

C.B. STEPHENSON, et al.,

v.

DOCKET NO. 94-MBOT-825

BOARD OF TRUSTEES,

MARSHALL UNIVERSITY

DECISION

Grievants C.B. Stephenson [\(See footnote 1\)](#) and Cletis Richards each alleges he was misclassified effective January 1, 1994, in the "Mercer reclassification" [\(See footnote 2\)](#). Each Grievant seeks as relief classification as a Supervisor Building Trades, Pay Grade 16, effective January 1, 1994, and backpay from January 1, 1994. A Level IV hearing was held on June 13, 1996. This matter became mature for decision on August 27, 1996, with the admission of Respondent's Rebuttal Exhibit Number 1. [\(See footnote 3\)](#) The following Findings of Fact are properly made from the record developed at Level IV.

Findings of Fact.

1. Grievant Stephenson has been employed at Marshall University ("MU") since 1970, and is assigned to the Student Center. Grievant Richards has been employed at MU since 1959, and is assigned to two 15 floor dormitories and a cafeteria.

2. In 1991, all higher education classified employees were asked to complete a Position Information Questionnaire ("PIQ"). Employees were to describe their job duties and responsibilities and the job requirements on the PIQ, by answering a series of questions designed to elicit this information. Each Grievant completed a PIQ in 1991.

3. Each Grievant was classified as a Trades Worker Lead ("TWL"), Pay Grade 14, effective January 1, 1994.

4. Grievant Richards' primary job duties (with the percentage of time he performs these duties in parenthesis) are repairing and performing preventive maintenance on air conditioning and heating units, water heaters and the sprinkler system (75%); repairing cafeteria equipment (25%); and,

training other employees to perform the same work he performs, placing telephone calls to vendors to locate and order parts, and picking up parts (5%).

5. Grievant Stephenson's primary job duties (with the percentage of time he performs these duties in parenthesis) are performing electrical and plumbing maintenance and repairs (30%); performing maintenance and repairs of the air conditioning system (20%); performing preventive maintenance and repairs of kitchen equipment (10%); carpentry (5%); calibrating and repairing pneumatic equipment (5%); maintaining and repairing boilers, "steam," and lights (5% each); maintaining eight bowling lanes (5%); keeping maintenance and repair records (5%); and, repairing the roof and equipment on the roof (5%).

6. Trades Workers are trained on the job in four crafts (plumbing, carpentry, electrical repair, and mechanics), over a period of at least six months for each craft. During this time they also become familiar with the buildings in which Grievants work. Prior to 1994, they were assigned to the Student Center for six months of their training, but they are now assigned to it for one year, rather than six months. After their training is completed, they may be called to work after normal work hours to perform emergency repairs without supervision.

7. The cafeteria equipment includes dishwashers, steamers, deep fryers, coolers, and freezers. The equipment usually does not come with a manual; however, if a piece of equipment is not working, Grievant Richards goes through a set procedure to determine the problem, beginning with checking to see if there is power to the machine.

8. Grievants' tasks each day are dependent upon what equipment breaks down and what parts shipments are received. If repairs are needed in a dormitory, the students are to report the problem to the Residence Assistant, who is to report it to Grievant Richards' supervisor's office. A work order is then prepared and given to Grievants' supervisor, who assigns priority to work orders, and refers them to Grievant Richards for action. Grievant Richards also makes a routine building check every morning, and if he finds something which requires repair, he takes care of the repair, and then prepares a work order. Grievant Richards decides whether to perform a task himself or assign it to a Trades Worker.

9. Student Center repair requests are almost always reported to Grievant Stephenson by the person requesting the repair.

10. Grievant Stephenson has no budgetary responsibility. The MU Student Center is not a

functional area.

11. Grievant Stephenson speaks with the recreation and computer store managers, persons in Facilities Planning, the main desk complex manager, persons in the office of auxiliary services complex, student affairs, the ombudsman, and persons in the other departments in the Student Center. He usually talks to the staff.

12. Grievant Stephenson regularly speaks with vendors who operate the Student Center kitchen and bookstore about repairs which are needed.

13. Grievant Stephenson has escorted security for dignitaries through the Student Center to show them alternate exit routes; however, the Facilities Planning Department at MU is the contact with outside users to plan use of the Student Center. When U.S. Senators, Congressmen, and other dignitaries visit the MU Student Center, Grievant Stephenson may meet them and may escort them through the Student Center.

14. Grievant Richards speaks to vendors and may urge them to expedite delivery of parts, and he explains to the manager of the cafeteria (who is not a MU employee) why equipment has not been fixed.

15. In performing his duties each day, Grievant Stephenson must squat, stand, walk, and lay on concrete and dirty floors for long periods of time; climb ladders and stand on them for extended periods of time; and lift materials or parts exceeding 100 pounds.

16. The TWL Job Title received 1956 total points from the following degree levels in each of the thirteen point factors [\(See footnote 4\)](#): 4.0 in Knowledge; 4.0 in Experience; 3.0 in Complexity and Problem Solving; 3.0 in Freedom of Action; 1.0 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 of Contact; 1.0 in External Contacts, Nature of Contact; 2.0 in External Contacts, Level of Contact; 4.0 in Direct Supervision Exercised, Number; 3.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 4.0 in Physical Coordination; 3.0 in Working Conditions; and 4.0 in Physical Demands. Joint Exhibit D.

17. The point score range for a Pay Grade 14 is from 1866 to 1984 points. Joint Exhibit C.

Discussion

A. Burden of Proof

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.19; W. Va. Code § 18-29-6. Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

A grievant is not likely to meet his burden of proof in a Mercer grievance merely by showing that the grievant's job duties better fit one job description than another, because the Mercer classification system does not use "whole job comparison". The Mercer classification system is largely a "quantitative" system, in which the components of each job are evaluated using the point factor methodology. Therefore, the focus in Mercer Decisions issued by this Grievance Board is upon the point factors the grievant is challenging. [\(See footnote 5\)](#) While some "best fit" analysis of the definitions of the degree levels is involved in determining which degree level of a point factor should be assigned, where the position fits in the higher education classified employee hierarchy must also be evaluated. In addition, this system must by statute be uniform across all higher education institutions; therefore, the point factor degree levels are not assigned to the individual, but to the Job Title. W. Va. Code § 18B-9-4; Burke, supra. A Mercer grievant may prevail by demonstrating his reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehabilitation, Div. of Rehabilitation Services, 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 or PIQ's at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 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 Res., 465 S.E.2d 887 (W. Va. 1995). The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. [\(See footnote 6\)](#)

B. Application of the Point Factor Methodology

The following table shows the differences between the degree levels assigned in the point factors challenged by Grievants for the TWL, the Supervisor Building Trades ("Supr"), and the degree levels Grievants argued they should have received. (Where "NC" is used, the Grievant referred to did not challenge the point factor.)

	<u>SE</u>	<u>SE</u>	<u>IC</u>	<u>IC</u>	<u>EC</u>	<u>EC</u>	<u>KN</u>	<u>EX</u>	<u>CPS</u>	<u>FA</u>	<u>IA</u>	<u>NA</u>	<u>BR</u>	<u>NC</u>	<u>LVL</u>	<u>NC</u>	<u>LVL</u>
<u>PC</u>	<u>WC</u>	<u>PD</u>	(See footnote 7)														
TWL	4	4	3	3	1	2	1	1	2	1	2	4	2	3			
Supr	5	5	3.5	3.5	3	3	1	3	2	1	2	2	2	2			
Richards																	
Argument	5	5	5	4	3	3	NC	2	NC	2	NC	NC	NC	NC	NC		
Stephenson																	
Argument	5	7	6	5	3	5	5	3	5	2	5	5	4	5			

Joint Exhibit D. Each of the point factors challenged by Grievants will be addressed separately below.

1. Knowledge

The Job Evaluation Plan ("the Plan") defines Knowledge as:

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.

Grievants' Job Title received a degree level of 4.0, which 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.

Grievants argued they should have received a degree level of 5.0, as did the Supervisor Building Trades ("Supervisor") Job Title. 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 Richards argued knowledge of refrigeration and air conditioning is required to perform

his duties, and this training normally takes three years. He based this upon the amount of time it took him to recently complete a correspondence course, while working full-time. He did not indicate whether his job duties had changed since completing the correspondence course. On his PIQ he marked "D" or 4.0 under Knowledge, and wrote:

This position requires high school education. Two years Vocational Technical training in Refrigeration and air conditioning, heating and ventilation. Three years on the job training.

Grievant Stephenson argued his job requires knowledge, skill and experience in many different areas of maintenance, including electrical and mechanical repairs.

Margaret Robinson Buttrick, Human Resources Administrator for the State College and University Systems of West Virginia, and JEC Chair, explained that this position is a Trades Worker, meaning Grievants have some knowledge of various trades, not that they are at a journeyman level in all trades, or that they have knowledge in all trades.

Grievants failed to present any evidence that more than 18 months of full-time education beyond high school was required to perform their duties, when accompanied by the training required under Experience.

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.

Grievants' Job Title received a degree level of 4.0, which is defined in the Plan as "[o]ver two years and up to three years of experience." Grievant Richards argued he should have received a degree level of 5.0, as did the Supervisor Job Title. A degree level of 5.0 is defined in the Plan as "[o]ver three years and up to four year of experience." Grievant Richards opined it would take at least one year to learn the two 15 story dormitories and the cafeteria he is responsible for, and another three to four years to learn his varied duties.

Grievant Stephenson argued he should have received a degree level of 7.0, which is defined in the Plan as "[o]ver six years and up to eight years of experience." Grievant Stephenson opined that it would take him five years to train someone so they would know everything about the Student Center and could fix everything.

Mrs. Buttrick stated the entry-level experience for all Job Titles was determined from a review of all the PIQ's of persons in the Job Title, the JEC members' knowledge of the industry, the entry-level requirements for each position gathered from federal guidelines and surveys of various jobs, what the institution would require, and what the market value of the job was.

Clearly, Grievants take a lot of pride in their work, and have a tremendous amount of experience. The only concrete evidence of the minimum amount of experience needed to be able to learn to perform the job duties, however, was the training period for Trades Workers; which is 24 months to be able to perform work in the four crafts in the two dormitories and a cafeteria, and 30 months to work in the Student Center. It may well take much longer for someone to learn to perform Grievants' duties as well as Grievants, but that is not what this point factor measures. Grievants have failed to meet their burden of proof on this point factor.

3. Complexity and Problem Solving

The Plan defines 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.

Grievants' Job Title received a degree level of 3.0. Grievant Richards argued he should have received a degree level of 5.0, and Grievant Stephenson argued he should have received a degree level of 6.0. The Supervisor Job Title received a degree level of 3.5.

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 4.0 is defined in the Plan as:

Problems encountered are complex and varied due to incomplete and/or conflicting data. General policies, procedures, principles, and theories of specific professional disciplines are available as guidelines; however, these guides may have gaps in specificity or lack complete applicability to work assignments. Employee must utilize analytical skills in order to interpret policies and procedures, research relevant information, and compare alternative solutions.

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, evaluative 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.

A degree level of 6.0 is defined in the Plan as:

Problems encountered are extremely complicated and require considerable resourcefulness and originality. Various strategies are examined to determine most feasible approach to resolution of problems. Long-range planning to resolve extraordinary problems is almost always required of positions at this level to attain desired goals. Advanced analysis which requires the employee to solve unusual and complex problems taking information from many different sources is required. Employee will often use initiative and resourcefulness in deviating from traditional methods, proposing new policies, and researching trends.

Grievant Richards argued he must exercise analytical and reasoning skills to repair outdated equipment for which parts and manuals no longer exist. Grievant Stephenson argued the equipment in the Student Center must be in working order for visiting speakers, and that he has redesigned most of the equipment so it is problem free, or he has a back-up. He stated the Student Center generates its own revenue and receives no funding, and for that reason, he must keep expenses down. He pointed out he has saved MU money by rebuilding equipment, such as chiller units, using scrap materials.

Mrs. Buttrick explained that at level 5.0, the job requires a lot of analytical work, reasoning, researching information, and high-level management skills. She stated that degree level 3.0 indicates that in this job there are sometimes problems which may take some complex review, and the individual may have to use his own resourcefulness in finding a solution, but many times guidelines and methods are available which can be adapted to solve the problems. She pointed out Grievants would have manuals and repair booklets available, and Grievants would follow general guidelines for electrical and air conditioning repair.

Grievants use their training, experience and standard trouble-shooting and repair procedures to evaluate mechanical problems. For example, Grievant Richards indicated that he determines the source of a problem by following a series of steps, beginning with determining whether there is power running to the machine. At times it may be difficult to determine the source of a problem, and Grievants may be called upon to think the problem through, and come up with unique solutions, particularly when the part is no longer available or funds are limited. All of this is covered in the

definition of degree level 3.0. Grievants have failed to prove that another degree level is a better fit for their job duties.

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.

Grievants' Job Title received a degree level of 3.0. Grievant Richards argued he should have received a degree level of 4.0, and Grievant Stephenson argued he should have received a degree level of 5.0.

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.

The definitions in the Plan show that at a degree level of 5.0:

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

Grievant Richards argued he notes and corrects problems without being told to do so, and assigns and is responsible for the work of his helper.

Mrs. Buttrick explained this point factor measures how much freedom an individual has to make decisions and perform assignments, what types of controls are placed on the person, what type of

freedom they have to move forward if there is a problem, how work is checked, and the contact they have with their supervisor. She stated policies and working practices of a unit are types of controls. She pointed out that managers, supervisors and directors received degree level 5.0, because they have to set goals, perform analytical planning, and are responsible for the unit. She stated Grievants have a controlled environment, where their work assignments are either set by their supervisor or by other individuals within the area. She concluded that when Grievant Richards' supervisor assigns priority to work orders this adds structure. She noted that Grievant Stephenson's work may be prioritized for him by which events are scheduled in the Student Center.

Grievants' work does not fall within a degree level of 4.0. They receive assignments each day in the form of work orders or reports of equipment which needs repaired. Although there may be exceptions, what gets repaired first is generally either decided by their supervisor or by standard practices or instructions as to what is most important. Grievants may work from the objective set by their supervisor that they are to keep equipment in working order, and they decide how to accomplish the repair. Grievants have failed in meeting their burden of proof on this point factor. See Payne, et al., v. Bd. of Directors, W. Va. State College, Docket No. 94-MBOD-787 (Sept. 19, 1996).

5. Scope and Effect

Scope and Effect is defined in the 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 point factor consists of two parts, Impact of Actions and Nature of Actions. Grievants challenged the degree levels received in both parts. Grievants argued they should have received a degree level of 3.0 in Impact, as did the Supervisor Job Title, rather than a 1.0.

A degree level of 1.0 in Impact of Actions is defined in the Plan as "[w]ork is limited to immediate

work function and short- term situations." A degree level of 2.0 in Impact is defined in the Plan as "[w]ork affects either an entire work unit or several major activities within a department." A degree level of 3.0 in Impact is defined in the Plan as:

Work affects the operations of more than one school or division of a specialized school, branch campus, community college or baccalaureate-level Institution with an operating budget of less than \$13M; a school or division of a graduate or baccalaureate-level Institution with an operating budget of \$13-\$18M; several departments within a graduate or baccalaureate-level Institution with an operating budget of \$19-\$25M; a major department within a graduate-level Institution with an operating budget of more than \$50M; or a moderate-size department within a doctoral-level Institution with an operating budget of more than \$200M.

Grievant Richards argued his actions have the potential to impact students, parents, visitors, staff and faculty, because he repairs cafeteria equipment, and heating and air conditioning in dormitories and offices, and a repair error could cause serious injury. Grievant Stephenson argued his work probably affects all MU departments because they all use the Student Center.

Mrs. Buttrick pointed out that this point factor does not evaluate employee mistakes; it evaluates accountability. She stated that Grievants' work affects only the immediate function, that is, the dormitory, the cafeteria, and the Student Center.

Grievants' scope of responsibility is limited to making the proper repairs in the buildings to which they are assigned. Grievants' supervisor assigns other employees to make repairs in these buildings, and to assist Grievants in making repairs. Their supervisor is responsible for their work and that of the other employees. Mrs. Buttrick's explanation of the degree levels is not inconsistent with the somewhat vague definitions provided in the Plan. Grievants have not proven that a degree level of 3.0 is a better fit than a 1.0.

Grievants received a 2.0 in Nature of Actions. Grievant Richards argued he should have received a degree level of 3.0, as did the Supervisor Job Title. Grievant Stephenson argued he should have received a degree level of 5.0.

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

Work contributes to the accuracy, reliability, and acceptability of processes, services, or functions. Decisions are limited to the application of standardized or accepted practices and errors could result in some costs and inconveniences within the affected area.

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

Work provides guidance to an operation, program, function or service that affects

many employees, students or individuals. Decisions and recommendations made involve non-routine situations within established protocol, guidelines, and/or policies. Errors could easily result in moderate costs and inconveniences within the affected area.

A degree level of 4.0 in Nature is defined in the Plan as:

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

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

Work involves planning, developing, and operating a major program or service having a broad impact within the institution by solving critical operational problems or developing and/or implementing new procedures and concepts. Work also involves extensive and consequential support, development, or recommendation of major objectives, policies, programs or practices. Errors could easily result in major costs, problems and disruptions within the affected area.

Grievant Richards argued if the cafeteria equipment, heating or air conditioning were not maintained in good working order it could result in moderate costs and inconveniences in offices, dormitories and the cafeteria. Grievant Stephenson argued he has to provide a safe environment for everyone who uses the Student Center, and stresses safety to everyone who works for him.

Mrs. Buttrick pointed out that a 5.0 is the highest degree level available, and would be appropriate for someone responsible for a major program.

Grievants' duties represent one step in the process of providing housing, food, entertainment, and some educational programs to students. They have not proven that some other degree level is a better fit than a 2.0 in Nature.

6. Breadth of Responsibility

Grievant Stephenson argued he should have received a degree level of 5.0, rather than a 1.0. Grievant Stephenson has no budgetary responsibility, nor is he formally accountable for a functional area. His duties fall within a degree level of 1.0. See Burke, supra; and Floyd v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-932 (June 14, 1996).

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.

This point factor also consists of two parts, Nature of Contact and Level of Contact. Grievants are challenging the degree levels received in both parts. Grievant Stephenson argued he should have received a degree level of 5.0, rather than a 2.0. [\(See footnote 8\)](#) The Supervisor Job Title also received a degree level of 2.0.

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

Staff and faculty outside the immediate work unit.

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

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

A degree level of 4.0 in Level is defined in the Plan as:

Deans or Directors in an institution or Assistant Directors in the Systems' Central Office.

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

Associate/Assistant Vice Presidents or Systems' Central Office Directors that report to the Senior Administrator.

Grievant Stephenson argued he deals with nearly every department at MU, and he provides them with the atmosphere they desire.

Grievant Stephenson presented no evidence that he has regular, recurring personal contact, which is necessary to carry out his job duties, with persons who are not staff. His PIQ states that he has daily contact with the Vice-President of Finance, but his testimony did not reveal why this was necessary. He did not even address this contact in his testimony. Given his job duties, the undersigned cannot see any reason for this contact.

Grievants' Job Title received a degree level of 1.0 in Nature. Grievant Richards argued he should have received a degree level of 2.0. Grievant Stephenson argued he should have received a degree level of 3.0, as did the Supervisor Job Title.

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

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

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

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

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

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

Grievants' job duties involve receiving information that equipment needs to be repaired. They also provide information, when asked, about how long the repair will take, although it is not clear they are required to do so. While they may on occasion be pressured to perform a repair more quickly, this does not change the purpose of the contact, which is to receive and provide information. Grievants have failed to offer any evidence that their contacts involve more than routine information exchange. See *Lovely, et al. v. Bd. of Trustees, Marshall Univ.*, Docket No. 94- MBOT-762 (Nov. 27, 1996).

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 [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, influencing others or negotiation.

This point factor is also divided into Nature of Contact and Level of Contact. Grievants are challenging the degree levels received in both parts. Grievant Stephenson argued he should have received a degree level of 5.0 in Level, rather than a 2.0. The Supervisor Job Title also received a degree level of 2.0.

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

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

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

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

A degree level of 4.0 in Level is defined in the Plan as:

Mid-level representatives of government agencies, professional contacts with other colleges and universities outside the systems.

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

Substantially prominent persons (e.g., community leaders, business and industry leaders) and officials of government agencies, financial agencies, and other important constituents.

Grievant Stephenson argued he deals with state and local governments, and he escorted the First Lady of the United States around the Student Center.

Mrs. Buttrick pointed out that even though Grievant may have contact with substantially prominent persons, his contact with them is as visitors to the campus. The undersigned agrees. In addition, these contacts are not regular and recurring. Neither these contacts nor his contacts with security preceding dignitaries are essential to the performance of his job duties. See Braniff v. Bd. of Trustees, W. Va. Univ. - Parkersburg, Docket No. 94-MBOT-865 (Sept. 30, 1996). Grievant Stephenson's regular, recurring and essential contacts are within a degree level of 2.0.

Both Grievants argued they should have received a degree level of 2.0 in Nature, rather than a 1.0. The Supervisor Job Title also received a degree level of 1.0. The definitions are nearly identical to those under Intrasytems Contacts, Nature of Contact, and will not be repeated here.

Grievant Richards argued when the repair of cafeteria equipment takes longer than anticipated, it takes moderate tact to deal with managers of the Marriott Corporation, which holds the contract to operate the cafeteria. He stated he must explain why equipment has not been fixed; for example, he must tell the manager that a part did not come in, and he will fix the equipment as soon as the part arrives. This is routine information exchange. See Lovely, supra; and Gregg, et al., v. Bd. of Trustees, W. Va. Network for Educational Telecomputing, Docket No. 94-MBOT-863 (Dec. 19, 1996). He also argued that pushing vendors for expedited delivery of parts requires tact. However, since he spends less than 5% of his time in this activity, the nature of the activity need not be addressed because it is not essential contact. See Braniff, supra.

9. Physical Coordination

Physical Coordination is defined in the Plan as:

This factor assesses the amount of psychomotor skill involved in performing the job. Consider the complexity of body movements, speed/timing of movements, precision of movements, and need for close visual attention regularly required by the job in performing the work.

Grievant Stephenson argued he should have received a degree level of 5.0 in this point factor, rather than a 4.0. The Supervisor Job Title received a degree level of 2.0.

A degree level of 4.0 is defined in the Plan as:

Work requires skill and accuracy or other manual actions involving rapid physical motions and closely coordinated performance on or with office equipment; or a high degree of manual skill and exactness in the use of hand instruments or equipment.

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

Work requires extraordinary skill and precision with complicated and/or difficult manual skill involving coordinated physical motions and exactness in the use of hand instruments or tools requiring delicate timing and placement of movements.

Grievant Stephenson argued he must be very, very coordinated, and works with a lot of hazardous machinery which requires his full attention, and in hazardous situations, such as when performing electrical repairs, when checking chemicals in water two times per season, and in extreme weather conditions when working on roof tops.

Grievant received credit for a high degree of manual skill and exactness. He failed to present evidence that his duties require such skill that a degree level of 5.0 is a better fit than a 4.0.

10. Working Conditions

Working Conditions is defined in the Plan in conjunction with Physical Demands as:

This factor considers the physical demands of the job as measured by the exertion placed on the skeletal, muscular and cardiovascular systems of the incumbent. It also takes into account the quality of the physical working conditions in which the job is normally performed such as lighting adequacy, temperature extremes and variations, noise pollution, exposure to fumes, chemicals, radiation, contagious diseases, heights and/or other related hazardous conditions.

Grievant Stephenson argued he should have received a degree level of 4.0, rather than a 3.0 in this point factor. The Supervisor Job Title received a degree level of 2.0.

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

Routine discomforts from exposure to moderate levels of heat, cold, moisture/wetness, noise and air pollution. May involve routine exposure to light chemical substances such as cleaning solutions or occasional exposure to hazardous conditions such as radiation, chemicals, diseased laboratory animals, contagious diseases, heights, and moving parts.

A degree level of 4.0 is defined in the Plan as:

Frequent or prolonged exposure to extreme levels of temperature, air pollution, noise, radiation, chemicals, contagious diseases, gases and substances, heights, and moving parts.

On his PIQ, Grievant Stephenson stated:

Every aspect of this position in [sic] performed in conditions which involves working in conditions of extreme heat, roof tops which involve both heat and cold, grease, dirt, dust, electrical shock potential, cramped and close working areas, very high noise levels, exposure to chemicals used in various areas. High exposure to asbestos in high concentrated levels, wearing of protective equipment and clothing.

Mrs. Buttrick stated Grievant Stephenson is at times exposed to outside weather conditions and chemicals, but level 4.0 requires frequent or prolonged exposure to extreme levels. She stated that someone performing asbestos abatement work or working outside all the time would receive a 4.0.

"The parameters used by the JEC for determining whether someone is exposed to extreme levels of temperature are from normal office conditions to outdoor temperatures." Lovely, supra. Grievant Stephenson sometimes works outside on the roof, and on at least one occasion had to do so when the temperature was eight degrees below zero, but he did not indicate how often he works on the roof, or how often he is required to do so when the temperature is extremely hot or cold. He is exposed to noise, dust and grease, but he did not identify the level of any of these, so that it can be determined whether it is an extreme level. He stated he is exposed to chemicals which are placed in the water only twice a season, and he did not identify the chemicals so that it can be determined whether they are light chemical substances or extreme levels. He stated he is exposed to asbestos, but did not identify how often. He has not proven that he is frequently or for prolonged periods exposed to extreme levels of the listed conditions such as would be required to receive a degree level of 4.0.

11. Physical Demands

Grievant Stephenson argued he should have received a degree level of 5.0, rather than a 4.0 in this point factor. The Supervisor Job Title received a degree level of 2.0.

A degree level of 4.0 is defined in the Plan as:

Considerable physical exertion required involving bending, stooping, climbing, lifting or carrying heavy items (over 50 and up to 75 pounds) and periodically working in difficult or awkward positions.

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

Extremely strenuous, with frequent physical exertion such as the lifting of very heavy items (more than 75 pounds), deep bending, climbing and/or working in difficult or cramped positions for long periods of time.

On his PIQ, Grievant Stephenson described the physical effort required every day in his job as:

Squatting for long periods of time; standing, walking and laying on concrete and dirty floors for long period of time; working off ladders for extended periods of time; lifting of material or parts exceeding over 100 #.

Respondent offered no rebuttal to this statement. Mrs. Buttrick stated Grievant Stephenson's job does not constantly require physical exertion, and is therefore not extremely strenuous.

Grievant Stephenson has proven his job duties require him to frequently lift over 75 pounds, climb, and work in difficult or cramped positions for long periods of time, all of which are within the definition of a degree level of 5.0. Grievant Stephenson has proven that his job duties, if rated individually would fall within this higher degree level.

C. Summary

Grievant Stephenson proved that his job duties, if rated independently, would entitle him to a degree level of 5.0 in Physical Demands. This change would add 14 points to the TWL total points, making the total 1970, which is still a Pay Grade 14. Because degree levels are assigned to Job Titles and not individuals, and the pay grade is unaffected, no change will be made in the TWL data line, and Grievant Stephenson is properly classified. See Riggs v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-711 (Apr. 29, 1996); Barber, et al., v. Bd. of Trustees, W. Va. Univ., et al., Docket No. 94-MBOT-872 (Oct. 31, 1996).

Grievants failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning their Job Title, or in assigning the degree levels in the point factors to their Job Title. [\(See footnote 9\)](#) Because the point factor analysis does not result in a change in the pay grades, a comparison of Grievants' duties to those found in the Generic Job Descriptions for the Job Title sought is not necessary.

The following Conclusions of Law support the decision reached.

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 Found., 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 Trades Workers Lead, Pay Grade 14, is not clearly wrong or arbitrary and capricious.

5. The Job Evaluation Committee's assignment of degree levels to the point factors for the Trades Worker Lead Job Title is neither clearly wrong nor arbitrary and capricious.

Accordingly, the grievances of C. B. Stephenson and Cletis Richards are **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Cabell 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: December 30, 1996

[Footnote: 1](#)

At the hearing Grievant Stephenson stated that his first name is Calvery. The grievance was filed using the initials "C.B."

[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](#)

Grievant Richards' representative submitted late-filed written argument on September 6, 1996, stating as the reason for her tardiness that she had been off work. The undersigned is aware that Grievant's representative had been seriously ill. Respondent did not object to the late filing. Due to the lack of any objection, and the good cause for late filing, this writtensubmission will be considered by the undersigned as if timely filed.

[Footnote: 4](#) *The thirteen point factors are set forth in 128 C.S.R. 62 § 2.27, and 131 C.S.R. 62 § 2.27. Burke, supra.*

[Footnote: 5](#) *A grievant may challenge any combination of point factor degree levels, so long as he clearly identifies the point factor degree levels he is challenging, and this challenge is consistent with the relief sought. See Jessen, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-1059 (Oct. 26, 1995); and Zara, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-817 (Dec. 12, 1995).*

[Footnote: 6](#) *This discussion is not intended to address challenges to the way the Mercer system as a whole is set up, that is, challenges to the methodology.*

[Footnote: 7](#) *These headings are shorthand for the following point factors: KN is Knowledge; EX is Experience; CPS is Complexity and Problem Solving; FA is Freedom of Action; SE, IA is Scope and Effect, Impact of Actions; SE, NA is Scope and Effect/Nature of Actions; BR is Breadth of Responsibility; IC, NC is Intrasytems Contacts/Nature of Contact; IC, LVL is Intrasytems Contacts, Level of Contact; EC, NC is External Contact/Nature of Contact; EC, LVL is External Contacts/Level of Contact; PC is Physical Coordination; WC is Working Conditions; and PD is Physical Demands.*

[Footnote: 8](#) *Grievant Richards initially argued he should have received a degree level of 3.0. However, when his testimony made it clear that all his Intrasytems Contacts were with people within his work unit, he withdrew his challenge.*

[Footnote: 9](#) *Mrs. Buttrick opined that neither Grievant has Lead responsibility and should not have any received credit under Direct Supervision. She stated that on a regular basis Grievants do not have someone working under them, and that once the Trades Workers have learned all the trades, they are assigned by Mr. Curry to assist where needed, and are under his supervision. This argument need not be addressed since this grievance is denied.*