

ANTHONY KILGALLON

v. Docket No. 94-MBOT-489

BOARD OF TRUSTEES/

WEST VIRGINIA UNIVERSITY

DECISION

Grievant, Anthony Kilgallon, alleges he was misclassified as an ROTC Supply Clerk, Pay Grade 7, under the "Mercer reclassification," and seeks to be classified as a Program Manager, Pay Grade 15, with backpay, effective January 1, 1994, the date the classification system was implemented. ([See footnote 1](#)) Grievant challenges the degree levels received in several point factors. A level four hearing was conducted on June 13, 1996, and the matter became mature for decision with the submission of post-hearing fact/law proposals by both parties on or before August 8, 1996.

The following Findings of Fact are properly made from the record developed at level four.

Findings of Fact

1. Grievant is employed by the Board of Trustees (BOT) in the Air Force ROTC program at West Virginia University (WVU).
2. In 1991, all higher education classified employees, including Grievant, were asked to complete a Position Information Questionnaire (PIQ) prior to the reclassification. Employees were to describe their job duties and responsibilities on the PIQ, by answering a series of questions designed to elicit this information.
3. As a result of the Mercer reclassification, Grievant was classified as an ROTC Supply Clerk, Pay Grade 7, effective January 1, 1994.
4. Grievant's primary job duties prior to January 1, 1994, were establishing and implementing policies, procedures, and schedules relating to the issuance of uniforms to ROTC cadets. These duties generally required that Grievant determine the quantity of uniforms and accessories required in

addition to on-hand stock, obtain clothing issue cards, obtain student deposit forms from the Controller's office, post necessary signs to inform and guide students to the proper issue locations, contract for alteration of uniforms, provide forms and procedures to instructors of the AFROTC Aerospace Studies classes for distribution to students, procure temporary assistance from the WVU Human Resources Department during the time uniforms are issued, complete payroll documents, maintain contact with military clothing sales stores to check prices, ascertain that items met Federal specifications, and ensure that items would timely arrive. Grievant also prepared requests for payment of uniform claim vouchers, and maintained auditable records pertaining to the receipt and expenditure of uniform commutation funds, resale funds, and deposit funds. 5. The Supply Clerk job title received 1266 total points from the following degree levels in each of the thirteen point factors [\(See footnote 2\)](#): 3 in Knowledge; 1 in Experience; 2 in Complexity and Problem Solving; 1.5 in Freedom of Action; in Scope and Effect, Impact of Actions; 1 in Scope and Effect, Nature of Actions; 1 in Breadth of Responsibility; 1 in Intrasystems Contacts, Nature of Contact; 2 in Intrasystems Contacts, Level; 1 in External Contacts, Nature of Contact; 3 in External Contacts, Level; 1 in Direct Supervision Exercised, Number; 1 in Direct Supervision Exercised, Level; 1 in Indirect Supervision Exercised, Number; 1 in Indirect Supervision Exercised, Level; 1 in Physical Coordination; 2 in Working Conditions; and 3 in Physical Demands.

6. The point range for Pay Grade 7 is from 1253 points to 1320 points.

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 §4.1; 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 byshowing that the grievant's job duties better fit one job description than another, without also identifying which point factors he is challenging, and the degree level he believes he should have received. [\(See footnote 3\)](#)

While some "best fit" analysis of the definitions of the degree levels is involved in determining which degree level of a point factor should be assigned, where the position fits in the higher education classified employee hierarchy must also be evaluated. In addition, this system must by statute be uniform across all higher education institutions; therefore, the point factor degree levels are not assigned to the individual, but to the job title. W.Va. Code §18B-9-4; Burke, supra. A Mercer grievant may prevail by demonstrating his reclassification was made in an arbitrary and capricious manner. See Kyle v. W.Va. State Bd. of Rehabilitation, Div. of Rehabilitation Services and W.Va. Civil Serv. Comm'n, Docket No. VR-88-006 (Mar. 28, 1989).

Finally, whether a grievant is properly classified is almost entirely a factual determination. As such, the Job Evaluation Committee's (JEC) interpretation and explanation of the point factors and generic job 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. [\(See footnote 4\)](#)

B. Comparison of Grievant's Duties to Warehouse Supervisor

No generic job description for ROTC Supply Clerk was made a part of the record and it is likely one does not exist in that they were developed only for classifications with ten or more employees. Neither was a generic job description for Program Manager submitted. While a classification of Program Manager exists, it is slotted at Pay Grade 17. Since Grievant is requesting Pay Grade 14, it appears that he is in fact requesting an institution specific classification. Such a designation would not necessarily require a revised job title because Grievant is the only ROTC Supply Clerk in the Mercer system. [\(See footnote 5\)](#)

Grievant asserts that his duties are substantially similar to those of Warehouse Supervisor, Pay Grade 14. A PIQ completed by a Warehouse Supervisor indicates that the incumbent is responsible for controlling a multi-million dollar inventory consisting of approximately 20,000 items using an automated inventory control, shipping and receiving, and warehousing system. These employees also manage personnel to achieve long range and daily activities relating to each unit, as outlined by

Physical Plant procedures, University guidelines, and state laws. The bulk of the Supervisor's duties were listed as managing personnel, scheduling and estimating, assigning materials, monitoring disbursement of materials, planning the division work load, recommending action relating to material services procurement, and preparing correspondence to the Physical Plant and outside sources relating to the procurement, warehousing, and inventory control of materials. A simple comparison of Grievant's job duties to those of the Warehouse Supervisor reveals that both positions involve the procurement and disbursement of supplies. However, the PIQ's also establish that a Warehouse Supervisor is assigned significantly more responsibility managing personnel as well as a much larger and more diverse inventory. Because this comparison does not readily indicate misclassification, it is more appropriate to review the degree levels of the ROTC Supply Clerk point factors challenged by Grievant.

C. Application of the Point Factor Methodology

Grievant challenged the degree level received in the point factors Knowledge, Experience, Complexity and Problem Solving, Freedom of Action, Scope and Effect/Nature of Actions and Impact of Actions, Breadth of Responsibility, Intrasystems Contacts/Nature of Contact and Level of Regular, Recurring and Essential Contact, External Contacts/Nature, Direct Supervision Exercised/Number and Level of Regular, Recurring and Essential Contact, and Indirect Supervision Exercised/Number and Level. Following are the differences between the degree levels assigned the point factors for the ROTC Supply Clerk and the degree levels Grievant argued he should have received in each of the challenged point factors.

	<u>ROTC Supply Clerk</u>	<u>Grievant</u>
Knowledge	3	4.5
Experience	1	4.5
Complexity and Problem Solving	2	3
	1.5	3.5
Freedom of Action		
Scope and Effect/Impact of Actions	1	2
Scope and Effect/Nature of Actions	1	3
Breadth of Responsibility	1	2.5
Intrasystems Contacts/Nature	1	2
Intrasystems Contacts/Level	2	3

External Contacts, Nature	1	2
Direct Supervision Exercised/Number	1	2
Direct Supervision Exercised/Level	1	2
Indirect Supervision Exercised/Number	1	2
Indirect Supervision Exercised/Level	1	2

Each of the point factors challenged by Grievant will be addressed separately.

1. Knowledge

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.

ROTC Supply Clerk was assigned a degree level of 3.0, defined by 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.

Grievant asserts that his duties merit a degree level of 4.5. The Plan does not specifically define mid-range categories, which fall between the two levels. A degree level of 4.0 is defined in the Plan as:

Job requires basic knowledge in a specific area typically obtained through a business, technical or vocational school as might normally be acquired through up to 18 months of education or training beyond high school.

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

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

Grievant argues that the higher level of knowledge is required to satisfactorily complete the myriad responsibilities associated with the procurement of uniforms and accessories. He must be familiar with Air Force requirements to ascertain what specific items to purchase, determine when uniforms are no longer serviceable, and manage funds of up to \$20,000.00 in the three programs which he manages.

Teresa Crawford, Senior Compensation Analyst at WVU, testified that the assignment of a degree level was not to the incumbent employee but rather was what would be required of a new employee. In this case, it was determined that an individual with a high school diploma or GED would possess the basic educational skills required to complete the duties of Supply Clerk. Ms. Crawford noted that an extra half-point was allocated to employees if certification was required. Because none was required, it would be improper in this instance.

Although Grievant undeniably exceeds the minimum knowledge requirements for the position, having completed sufficient hours to attain the rank of senior as a part-time student at WVU, it is the position, and not the person, which is classified. A review of documents submitted by Grievant as examples of his responsibilities establishes that he completes forms, generates memoranda and other informational signs, banners, etc. While Grievant's more advanced knowledge level undoubtedly facilitates the completion of his duties and allows him the ability to exceed entry-level expectations, it is not necessary for the basic performance of duties required of the ROTC Supply Clerk. Grievant has not met his burden of proving the JEC was clearly wrong or acted in an arbitrary and capricious manner in deciding the Supply Clerk duties were properly allocated a degree level of 3.0.

2. Experience

The Plan defines Experience as follows:

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

ROTC Supply Clerk was allocated a degree level of 1.0, defined by the Plan as:

No experience or up to six months of experience.

Grievant asserts that the duties and responsibilities of his position merit a degree level of 4.5. A degree level of 4.0 in this point factor is defined by the Plan as:

Over two years and up to three years of experience.

A degree level of 5.0 in this point factor is defined by the Plan as:

Over three years and up to four years of experience.

Grievant opines that the higher level is justified by the quantity and complexity of documentation which he is required to complete, and the coordination of events which insure the smooth flow of the

program. Ms. Crawford explained that "Experience" was defined by the JEC as the amount of directly related previous experience required to perform the duties of the position. It was determined that the duties of Supply Clerk could reasonably be learned in six months, and that to require two to four years of experience would create artificial and excessive barriers to applicants. Ms. Crawford also noted that Experience was not a factor in which a half point was allocated.

The duties of ROTC Supply Clerk are essentially purchasing and distribution of uniforms and accessories. Again, Grievant gained prior experience in the military performing similar duties, and that experience has allowed him to efficiently assume his current responsibilities; however, Grievant has failed to prove that an individual could not perform the basic requirements of the position with six months' experience.

3. 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.

The JEC assigned ROTC Supply Clerk a degree level of 2.0, defined in the Plan as:

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

Grievant asserts that the proper degree level for the position is 3.0, 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 cites the considerable federal documentation which he must read and comprehend in order to complete his duties, with no direct supervision, as the basis for the higher degree level. Ms. Crawford testified that the various procedures, specifications, policies and regulations of the Air Force

and WVU which governs virtually all aspects of Grievant's duties leaves little need for problem solving in this position.

It appears that Grievant, at times, may be confronted with a situation which requires some reasoning skills as to what alternatives may be chosen. However, it is clear that the duties involving procurement of uniforms and accessories, maintaining inventory, disbursement of the goods, and the financial duties associated with the funds, are all clearly delineated by rules, regulations and policies. Grievant is not required to act beyond making basic decisions using established procedures. Thus, Grievant has failed to prove that he performs at the higher degree level.

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.

ROTC Supply Clerk was accorded a degree level of 1.5. The degree level for 1.0 is defined by 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.

The definitions in the Plan show that at a degree level of 2.0:

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.

Grievant argues that his duties are more properly defined at a 3.5 level.

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.

The definitions in the Plan show that at a degree level of 4.0:

Tasks are minimally structured with incumbent working from broad goals set by the supervisor and established institutional policies. The employee and supervisor work together to establish objectives, deadlines and projects. The employee, having developed expertise in the line of work, is responsible for planning and carrying out the assignment; resolving most of the conflicts which arise; and coordinating the work with others. The employee keeps the supervisor informed of progress and potentially controversial matters. Completed work is checked only to determine feasibility, compatibility with other work, or effectiveness in meeting the objectives of the unit.

Grievant argues that his duties require that he research guidelines and coordinate departments and agencies, which justify the higher level. Ms. Crawford stated that Grievant does not generally work from objectives, which would require that he exercise independent judgment in their completion. Additionally, she noted that Grievant does not set his own work assignments. A degree level of 1.5 fits Grievant's duties which he completes by following standardized instruction or procedures without ongoing, on-site supervision. The higher- level degree requested by Grievant does not apply because his tasks are more structured and defined by policies and procedures.

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.

ROTC Supply Clerk was accorded a degree level of 1.0 in Impact of Actions, defined in the Plan as:

Work is limited to immediate work function and short-term situations.

Grievant requests a degree level of 2.0 in Impact of Actions, 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.

Grievant requests a degree level of 3.0 in Nature of Actions, 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 argues that his work affects the entire unit and that error would have a deleterious effect on the department. Respondent argues that a level of two was given to purchasing assistants or clerks while the impact of positions which provides a service to others, such as a supply clerk, was determined to be short-term and limited to the immediate work function.

Should Grievant fail to procure in a timely manner the correct items necessary for the ROTC students, it might well cause problems in the program. However, it would appear that any such mistakes could be rectified within a relatively short period of time. Further, any glitches in apparel procurement and disbursement would not affect the functioning of the entire Aerospace program. Therefore, a level of 1.0 would be appropriate for both Impact of Action and Nature of Action.

6. 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.]

ROTC Supply Clerk was assigned a degree level of 1.0, defined in the Plan as:

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

Grievant requests a degree level of 2.5, defined in the Plan 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.

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

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

Grievant asserts that he works with various area of WVU including the Bursar's office and Admissions and Records. He argues that his accountability outside the Aerospace department warrants a level of 2.5. Respondent argues that Grievant is correctly placed at level 1.0 in that he is accountable for only one area. While Grievant infrequently exchanges information with employees in other branches of the institution to accomplish his duties, he is not responsible or accountable for even a functional area. Rather, he is responsible only for his immediate work assignments. Therefore, a level 1.0 is appropriate for this factor.

7. 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.

The JEC awarded the position of ROTC Supply Clerk the degree level of 1.0 in Nature of Contact, defined in the Plan as:

Routine information exchange and/or simple service activity; requires common courtesy (e.g., furnishing or obtaining factual information, ordering supplies, describing simple procedures).

Grievant requests a degree level of 2.0 in Nature defined in the Plan as:

Moderate tact and cooperation required; communication is largely of a non-controversial nature and handled in accordance with standard practices and procedures (e.g., explaining simple policies and procedures, coordinating/scheduling complex meeting or conference arrangements.)

ROTC Supply Clerk was assigned a degree level of 2.0 in Level of Contact, defined in the Plan as:

Staff and faculty outside the immediate work unit.

Grievant requests a degree level of 3.0, defined in the Plan as:

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

Grievant testified that he communicates with supervisors, managers, and department chairs. Because many of these individuals have no in-depth understanding of the program, he asserts that substantial sensitivity and cooperation is required in the interpretation of complex policies. Respondent argues that a review of the individuals listed on the samples of work provided by Grievant, establishes that they would all fall within level one, immediate associates and his own supervisor, or related units. Respondent further notes that while Grievant primarily communicates with faculty and staff, the nature of his contact involves routine, noncontroversial matters which require only moderate tact and cooperation.

Grievant's duties involve regular, recurring, and essential contact with immediate associates and his own supervisor. The nature of his contact primarily is the exchange of routine information and is noncontroversial, handled in accordance with standard practices and procedures. Based upon the evidence, it cannot be determined that the levels assigned to this factor were clearly wrong.

8. External Contacts

External Contacts is defined in the Plan as:

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

This factor consists of two parts, Nature of Contact and Level of Regular, Recurring and Essential Contact. Grievant challenges only the Nature of Contact. The JEC awarded ROTC Supply Clerk a degree level of 1.0 in Nature of Contact, defined in the Plan as:

Routine information exchange and/or simple service activity; requires common courtesy (e.g., furnishing or obtaining factual information, ordering supplies, describing simple procedures).

Grievant requests a degree level of 2.0 in Nature of Contact, defined in the Plan as:

Moderate tact and cooperation required; communication is largely of a noncontroversial nature and handled in accordance with standard practices and procedures (e.g., explaining simple policies and procedures, coordinating/scheduling complex meeting or conference arrangements.)

Grievant argues that moderate tact and cooperation are required in his contact with students, Air Force personnel, and other external contacts. Respondent asserts that he provides only routine information. Grievant's testimony indicates that his external contacts are of a routine nature requiring only common courtesy.

9. Direct Supervision Exercised

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

ROTC Supply Clerk was slotted at degree level 1.0; Grievant requests a degree level of 2.0 in both the Number and Level categories of this factor.

A degree level of 1.0 for the Number of Direct Subordinates is defined by the Plan as:

Supervising no direct subordinates.

A degree level of 2.0 for the Number of Direct Subordinates is defined by the Plan as:

Supervising one direct subordinate.

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

Minimal or no responsibility for the work of others; however, may provide functional guidance to student workers or lower-level employees on a non-essential basis.

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

Responsible for directing and monitoring the work of student workers essential to the operations of the unit.

___ Grievant argues that 2.0 is appropriate for both Number and Level because he is responsible for the hiring, firing and supervision of one part-time student employee [\(See footnote 6\)](#). He may also hire additional part-time help, as needed. Respondent asserts 1.0 is appropriate because Grievant does not supervise other employees on a regular daily basis.

Grievant cannot be granted degree levels of 2.0 because he does not supervise enough student

workers to equal one full-time employee, and the one, part-time student worker is not essential to the operations of the unit.

9. Indirect Supervision Exercised

Indirect Supervision Exercised is defined in the Plan as:

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

Indirect Supervision is subdivided into two categories, Number of Indirect Subordinates in Line of Authority, and in Level of Supervision. ROTC Supply Clerk was ranked 1.0 in both categories.

A degree level of 1.0 for Number of Indirect Subordinates is defined by the Plan as:

None.

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

1 - 3

A degree level of 1.0 for Level of Supervision is defined by the Plan as:

No indirect supervisory responsibility; has formal authority overlead and/or non-supervisory personnel only.

A degree level of 2.0 for Level of Supervision is defined by the Plan as:

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

Grievant's claim that he has the authority to hire more than three part-time employees is not controlling, in that the evidence establishes that he has no subordinate employees, either direct or indirect.

D. Summary

___Grievant failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner by failing to classify him as a Program Associate at pay grade 14. Grievant further failed to prove that

the degree levels assigned to his job title in the point factors were clearly wrong or were assigned in an arbitrary and capricious manner by the JEC.

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§4.1. 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, if one exists, 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 Grievant is properly classified as an ROTC Supply Clerk is not clearly wrong or arbitrary and capricious.

5. The Job Evaluation Committee's assignment of degree levels to the point factors for the ROTC Supply Clerk job title is neither clearly wrong nor arbitrary and capricious.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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 16, 1996 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

[Footnote: 1](#)

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

[Footnote: 2](#)

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.

[Footnote: 3](#)

A grievant may challenge any combination of point factor degree levels, so long as he clearly identifies the point factor degree levels he is challenging, and this challenge is consistent with the relief sought. See Jessen, et al. v. Bd. of Trustees, W.Va. Univ., Docket No. 94-MBOT-1059 (Oct. 6, 1995); and Zara, et al., v. Bd. of Trustees, W.Va. Univ., Docket No. 94-MBOT-817 (Dec. 12, 1995).

[Footnote: 4](#)

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: 5](#)

Grievant initially requested reclassification at Pay Grade 14, 15, or 16, but settled on Pay Grade 14.

[Footnote: 6](#)

Grievant is also authorized to hire additional part-time employees, as needed. However, it did not appear that this situation was frequent or long-term.