

DINA BRANIFF

v.

DOCKET NO. 94-MBOT-865

BOARD OF TRUSTEES,

WEST VIRGINIA UNIVERSITY - PARKERSBURG

DECISION

Grievant Dina Braniff alleges she was misclassified effective January 1, 1994, in the "Mercer reclassification" [\(See footnote 1\)](#). Grievant seeks as relief to be classified as an Accountant Senior, Pay Grade 18, effective January 1, 1994, and backpay to January 1, 1994. She also challenges the degree levels received in several point factors. A Level IV hearing was held on March 13 and June 19, 1996. This matter became mature for decision on August 1, 1996, with receipt of Respondent's fact/law proposals. [\(See footnote 2\)](#)

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

Findings of Fact.

1. Grievant has been employed at West Virginia University - Parkersburg ("WVU-P") since 1988.
2. 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. Grievant filled out a PIQ in 1991.
3. Grievant was classified in the Mercer reclassification as an Accountant, Pay Grade 16, effective January 1, 1994.
4. Grievant's primary job duties (with the percentage of time she performs these duties shown in parenthesis) are verifying that all information is in order and signing the cover sheet indicating all information is in order to pay invoices from the fund indicated [\(See footnote 3\)](#), including verifying availability of funds and deciding which fund should be used to pay an invoice to make the best use

of funds, coding revenues and expenses from a chart of accounts, coding funds used from a chart of accounts, allocating charges to departments using the percentage set by her supervisor, making budget changes requested by persons responsible for setting budgets, coding consulting agreements and verifying necessary forms are attached, formatting the Master Tables in the CUFS (College and University Financial Systems) software to generate budget reports in the form chosen by her supervisor, performing Master Table maintenance, checking the state auditor's reports against internal reports for errors and correcting data entry and coding errors on internal reports, reviewing travel expenses to assure compliance with state regulations, and assisting employees with travel reimbursement problems (75%); and, preparing hourly payroll and various hourly payroll documents (25%). Grievant is the FIMS (State Financial Information Management System) "Superuser". In this capacity she helps the few other FIMS users at WVU-P with problems, distributes FIMS policies to the affected users at WVU-P, and is the campus contact person for all FIMS matters.

5. A person classified as Accountant Senior performs duties such as deciding how all aspects of the accounting system are set up and maintained, analyzing complex financial information, preparing financial reports, developing cost proposals, and training other employees in complex accounting concepts and regulations.

6. Grievant has policies, procedures, guidelines and manuals available which she uses in performing her duties.

7. Most of Grievant's contacts within higher education are with faculty, staff and chairpersons. Grievant's contacts with the Dean of Students are with his secretary. Grievant has contact routinely with the Dean of Students about his budget. He contacts her himself because he is

new. 8. Grievant's contacts with persons not employed in higher education are with vendors as problems arise, and with the Administrator of the State Travel Management Office, Ron Dukate, once or twice a month to resolve travel reimbursement problems.

9. The Accountant Job Title received 2116 total points from the following degree levels in each of the thirteen point factors [\(See footnote 4\)](#): 6.0 in Knowledge; 3.0 in Experience; 3.5 in Complexity and Problem Solving; 3.5 in Freedom of Action; 5.0 in Scope and Effect, Impact of Actions; 3.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 2.0 in Intrasystems Contacts, Nature of Contact; 3.0 in Intrasystems Contacts, Level of Contact; 2.0 in External Contacts, Nature of Contact; 2.0 in External Contacts, Level of Contact; 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; 2.0 in Working Conditions; and 1.0 in Physical Demands. Respondent's Exhibit 1.

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, without also identifying which point factors he is challenging, and the degree level he believes he should have received. [\(See footnote 5\)](#) While some "best fit" analysis of the definitions of the degree levels is involved in determining which degree level of a point factor should be assigned, where the position fits in the higher education classified employee hierarchy must also be evaluated. In addition, this system must by statute be uniform across all higher education institutions; therefore, the point factor degree levels are not assigned to the individual, but to the Job Title. W. Va. Code § 18B-9-4; Burke, supra. A Mercer grievant may prevail by demonstrating his reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehabilitation, Div. of Rehabilitation Services and W. Va. Civil Serv. Comm'n., Docket No. VR-88-006 (Mar. 28, 1989). Finally, whether 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 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 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.

Comparison of Grievant's Duties to Accountant Senior Job Title

Respondent did not explain the difference between an Accountant and an Accountant Senior. Attached to this Decision as Appendix A and B respectively are the Generic Job Descriptions for the Accountant and Accountant Senior Job Titles. These Generic Job Descriptions show the Accountant Senior performs duties such as deciding how all aspects of the accounting system are set up and maintained, analyzing complex financial information, preparing financial reports, developing cost proposals, and training other employees in complex accounting concepts and regulations. Grievant does not function at this level. Her supervisor, who is the Business Manager, is the person who decides how the accounting system should be set up, analyzes complex financial information and prepares financial statements. Grievant's supervisor tells Grievant the format he wants for financial statements and budget reports, the proper codes for expenses and funds, the percentages to be used in allocating expenses to departments, and sets the budgets and makes decisions about changes to budgets. Grievant takes her supervisor's decisions and implements them. Grievant analyzes financial information to compare the state auditor's report to in-house reports and to monitor budgets for overruns, but this comparison work is not as complex as preparing the budget and financial statements.

Joint Exhibit A contains a PIQ for an Accountant Senior at West Virginia State College. Grievant argued she should be classified as an Accountant Senior because her duties were essentially the same as those listed on this PIQ. Many of the duties and responsibilities of that person appear to be the same as Grievant's, or are at the same or a lesser performance level than Grievant's. An important distinction is the higher level of budgetary and financial reporting responsibility.

The PIQ states the Accountant Senior assists in "setting up budgets for departments" five percent of her time. The PIQ, like those placed into evidence in other Mercer grievances, does not clearly explain what this means. The undersigned cannot tell whether this means, as Grievant argued, that she takes the information her supervisor gives her on what the budgets will be, and sets it up on the computer as Grievant does, or she actually helps in making the decision as to budget amounts. The PIQ for the Accountant Senior also states that she assists in the preparation of annual operating

reports, quarterly reports and the annual expenditure schedule 15 percent of her time, while Grievant does not provide such assistance. Under Breadth of Responsibility on the PIQ, the Accountant Senior provided additional information on her duties which indicate more direct responsibility for preparing financial and budget statements, when she described her areas of responsibility/accountability under "[a]ccounting":

Assisting in performing and maintaining the college's financial system which consist of the recording of transactions and preparing financial and other reports for the use of management.

She described under "[b]udgeting":

assisting with the set up and maintenance of departmental budgets of their operations and providing summaries and reports.

While these duties do not match those in the Generic Job Description for the Accountant Senior, they are more complex than Grievant's.

This is but one PIQ out of ten persons classified as Accountant Senior. Respondent's Exhibit 1. The parties submitted as Joint Exhibit D the duties and responsibilities section of the PIQ for an Accountant Senior at Fairmont State College. That position works with others to develop and maintain the accounting system, prepares financial reports and statements, and prepares budgets for all grants 35% of the time. These duties and responsibilities more closely resemble those on the Generic JobDescription. Further, in addition to the fact that the West Virginia State College Accountant Senior PIQ does not clearly describe certain of the duties, the undersigned will also take notice that Respondents' JEC member witnesses have testified in other Mercer grievances that particular PIQ's were orally supplemented at JEC meetings by campus human resource personnel. As noted in Payne, et al., v. Bd. of Directors, W. Va. State College, et al., Docket No. 94-MBOD-787 (Sept. 19, 1996), footnote 6, "[a]ll of this is an indication to the undersigned that PIQ's alone are less reliable for classification purposes than Generic Job Descriptions."

The undersigned concludes that Grievant has not presented evidence that her duties are the same as those of an Accountant Senior. However, as in all Mercer grievances, an analysis of the point factors at issue is necessary in the final determination of whether the differences in the duties are significant enough to prevent Grievant from being classified as an Accountant Senior.

C. Application of the Point Factor Methodology

Grievant challenged the degree levels received in the point factors Complexity and Problem

Solving, Freedom of Action, Scope and Effect/Nature of Actions, Intrasystems Contacts/Nature and Level, and External Contacts/Level. Following are the differences between the degree levels assigned the point factors for the Accountant Job Title, the Accountant Senior Job Title, and the degree levels Grievant argued she should have received in each of these point factors:

		<u>SE</u>	<u>IC</u>	<u>IC</u>	<u>EC</u>			
	<u>EX</u>	<u>CPS</u>	<u>FA</u>	<u>NA</u>	<u>NC</u>	<u>LVL</u>	<u>LVL</u>	<u>(See footnote 7)</u>
Accountant		3	3.5	3.5	3	2	3	2
Accountant Senior		5	4	4	3	3	4	4
Grievant's Argument		5	4	4	4	3	4	4

Respondents' Exhibit 4. Each of the point factors challenged by Grievant will be addressed separately below. [\(See footnote 8\)](#)

1. Experience

The Job Evaluation Plan ("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.

Grievant's Job Title received a degree level of 3.0 in this point factor. She argued she should have received a degree level of 5.0, as did the Accountant Senior Job Title. A degree level of 3.0 is defined in the Plan as "[o]ver one year and up to two years of experience." A degree level of 4.0 is defined in the Plan as "[o]ver two years and up to three years of experience." A degreelevel of 5.0 is defined in the Plan as "[o]ver three years and up to four years of experience."

Grievant argued a person had to have prior experience in state government due to the invoice verification aspect of her job, and to be able to work with auditors. She also pointed to her payroll duties. She further presented evidence that the old WVU-P Position Description for her position, signed by her supervisor and her second level supervisor, stated the position required a college degree and three years' experience. Her supervisor testified he would prefer someone with at least three years of experience.

Margaret Robinson Buttrick, Human Resources Administrator for the State College and University Systems, and Chairman of the JEC, testified on behalf of Respondent. She noted this point factor

measures the least amount of directly related work experience an individual would need coming into the position. She testified Grievant's position is that of an entry-level Accountant. She stated the JEC felt that with a Bachelor's Degree in accounting, one to two years' experience would be sufficient for an entry-level accounting position. She stated the JEC used all the PIQ's in the Job Family, their own human resources experience, and the type of experience the market would require for an entry-level accountant. She stated the JEC also used a mathematical formula developed by the consultant on the reclassification project, William M. Mercer, Inc., which showed whether the jobs were being overvalued or undervalued in comparison to the market. She stated the requirement on the old Position Description for Grievant's job that three years' experience was required should be disregarded because it was developed under a different classification system.

Grievant has proven that some prior experience is necessary, but she has not proven how much prior experience is necessary to be able to do her job. The only evidence of a particular number of years of experience is the old Position Description. This document shows only that Grievant's supervisor and second level supervisor believed three years was the requisite prior experience, just as her supervisor stated on Grievant's PIQ. Her second level supervisor, however, marked "[o]ver two years and up to three years of experience" on the PIQ. Grievant's supervisor's basis for the three year requirement was not that it was the minimum level required, but that it was his preference.

Further, Grievant did not prove her accounting duties are more than entry-level. Most of her duties would appear to be very basic for someone with an accounting or related four-year degree. She prepares no financial statements, nor does she prepare the budget. One of the more difficult duties Grievant has is to format the CUFS software to generate the type of financial reports her supervisor wants. While no one in higher education had been able to generate the reports using CUFS which Grievant was able to generate, she testified she was able to accomplish this by reading the system manuals. However, Grievant would need a "[t]horough knowledge of automated accounting systems, and electronic data processing concepts and ability to utilize basic business software (i.e. word processing, spreadsheet, and database packages)", as is listed in the Knowledge/Skills/Abilities of the Accountant Senior Generic Job Description, to be able to make practical application of the manual when others could not. This, however, is but one of several areas listed in the Generic Job Description, and there is no indication that three years' experience would be necessary to achieve this level of proficiency in this area alone.

Grievant has not presented evidence sufficient to meet her burden of proof on this point factor.

2. 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.

Grievant received a degree level of 3.5 in this point factor. She argued she should have received a degree level of 4.0, as did the Accountant Senior Job Title. A degree level of 3.5 is not defined in the Plan, but Mrs. Buttrick testified that a "half- level" was assigned a Job Title in this point factor, and in Freedom of Action, when, in looking at the PIQ's of all persons in the Job Title, some of the duties were within the lower degree level (3.0 in this case), and some were within the higher degree level (4.0 in this case). The varying structures of the institutions were taken into account in the decision that half- levels should be assigned.

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.

Mrs. Buttrick explained that this point factor looks at the types of problems an individual encounters on a daily basis in her job, and how she might go about solving those problems. She believed Grievant's supervisor handles the more complex problems, and the problems handled by Grievant are more routine. Because of this, she believed Grievant's duties would not rise to the 3.5 degree level her Job Title received.

The evidence does not support a finding that the problems Grievant encounters are complex and varied due to incomplete or conflicting data. Most problems Grievant encounters seem to be

straightforward and recurring, with precedents, regulations, or manuals available which provide the solution. The exceptions are, first, when Grievant is deciding which fund should be used to cover an expense. This may require some analysis and resourcefulness, but Grievant did not demonstrate this was a complex decision. She stated there are not written policies to follow, but there are guidelines, such as all travel expenses are paid out of the same fund. The second exception is when Grievant is formatting CUFS software to allow production of reports in the desired form. Grievant's testimony would support a finding that this was complex, because no one else had been able to achieve the results Grievant achieved. However, because the manual provided all the information she needed to solve the problem, Grievant was not faced with incomplete and/or conflicting data in performing this task, although her prior experience assisted her in understanding the manual.

One significant difference between Grievant's duties and those of the Accountant Senior is that Grievant does not prepare financial statements. This duty would fall squarely within a degree level of 4.0. Grievant has not proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in deciding her Job Title should receive a degree level of 3.5, while awarding the Accountant Senior a slightly higher degree level.

3. 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. Grievant received a degree level of 3.5 in this point factor. She argued she should have received a degree level of 4.0, as did the Accountant Senior Job Title.

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.

Mrs. Buttrick explained this point factor is similar to Complexity and Problem Solving, but it looks at what the employee can do on her own, the types of decisions the employee must make, and whether the employee must use initiative and be creative in handling the job on a daily basis. She described Grievant's position as having some freedom in very routine matters, and noted there are operating procedures and guidelines for her use. She used as an example Grievant's correction of data entry or coding errors, for which there are very specific guidelines for making corrections. However, if the problem were that an organizational code had not been established, that would go to Grievant's supervisor for corrective action. She concluded this limits the position's problem solving and freedom of action. She believed Grievant's job duties would fall somewhere below a degree level of 3.5.

Grievant proved that she fits part of the 4.0 definition, in that she has developed expertise in her work, and plans and carries out her assignments, resolves most conflicts and coordinates her work with others. She did not prove that she works from broad goals as opposed to objectives, or that she works with her supervisor to establish objectives, deadlines and projects. Her testimony was that her supervisor makes decisions, tells her what he wants done, and she then decides how to accomplish the task. Overall, the definition of the 3.0 degree level is a better fit for Grievant's duties than a 4.0. Grievant has not proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in giving her Job Title credit under both degree levels by assigning a 3.5.

4. 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 point factor consists of two parts, Nature of Actions and Impact of Actions. Grievant is challenging only the degree level received in Nature. She received a degree level of 3.0 in this point factor. She argued she should have received a degree level of 4.0. The Accountant Senior Job Title received a degree level of 3.0.

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

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

A degree level of 4.0 in Nature of Actions 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. Grievant pointed out she decides which fund should be used to pay an invoice to make the best use of funds. If she does not use the correct fund, it is possible to run short of funds for particular items. However, she stated her supervisor could change the allocation of funds to correct the problem.

Mrs. Buttrick stated this factor measures the responsibility of the individual, and how that affects the institution. Mrs. Buttrick pointed out that Grievant has no budgetary responsibility, which affected the degree level in Impact of Actions. She stated there is a relationship between Impact and Nature of Actions, and that a Job Title which received a 5.0 in Impact of Actions, as did the Accountant Job Title, would provide guidance to an operation, program, function or service that affects many employees, students or individuals, which is a degree level of 3.0. She did not believe, however, that Grievant's duties affect many students, employees or individuals, and if she were evaluating Grievant's duties alone, they would fall within a degree level of 2.0. She stated Grievant's duties provide some reliability and accountability of processes and functions, but there is limited decision-making. She stated the problems and errors would result in some cost and inconvenience, but not a large amount, and it would not affect the entire institution by causing a shutdown.

Viewing Grievant's duties in light of the definition of Scope and Effect, she has little responsibility with regard to the institution's mission. Her duties would not affect many levels within the institution, because it is her supervisor who is making the decisions about budgets, allocation of expenses, and financial reporting, and Grievant is assisting in implementing these decisions. The one exception is

when she decides which fund should be used. If she does not make good decisions about which fund should be used, the only impact on the institutional mission will be that a department may run out of funds for the quarter. This seems unlikely given Grievant's testimony that her supervisor can take steps to allocate more funds for the quarter, or take other corrective action. Grievant's scope and effect is not at a high level overall.

With regard to Nature of Actions then, Grievant has not proven her work contributes to the effectiveness of services having a significant impact within the institution. Likewise, she has not proven errors could easily result in any costs, that the inconvenience to her supervisor in taking corrective action would rise to the level of a substantial inconvenience, or that services would be disrupted. It is also helpful to consider the definition of a degree level of 2.0, which is as follows:

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.

Comparing this definition to the definition of a degree level of 4.0, Grievant's duties are better described by the 2.0 definition. Grievant has not proven she should have received a degree level of 4.0 in Nature of Actions.

5. 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. Grievant is challenging the degree level received in both parts. She received a degree level of 2.0 in Nature of Contact and a 3.0 in Level of Contact. She argued she should have received a degree level of 3.0 in Nature and 4.0 in Level, as did the Accountant Senior Job Title.

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.)

A degree level of 3.0 in Level 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.

Mrs. Buttrick stated this point factor measures the regular and essential contact employees have with other higher education employees. She stated that Grievant's occasional contact with a Dean or Director would not be enough to put her in a degree level of 4.0 in Level of Contact, noting that most of Grievant's contact regarding travel problems would be with the unit secretary, rather than the Dean or Director directly. She believed a degree level of 2.0 would better fit Grievant's duties.

As to Nature of Contact, Mrs. Buttrick stated that at times, Grievant has to deal with someone who is irate, but she did not believe this was regular, recurring and essential; and, therefore believed a degree level of 2.0 would fit Grievant's contacts.

Grievant has not proven her contacts rise to a degree level of 4.0 in Level of Contact. As Mrs. Buttrick pointed out, the definition of this point factor requires the contact to be essential to the performance of the job. As previously noted by this Grievance Board, "[w]hen Grievant's discussions with a Director's Office are such that he does not need to talk to the Director, but can resolve the issue by dealing with a member of the Director's staff, the fact that the Director may answer the telephone and help him does not make this an essential contact with the Director. These are contacts with staff." Wilkinson v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-765 (Aug. 26, 1996). Grievant's contacts with the Dean of Student's secretary is with staff. Grievant has not proven her contact with the Dean of Instruction "because he's new" is essential contact which could not be handled by his staff.

Under Nature of Contact, Grievant has proven her discussions may on occasion be controversial when someone is upset because they have not followed state travel procedures and are unable to obtain reimbursement, but she is usually explaining policies and procedures, such as the state travel policy and budget policies. Her supervisor deals with persons who become threatening. To fall within

a degree level of 3.0, Grievant's discussions would have to be frequently controversial and require some delicacy. She has not presented any evidence that her discussions are better characterized as frequently controversial rather than largely non- controversial.

6. 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 consists of two parts, Nature of Contacts and Level of Contacts. Grievant is challenging only the degree level received in Level. She received a degree level of 2.0 in this point factor. She argued she should have received a degree level of 4.0, as did the Accountant Senior Job Title.

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

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

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

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

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

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

Mrs. Buttrick explained this point factor measures the regular and recurring contact essential to the job, with people who are not higher education employees. Mrs. Buttrick asserted Grievant had not provided the title of the person she deals with at the Travel Management Office, and she would need this information to evaluate this point factor. She also stated that contact once or twice a month is not contact which is essential to the position.

The phrase "[m]id-level representatives of government agencies" is not self-explanatory, and Respondent offered no clarification. The Administrator or Director of a state office could fall within this category, as Grievant asserted. However, Grievant's contact at this level is not essential. Mrs. Buttrick's explanation of the meaning of essential is consistent with the plain meaning of the word.

The American Heritage Dictionary, Second College Edition, defines essential, when used as an adjective, as:

1. Constituting or part of the nature of something; inherent.
2. Basic or indispensable; necessary: essential ingredients.

Although Grievant is the person responsible for resolving travel reimbursement problems and this is a required part of her job, her occasional contact with Mr. Dukate is a minor part of her job. As the definition points out, there may be many ingredients, but it is only the key ingredients which are essential. In describing Grievant's position, her contact with the State Travel Management Office is not a major purpose of her position. Grievant described the "general purpose" of her position on her PIQ as "to maintain the budget and to monitor all items affecting the budget. . . . also assists in the payroll operation to the extent necessary to stay current with state procedures." The JEC was not clearly wrong, nor did it act in an arbitrary and capricious manner, in deciding Grievant's contact with the Administrator of the State Travel Management office was not essential.

D. Summary

Grievant failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning her Job Title, or in assigning the degree levels in the point factors to her Job Title.

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 Grievant is not an Accountant Senior is not clearly wrong or arbitrary and capricious.

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

Accordingly, this grievance is **DENIED**.

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

[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](#)

Grievant declined to submit written argument.

[Footnote: 3](#)

Grievant's signature on the cover sheet, along with the required signature of a second employee, indicates all the paperwork is in order for payment to be made. She is not financially obligating the institution as was discussed in Campbell-Turner, et al., v. Bd. of Trustees, Marshall University, Docket No. 94-MBOT-1035 (Jan. 31, 1996).

[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: EX is Experience; CPS is Complexity and Problem Solving; FA is Freedom of Action; SE, NA is Scope and Effect/Nature of Actions; IC, NC is Intrasytems Contacts/Nature of Contact; IC, LVL is Intrasytems Contacts/Level of Contact; and, EC, LVL is External Contacts/Level of Contact.

[Footnote: 8](#)

The Accountant - Senior Job Title received a higher degree level than the Accountant Job Title in the point factors Scope and Effect/Impact of Actions, and Direct Supervision Exercised/Number and Level. Grievant is not challenging the degree level received in these point factors. Respondent did not argue this point. Accordingly, the undersigned will not address these differences.