

**SHARON SKEENS,**

**Grievant,**

**v.**

**DOCKET NO. 94-MBOD-788**

**BOARD OF DIRECTORS/SOUTHERN  
WEST VIRGINIA COMMUNITY AND  
TECHNICAL COLLEGE,**

**Respondent.**

### **DECISION**

Grievant alleges she was misclassified effective January 1, 1994, in the "Mercer reclassification." [\(See footnote 1\)](#) Specifically, Grievant challenges her classification as a Human Resources Assistant III at a Pay Grade 14 and argues that she is entitled to classification as a Benefits Counselor I at a Pay Grade 15. She seeks as relief to be reclassified as requested effective January 1, 1994, with backpay to January 1, 1994. Grievant has also challenged the degree levels her Job Title received in several point factors. A Level IV hearing was held on April 10, 1996 [\(See footnote 2\)](#), and this matter became mature for decision on August 12, 1996, with receipt of Respondent's fact/law proposals. [\(See footnote 3\)](#)

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

### **Findings of Fact**

1. Grievant has been employed by Respondent since approximately 1984 in its Personnel Department. Prior to the Mercer Reclassification, her title was Benefits Officer/Payroll Clerk.
2. In 1991, all higher education classified employees were asked to complete a Position Information Questionnaire ("PIQ"), prior to implementation of the Mercer reclassification. Employees were asked to describe the duties, responsibilities and requirements for their positions on the PIQ by answering a series of questions. Grievant filled out a PIQ in 1991.

3. Grievant's daily duties and responsibilities involve the processing, dissemination and records maintenance of benefits and leave information for all employees of the college. She also maintains records and prepares reports related to employee payroll information. Grievant files Workers' Compensation and Unemployment Compensation claims for all employees, and she maintains and updates orientation materials and personnel manuals.

4. The Job Evaluation Committee ("JEC") determined that the Grievant should be classified as a Human Resource Assistant III at a Pay Grade of 14. This Job Title received the following degree levels in the thirteen point factors ([See footnote 4](#)): 5.0 in Knowledge; 4.0 in Experience; 2.5 in Complexity and Problem Solving; 3.0 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; 2.0 in Intrasystems Contacts, Nature of Contact; 3.0 in Intrasystems Contacts, Level; 2.0 in External Contacts, Nature; 3.0 in External Contacts, Level; 2.0 in Direct Supervision Exercised, Number; 3.5 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 3.0 in Physical Coordination; 2.0 in Working Conditions; and 1.0 in Physical Demands.

5. Common problems encountered by Grievant involve assisting employees in completing benefits claims forms, such as with insurance claims, and complying with applicable laws related to benefits and payroll issues. Research may be required in order to "pull together" applicable guidelines or policies, but the guidelines are usually well- established.

6. Grievant's work affects many aspects of benefits processing and payroll reporting within the department of Human Resources. Although her activities affect many college employees, they do not regularly affect the entire institution or its budget.

7. Grievant's normal duties are routine, such as processing leave requests, disseminating benefits information to new employees, preparing payroll and benefits reports, and processing insurance claims. Her decisions are governed by standardized procedures most of the time.

8. Formal accountability for the functional area of Human Resources is the responsibility of Grievant's supervisor, Director of Human Resources. Grievant is only accountable for her immediate work assignments.

9. Grievant's regular, recurring and essential contacts within the institution are with other employees and their supervisors regarding benefits and payroll information. The Director of Human Resources and the Vice President of Financial Affairs, both of whom have authority over Grievant,

are part of her immediate work unit.

10. Grievant has frequent and regular contacts with insurance company employees regarding the processing of employees' claims. She also regularly communicates with state agencies, such as the State Auditor's Office, the Workers' Compensation Division, the Public Employees' Insurance Agency, and Unemployment Compensation. These contacts usually involve exchange of information and clarification of procedures, and they do not appear to involve mid-level representatives of state government.

## **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, because the Mercer classification system does not use "whole job comparison." It is largely a "quantitative" system, in which the components of each job are evaluated using the point factor methodology developed by the JEC and adopted by the governing boards. Therefore, the focus in Mercer grievances for this Board is upon the point factors the grievant is challenging. [\(See footnote 5\)](#) 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 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. [\(See footnote 6\)](#)

#### B. Comparison of Grievant's Duties to Benefits Counselor I

In addition to the challenges to particular point factors, Grievant alleges that the appropriate Job Title for her position is Benefits Counselor I at a Pay Grade 15. In support of this argument, Grievant introduced into evidence the PIQ of Cheryl Ann Phillips (L IV, Gr. Ex. 3), who was classified as a Benefits Counselor I. Also at Level IV, Grievant's Exhibit 1 included the PIQ of an unidentified individual classified as a Benefits Counselor II, and a Generic Job Description describing the majority of duties performed by most people classified as Benefits Counselor I.

Grievant testified that she "advises" all employees of the college on benefits. However, her PIQ describes her job as requiring "compilation and maintenance of payroll and benefits records", and her chief responsibility is described as reviewing, interpreting and disseminating benefit information to all employees. The only "assistance" to employees described on the PIQ is in claims processing, and Grievant testified that the information in her PIQ was correct. Other duties listed by Grievant include maintaining earnings records, preparing reports and payment documents, completing paperwork related to benefits information, and compiling and maintaining leave and benefits records.

Review and comparison of the PIQs reveals one critical distinction between Grievant's duties and those of the Benefits Counselors. The essence of the Benefits Counselors' responsibilities pertain to counseling employees in making choices as to what type of health, retirement and financial benefits are best suited to the individual's personal circumstances. A Benefits Counselor is trained to be a professional advisor regarding such benefits. By comparison, however, the focus of Grievant's duties and responsibilities is upon assisting employees with the processing of benefits-related information once selections have been made. Although she disseminates benefits information, such as when

there is a program change, she does not appear to provide any actual advice to employees as to which programs they should choose.

Margaret Robinson, Chairperson for the JEC, testified at Level IV on behalf of Respondent. She explained that a Benefits Counselor is required to have a financial background in order to provide counseling and training to employees regarding how to make benefits choices. Ms. Robinson described Grievant's duties as involving information sharing and management, which she believed was extremely different from the role of a counselor. Similar testimony was provided by Patricia Hank, Grievant's supervisor and Director of Personnel for Respondent [\(See footnote 7\)](#), who did not believe Grievant's position could be appropriately described as Benefits Counselor. At this particular institution, Ms. Hank provides the initial explanation of benefits options to new employees, then completed forms are given to Grievant for processing. Ms. Hank also pointed out differences between Grievant's duties and those listed on the Generic Job Description for Benefits Counselor I. Grievant does not "counsel employees regarding all aspects of the health and life insurance programs, . . . [or] assist them [in choosing] additional benefits or chang[ing] existing benefits", which is the chief responsibility of the Benefits Counselor (Gr. Ex. 1). She also does not assist employees in "assessing personal benefits needs", and Ms. Hank stated that both of these types of counseling and assistance are performed by her during new employee orientation, not by Grievant.

In view of the evidence and testimony submitted at Level IV, Grievant did not prove by a preponderance of the evidence that she performs the duties and responsibilities of a Benefits Counselor I, rather than the job in which she was classified.

C. Application of the Point Factor Methodology

Grievant challenged the degree levels she received in the point factors Complexity and Problem Solving; Scope and Effect (both Nature and Impact); Breadth of Responsibility; Intrasystems Contacts, Level; and External Contacts, Level. A comparison of the degree levels assigned to the Job Titles of Human Resources Assistant III ("HRA III"), BenefitsCounselor I ("BC I"), and those Grievant claims she is entitled to in the challenged factors follows.

	SE	SE		IC	EC
	<u>CPS</u>	<u>IA</u>	<u>NA</u>	<u>BR</u>	<u>LVL</u>
HRA III	2.5	2.0	2.0	1.0	3.0

BC I	6.0	4.0	3.0	1.0	3.0	4.0
Grievant's argument	3.0	3.0	3.0	2.0	4.0	4.0

Each factor will be analyzed individually below.

1. 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 received a 2.5 degree level in this factor and argues that she is entitled to a 3.0. [\(See footnote 8\)](#) As Margaret Robinson explained in her testimony, the JEC often assigned "half levels" to a job which was not clearly one level or the other, but had characteristics of both. A degree level of 2.0 is defined in the Plan as:

Problems encountered require the employee to make basic decisions regarding what needs to be done, but the employee can usually choose among a few easily recognizable solutions. Established procedures and specific instructions are available for doing most work assignments, with some judgment required to interpret instructions or perform basic computation work such as in the comparison of numbers or facts.

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

Problems encountered can be somewhat complex and finding solutions to problems may require some resourcefulness and originality, but guides, methods and precedents are usually available. Diversified guidelines and procedures must be applied to some work assignments. Employee must exercise judgment to locate and select the most appropriate guidelines, references, and procedures for application, and adapt standard methods to fit variations in existing conditions.

Grievant's testimony on this point factor was very brief and rather vague, and she really did not explain why she felt entitled to a 3.0 degree level. On her PIQ, she had alleged she was entitled to a level 4.0, which describes problems encountered as "complex and varied", with general policies, procedures, and theories available as guidelines which may lack specificity or exact applicability to the situation. Grievant stated on her PIQ that the most common type of problems she encountered was in assisting employees in filing insurance claims, which would require coordinated effort by Grievant, the employee, and an insurance administrator or insurance company.

When testifying regarding other point factors, Grievant stated that the guidelines and policies she must follow are established, but sometimes they must be researched and put together in order to

decide what steps to follow in a given situation. Grievant also discussed on her PIQ a situation which occurred because of a legislative change in the Workers' Compensation law, and she had difficulty obtaining accurate information from state agencies in order to clarify the appropriate procedures. However, it appears that this was a one-time occurrence. The evidence supports the JEC's allocation of a 2.5 degree level to Grievant's position in this point factor. Although she does sometimes encounter problems to which the solutions are not always obvious, she can obtain solutions from specific sources, such as insurance companies, other agencies or research. The majority of Grievant's duties, which involve information dissemination and records-keeping activities, would appear to require very little problem-solving.

## 2. Breadth of Responsibility

The factor Breadth of Responsibility is defined in the 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 divisions would include: (1) Student Services-- Housing, Admissions, Financial Aid, Counseling; (2) Business and Finance-- Purchasing, Auditing, Grants and Contracts, Bursar.]

A degree level of 1.0 is defined in the Plan as "[a]ccountable for only immediate work assignments but not for a functional area." A 2.0 level is defined as:

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

Grievant's testimony reveals that, when she completed her PIQ, she was under the impression that she would be considered responsible for two functional areas, namely payroll and benefits. However, even after since learning that human resources would be considered one functional area, she maintained that she still perceived herself as having two functional areas due to her responsibilities for both payroll and leave information. The key to understanding the Breadth of Responsibility point factor is to focus upon who has ultimate responsibility for everything which goes on in a particular department or unit. See Burke, supra. Although Grievant performs functions regarding both leave and payroll within the human resources department, it is Ms. Hank who is accountable for all work performed within the department. Indeed, the definition itself refers to "formal and ongoing accountability." Grievant is accountable for her immediate work assignments, not a

functional area, and was properly assigned a 1.0 in this point factor.

### 3. 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.

There are two components to Scope and Effect, which are Impact of Actions and Nature of Actions, and Grievant challenged the degree levels her job received in both. The Human Resources Assistant III Job Title received a 2.0 degree level in both Impact and Nature, and Grievant argues she is entitled to a 3.0 level for each.

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.

Grievant argues that, because she handles benefits information and records for all employees of all campuses of the institution, her work affects the operations of the entire college. However, while benefits and payroll issues may have impact upon individual employees, it would simply be erroneous to describe them as impacting upon "the overall mission of the institution."

Ms. Robinson's testimony reiterates this conclusion; she did not perceive Grievant's duties as



affecting an entire school or campus. Her work affects her work unit and several major activities within one department. Ms. Robinson explained that only individuals whose work affects an entire institution received higher than a 2.0. Patricia Hank testified accordingly, stating that, if Grievant failed to prepare a particular benefit or payroll report, it would only affect the work unit, not the entire institution or the system. The evidence supports the JEC's assignment of a 2.0 degree level to Scope and Effect, Impact of Actions, to Grievant and to her Job Title.

As stated above, Grievant also challenged the degree level she received for Nature of Actions. A degree level of 2.0 in Nature of Actions is defined 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.

Grievant maintains that a 2.0 degree level is inappropriate for her position, because, although the policies she must follow are well-established, she sometimes must conduct research in order to put together a plan for following the appropriate procedure in a particular situation. The undersigned assumes that this statement was Grievant's attempt to demonstrate that she must make "non-routine" decisions "within established . . . guidelines and/or policies." However, Ms. Hank views Grievant's work as a "processing" function rather than a managing or controlling type of activity, which she stated was necessary for the higher degree level.

It would be inaccurate to describe Grievant's duties as "providing guidance" to the human resources unit, as required for a degree level of 3.0. Her duties fit appropriately within the level 2.0 description, because they "contribute to the accuracy, reliability, and acceptability" of all benefits and payroll services for the college. Grievant did not sufficiently explain how she must conduct research in order to determine proper procedures for filing claims for employees, and she has not demonstrated that her decisions are normally of a non-routine nature. Her position fits appropriately within the 2.0 level for Nature of Action.

#### 4. Intrasytems Contacts

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

[A]ppraises 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 point factor also has two features: Nature of Contact and Level of Regular, Recurring and Essential Contact. Grievant challenges only the 3.0 degree her job received for Level of Contact, arguing that she should have received a 4.0. A degree level of 3.0 is defined in the Plan as "[s]upervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office." A degree level of 4.0 in Level is defined in the Plan as "Deans or Directors in an institution or Assistant Directors in the Systems' Central Office."

Grievant's argument regarding this point factor is based chiefly upon the fact that she reports directly to Patricia Hank, who is the Director of Human Resources. However, the definition of Intrasystems Contacts specifically includes "only those contacts outside the job's immediate work area." Therefore, Grievant's constant dealings with her direct supervisor would not raise the degree level she received in this factor. Patricia Hank stated that most of Grievant's internal contacts are with other employees regarding leave, benefits, and payroll issues. However, she also regularly communicates with employees' supervisors, such as to verify leave an employee has taken, so Ms. Hank believed the level 3.0 Grievant received was appropriate.

Some rather confusing testimony was given both by Grievant and by Ms. Hank regarding Grievant's relationship with Aretha Baker, Vice President of Financial Affairs. Part of Grievant's duties relate to payroll, such as compiling reports, W-2 forms and other tax information. Grievant testified that she "sometimes reports to [Ms. Baker]." Conversely, Ms. Hank stated that Aretha Baker was not a supervisor of grievant, but she indicated that she and Ms. Baker work together closely on leave and payroll issues. Grievant's payroll- related work requires contact with Ms. Baker, who must sign all checks as Vice President of Financial Affairs.

Since a major portion of Grievant's duties relate to payroll, Ms. Baker's area of authority, and Ms. Hank and Ms. Baker must work closely together to accomplish their respective duties, it would seem that Ms. Baker could accurately be considered to be part of Grievant's "immediate work unit." Therefore, Grievant has not shown that the JEC was incorrect in assigning her position a 3.0 degree

level in this point factor.

## 5. 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 point factor is also divided into Nature of Contact and Level of Contact. As with Intrasystem Contacts, Grievant challenged only the degree level her job received for Level of Contact. She received a 3.0 and claims entitlement to a 4.0. 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.

A degree level of 4.0 in Level of Contact is defined in the Plan as "[m]id-level representatives of government agencies, professional contacts with other colleges and universities outside the systems."

In order to process employees' benefits claims, Grievant must frequently deal with PEIA (the Public Employees' Insurance Agency) and other insurance companies. She testified that her contact with PEIA is almost daily regarding completion of claims forms or changes in laws, policies, and specific plans. The people she deals with at these insurance agencies are normally administrators who have authority to make decisions and give approval regarding claims and related issues. These statements were supported by Ms. Hank's testimony, who also testified that these people would not be considered "mid-level" government representatives, because they are not in policy-making positions.

With regard to payroll issues, Grievant must contact the state auditor's office and the state tax department about one or two times per month. Her contact would be more frequent if there were a change in law or policy, and would usually be with a director or assistant director of a specific division of the agency (usually the payroll division). Nevertheless, Grievant testified that her contact with such persons would vary depending on the circumstances. Varying degrees of contact cannot be considered "regular, recurring and essential."

The evidence does not show that Grievant has regular contacts with "mid-level representatives of government agencies." Claims administrators for insurance agencies do not fit this description. As noted by Ms. Hank, none of the entities listed in the definition of degree level 3.0 for Level of Contact really "fit" the people with whom Grievant must communicate. However, if insurance were characterized as a "product", then the insurance administrators could be deemed "higher-level

product representatives," as set forth in the level 3.0 definition.

Considering the evidence presented and the arguments of the parties, the undersigned finds that Grievant has not established that the JEC acted arbitrarily and capriciously or was clearly wrong in assigning a 3.0 degree level to Grievant for Level of External Contact.

**D. Summary**

Grievant's duties and responsibilities consist of disseminating maintaining benefits, leave, and payroll information for employees of the college. She does not counsel employees as to what benefits they should choose, and she has not demonstrated that she is performing the duties of a Benefits Counselor.

The evidence does not establish that the JEC was clearly wrong or acted in an arbitrary and capricious manner in its assignment of point factors to Grievant's position as a Human Resources Assistant III. Grievant was appropriate classified in this Job Title at a Pay Grade of 14.

**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. Grievant does not perform the duties and responsibilities of a Benefits Counselor I, and the JEC did not err when it did not classify her position in that Job Title.

5. The JEC appropriately assigned half levels in certain point factors to positions which were performing significant portions of duties and responsibilities in two degree levels.

6. Grievant did not prove by a preponderance of the evidence that the JEC was clearly wrong or acted in an arbitrary and capricious manner in its application of the point factor methodology to her position as a Human Resources Assistant III. 7. Insurance company administrators may be considered "higher-level product representatives" as set forth in the Plan's definition of level 3.0 under the External Contacts point factor.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Logan 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.

**DATE: October 30, 1996** \_\_\_\_\_

**DENISE**

**MANNING**

**Administrative Law Judge**

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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](#)

*An Administrative Law Judge in this Board's Charleston office conducted the hearing; however, this grievance was subsequently assigned to the undersigned for administrative reasons.*

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[Footnote: 3](#)

*Grievant declined to submit written argument.*

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[Footnote: 4](#)

*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: 5](#)

*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: 6](#)

*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: 7](#)

*It should also be noted that Ms. Hank was a member of the JEC when the Mercer project was begun, giving her a particularly qualified understanding of the classification system.*

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[Footnote: 8](#)

*Although the Benefits Counselor I Job Title received a much higher degree level for this point factor, 6.0, Grievant did not argue at Level IV that she was entitled to a similar level. It should also be noted that a 6.0 is the highest degree level one can receive in this point factor.*