

PATRICIA L. PARKS

v.

Docket No. 94-MBOT-519

BOARD OF TRUSTEES/WEST VIRGINIA UNIVERSITY

DECISION

Grievant Patricia Parks alleges she was misclassified effective January 1, 1994, in the "Mercer reclassification" ([See footnote 1](#)). Grievant specifically challenges her classification as an Office Assistant at a Pay Grade 7 and seeks classification as a Certification Analyst at a Pay Grade 14, effective January 1, 1994, with backpay to January 1, 1994. She stated her grievance as follows:

I am responsible for processing all applications for Public School Certification for West Virginia University graduates. The description in my PIQ is an accurate description of my duties. I have been a Teacher Certification Analyst for 9 years: Therefore, I feel that my title should be changed back to Certification Analyst.

Grievant challenges the degree levels received in several point factors. A Level IV hearing was held on June 5, 1996, ([See footnote 2](#)) and this matter became mature for decision on July 1, 1996, with receipt of Respondent's fact/law proposals. Grievant declined to submit written argument.

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

FINDINGS OF FACT

1. Grievant has been employed by Respondent since 1986 in the Graduate Advising unit of the College of Human Resources and Education with a primary responsibility of processing teacher certification applications submitted by WVU graduates. Prior to the Mercer reclassification, her title was Teacher Certification Analyst at a Pay Grade of 7.

2. In 1991, all higher education classified employees were asked to complete a Position Information Questionnaire ("PIQ"), prior to implementation of the Mercer reclassification. Employees were to describe the duties, responsibilities and requirements for their respective positions on the PIQ by answering a series of questions. Grievant filled out a PIQ in 1991.

3. The Job Evaluation Committee ("JEC") ultimately determined that Grievant should be classified as an Office Assistant at a Pay Grade of 7. This Job Title received the following degree levels in the thirteen point factors [\(See footnote 3\)](#): 3.0 in Knowledge; 2.0 in Experience; 1.5 in Complexity and Problem Solving; 1.5 in Freedom of Action; 1.0 in Scope and Effect, Impact of Actions; 1.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 1.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level; 1.0 in External Contacts, Nature; 2.0 in External Contacts, Level; 1.0 in Direct Supervision Exercised, Number; 1.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 2.0 in Physical Coordination; 1.0 in Working Conditions; and 1.0 in Physical Demands.

4. The Generic Job Description for Certification Analyst describes it as a professional position requiring a bachelor's degree; such individuals generally perform analysis of teacher certification applications and must interpret applicable rules and regulations for teacher licensure.

5. The official Chief Certification Officer whose name appears on all formal certification recommendations for WVU graduates is Joan Applegate, Dean of the College of Human Resources and Education.

6. The certification professional at WVU charged with the responsibilities of certification analysis is Michael Caruso, Graduate Advisor, with whom Grievant works directly on a regular basis. However, Grievant's immediate supervisors are two people who handle financial and student programs for Dean Applegate, Ernest Garas and Richard Hawthorne. Nevertheless, Grievant has no regular contact with these individuals, and she goes to Mr. Caruso with questions regarding teacher certification. Her "official" supervisors have never checked her work.

7. Grievant's daily duties consist of assisting the certification officer in evaluating and processing all certification applications. She examines and evaluates each application to determine if it meets applicable requirements, gathers any needed information, and types recommendations for certification onto appropriate forms. Grievant explains general certification requirements to graduates and county boards of education when questions arise. Her desk is located in the reception area, so she also greets visitors and answers the telephone.

8. When conflicts, problems or questions arise regarding certification which Grievant is unable to answer or address, she consults Michael Caruso, who makes the appropriate decision and/or recommendation. If no such difficulties arise, Grievant recommends certification to the state

Department of Education without consulting either Mr. Caruso or Dean Applegate.

9. Once the applications have been processed and completed, Grievant affixes Dean Applegate's signature to the formal certification documents. Dean Applegate apparently does not see or review these documents before they are finalized.

10. Grievant challenged the degree levels she received in the point factors Complexity and Problem Solving, Freedom of Action, Scope and Effect/Impact of Actions, Breadth of Responsibility, Intrasystems Contacts/Nature of Contact and Level of Contact, External Contacts/Nature of Contact and Level of Contact, and Physical Demands.

11. Grievant's everyday duties are clear-cut and guided by well-defined procedures and guidelines. Certification requirements are contained in a guidebook which she consults to determine if each application is complete and qualifies for certification. However, she must exercise some judgment, as in determining whether an applicant meets applicable requirements or more information is needed for processing, and she is required to perform basic computation work, as when she computes each applicant's grade point average.

12. Grievant's responsibilities are highly routine, require following standardized instructions without ongoing supervision, and she normally functions autonomously with some questions referred to Mr. Caruso.

13. Grievant's work affects only the processing of certification applications and the applicants themselves, who could lose a job if a mistake is made in the certification process. However, Grievant's decisions do not affect an entire department or unit of the University.

14. Grievant is only accountable for her immediate work assignments in processing applications, not for the entire area of teacher certification or graduate advising. 15. Aside from Mr. Caruso, Grievant's regular and recurring contacts within the University are with staff of other departments regarding questions related to the applications of graduates of the particular department, if more information is needed to process the student's application. This occurs approximately once per week, and Grievant rarely deals with an actual department chair or supervisor to obtain information.

16. Grievant's communications within the University are routine exchanges of information regarding applicants and applications, which require common courtesy.

17. Grievant's regular and recurring contacts outside the university system are with staff persons of county boards of education and the state Department of Education. She also frequently

communicates with students who have questions regarding their applications.

18. Grievant's dealings with board of education and Department of Education employees require explaining the policies and procedures which govern certification. She must use tact when dealing with students, particularly those whose applications she must reject because they do not qualify for certification.

19. The physical demands of Grievant's normal duties involve mostly sitting, and she has discretion about walking or standing.

20. The point range for a Pay Grade 7 in the Job Evaluation Plan is from 1253 points to 1320 points. The Office Assistant Job Title received 1263 points.

DISCUSSION

A. Burden of Proof

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.17; W. Va. Code § 18-29-6. Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

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

Finally, whether a grievant is properly classified is almost entirely a factual determination. As such,

the Job Evaluation Committee's ("JEC") interpretation and explanation of the point factors and Generic Job Descriptions at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Foundation, 459 S.E.2d 374 (W. Va. 1995); Burke, supra. However, no interpretation or construction of a term used in the Job Evaluation Plan (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. Watts v. Dept. of Health and Human Resources, 465 S.E.2d 887 (W. Va. 1995). The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. ([See footnote 5](#))

B. Comparison of Grievant's Duties to Certification Analyst

The generic job descriptions for Certification Analyst and Office Assistant were introduced at the Level IV hearing and are attached as Appendix A and Appendix B, respectively; by reference hereto they are made a part of this Decision. To develop Generic Job Descriptions for Job Titles, the JEC read the PIQs submitted by all persons in the state higher education system in that classification, looking for similarities and differences in job duties. The duties shown on the Generic Job Description are those duties most frequently appearing on the PIQs and are considered the common duties of that job. The duty which occurred most often on the PIQs, was performed the highest percentage of time by most individuals, or a combination thereof, is listed first. Generic Job Descriptions were developed after January 1, 1994, which was after employees were notified of their initial classifications. Burke, supra.

The Generic Job Description for Office Assistant states the position's general function as "[p]erforms a variety of clerical and basic office duties." For Certification Analyst, the general function is "[p]erforms analysis for teacher certification applications to ensure compliance with institutional and state requirements . . . [i]nterprets rules and regulations dealing with programs and licensure." Clearly, these are two vastly different jobs which would appear to have absolutely no similarities in duties and functions performed. Further comparison of the Generic Job Descriptions confirms the dissimilarities. The characteristic duties and responsibilities of an Office Assistant include such things as obtaining information and inserting it into forms and form letters, filing, dealing with incoming and outgoing mail, greeting visitors, answering the telephone, and collecting and verifying information for reports. A Certification Analyst must respond to all inquiries regarding teacher certification requirements, analyze student transcripts, maintain current knowledge of certification policies and

regulations, prepare certification and verification forms, and compile reports.

In addition, the educational and experience requirements for these two positions are quite different. An Office Assistant typically requires only a high school diploma or GED and six months of experience, while a Certification Analyst requires a bachelor's degree and two years of related experience.

Both Grievant and Michael Caruso (who was previously her direct supervisor and currently is the responsible chief certification officer) testified that she performs all of the job duties listed on both Job Descriptions. However, both also testified that the "official" chief certification officer is Joan Applegate, Dean of Human Resources and Education. When problems or questions regarding the certification process arise, Grievant goes to Mr. Caruso for instructions. Grievant further testified that she affixes Ms. Applegate's signature to all certification documents once they are in final form. Ms. Applegate did not testify, and it is unknown what her daily duties are in the certification process, if any.

Luann Moore, Senior Compensation Analyst for Respondent, also testified at Level IV regarding the Mercer classification system generally and Grievant's case particularly. She testified that, in general, the difference between the two positions is that an Office Assistant is a non-professional individual whose work is very standardized, i.e. filling out forms, and a Certification Analyst is a professional person who must analyze and interpret rules and policies. Based upon the information provided to her, she believed that Grievant's duties were appropriately classified as those of Office Assistant. Ms. Moore also had been told by Dean Applegate that the certification professional at West Virginia University was Mr. Caruso. None of the evidence presented at Level IV addressed the exact relationship between Dean Applegate and Mr. Caruso, or why Mr. Caruso is considered "responsible" for certification and why Dean Applegate's signature is placed on all documents without any apparent participation by her in the process.

Grievant's testimony indicates that she processes applications for teacher certification quite efficiently and very independently. In order to gather the information necessary for certification recommendation and further processing by the State Department of Education, she must be familiar with the requirements for certification in numerous areas of specialization. Under cross-examination at Level IV, Grievant described her daily duties. Upon receipt of an application from a student, she gathers the necessary information from a variety of sources, checks it for accuracy (which may

involve communications with other departments, county boards of education, or applicants), calculates the student's grade point average, types the information onto the appropriate form, and mails completed applications with Ms. Applegate's signature. She also must greet visitors and answer the telephone on a daily basis. As noted by this Board in Jones v. Bd. of Trustees, Docket No. 94-MBOT-978, at 22 n.5 (Feb. 29, 1996), it is not unusual for the range of responsibilities of individuals within a particular classification to differ, and "[n]uances among jobs do not deserve separate classifications." Id. (citing Hayes and Reeves, Personnel Management in the Public Sector). The evidence shows that Grievant should not have been classified as a Certification Analyst. However, she is entrusted with a higher level of responsibility than the typical Office Assistant because of the specialized knowledge she has gained through her years of work in teacher certification. She has not demonstrated that her duties are those of a Certification Analyst. Grievant essentially performs the clerical and office duties of an Office Assistant, although one with specialized knowledge in certification, and she has not shown that the JEC was clearly wrong or arbitrary and capricious in its classification of her.

C. Application of the Point Factor Methodology

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

1. Complexity and Problem Solving

The Job Evaluation Plan (the "Plan") defines Complexity and Problem Solving as:

This factor measures the degree of problem-solving required, types of problems encountered, the difficulty involved in identifying problems and determining an appropriate course of action. Also considered is the extent to which guidelines, standards and precedents assist or limit the position's ability to solve problems. Grievant (and the Job Title Office Assistant) received a 1.5 degree level in this point factor, meaning that the job's duties and responsibilities fall between a 1.0 and a 2.0.

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

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

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

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

Grievant argues she should have received a degree level of 3.0, which is defined in the Plan as:

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

Grievant's testimony was that execution of her daily responsibilities requires resourcefulness and originality in order to determine whether the application is the appropriate type and whether the candidate meets certification requirements. She also must calculate the student's grade point average (GPA) in order to process his or her application. She alleged that solutions to problems or questions are always different because of the numerous types of applications and unique situation of each applicant. However, Grievant also testified that she consults a book of state guidelines and regulations in order to process the applications.

Luann Moore testified that Grievant's duties normally consist of dealing with routine problems with clear-cut solutions, but that she sometimes must use judgment and perform calculations, i.e. calculation of student GPAs. Close scrutiny of Grievant's actual activities related to Complexity and Problem Solving reveals that Respondent did not act arbitrarily or capriciously in assigning her a degree level of 1.5 in this point factor. As Ms. Moore testified, Grievant's basic work activities are routine and guided by specific rules and regulations. Although she must use some judgment to determine whether an applicant meets specific requirements, it would be incorrect to state that her duties require resourcefulness and originality. Grievant's testimony reveals that any unique problems or questions must be taken by her to Mr. Caruso, so most situations she encounters are routine and addressed by the available guidelines.

Accordingly, Grievant has not proven that Respondent was clearly wrong in assessing her at a 1.5 degree level in this point factor, and she has not proven her entitlement to a 3.0.

2. 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 1.5 in this point factor, indicating that, again, her duties fall somewhere between a 1.0 and a 2.0. The definitions in the Plan show that at a degree level of 1.0:

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

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

Tasks are structured to the extent that standard operating procedures serve as a gauge to guide the employee's work. The employee can occasionally function autonomously with the immediate supervisor available to answer questions. Questionable items are referred to the immediate supervisor.

Grievant argues that she should have received a 4.0 for Freedom of Action. The definitions in the Plan show that at a degree level of 4.0:

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

Grievant's description of her duties in this category unquestionably leads to the conclusion that she has not even come close to establishing her entitlement to a degree level of 4.0. She testified that she knows what her responsibilities are and works alone to process the applications. When unusual problems arise, she solves them herself by consulting guidelines or discusses them with Mr. Caruso. However, as noted by Luann Moore in her Level IV testimony, Grievant repeatedly performs routine tasks and is not involved in establishing policies or objectives, as required for a 4.0 degree level. Grievant's job duties appear to fall between a 1.0 and a 2.0 degree level in Freedom of Action.

3. Scope and Effect

Scope and Effect is defined in the Job Evaluation Plan as:

This factor measures the scope of responsibility of the position with regard to the overall mission of the institution, and/or the West Virginia higher education systems, as well as the magnitude of any potential error. Decisions regarding the nature of action should consider the levels within the systems that could be affected, as well as Impact on the following points of institutional mission: instruction, instructional support,

research, public relations, administration, support services, revenue generation, financial and/or asset control, and student advisement and development. In making these judgments, consider how far-reaching is the impact and of what importance to the institution and/or higher education systems is the work product, service or assignment. Decisions regarding the impact of actions should take into account institutional scope and size as reflected by operating budget, student enrollment and institutional classification. Also, consideration should be given for the possibility that a unit, program or department within a large institution may be equivalent in size to multiple units, programs or departments within a smaller institution. In making these interpretations, assume that the incumbent would have normal knowledge, experience and judgment, and that errors are not due to sabotage, mischief or lack of reasonable attention and care.

Scope and Effect has two features, namely Impact of Actions and Nature of Action. Grievant challenged the degree level of 1.0 she received in Impact of Actions, which is defined in the Plan as "[w]ork is limited to immediate work function and short-term situations." She argues that she is entitled to a 3.0 degree level, which is defined 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.

The basis of Grievant's argument regarding this point factor is that, if she makes an error in processing an application, it could cost the applicant a job. However, she admitted that her work does not seriously affect the department in which she is employed. Ms. Moore testified that Grievant performs a support function only, processing applications so they can be forwarded to the next level in the certification process.

The evidence supports the assignment of a degree level of 1.0, because Grievant's work appears only to affect her immediate function, not an entire unit or department.

4. Breadth of Responsibility

The factor Breadth of Responsibility is defined in the Plan as:

This factor describes the variety of specific functional areas in which the job may have formal and ongoing accountability. In reviewing this factor, consider the level of in-depth knowledge required as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations. [Examples of some functional areas within the following divisions would include: (1) Student Services--Housing, Admissions, Financial Aid, Counseling; (2) Business and Finance--Purchasing, Auditing, Grants and Contracts, Bursar.]

Grievant also received a 1.0 in this point factor and argues that she is entitled to a 2.0. A degree

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

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

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

Apparently, Grievant believes that certification should be considered a single functional area and one in which she is required to answer detailed and complex questions. Ms. Moore explained that Financial Aid or Admissions and Records would be considered "functional areas." Certification is Grievant's primary area of responsibility within the Graduate Advising unit of the department of Human Resources and Education, according to the information contained in her PIQ (Grievant's Exhibit 3 at Level IV). Thus, Grievant is accountable only for her immediate work assignments in the certification application process, not for the entire functional area of Graduate Advising. Moreover, even if certification were deemed to be a functional area, it would appear that Mr. Caruso or Ms. Applegate would be the individual having "formal or ongoing accountability" in the area of certification, not Grievant.

5. Intrasytems Contacts

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

[A]ppraises the responsibility for working with or through other people within the [State College and University Systems of West Virginia] to get results. Consider the purpose and level of contact encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, explaining policies or discussing controversial issues. This factor considers only those contacts outside the job's immediate work area.

Intrasytems Contacts are measured as to Nature of Contact and Level of Regular, Recurring and Essential Contact. Grievant received a 1.0 for Nature of Contact and a 2.0 for Level of Contact.

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).

Grievant argues that her job duties rise to the level of a 2.0 in this point factor, which 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.)

Sometimes Grievant is required to contact the Admissions and Records department in order to complete a transcript for a particular applicant; also, she often contacts other departments to complete the needed information regarding an applicant's courses. She argues that these communications entitle her to a degree level of 2.0 in Nature of Contact, because they require moderate tact. However, her job appears to fit appropriately within the degree level 1.0, because her contacts involve obtaining factual information regarding the applicants. Grievant did not describe any contacts of a controversial nature or any which would require more than common courtesy. Her communications were viewed by Ms. Moore as routine exchanges of information. Grievant has not established any error was made in the assignment of a degree level of 1.0 for Nature of Contact.

For Level of Contact, Grievant received a 2.0 and argues she is entitled to a 3.0 degree level. A degree level of 2.0 in Level of Contact is defined in the Plan as "[s]taff and faculty outside the immediate work unit." A degree level of 3.0 is defined as "[s]upervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office."

Grievant testified that she regularly (about once per week) contacts other departments, such as Creative Arts and Physical Education, concerning their graduates who have applied for teacher certification. This is necessary contact for processing of the application if the information is incomplete and normally requires communication between Grievant and a clerical person from the other department. Occasionally, however, she must communicate with a department chair if a course has been substituted for a required class. In such situations Grievant must obtain supporting information to justify the substitution, and she described such situations as occurring "not very often."

On her PIQ, Grievant stated that she communicates daily with the University Office of Admissions and the University Registrar's Office; also, she communicates on a weekly basis with University faculty concerning substitutions for required courses. "Regular" and "recurring" can include daily or weekly contact. Riggs v. Bd. of Trustees, Docket No. 94-MBOT-711 (April 29, 1996). However, the individuals which Grievant has described seem to squarely fit into the degree level 2.0 category of "staff and faculty outside the immediate work unit." As Luann Moore testified, when Grievant contacts another department or office to inquire regarding a particular student, she discusses the matter with a staff person, not the department chair or supervisor. Grievant did not dispute Ms. Moore's testimony

in that regard.

Grievant's daily and weekly regular contacts are with faculty and staff within and outside her own department. Her occasional contact with department chairs is infrequent and would not fall within the above description of regular and recurring; thus she has not established entitlement to the higher degree level. All of the evidence presented at Level IV supports Respondent's assignment of a degree level of 2.0 to Grievant's job in this point factor, and her duties and responsibilities fit the description contained in the Plan.

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 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.

Like Intrasystems Contacts, this factor has two elements, and Grievant challenged the degree levels she was assigned both as to Nature of Contact and Level of Contact. As to Nature of Contact, she was assigned a 1.0 and desires a 2.0. 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 of Contact is defined in the Plan as:

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

The testimony given by Grievant at Level IV regarding this point factor was that she has regular contacts of a non-routine nature with students, county boards of education, and the State Department of Education. These communications consist of giving information and explaining the procedures and requirements for certification applications. Grievant believes that moderate tact is necessary when an applicant is rejected, which is accomplished in memo form signed by her and addressed to the student or the county board of education. She also views these communications as non-routine, because each applicant's situation is unique.

Ms. Moore sees Grievant's duties as routine exchanges of information. However, the evidence clearly contradicts her testimony. Grievant and Mr. Caruso testified regarding the explanations and guidance which she gives to individuals who have questions regarding the certification process. This would seem to rise above the level of simple "exchange of information," and clearly involves "explaining simple policies and procedures," as set forth in the degree level 2.0 description.

Also, if Grievant is responsible for informing some students that they do not qualify for certification and, therefore, will be unable to obtain employment, moderate tact would certainly seem to be more appropriate than simple common courtesy. "Tact" as defined in Webster's New World Dictionary (1975) requires "delicate perception of the right thing to say or do without offending," while "courtesy" involves being "polite and gracious." Rejection of a student's application appears to be a "delicate" matter which should be handled in a manner so as not to offend the applicant.

There was no evidence presented regarding the typical duties of other persons classified as Office Assistants, but Grievant has shown that her particular duties and responsibilities require more than the 1.0 level assigned to her Job Title. She has established that her position is entitled to a 2.0 degree level.

The Office Assistant title was assigned a 2.0 degree level in Level of Contact, and Grievant argues that she is entitled to a 4.0. A degree level of 2.0 in Level of Contact is defined in the Plan as contact with "[g]eneral public, visitors, and/or service representatives and vendors." A degree level of 4.0 in Level of Contact is defined as "[m]id-level representatives of government agencies, professional contacts with other colleges and universities outside the systems." Both on her PIQ and in her testimony, Grievant maintained that her contacts with representatives at each county board of education place her at a degree level 4.0. However, she deals with a secretary or staff person, which would not be a "mid-level" employee.

Luann Moore did concede that, if Grievant's position were evaluated individually, her regular contact with students would probably entitle her to a 3.0 degree level. Indeed, the Plan's description of the contacts required for a 3.0 in this factor names "students" as the first group of persons with whom the incumbent must have regular, recurring and essential contact. Clearly, Grievant must constantly deal with the students whose applications she is processing, which Mr. Caruso estimated at 1300 to 1400 applicants per year.

Accordingly, the undersigned finds that Grievant has proven her entitlement to a 3.0 degree level

for Level of Contact, External Contacts, due to her regular, recurring and essential contacts with students applying for teacher certification.

7. Physical Demands

It appears that Grievant challenged her assigned degree level in this point factor, but she did not mention it at all during the Level IV hearing. However, Ms. Moore offered testimony on this point factor, indicating that there must have been a challenge by Grievant. On her PIQ, Grievant did not provide any description of types of physical effort she is routinely required to expend to accomplish her job duties. Her position was assigned a degree level of 1.0, which means that the "[j]ob is physically comfortable; individual is normally seated and has discretion about walking, standing, etc." She stated in her PIQ that she believed she would be entitled to a 2.0, which involves "[l]ight physical effort . . . stooping and bending . . . limited discretion about walking, standing, etc."

Since Grievant provided no testimony and no explanation of the physical demands of her job, there is no basis for her argument that her job requires the activities described in the Plan at a 2.0 degree level. Thus, she has not established any error by the JEC regarding the Physical Demands point factor.

D. Summary

Grievant has not proven by a preponderance of the evidence that she is performing the duties of a Certification Analyst. However, the JEC was clearly wrong in its assignment of degree levels to Grievant's position in the point factors of External Contacts, Nature and Level. She is entitled to a degree level of 2.0 for Nature of Contact and a 3.0 for Level of Contact, bringing the total points for this point factor up to 113 points.

The JEC originally assigned Grievant's Job Title 73 points for External Contacts. She would require at least 1321 points to be entitled to the next higher Pay Grade of 8. However, the additional 40 points she will receive in this point factor (the difference between 113 and 73) only brings her total points up to 1303, which is insufficient to place her in a Pay Grade 8.

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.2d374 (W. Va. 1995); Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995).

4. Grievant did not prove by a preponderance of the evidence that she should have been classified as a Certification Analyst.

5. Respondent's assignment of degree levels to the point factors Complexity and Problem Solving; Freedom of Action; Scope and Effect, Impact; Breadth of Responsibility; Intrasystems Contacts; and Physical Demands for the Office Assistant Job Title was not clearly wrong nor arbitrary and capricious.

6. The JEC was clearly wrong in its assignment of degree levels to the point factor External Contacts, both Nature and Level, as applied to Grievant's position.

7. Grievant's position is entitled to a degree level of 2.0 for External Contacts, Nature and a degree level of 3.0 for External Contacts, Level.

8. Grievant did not prove by a preponderance of the evidence that her position is entitled to a higher Pay Grade under the Job Evaluation Plan than the Pay Grade 7 her Job Title received.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Monongalia County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

DENISE MANNING
Administrative Law Judge

October 15, 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](#)

The undersigned did not conduct the hearing, and this matter was subsequently reassigned to the undersigned for administrative reasons.

[Footnote: 3](#)

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: 4](#)

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: 5](#)

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.