

ROBERT J. ARONHALT,

Grievant,

v.

DOCKET NO. 94-MBOT-1013

BOARD OF TRUSTEES/

WEST VIRGINIA UNIVERSITY,

Respondent.

DECISION

This is a grievance by Robert J. Aronhalt, Grievant, against the Board of Trustees, West Virginia University, Respondent. Grievant believes he was misclassified effective January 1, 1994, pursuant to W.Va. Code §18B-9-4 (the "Mercer reclassification") ([See footnote 1](#)). Grievant is classified as Supervisor/Laborers, Pay Grade 15. Grievant seeks to be classified as Supervisor/Laborers, Pay Grade 18, effective January 1, 1994, and backpay to January 1, 1994. A Level IV hearing was held on February 29, 1996. This matter became mature for decision with the receipt of written argument from the Respondent on March 19, 1996. Grievant did not submit written argument.

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

FINDINGS OF FACT

1. Grievant is employed by West Virginia University. Grievant was classified in the Mercer reclassification as Supervisor/Laborers, Pay Grade 15, 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. The Supervisor/Laborers job position received a total of 1,994 points from the following degree levels in the point factors: 3.0 in Knowledge; 5.0 in Experience; 3.0 in Complexity and Problem Solving; 3.5 in Freedom of Action; 3.0 in Scope and Effect, Nature of Actions; 3.0 in Scope

and Effect, Impact of Actions; 1.0 in Breadth of Responsibility; 2.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level; 1.0 in External Contacts, Nature of Contact; 2.0 in External Contacts, Level; 6.0 in Direct Supervision Exercised, Number; 4.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 1.0 in Physical Coordination; 2.0 in Working Conditions; and a 3.0 in Physical Demands. (R. Ex. __)

4. The Supervisor/Laborers job position is within the Physical Plant/Facilities Job Family.
5. The point range for a Pay Grade 15 is from 1,985 points to 2,113 points. (R.Ex. 2).
6. The point range for a Pay Grade 18 is from 2,408 points to 2,573 points. (R. Ex. 2).

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 doing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-MBOD- 124 (Mar. 4, 1991).

A grievant is not likely to meet his burden of proof in a Mercer grievance merely by showing that his job duties better fit one job description than another, without also identifying which point factor degree levels he is challenging. [\(See footnote 2\)](#) 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 factors are not assigned to the individual, but to the job. 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, in this case, whether Grievant is 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 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. The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. [\(See footnote 3\)](#)

B. Application of the Point Factor Methodology

At the Level IV hearing Grievant testified that he should have been given more credit for Knowledge, Experience, Complexity and Problem Solving, Freedom of Action, Scope and Effect, Breadth, Intrasystems Contacts, External Contacts and Direct Supervision. On the other hand, Grievant's PIQ only shows disagreement with the following point factors: Knowledge, Experience and Complexity and Problem Solving. Further, Grievant stated that he had no idea who made either the X's or the check marks on his PIQ. (Level IV testimony of Grievant).

Grievant specifically identified the below-listed point factors he believed should have been assigned a different level in the evaluation of his position. This list shows the differences in the point factors for Supervisor/Laborers assigned by the JEC and those found in the Grievant's PIQ and testimony:

	<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>CPS</u>	<u>FA</u>	<u>IA</u>	<u>NA</u>	<u>BR</u>	<u>NC</u>	<u>LVL</u>	<u>NC</u>	<u>LVL</u>	<u>NU</u>	<u>LVL</u>	(See footnote 4)

(JEC)	3	5	3	3.5	3	3	1	2	2	1	2	6	4		
G's PIQ	3	5	3	4	3	or 4	4	or 5	2	or 3	7	2	3	4	5
G's Test.	4	6	5	5	4	6	3	7	2	3	6	5			

The following discussion will examine each point factor as to the levels assigned by the JEC, those found in Grievant's PIQ and those outlined in Grievant's testimony.

1. Knowledge

The Job Evaluation Plan (R Ex 3; See also Burke, supra.) describes 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.

Grievant received a 3.0 for this point factor. A degree level of 3.0 as assigned to Supervisor/Laborers, is defined in the Job Evaluation Plan as:
Job requires basic knowledge of grammar, spelling, punctuation, and simple mathematical functions like percentages, ratios, etc. as might normally be acquired through attainment of a high school diploma or GED.

A degree level of 4.0, which Grievant testified that he should have been assigned, is defined in the Job Evaluation Plan as:
Job requires basic knowledge in a specific area typically obtained through a business, technical or vocational school as might normally be acquired through up to 18 months of education or training beyond high school.

Grievant stated that Knowledge needs to be a 4.0 because the University needs to run a business rather than as a state organization. Grievant testified that he had vocational and technical school training and on-the-job training which gave him knowledge for his job. Teresa Crawford testified that Knowledge measures the bona fide minimal formal education required for a new hire to perform the job, and that 3.0 was appropriate for this position. Although Grievant does have vocational and technical school training, he has failed to meet his burden of proof on this point factor because as to this point factor, Grievant only offered an opinion and his particular qualifications are not relevant to the issue of the point factors for his job. This factor measures the position not the employee.

2. Experience

The Job Evaluation Plan describes Experience as:

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

A degree level of 5.0, as assigned to Supervisor/Laborers by the JEC and Grievant's PIQ, is defined in the Job Evaluation Plan as:___Over three years and up to four years experience.

Grievant stated that he should have received a degree level of 6.0. A degree level of 6.0 is defined in the Job Evaluation Plan as:

Over four years and up to six years of experience.

Grievant testified that over four years and up to six years of experience is what is needed for the position; that the position takes skill. Teresa Crawford testified that 5.0 was appropriate for the position and that the amounts of experience were treated as concurrent-- that is, an individual gains more than one skill in a job--he will gain various skills in a job. Ms. Crawford also stated that under the Job Evaluation Plan, if some level of Experience is credited under Knowledge, then it cannot also be credited under this factor. Grievant has not proven that his position should have received a 6.0 for this point factor.

3. Complexity and Problem Solving

The Job Evaluation Plan describes Complexity and Problem Solving as follows:

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.

A degree level of 3.0, as assigned to Supervisor/Laborers and found on Grievant's PIQ, is defined in the Job Evaluation 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. Employees 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.

A degree level of 5.0, the level Grievant testified is the appropriate one, is defined in the Job Evaluation Plan as:

Problems encountered involve unusual circumstances, variations in approach, and incomplete or conflicting data. Employees exercise considerable analytical, valuative and reasoning skill in researching information and developing new methods to perform work assignments or optimum solutions to problems. The development of new programs, procedures or methods are typical end results of the problem-solving process. Determination of the effectiveness of a policy or practice may be involved at this level.

Grievant testified that Complexity and Problem Solving should be a 5.0 because he develops

programs, i.e., a recycling program at the University that has been in effect for the past 14 months. Teresa Crawford testified that a level of 3.0 allotted by the JEC was appropriate--that the JEC looked at the types of problems that an individual would be expected to solve, what kinds of judgment would be involved, and the thought processes used to solve those thought problems. Ms. Crawford additionally stated that at Grievant's level, general policies and professional disciplines are not applicable to his position, that Grievant's supervisor only received a 4.5 in Complexity and Problem Solving and that a level 3.0 or 3.5 is usually allotted to technical positions or first level supervisors. Grievant failed to meet his burden of proof on this point factor.

4. Freedom of Action

The Job Evaluation Plan defines Freedom of Action as:

This factor measures the degree to which the position is structured as is determined by the type 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 a 3.5 for Freedom of Action. A degree level of 3.0 is defined in the Job Evaluation Plan as:

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's PIQ listed a 4.0 for Freedom of Action. A degree level of 4.0 is defined in the Job Evaluation 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.

A degree level of 5.0, the level which Grievant testified is most appropriate for Freedom of Action, is defined in the Job Evaluation Plan as:

Virtually all tasks are unstructured; assignments are in terms of setting objectives within strategic planning goals. At this level, the employee has responsibility for planning, designing and carrying out programs, projects and studies; employee sets goals and objectives for a major unit, program or department. Approval from higher supervision may be necessary only in terms of financial impact and availability of funds, but little reference to detail is discussed with the next level supervisor. Work review concerns matters such as fulfillment of goals and objectives.

Grievant stated that sometimes he doesn't hear from a supervisor for weeks and that prior to January 1, 1994, he made decisions without a supervisor. Teresa Crawford testified that Freedom of Action means the type of guidance provided by the supervisor, that is, the type of instruction given in regard to policies or procedures for the employee to determine their work processes and their daily work assignments. Ms. Crawford stated that typically, E (or 5.0) level is usually the top position within a level. That person decides and sets goals and objectives for that unit, and this is usually a high level management position in an organizational structure. Moreover, Ms. Crawford stated that Grievant's position involved daily contact as to assignments, and that a level of 3.5 indicates that once the assignment is made, the person then plans out and coordinates the assignment to make sure it is completed. Grievant did not meet his burden of proof that the position should have been assigned a 5.0.

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 system 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 reclassification. 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.

A level 3.0 assigned to Supervisor/Laborers for Scope and Effect, Impact of Actions, is defined in the Job Evaluation Plan as:

Work affects the operations of more than one school or division of a specialized school, branch campus, community college or baccalaureate-level institution with an operating budget of < \$13M; a school or division of a graduate or baccalaureate-level institution with an operating budget of \$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.

A level 3.0 for Scope and Effect, Nature of Actions, as allotted to the Supervisor/Laborers, is defined in the Job Evaluation Plan as:

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

A level 4.0 for Scope and Effect, Nature of Actions, the level Grievant testified is most appropriate, is defined in the Job Evaluation Plan as:

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

Grievant testified that due to injuries occurring on the job, the job of the Supervisor/Laborers is not

only to get the work done but to also complete the work in a timely and safe manner and that he tries to do this in an efficient manner. Teresa Crawford testified that this is the hardest point factor next to Breadth; that this factor was to get at small school versus big school differences, and that size impacts how work is structured. This point factor looks at the nature of the work in and of itself and how it affects the institution. Ms. Crawford testified that level 3.0 was consistently applied to professional jobs and also applied to first level supervisors who have individuals reporting to them. Grievant is a first line supervisor and a 3.0 is appropriate. The Impact of Actions portion of this factor looks at the impact the position has on the entire higher education system in regard to size and budget for institutions. The labor crew is a moderate-size department within the University; therefore, according to Ms. Crawford, a 3.0 is appropriate. Grievant properly received a 3.0 for this point factor.

6. Breadth of Responsibility

Breadth of Responsibility is defined in the Job Evaluation Plan 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 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.]

A level of 1.0 for Breadth of Responsibility in the Job Evaluation Plan is defined as:

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

Grievant's PIQ indicated both a level 4.0 and a level 5.0 for Breadth of Responsibility. A level of 4.0 for Breadth of Responsibility in the Job Evaluation Plan is defined as:

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.

A level of 5.0 for Breadth of Responsibility in the Job Evaluation Plan which Grievant testified is the most appropriate is defined as:

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.

Grievant testified that he should have been allocated a level 5.0 for Breadth of Responsibility. Grievant testified that he has six areas for which he is responsible. He stated that he does not have budget control but that he can make suggestions for budget. Teresa Crawford stated that budget control is a functional area, and that the Director of the Physical Plant and Public Safety has two functional areas. Ms. Crawford stated that Grievant was assigned a 1.0 along with all other University personnel. The undersigned cannot find from the evidence presented, that the decision of the JEC to assign Grievant's position a degree level of 1.0 in this point factor was arbitrary and capricious or clearly wrong.

7. Intrasytems Contacts

Intrasytems Contacts is defined in the Job Evaluation Plan as:

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

A level of 2.0 for Intrasytems Contacts, Nature of Contact, as assigned to Supervisor/Laborers, is defined in the Job Evaluation 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 level of 3.0 for Intrasytems Contacts, Nature of Contact, as indicated on Grievant's PIQ and in Grievant's testimony, is defined in the Job Evaluation Plan as:

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

A level 2.0 allotted to the Supervisor/Laborers for Intrasytems Contacts, Level of Regular, Recurring, and Essential Contact is defined in the Job Evaluation Plan as:

Staff and faculty outside the immediate work unit.

A level 7.0 for Intrasytems Contacts, Level of Regular, Recurring, and Essential Contact, as indicated in Grievant's PIQ and Grievant's testimony, is defined in the Job Evaluation Plan as:

Presidents, Chancellors and/or Board Members.

In regard to Intrasytems Contact, Level of Regular, Recurring, and Essential Contact, Grievant testified that he has contact with Presidents, Vice Presidents, Deans, and Directors. For example, during football season he has continuous contact with Vice Presidents, e.g., the Vice President for Institutional Advancement. Grievant testified that although the Vice President's secretary calls in the work order, he will speak with the Vice President directly, not the Vice President's office. Grievant testified that he worked directly with NASA and COMER administration and his crew laid the foundation for the NCCR [\(See footnote 5\)](#) building. Teresa Crawford testified that this point factor looks at the contacts that a position has within higher education that are essential for the performance of the position's duties and responsibilities on a regular and recurring basis. She testified that the contact for Grievant's position would normally be with the building supervisor who is a staff member and therefore, 2.0 is the appropriate level for Intrasytems Contact.

For Intrasytems Contacts, Nature of Contact, Grievant testified that the nature of his contact is controversial, since things are always changing and that some delicacy and diplomacy is required. Teresa Crawford testified that senior level professional jobs are advisory in nature, and they are the positions which receive credit for controversial issues, in that senior level positions must inform Deans and Directors why they cannot do something outside the scope of their authority. Ms. Crawford stated that Grievant's position is not controversial in nature and a 2.0, therefore, is appropriate for Grievant's position. Grievant has not proven that he should have been assigned a 7.0 for this point factor.

8. External Contacts

External Contacts is defined in the Job Evaluation 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.

A level of 1.0 for External Contacts, Nature of Contact as assigned to Supervisor/Laborers, is defined in the Job Evaluation 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 level of 2.0 as indicated in Grievant's PIQ and Grievant's testimony for External Contacts, Nature of Contact, is defined in the Job Evaluation Plan as:

Moderate tact and cooperation is 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 level of 2.0 for External Contacts, Level of Regular, Recurring and Essential Contact, as assigned by the JEC, is defined in the Job Evaluation Plan as: General public, visitors, and/or service representatives and vendors.

A level of 3.0 for External Contacts, Level of Regular, Recurring and Essential Contact, the level reflected in Grievant's PIQ and testimony is defined in the Job Evaluation Plan as:

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

Grievant testified that he should have been given a 3.0 for External Contacts. Grievant testified that his external contacts include alumni, and faculty of institutions outside the systems, and that he also deals a lot with students and the alumni association at the University. Ms. Crawford testified that this point factor looks at the contacts that a position has outside higher education and particularly focuses on those with little internal but with much external contact. She testified that Grievant's position has some contact with outside organizations, which are considered the general public, and therefore, a 2.0 was appropriate. Grievant failed to meet his burden of proof that a 2.0 was not appropriately assigned to this point factor.

For External Contacts, Nature of Contact, Grievant feels that a 2.0 should have been given to his position because it is non-controversial. Ms. Crawford testified that the position is a service activity and that a 1.0 is appropriate. Grievant has not proven that his job duties are at a degree level of 2.0.

9. Direct Supervision Exercised

Director Supervision Exercised is defined in the Job Evaluation Plan as:

This factor measures the job's degree of direct supervision exercised over others in terms of the level of subordinate jobs in the organization, the nature of the work performed, and the number supervised. Only the formal assignment of such responsibility should be considered; informal work relationships should not be considered. Supervision of student workers may be taken into account if they are essential to the daily operation of the unit. The number of subordinates should be reported in full-time equivalency (FTE) and not head count.

A level of 4.0 for Direct Supervision Exercised, Number of Direct Subordinates, as indicated on Grievant's PIQ, is defined in the Job Evaluation Plan as:

4-6.

A level of 6.0 for Direct Supervision Exercised, Number of Direct Subordinates as indicated by Grievant's testimony and assigned by the JEC, is defined in the Job Evaluation Plan as:

11 or more

A level of 4.0 for Direct Supervision Exercised, Level of Supervision, assigned to the Supervisor/Laborers position, is defined in the Job Evaluation Plan as:

Direct supervision over a unit of non-exempt employees or lead responsibility over a group of exempt employees. Most of the time is spent assigning, reviewing, and checking work or eliminating normal difficulties involving standard policies, procedures, or work practices. Input would be significant in subordinate employees' performance appraisal, hire or fire decisions.

A level of 5.0 for Direct Supervision Exercised, Level of Supervision, as indicated in Grievant's PIQ and Grievant's testimony is defined in the Job Evaluation Plan as:

Direct supervision over exempt employees (and non-exempt employees, if applicable). Responsible for results in terms of costs, methods, and personnel. In a position to hire/fire or strongly recommend such personnel actions.

Grievant testified that he currently has direct supervision of eight employees, and that as of January 1, 1994, he had direct supervision of nine employees. This factor measures the number of employees directly reporting to an individual. Grievant testified that he is responsible for the performance appraisals of 14 laborers and laborer leads, all nonexempt employees, [employees who receive overtime], that report to him. Grievant testified that a 6.0 was appropriate for the number of

direct subordinates and the JEC agreed with him. Ms. Crawford testified that in order to receive a 5.0 for Direct Supervision Exercised, Level of Supervision, an individual must supervise exempt employees and since Grievant supervised non-exempt employees, a 4.0 is appropriate. Grievant has not proven that the Direct Supervision Exercised, Level of Supervision, should be a 5.0.

10. Indirect Supervision Exercised

Indirect Supervision Exercised is defined in the Job Evaluation Plan as:

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

A level of 1.0 for Indirect Supervision Exercised, Number of Indirect

Subordinates in Line of Authority, as allotted to Supervisor/Laborers and as indicated in Grievant's testimony, is defined in the Job Evaluation Plan as:

None.

A level of 4.0 for Indirect Supervision Exercised, Number of Indirect

Subordinates in Line of Authority, as indicated in Grievant's PIQ, is defined in the Job Evaluation Plan as:

9-15. A level of 1.0 for Indirect Supervision Exercised, Level of Supervision as assigned to Supervisor/Laborers is defined in the Job Evaluation Plan as:

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

A level of 2.0 for Indirect Supervision Exercised, Level of Supervision as indicated in Grievant's PIQ, is defined in the Job Evaluation Plan as:

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

A level of 4.0 for Indirect Supervision Exercised, Level of Supervision as also indicated in

Grievant's PIQ is defined in the Job Evaluation Plan as:

Directs and coordinates the work of a unit or department, including direct supervision over personnel above the manager level, and indirect supervision over manager-level personnel, first-line supervisors, and non-supervisors who are under the position's line of authority.

Grievant testified that the level of supervision that he exercises is a 1.0. Teresa Crawford indicated that an individual cannot receive credit for indirect supervision unless the individual has supervisors working for them. Grievant has no supervisors working for him and therefore a 1.0 for level and a 1.0 for number was appropriate.

Grievant testified that he had no quarrel with the point factors allocated for his position under Physical Coordination, Working Conditions or Physical Demands. (Hearing Testimony).

C. Summary

Grievant has not proven that he should be classified as a Supervisor/Laborers at a Pay Grade 18. None of the levels that Grievant challenged should be changed. Therefore, the number of points allotted to the Supervisor/Laborers, 1,994, is appropriate.

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). 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. Jesson v. Bd. of Trustees, Docket No. 94-MBOD-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 401 (1994); Kyle v. W.Va. State Bd. of Rehabilitation, Docket No. VR-88-006 (Mar. 28, 1989).

4. In order to prevail on a claim that a classification and pay grade should have been created that would more closely fit the duties and responsibilities of a grievant, the grievant has the burden of proving an abuse of the broad discretion extended. See Pridemore v. West Va. Bureau of Employ. Programs, Docket No. 92-BEP-435 (Aug. 17, 1993); Compare AFSCME v. Civil Service Com'n of W.Va., 380 S.E.2d 43 (W.Va. 1989); Nida v. W.Va. Dept. of Health and Human Res./Div. of Health and W.Va. Dept. of Admin./Div of Personnel, Docket No. 93-HHR-240 (Aug. 20, 1993); Johnston v. W.Va. Dept. of Health and Human Res./Div. of Personnel, Docket No. 94-HHR-206 (June 15, 1995).

5. The Job Evaluation Committee's interpretation of the point factors assigned to Supervisor/Laborers, Pay Grade 15, is not clearly wrong.

6. Grievant failed to establish by a preponderance of the evidence that he should have been classified as Supervisor/Laborers, Pay Grade 18.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the circuit court of Kanawha County or in the circuit court of Monongalia County 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.

DATE: May 2, 1996

MARY BETH ANGOTTI-HARE

Administrative Law Judge

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.

[Footnote: 2](#) A grievant may challenge any combination of point factor degree levels, so long as he can clearly identify 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, West Virginia Univ.*, Docket No. 94-MBOT-1059 (Oct. 26, 1995); and *Zara, et al., v. Bd. of Trustees, West Virginia Univ.*, Docket No. 94-MBOT-817 (Dec. 12, 1995).

[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.

[Footnote: 4](#) These headings are shorthand for the following point factors: KN is Knowledge; EX is Experience; CPS is Complexity & Problem Solving; FA is Freedom of Action; SE, IA is Scope and Effect, Impact of Actions; SE, NA is Scope and Effect, Nature of Actions; BR is Breadth of Responsibility; IC, NC is 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 Contacts, Level of Regular, Recurring and Essential Contact; DSE, NU is Direct Supervision Exercised, Number of Direct Subordinates; DSE, LVL is Direct Supervision Exercised, Level of Supervision. 128 C.S.R. 62 §2.27, and 131 C.S.R. 62 §2.27 list the 13 point factors. See also, *Burke, supra*.

[Footnote: 5](#) No explanation or location was given for NASA, COMER and NCCR.