

JAMES FLENNIKEN, et al.,

v.

DOCKET NO. 94-MBOT-1020

BOARD OF TRUSTEES,

WEST VIRGINIA UNIVERSITY

DECISION

Grievants James Flenniken, Dana Skidmore [\(See footnote 1\)](#), Edward Hriblan, Kermit Brewer, and William Livengood each allege he was misclassified effective January 1, 1994, in the "Mercer reclassification" [\(See footnote 2\)](#). Each Grievant seeks to be classified as a Purchasing Assistant II, Pay Grade 12, effective January 1, 1994, and backpay to January 1, 1994. Grievants also challenged the degree levels received in several point factors. Three days of hearing at Level IV were held on August 14, August 21, and December 15, 1995. This matter became mature for decision on January 18, 1996, with receipt of Respondent's proposed findings of fact and conclusions of law. [\(See footnote 3\)](#)

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

Findings of Fact.

1. Grievants Flenniken, Brewer, Hriblan and Skidmore 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. Grievant Livengood is employed in the Mountainlair at WVU, a student cafeteria and in-house catering service.
3. 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. With the exception of Grievant Flenniken, each Grievant filled out a PIQ in 1991. Grievant Flenniken was not a higher education employee in 1991, but signed a PIQ

February 10, 1992. The PIQ's of Grievants Flenniken, Skidmore, Hriblan and Brewer are identical.

4. Grievant Livengood was classified in the Mercer reclassification as a Purchasing/Inventory Technician, Pay Grade 11, effective January 1, 1994. The remaining Grievants were classified in the Mercer reclassification as Materials Handlers, Pay Grade 7, effective January 1, 1994.

5. Grievant Livengood's primary job duties prior to January 1, 1994, were purchasing related. He received requisitions from the catering supervisor, and checked the computerized inventory for availability of the items needed. He also used the computer for menu making. He also decided what needed to be ordered working from a menu. If an item was not on hand, he purchased the item in accordance with state purchasing regulations. Eighty percent of the items purchased were on state contract and were obtained through it. He contacted different vendors for pricing of items not on contract, and determined the lowest bid for items. If the item was over \$5000, Grievant Livengood went through the purchasing department to acquire it. He wrote the specifications for items to be procured by contract. He checked deliveries to verify the quantity delivered was what was ordered and inspected the quality of products. He did inventory once a month, and ensured that food storage areas were maintained in a sanitary condition.

6. Prior to January 1, 1994, Grievants Flenniken, Brewer, Hriblan and Skidmore all performed the same job duties. Grievant Flenniken, however, spent most of his time on the computer and on the telephone talking to vendors. Their primary job duties were processing requests for PRT parts used in maintenance and improvement. Grievants searched out the previous order on the computer database to determine the vendor used in the past, and then contacted that vendor, and sometimes others, for price information. Grievants determined the reorder quantity from computerized annual usage information. They searched for scarce parts. Grievants received the vendor's copy of the purchase order for local vendors only, and would take it to the vendor and pick up the parts. They handled the paperwork on the four or five PRT service contracts on a regular basis, after the PRT engineers wrote up the contracts and specifications and told Grievants who to contact. Grievants verified that the materials ordered were received, checking the amount received against the amount and item ordered, and verifying that it met specifications. They recorded receipt of goods in the credit voucher book and on the computer, and assigned a control number, and participated in inventory everyday. Grievants also assisted in budgeting and prepared materials for shipment, including hazardous materials.

7. Purchasing Assistant II's are located in a central purchasing department and deal with purchasing items and information throughout WVU, rather than just one department. They contact vendors for pricing information; verify that materials ordered are received, checking the quantity and quality of the materials; may assist in conducting inventory; maintain computerized information on purchases; encumber documents; help to educate departments on the purchasing process; are assistants to the Purchasing Agents who work on contracts, making sure the forms submitted by the departments are accurate; assist in preparing contract forms which go to the attorney general's office for approval; prepare, type, and set up "Form 48" independent contractor construction agreements; ensure that state purchasing regulations are being followed; and may be a support person to the professionals who deal with the bidding process, preparing quotations, making sure they go out according to procedure, that the proper notifications are going out, and keeping track of the bid opening dates and the bids which come in. They must have knowledge of applicable purchasing regulations, good written and oral communications skills, good mathematical skills and the ability to use computer software packages including word processors and data bases.

8. Prior to his employment in his present position, Grievant Brewer worked in various other jobs for over 18 years.

9. Prior to his employment in his present position, Grievant Hriblan worked nine years in various other jobs.

10. All Grievants have high school degrees, but except for Grievant Flenniken, none of them has formal educational training beyond high school. Grievant Flenniken received six months of computer programming schooling, and attended eight months of steam engineering school with the U.S. Maritime Service.

11. There are three shifts at the PRT. Grievants' supervisor works 8:00 a.m. to 4:00 p.m., while Grievants work other shifts, and their supervisor is not on call. In an emergency, Grievants make decisions such as whether to authorize special shipment of parts, and keep their supervisor informed of the decisions they have made.

12. The Materials Handler Grievants' supervisor from time to time assigns a task, and they must decide how and when to do the task, and tell their supervisor when the task is completed. They resolve conflicts on inventory, and coordinate their work. Ninety percent of the time they solve problems encountered on their own, and ten percent of the time they must go to their supervisor or a

PRT engineer. Their supervisor closely checks their work.

13. The Materials Handlers have intrasystems contacts with PRT personnel, faculty and staff, and a manager regarding shipment of the hazardous materials, which occurs on a monthly basis.

14. Grievant Livengood communicates weekly with the supervisor at Food Services and Housing about whether that department is experiencing problems with vendors and products, for example, supervisors at Student Organizations and Placement, the supervisor at the Athletic Department regarding any problems with the quality of the food and the catering service, the motorpool, the business office, and employees within the immediate department.

15. The Catering Sales Representative at the Mountainlair is the official contact with all departments requesting catering services. She passes menu and special request information on to the Catering Manager.

16. The Materials Handler Job Title received 1277 total points from the following degree levels in each of the thirteen point factors [\(See footnote 4\)](#): in 3.0 Knowledge; 1.0 in Experience; 1.5 in Complexity and Problem Solving; 1.5 in Freedom of Action; 1.0 in Scope and Effect, Impact of Actions; 1.0 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; 2.0 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; 3.0 in Working Conditions; and 4.0 in Physical Demands. R Exs 2 and 3. [\(See footnote 5\)](#)

17. The Purchasing/Inventory Technician Job Title received 1605 total points from the following degree levels in the point factors: 3.0 in Knowledge; 3.0 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; 2.0 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; 3.0 in Working Conditions; and 4.0 in Physical Demands. R Ex 2.

18. The point range for a Pay Grade 9 is from 1395 points to 1474 points. R Ex 3.

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. [\(See footnote 6\)](#) 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. [\(See footnote 7\)](#)

B. Comparison of Grievants' Duties to Purchasing Assistant II

The Generic Job Description for Purchasing Assistant II (Gr Ex 1) is as follows:

PURCHASING ASSISTANT II

General Function: Prepares requisitions and maintains records on supplies and materials.

Characteristic Duties and Responsibilities:

- . Analyzes departmental requests for supplies and determines amount to order and vendors to contact.
- . Prepares for approval procurement contract, invitation for bids, or proposals in final form for prescribed materials, supplies, and/or services.
- . Assists in determining method of procurement such as direct purchase or bid.
- . Contacts outside vendors to secure pricing and availability of requested articles.
- . Verifies that purchased materials are received and that both quantitative and qualitative specifications are met.
- . Maintains computerized procurement information, such as items or services purchased, cost, product quality or performance, etc.
- . May assist in conducting periodic inventories.

Job Specifications:

Knowledge/Skills/Abilities:

Knowledge of applicable purchasing regulations.

Good written and oral communications skills.

Good mathematical skills.

Ability to use computer software packages including word processors and data bases.

The knowledge, skills, and abilities listed above are typically acquired through the following levels of education and experience. However, any equivalent combination of education and/or experience is acceptable which provides an applicant the listed knowledge, skills, and abilities and the capability to perform the essential functions of the job.

Education:

Business, technical or vocational school education of up to 18 months beyond high school.

Experience:

Two years of related experience.

Licensure:

None.

Grievant Livengood is a 29 year employee, and has been in his present position eight years. He worked in receiving prior to being placed in his present position. He described his main function as purchasing prior to January 1, 1994. He stated that he "analyzes departmental requests for supplies" everyday, without any direction, and "determines the amount to order". Every morning he checks his

mailbox for new requisitions from the catering supervisor, and checks the computerized inventory for availability of the items needed. He also uses the computer for menu making. If an item is not on hand, he purchases the item. He has to be familiar with purchasing regulations, and must adhere to them. He has to know what items are on state contract. If an item is on state contract, as are 80% of the items purchased, he obtains the product from the state contract. If not, he contacts different vendors for pricing, and determines the lowest bid for items. He has no input on items which are on state contract. He has written and oral communication with vendors on a regular basis.

If the item is over \$5000, Grievant Livengood has to go through the purchasing department to acquire it. He writes the specifications for items to be procured by contract. He does not prepare requisitions, but pointed out that the persons preparing requisitions are not Purchasing Assistant II's.

Deliveries arrive throughout the day, and Grievant Livengood checks deliveries to verify the quantity delivered is what was ordered and inspects the quality of product. A secretary enters information into the computer. He does inventory once a month. He has an assistant who helps him with some duties.

The Materials Handler Grievants admitted they perform all the duties listed in the Generic Job Description for Materials Handler [\(See footnote 8\)](#), but also asserted they perform virtually all the duties listed in the Generic Job Description for Purchasing Assistant II.

They stated they analyze departmental requests for supplies every day for the PRT. A request for supplies is initiated by the person needing the part, approved by his supervisor, who decides the volume to order initially, and then it would go to Grievants for processing. If the item has been ordered before, Grievants search out the previous order to determine the vendor used in the past, and then contact that vendor for price information. If the price has gone up since the last order, they might get "telephone bids" from other vendors. Grievants deal with 560 vendors, which are listed on a computer database. The computer shows the annual usage, and Grievants determine the quantity to order from this information. The items purchased are parts used in PRT maintenance and improvement, from the module itself to a transistor. They search for scarce parts. Grievants do not negotiate contract terms and conditions.

If the purchase is under \$1,000.00, another PRT employee types the Departmental Purchase Order, and it is then returned to Grievants with a copy sent to the vendor by the person typing the purchase order. Grievants sign purchase orders indicating they have reviewed them, but they do not

have signature authority. They review and sign five to twenty-five purchase orders per day. If a local vendor is used, Grievants receive the vendor's copy, take it to the vendor and pick up the part. If the purchase is over \$1,000.00, the purchasing department at WVU prepares the purchase order. Grievants sometimes submit the names of three preferred bidders to purchasing. Grievants contact the vendors and obtain prices, and this information is then submitted to the business manager who makes the decision on the low bidder and best product.

Grievants do not prepare procurement contracts or requests for proposals. They do handle the paperwork on service contracts on a regular basis, after the PRT engineers write up the contract and specifications and tell Grievants who to contact. There are four or five service contracts covering transformers and circuit breakers.

Grievants verify that the materials ordered are received. They check the amount received against the amount and item ordered, and verify that it meets specifications. They record receipt of goods in the credit voucher book and on the computer, and assign a control number. They do not approve payment. They participate in inventory everyday. Grievants also assist in budgeting and they prepare materials for shipment, including hazardous materials.

Teresa Crawford, Senior Compensation Analyst, Department of Human Resources, WVU testified on behalf of Respondent. She has held this position since Fall 1992, and prior to that, had been in the classification and compensation unit since May of 1984. She is a certified compensation professional. She was not a voting member of the JEC.

Ms. Crawford explained that a Purchasing Assistant II deals with items and information from throughout WVU, whereas Grievant Livengood's responsibility is limited to food items for the Mountainlair. WVU has three Purchasing Assistant II's. All three positions are in the central purchasing department. They encumber documents; help to educate departments on the purchasing process; deal with contracts which are coming through and are assistants to the Purchasing Agents who work on the contracts making sure the forms submitted by the departments are accurate; assist in preparing contract forms which go to the attorney general's office for approval; prepare, type and set up "Form 48" independent contractor construction agreements; and have to be familiar with this process and ensure that state purchasing regulations are being followed. They are office type positions, providing high level secretarial support and low level technical support. The third Purchasing Assistant II at WVU is the support person to the professionals who deal with the bidding

process, preparing quotations, making sure they go out according to procedure, that the proper notifications are going out, and keeping track of the bid opening dates and the bids which come in.

Ms. Crawford agreed that the primary purpose of Grievant Livengood's position is the purchasing of food items. He works with a Purchasing Agent to obtain the food items needed. Ms. Crawford opined that the duties and responsibilities of the Materials Handler Grievants were similar to other Materials Handlers throughout the West Virginia higher education system.

A comparison of Grievants' job duties to the Characteristic Duties and Responsibilities found in the Generic Job Description for Purchasing Assistant II show that Grievants do in fact perform most of the same duties. None of the Grievants "prepares for approval procurement contract, invitation for bids, or proposals in final form for prescribed materials", however, Ms. Crawford's testimony indicates this is not a necessary part of the job. Although the Generic Job Description does not make this clear, Ms. Crawford's testimony was also that a Purchasing Assistant II must be in the Purchasing Department, and would basically check Grievants' work, as well as that of other persons performing the same work as Grievants in all other departments at WVU, and would be a resource person to Grievants if they had questions about purchasing regulations. Based upon the Generic Job Description and the testimony of Ms. Crawford, the undersigned also concludes that a Purchasing Assistant II may perform the same duties as Grievants.

The undersigned finds that there is enough distinction between Grievants' jobs and that of a Purchasing Assistant II, that the JEC decision that Grievants should not have the same Job Title as persons working in the purchasing department is not clearly wrong or arbitrary and capricious. However, there is not enough distinction between the two jobs to justify a difference of five pay grades between the Materials Handler Job Title [\(See footnote 9\)](#) and the Purchasing Assistant II Job Title. Whether a difference of one pay grade is justified for Grievant Livengood will be addressed through an analysis of the point factors.

C. Application of the Point Factor Methodology

Grievant Livengood challenges the degree level he received in the point factors Experience and Intrasytems Contacts/Level of Regular, Recurring and Essential Contact. The remaining Grievants challenge the degree levels received in the point factors Knowledge, Experience, Complexity and Problem Solving, Freedom of Action, Scope and Effect/Nature of Actions and Impact of Actions, and Intrasytems Contacts/Level of Regular, Recurring and Essential Contact. Following are the

differences between the degree level assigned the point factors for the Materials Handler Job Title, the Purchasing/Inventory Technician Job Title, the Purchasing 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>(See footnote 10)</u>														
	<u>KN</u>	<u>EX</u>	<u>CPS</u>	<u>FA</u>	<u>IA</u>	<u>NA</u>	<u>LVL</u>	<u>WC</u>	<u>PD</u>																	
Materials Handler	3	1	1.5	1.5	1	1	2	3	4																	
Purch/Inv Tech	3	3	2.5	2.5	2	2	2	3	4																	
Purchasing Asst. II	4	4	2.5	2.5	2	2.5	2	2	3	2	1															
Livengood Argument	3	4					3	3	4																	
Remaining Grievants'																										
Argument	4	4	5	2.5	2	2	3	3	4																	

R Ex 2. Each of the point factors challenged by Grievants will be addressed separately below. [\(See footnote 11\)](#)

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 3.0, as received by Grievants, is defined in the 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, as assigned to Purchasing Assistant II and sought by the Materials Handler 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.

The Materials Handler Grievants felt that three areas of their jobs in particular required more than a high school education. First, Grievants must prepare hazardous materials for shipment and arrange

for their shipment. These materials are subject to shipping and packaging regulations. Second, the PRT is totally computerized and Grievants must use the computer in their jobs. Third, Grievants have to be familiar with the parts on the PRT, such as transistors, capacitors, resistors, electronic equipment and hydraulics, so they can talk to vendors and make sure they are getting the right part. The PRT was built by Boeing in the 1970's, to experiment in relieving traffic, and the parts used were aircraft parts. Ms. Crawford explained that in deciding the degree level assigned to the Knowledge point factor, the JEC obtained information from the PIQs, from supervisors, and used as references books prepared by the Department of Labor, advertisements, and college catalogs. The Knowledge point factor represents the entry level or minimum level necessary to be able to perform the job after a normal period of on-the-job training. Ms. Crawford stated that a person with a high school degree would be able to acquire the necessary knowledge and abilities to perform the types of duties and responsibilities of the Grievants' positions through on- the-job training. Computer training on the systems in place would be included in on-the-job training. Grievants acknowledged that keyboarding is now taught, and students use computers, as part of obtaining a high school education.

The Generic Job Description for Purchasing Assistant II lists four areas of knowledge, skills and abilities, and states they are typically acquired through post-high school education obtained in 18 months or less. Of those areas, obviously Grievants must possess "[k]nowledge of applicable purchasing regulations", although not in the same detail as a Purchasing Assistant II, who is assisting Grievants and employees in all departments with questions. Grievants must possess "written and oral communications skills" to effectively communicate to vendors and salesmen the service and product needed, although they may not have to be as "good" as those of a Purchasing Assistant II since Grievants are not preparing contracts or requests for proposals in final form. Grievants must possess "mathematical skills". No evidence was presented that the mathematical skills utilized both by the Purchasing Assistant II and Grievants would be anything more than basic math skills which could be acquired through a high school education. Finally, Grievants must possess the "[a]bility to use computer software packages including word processors and data bases". As Ms. Crawford pointed out, this skill would be acquired in high school and through on-the-job training. There is some difference in the knowledge level needed by a Purchasing Assistant II and that needed by Grievants.

With the exception of Grievant Flenniken, none of the Grievants has had any formal education beyond high school, yet all are apparently able to perform the duties of the job. While Grievant

Flenniken's post-high school education would have helped him to learn his job more quickly, his particular training could not be considered a prerequisite to performing the job duties. Grievants failed to prove they should have received a degree level of 4.0 in this point factor.

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.)

Grievant Livengood received a degree level of 3.0 in this point factor, which is defined by the Plan as, "[o]ver one year and up to two years of experience." The other Grievants received a 1.0 in this point factor, which is defined as "[n]o experience or up to six months of experience." All Grievants believe they should have received a degree level of 4.0, as did the Purchasing Assistant II Job Title. A degree level of 4.0 is defined in the Plan as, "[o]ver two years and up to three years of experience." A degree level of 2.0 is defined in the Plan as "[o]ver six and up to twelve months of experience".

The PIQ's for the Materials Handler Grievants state that over one year of experience is required in procurement, supply procedures, storage procedures, packing and shipping procedures, procedures for handling, storage and shipping of hazardous materials, driving vehicles, and operating fork lifts, small cranes and hoists. Grievants stated that experience was necessary to be familiar with electronic parts, to be able to effectively deal with vendors, to become familiar with state purchasing regulations, and to input data into the computer. They believed a person with no work experience could perform some duties of their position, for example, stocking shelves and looking up parts in a book. They presented no evidence to support their opinion that over two years' experience was necessary.

Grievant Livengood stated that experience was necessary to understand all the state regulations and guidelines for purchasing, and to be able to effectively deal with vendors. His PIQ also notes over two years' experience in a high volume, multi-purpose food service operation, specifically in the area of food procurement would be desirable. All of the Grievants had many years of various types of experience prior to entering into their present positions.

Ms. Crawford 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

explained that in evaluating this point factor for Grievant Livengood's position, the decision would have been based on consistency with other Job Titles. In Ms. Crawford's opinion, an individual who had been involved with a food service operation one or two years would have acquired the skills and knowledge to assume the responsibilities of the position. Ms. Crawford simply stated her opinion that a degree level of 1.0 was correctly assigned the Materials Handler Job Title.

Finally, the knowledge, skills and abilities needed by a Purchasing Assistant II would apparently require some experience in purchasing to obtain "knowledge of applicable purchasing regulations", and some experience may be necessary to the development of "good written and oral communications skills." As noted above, Grievants must also have a lesser knowledge of purchasing regulations and written and oral communications skills. The remaining two areas of knowledge, skills and abilities should be acquired through a high school education or the additional 18 months of formal education beyond high school.

"As noted by this Grievance Board in Zara v. Bd. of Trustees, Docket No. 94-MBOT-817 (Dec. 12, 1995), the minimum amount of experience required to perform the essential duties of a position represents a subjective determination regarding which reasonable people may reach different conclusions." Jones, et al., v. Bd. of Trustees, Docket No. 94-MBOT-978 (Feb. 29, 1996). The best evidence in this case of the best fit for Grievants is a simple comparison of the duties and experience requirements of the three positions of record. The Materials Handler Grievants have proven the knowledge, skills and abilities needed to perform their duties are sufficiently similar to those of the Purchasing Assistant II Job Title that some experience would be necessary to performance of the job. Neither they nor Grievant Livengood have proven they should have received the same degree level as the Purchasing Assistant II Job Title. The undersigned concludes that the knowledge of purchasing regulations and written and oral communications skills needed by the Materials Handlers to communicate with vendors is identical to those needed by Grievant Livengood's position. One difference between Grievant Livengood's job and the other Grievants' jobs is that Grievant Livengood must also have sufficient experience to take a menu and decide how much of each food product to order, whereas the Materials Handler Grievants do not decide how much of the product to order. Someone else makes the initial decision, and from that point Grievants reorder based upon annual usage. Accordingly, Grievants have not proven they should have received the same degree level as Grievant Livengood's Job Title. The Materials Handler Grievants have proven they should have

received a degree level of 2.0 in Experience.

3. Complexity and Problem Solving

The Materials Handler Grievants received a degree level of 1.5 in Complexity and Problem Solving. They argued they should have received a degree level of 5.0. Grievant Livengood's Job Title received a degree level of 2.5 in this point factor, as did the Purchasing Assistant II Job Title, and he did not challenge the degree level received in this point factor.

The 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.

The 1.5 and 2.5 degree levels are not defined by the Plan. Ms. Crawford explained that the JEC assigned a "half level" when the job duties and responsibilities did not clearly fit in one degree level or the other. When a 1.5 was assigned, for example, the duties did not clearly fit within a 2.0, but were greater than a 1.0. Ms. Crawford stated the JEC assigned half levels only in certain point factors.

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

Routine problems are encountered involving simple solutions. Simple, standardized instructions (usually oral) covering all important aspects of the assignment are provided to the employee. Very little judgment is required by the position. Tasks are clear-cut and procedures well defined.

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.

A degree level of 5.0 is defined in the Plan as:

Problems encountered involve unusual circumstances, variations in approach, and incomplete or conflicting data. Employees exercise considerable analytical, valiative

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.

In addition to the evidence of their duties and responsibilities, the Materials Handler Grievants stated they encounter unusual circumstances regularly, although not every day. As an example, a roll pin was needed for the PRT. There were none on hand, but they were on order and were in New Jersey. Grievants' supervisor was not around to make a decision, so Grievant Flenniken authorized shipment of 400 roll pins by UPS so they had them the next day. In an emergency when their supervisor is not around, Grievants make these decisions and keep their supervisor informed of the decisions they have made. Grievants also look at the practices employed in performing their jobs, and try to determine the effectiveness of them. As an example, Grievant Flenniken changed the way pipe was listed in the inventory so the pipe size needed was easier to find, and then informed his supervisor he had done this. He has also changed the codes on the computer to try to make them uniform.

Ms. Crawford testified that higher level office support positions and lower level technical positions would fall within the 2.0 to 3.0 degree levels. She did not state that Grievants were not in higher level office support or lower level technical positions, or explain why Grievants would not fall within those categories. She stated that the persons performing maintenance on the vehicles used on the PRT received a 2.5, but did not elaborate on the duties performed which place them within this degree level.

Grievants' job duties clearly do not fall within the definition of the 5.0 degree level. It is difficult to determine whether Grievants are making "simple" decisions (degree level 1.0), or "basic" decisions (degree level 2.0). However, the last sentence of level 2.0 accurately and clearly describes Grievants' work, whether they are checking the quantity and quality of a shipment, or obtaining and comparing pricing information from vendors. In performing their duties, Grievants are "perform[ing] basic computation work such as in the comparison of numbers or facts." Accordingly, the best fit for Grievants is the definition of the 2.0 degree level. Grievants have proven that the JEC's application of this point factor to their Job Title was clearly wrong.

4. 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.

The Materials Handler Grievants received a degree level of 1.5 in this point factor. They believe they should have received a degree level of 2.5, as did Grievant Livengood's Job Title, and the Purchasing Assistant II Job Title. Grievant Livengood is not challenging the degree level received in this point factor.

Again, the 1.5 and 2.5 degree levels are not defined in the Plan. A degree level of 1.0 is defined in the Plan as:

Tasks are substantially structured with the employee receiving clear, detailed and specific instructions from the immediate supervisor or where tasks are so highly routine that they simply require following standardized instructions or procedures without ongoing, on-site supervision. The work is checked for accuracy, adequacy, and adherence to instructions and established procedures by the supervisor or through established monitoring systems. The employee consults with the supervisor on matters not covered in the original instructions or guidelines.

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.

Ms. Crawford stated that Freedom of Action is not a measure of whether the supervisor stands over the employee all the time. Rather, in applying this point factor, the JEC looked for set procedures which must be adhered to and whether similar duties and responsibilities are performed each day. She explained that a level of 3.0 or 3.5 was normally given to professional level exempt positions, and a degree level of 5.0 was typically assigned to positions which would be reviewing policies and procedures for effectiveness, and developing new procedures and policies. Ms. Crawford noted that the Manager of Inventory Control at WVU received a degree level of 4.5, and the Manager of Procurement Operations at WVU received a 5.5. Technical positions, para- professional positions, and high level office support positions, for example, would have received a degree level of 2.0 to 3.0.

The mechanics on the PRT received a 2.5. They would be expected to plan and carry out their own work assignments on a regular basis, but they are not working from objectives set by the supervisor. They may still be receiving daily assignments, similar to the work order system the PRT and physical plant have, but once they receive the work order, they are responsible for determining how they will complete the work order. For example, the supervisor is not setting an objective like evaluate this process in three months and make recommendations.

The Materials Handler Grievants have proven their duties and responsibilities do not fall within a degree level of 1.0. Grievants do not perform the same job over and over, nor does their supervisor tell them what to do each day and exactly how to do it. Their job duties each day are determined based upon what purchase requests are made and what shipments come in. They must research information on the computer and compare the information they receive. Their jobs are structured by standard operating procedures, purchasing regulations and guidelines. Their supervisor is not always available to answer questions, and they are occasionally called upon to make decisions on their own, subject to their supervisor's subsequent approval. Grievants have proven that the JEC erred in assigning them a degree level of 1.5, and that their duties fall within a degree level of 2.0.

Grievants have not proven they should have received a degree level of 2.5. Their jobs primarily involve a comparison of information. Grievants decide based upon these comparisons whether other vendors should be called, and whether items received are the items ordered and what should be done if they are not. These types of decisions are sufficiently distinguishable from the decisions Grievant Livengood makes about the quantity and quality of food products to order to explain a difference in this point factor.

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. The Materials Handlers received a degree level of 1.0 in both Impact of Actions and Nature of Actions. Grievants believe they should have received a degree level of 2.0 in both parts, as did Grievant Livengood and the Purchasing Assistant II Job Title.

A degree level of 1.0 in Impact of Actions is defined in the Plan as:

Work is limited to immediate work function and short-term situations. 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 1.0 in Nature of Actions is defined in the Plan as:

Work provides limited or routine support-type services to others in a timely manner. Decisions are infrequent and errors could result in minor inconveniences and costs within the affected area.

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.

Grievants stated their actions have an impact on the safety of the students, faculty and other members of the public riding on the PRT, and also noted the importance of keeping the system operating 24 hours a day, six and a half days a week. Their role is to order and disburse the right part.

Ms. Crawford explained that Scope and Effect evaluates the impact the duties and responsibilities performed by a position have on the state college and university system. In applying this point factor, the JEC did not look at the consequences of an employee making a mistake, but looked at how far reaching the impact of normal day to day decisions and duties would be. She stated Nature of Actions looks at the types of decisions being made, whether a service is being provided, whether the person is performing onestep in a process which will then impact another person, whether professional guidance is being provided, whether the person is ensuring the effectiveness of the overall operation, and whether the person is planning and developing the operation.

Ms. Crawford stated that professional level positions which are providing guidance to other

departments or persons outside their immediate work area are the types of positions which received a degree level of 3.0. Ms. Crawford's position, for example, received a 3.0. Positions which are part of a process, such as secretarial or technical support, received a degree level of 2.0. This position was not making the final decisions or providing guidance, but the job duties had an effect on the overall process. A level of 1.0 was assigned to support type services, that is, the job provided a service in support of other operations. Ms. Crawford stated that Grievants were providing support type services to the operation of maintaining the vehicles. Mechanics at the PRT received a 2.0. Ms. Crawford pointed out that Grievant Flenniken's work on the computer might put him in a higher degree level.

Many of the terms in the definitions of the degree levels have a particular meaning within higher education, and require the JEC's interpretation. Ms. Crawford's explanation of the application of this point factor is consistent with the definition of Scope and Effect. However, Grievants assure the necessary parts are ordered for the PRT, which provides what has become necessary transportation services between campuses at WVU. Grievant Livengood assures the necessary food items are ordered for the Mountainlair, which provides meals to students, faculty, staff and others. The undersigned cannot find a distinction between these two jobs which would account for the differences in degree levels in these two Job Titles in this point factor, and Ms. Crawford offered no explanation. Accordingly, the undersigned finds that the JEC application of this point factor to the Materials Handler Grievants was arbitrary and capricious, and they should have received the same degree levels as Grievant Livengood's Job Title, a 2.0 in Nature of Actions and a 2.0 in Impact of Actions.

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 not challenging the degree level received in Nature of Contact. All Grievants are challenging the degree level received in Level of Regular, Recurring and Essential Contact. Grievants believe they should have received a degree level of 3.0 in Level of Contact, as did the Purchasing Assistant II Job Title, rather than a 2.0.

A degree level of 2.0 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.

Ms. Crawford explained that in applying this point factor, the contact must be essential to performing the duties and responsibilities of the position, and must occur on a regular and recurring basis. This would not include casual contact. Ms. Crawford testified that the Catering Sales Representative is the primary contact with persons needing catering services, not Grievant Livengood, and his contacts with this person are not essential to the performance of his duties.

Grievants have not proven the JEC erred in assigning their Job Titles a degree level of 2.0 in this point factor. The Materials Handler Grievants have very limited contact at the 3.0 degree level with a manager regarding shipment of hazardous materials. While this contact is essential to performance of their duties, it is not representative of their contacts on a daily basis, and it occurs so infrequently that the JEC was not in error to find that this was not regular and recurring contact. Grievant Livengood's contacts with persons at the 3.0 degree level, while no doubt helpful, are not essential to performance of his duties.

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 Purchasing Assistant II's. Grievant Livengood failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning the degree levels to the point factors for his Job Title of Purchasing/Inventory Technician. The Materials Handler Grievants further failed to prove that the degree levels assigned to their Job Titles in the point factors Knowledge and Intrasystems Contacts were clearly wrong or were assigned in an arbitrary and capricious manner by the JEC. The Materials Handler Grievants proved they should have received a degree level of 2.0 in Experience rather than a 1.0; a degree level of 2.0 in Complexity and Problem Solving rather than a 1.5; a degree level of 2.0 in Freedom of Action rather than a 1.5; and a degree level of 2.0 in Scope and Effect, Nature of Actions, and a 2.0 in Scope and Effect, Impact of Actions rather than a 1.0 and 1.0. These changes to the Materials Handler data line add 179 points to the previous total of 1277 points, bringing the total to 1456 points, which places the Materials Handler Grievants in a Pay Grade 9. R Ex 3. [\(See footnote 12\)](#)

The foregoing Discussion will be supplemented by the following Conclusions of Law.

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 Purchasing Assistant II's, Pay Grade 12, is not clearly wrong or arbitrary and capricious.
5. The Job Evaluation Committee's assignment of degree levels in each of the point factors to the Job Title Purchasing/Inventory Technician, Pay Grade 11 is not clearly wrong or arbitrary and capricious.
6. The Job Evaluation Committee's assignment of degree levels to the point factors Experience, Complexity and Problem Solving, and Freedom of Action for the Job Title Materials Handler was clearly wrong.
7. The Job Evaluation Committee's assignment of degree levels to the point factor Scope and Effect, Nature of Actions and Impact of Actions for the Job Title Materials Handler was arbitrary and capricious.
8. The Materials Handler Job Title is in a Pay Grade 9.

Accordingly, this grievance is **DENIED IN PART AND GRANTED IN PART**. Respondent is **ORDERED** to make adjustments to the data line for the Materials Handler Job Title consistent with this **DECISION**, effective January 1, 1994, and to pay Grievants Flenniken, Skidmore, Brewer and

Hriblan 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 19, 1996

[Footnote: 1](#)

Respondent noted in its post-hearing written argument that Mr. Skidmore did not appear at any of the hearings in this matter, and Respondent reserved the right to address Mr. Skidmore's concerns if he chose to pursue his grievance. Respondent's reservation is without merit and Mr. Skidmore's grievance will be addressed herein. Respondent agreed at hearing to the stipulation of certain facts regarding Mr. Skidmore's employment and to the admission of Mr. Skidmore's Position Information Questionnaire ("PIQ") as an exhibit. Respondent's counsel indicated on the record that she did not need to elicit any other information from Mr. Skidmore. Mr. Skidmore agreed in writing to the stipulations offered by Respondent, and to the admission of his PIQ as an exhibit, and stated that he sought as relief to be classified as a Purchasing Assistant II.

[Footnote: 2](#)

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: 3](#)

Grievants declined the opportunity to submit written argument.

[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, et al., v. Bd. of

Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995).

[Footnote: 5](#)

Respondent's and Grievants' Level IV Exhibits will be referred to as "R Ex ___" and "Gr Ex ___" respectively, with the exhibit number appearing in the blank.

[Footnote: 6](#)

A Grievant may challenge any combination of point factor degree levels, so long as she clearly identifies the point factor degree levels she 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).

[Footnote: 7](#)

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: 8](#)

The parties did not make the Materials Handler Generic Job Description a part of the record. Generic Job Descriptions were developed by the JEC from the PIQs of the persons in the Job Title. Burke, supra. Accordingly, the undersigned will use the PIQs of the Materials Handler Grievants for comparison in lieu of a Generic Job Description.

[Footnote: 9](#)

Since Ms. Crawford testified that all Materials Handlers are performing duties similar to those of Grievants, it is appropriate to review the case in the context of whether all Materials Handlers were assigned an improper pay grade rather than just Grievants.

[Footnote: 10](#)

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; IC, LVL is Intrasystems Contacts, Level of Regular, Recurring, and Essential Contact; WC is Working Conditions; and PD is Physical Demands.

[Footnote: 11](#)

As shown in the chart, Grievants' Job Titles received a higher degree level in the point factors Working Conditions and Physical Demands than did the Purchasing Assistant II Job Title. Except for the argument in Respondent's post-hearing written materials that Grievants received the proper degree level in these two point factors, neither party addressed these point factors. Accordingly, the undersigned will not address or disturb the degree levels awarded Grievants' Job Titles in these point factors.

[Footnote: 12](#)

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 Respondent's Exhibit 3.