled initially that Grievants have no such burden, and that any ruling in this case would affect only Grievants, Ms. Crawford opined in her rebuttal testimony that the duties and responsibilities of Grievants were similar to other Work Control Technicians throughout the West Virginia higher education system, and that all should be in the same Job Title. Respondent's Exhibits 1 and 2, the PIQ's of two Work Control Technicians in the Physical Plant, support this testimony. Accordingly, the changes in degree levels of point factors proven by Grievants apply to the data line for the Work Control Technician Job Title. The changes to the Work Control Technician data line add 187 points to the previous total of 1556 points, bringing the total to 1743 points, which places Work Control Technicians in a Pay Grade 12. Joint Ex C. ([See footnote 8](#))

#### **Conclusions of Law**

1. The governing boards are required by W. Va. Code § 18B-9- 4 to establish and maintain an equitable system of job classifications for all classified employees in higher education.
2. The burden of proof in a misclassification grievance is on the grievant to prove by a

preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.17. The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

3. The Job Evaluation Committee's interpretation and explanation of the Generic Job Description and point factors will be given great weight unless clearly wrong, where the proper classification of a grievant is almost entirely a factual determination. See Tennant v. Marion Health Care Foundation, 459 S.E.2d 374 (W. Va. 1995); Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995).
4. The Job Evaluation Committee's decision that Grievants are not Program Assistant I's or II's is not clearly wrong or arbitrary and capricious.
5. The Job Evaluation Committee's assignment of degree levels to the point factor Experience for the Job Title Work Control Technician was clearly wrong.
7. The Job Evaluation Committee's assignment of degree levels to the point factor Knowledge for the Job Title Work Control Technician was arbitrary and capricious.
8. The Work Control Technician Job Title is in a Pay Grade 12.

Accordingly, this grievance is **DENIED IN PART AND GRANTED IN PART**. Respondent is **ORDERED** to make adjustments to the data line for the Work Control Technician Job Title consistent with this **DECISION**, effective January 1, 1994, and to pay Grievants the difference between what they would have received had they been placed in the proper pay grade as of that date, and the amount actually received.

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

**BRENDA L. GOULD**

## Administrative Law Judge

**Dated: July 31, 1996**

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[Footnote: 1](#)

The reader is referred to *Burke, et al., v. Bd. of Directors, Fairmont State College*, Docket No. 94-MBOD-349 (Aug. 8, 1995), for a discussion of the background of the Mercer reclassification project, the procedural history of the Mercer grievances, and the definitions of various terms of art specific to the Mercer reclassification.

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[Footnote: 2](#)

The thirteen point factors are set forth in 128 C.S.R. 62 § 2.27, and 131 C.S.R. 62 § 2.27. *Burke, supra*.

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[Footnote: 3](#)

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).

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[Footnote: 4](#)

Grievants argued the JEC decisions should be accorded no deference for a number of reasons, including that it did not understand Grievants' job duties. To the contrary, the testimony of Teresa Crawford, who was a non-voting member of the JEC, taken before Grievants testified showed that she had a good understanding of Grievants' job duties.

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[Footnote: 5](#)

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: 6](#)

These headings are shorthand for the following point factors: KN is Knowledge; EX is Experience; FA is Freedom of Action; SE, IA is Scope and Effect, Impact of Actions; SE, NA is Scope and Effect, Nature of Actions; IC, NC is Intrasytems Contacts, Nature of Contact; IC, LVL is Intrasytems Contacts, Level of Regular, Recurring, and Essential Contact; EC, NC is External Contacts, Nature of Contact; EC, LVL is External Contact, Level of Regular, Recurring, and Essential Contact; DSE, NUM is Direct Supervision Exercised, Number of Persons Supervised; and, DSE, LVL is Direct Supervision Exercised, Level of Supervision.

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[Footnote: 7](#)

Grievants are not challenging the degree level received in the point factors External Contacts, Nature of Contact, or Direct Supervision Exercised, Number or Level, and the undersigned will not address these point factors.

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*Footnote: 8*

*The chart used to convert degree levels into total points for purposes of determining the proper pay grade, and the pay grade chart, are a part of Joint Exhibit C.*