

RONDEL WILKINSON

v.

DOCKET NO. 94-MBOT-765

**BOARD OF TRUSTEES,
MARSHALL UNIVERSITY**

DECISION

Grievant Rondel Wilkinson alleges he was misclassified effective January 1, 1994, in the "Mercer reclassification" [\(See footnote 1\)](#). Grievant seeks either to be classified as a Director/Physical Plant II, Pay Grade 21, or a higher Pay Grade for his Job Title of Manager/Medical School Maintenance, effective January 1, 1994, and backpay to January 1, 1994. Grievant challenges the degree levels received in several point factors. A Level IV hearing was held on April 22, 1996. This matter became mature for decision on May 23, 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 is employed at Marshall University ("Marshall").
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. In 1992, Grievant's job duties changed, and he prepared a new PIQ in July of 1994, which better reflected his duties and responsibilities immediately prior to January 1, 1994.
3. Grievant was classified in the Mercer reclassification as a Manager/Medical School Maintenance, Pay Grade 19, effective January 1, 1994. This is an "institution specific" Job Title, that is, Grievant is the only higher education employee holding this Job Title.
4. Grievant's area of responsibility is the physical plant of the School of Medicine. The Marshall

School of Medicine is housed at two sites located nine miles apart. In addition, Grievant has some maintenance responsibilities at several hospitals or clinics in the Huntington area where students receive clinical training.

5. Grievant's primary job duties prior to January 1, 1994 (with the percentage of time he performs these duties shown in parenthesis), were responsibility for maintenance, repair, custodial services, building security, alarms and fire systems for all buildings housing the Medical School, and the telephone system for the Medical School, and oversight, but not planning or contracting, of capital improvements (35-45%); development of cost- saving strategies for maintenance, repair and utility costs in the School of Medicine (10-20%); responsibility for making sure electronic copying equipment is maintained (0-5%); responsibility for development and oversight of equipment renovation and replacement schedule for School of Medicine (5-10%); scheduling repairs and preventive maintenance of School of Medicine vehicles (5%); responsibility for School of Medicine maintenance, lease- purchase, and rental contracts (5%); acting as a liaison with university support agencies (10%); and supervision of the School of Medicine mail system (5%). All work assignments in his department are processed through his desk, and he assigns priority to the work.

6. Maintenance contracts on School of Medicine equipment specify the equipment, its location, and the type of maintenance which will be provided. Maintenance and repairs not under contract are performed by the employees who are under Grievant's supervision.

7. Grievant's supervisor, the Associate Dean of Finance and Administration, sets the budget for his department. Grievant monitors all expenditures under his responsibility to make sure he is operating within the budget.

8. Grievant's second-level supervisor is a Vice-President. 9. Grievant works closely with the office of the Director of Communications at Marshall in regard to computer hook-up systems, all telephone systems and mail at the Medical School. Grievant has daily contacts with the office of the Director of Physical Plant regarding support for School of Medicine facilities, but these contacts are not with the Director himself. Grievant contacts the Purchasing Department at Marshall regarding supplies, services and contracts, and sometimes the Director of Purchasing answers the telephone and assists him. Grievant also has contacts with the Assistant Vice-President for Administration on a daily to weekly basis regarding "[t]elex and communication problems". If a contract's limitations are exceeded he immediately contacts the Dean or the department chair of the basic or clinical sciences.

10. Grievant's most frequent contacts outside higher education are with vendors providing clinical and basic science support for the School of Medicine, such as equipment for special tests. His second most frequent contacts are with state agencies, such as, the State Health Department regarding updating safety related operating procedures; State Purchasing to keep current on regulations and to discuss purchase orders, state contracts, inventory control and surplus property, and whether equipment contracts have been processed; the State Department of Transportation about leasing vehicles; and Worker's Compensation to acquire information on processing claims. He also has contacts with sales engineers, as necessary, regarding equipment failures and modifications; product representatives on a daily to weekly basis regarding supply, delivery and warranty issues; professionals at colleges and universities outside the West Virginia higher education system on a daily to weekly basis regarding projects and technical concerns; drug suppliers; the Red Cross regarding transportation of blood, twice monthly; managers of the off-campus facilities, including the Business Managers of St. Mary's Hospital and Cabell-Huntington Hospital, and the Veteran's Area Medical Center; and contractors on a daily basis regarding repairs, new equipment, and maintenance contracts.

11. Grievant supervises two work-study students, an Assistant Supervisor/Building Services, a Supervisor/Building Trades, a Trades Worker Lead, a Postal Worker I, and an Administrative Secretary. These persons supervise two Building Service Worker Leads, two Trades Workers, a Painter, and eight Building Service Workers. Joint Exhibit C.

12. Lewis Miller, an employee of the West Virginia School of Osteopathic Medicine ("WVSOM"), was reclassified as Director/Physical Plant II, Pay Grade 21, effective January 1, 1994. In addition to his responsibility for and scheduling of repairs and maintenance relating to the physical plant at WVSOM, he also is responsible for developing and controlling the physical plant budget, and spends well over 25% of his time planning and overseeing capital improvement projects.

13. The Manager/Medical School Maintenance Job Title received 2647 total points from the following degree levels in each of the thirteen point factors [\(See footnote 3\)](#): in 6.0 Knowledge; 6.0 in Experience; 4.0 in Complexity and Problem Solving; 4.0 in Freedom of Action; 4.0 in Scope and Effect, Impact of Actions; 5.0 in Scope and Effect, Nature of Actions; 2.0 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; 3.0 in External Contacts, Level of Contact; 4.0 in Direct

Supervision Exercised, Number; 6.0 in Direct Supervision Exercised, Level; 4.0 in Indirect Supervision Exercised, Number; 2.0 in Indirect Supervision Exercised, Level; 1.0 in Physical Coordination; 1.0 in Working Conditions; and 1.0 in Physical Demands. Joint Exhibit D.

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 Director/Physical Plant II

There are no Generic Job Descriptions for the two Job Titles at issue. However, the PIQ of Mr. Miller is of record for comparison of the two Job Titles, in addition to the testimony offered. Grievant asserted his duties were the same as those of Mr. Miller. Grievant's conclusion was based upon his observations when he was employed at WVSOM as Purchasing Director. At that time, Mr. Miller was Assistant Physical Plant Director, and he worked closely with Grievant. Grievant believed he acquired a good working knowledge of Mr. Miller's duties. He has kept in contact with Mr. Miller, and stated that Mr. Miller tells him if he takes on additional duties or has any problems. He stated that one difference in their job duties is that Mr. Miller does not have off-campus operations and their problems, and acknowledged Mr. Miller has budget responsibility which he does not have. Grievant also argued that the two medical schools (apparently excluding West Virginia University) should have the same positions. This same argument has already been rejected by the Grievance Board in Browning v. Board of Directors, Southern West Virginia Community College, Docket No. 94-MBOD-985 (Aug. 15, 1996). As Brenda Nutter, Director of Human Resources, West Virginia Institute of Technology, and JEC member, pointed out, the fact that both institutions have medical schools does not mean Mr. Miller and Grievant have the same duties.

Ms. Nutter asserted that Mr. Miller's PIQ was incomplete, in that it had no information under Direct or Indirect Supervision, and she would not be comfortable using his PIQ for job evaluation. [\(See footnote 6\)](#) She pointed out that Mr. Miller listed more budget responsibility than Grievant, he is responsible for the entire physical plant at WVSOM rather than a portion of the physical plant as Grievant is, and he has to be able to read blue prints, which Grievant does not do.

The undersigned finds that Mr. Miller's budget responsibility and his significant responsibility for planning capital improvements offer enough distinction that the JEC decision that Grievant should not be classified as a Director/Physical Plant II is not clearly wrong or arbitrary and capricious. However, to compare the two Job Titles requires a comparison not just of the PIQ's, but also of the degree levels assigned to the two positions in the point factors at issue.

C. Application of the Point Factor Methodology

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

Solving, Freedom of Action, Breadth of Responsibility, Intrasystems Contacts/Nature of Contact and Level of Contact, External Contacts/Nature of Contact and Level of Contact, and Indirect Supervision Exercised/Level. Following are the differences between the degree level assigned the point factors for the Manager/Medical School Maintenance Job Title, the Director/Physical Plant II Job Title, and the degree level Grievant argued he should have received in each of these point factors:

	IC	IC	EC	EC	ISE	CPS	FA	BR	NC	LVL	NC	LVL	LVL	(See footnote 7)
Mgr/Med. Sch. Maint	4	4	2	2	3	2	3						2	
Dir/Physical Plant II	4.5	5	3	3	5	3	3						2	
Grievant's Argument	5	5		*	3	5	3	5	4					

Joint Exhibit D. Grievant argued he should have received either a 4 or 5 in Breadth of Responsibility. Each of the point factors challenged by Grievant will be addressed separately below. (See footnote 8)

1. Complexity and Problem Solving

The Job Evaluation Plan ("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 4.0 in this point factor. He believes he should have received a degree level of 5.0. The Director/Physical Plant II ("Director") Job Title received a degree level of 4.5. A degree level of 4.5 is not specifically defined, but Ms. Nutter stated this means the job duties and responsibilities fit in two levels (4.0 and 5.0 in this case) to a substantial degree.

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, valiative and reasoning skill in researching information and developing new methods to perform

work assignments or optimum solutions to problems. The development of new programs, procedures or methods are typical end results of the problem-solving process. Determination of the effectiveness of a policy or practice may be involved at this level.

Grievant stated he encounters unusual circumstances daily in maintaining the various sites. He stated the employees who are under his supervision transport materials, including hazardous materials within the buildings to the pick-up sites, furniture, equipment, and laboratory research equipment. He further noted that when equipment requires repair work, he has to first look at the contract to make sure the equipment and repair is covered.

On his 1994 PIQ, Grievant listed as "example[s] of common types of problems faced during the past year and the course of action taken to solve these problems":

Leaking Roof - Coordinated with contractor to remove and replace.
Shortage of lab space -- Worked closely with contractor to construct 3
labs. (Coordinated work with V[eteran's] A[dministration])

HVAC Turbine overheated - Cooling tower core replaced by Maintenance personnel.

Boiler Leaking - ordered parts and contracted maintenance.

Medical Waste Disposal - Negotiated contract and procured state permit.

Shortage of equipment and supplies - Close monitoring of budget.

Ms. Nutter stated that the types of problems encountered by Grievant are very important and require the use of analytical skills, but they do not involve unusual circumstances, and finding the solution would not require variation in approaching solutions. She stated the problems listed on the 1994 PIQ seemed to be ordinary problems encountered in building and grounds maintenance. Ms. Nutter stated that since Grievant does not have budget responsibility, this would also affect this point factor to a degree, but she did not explain how.

Grievant's duties and responsibilities seem to fall squarely within a degree level of 4.0. The problems in supervision of repair and maintenance of buildings and equipment, getting people and equipment to the proper location, keeping within a budget, controlling costs, and reading maintenance contracts to determine whether the repair is under contract can be complex and varied, but nothing in Grievant's description of these problems would lead to the conclusion that they involve unusual circumstances. Rather, they seem to be typical, recurring problems in building and equipment maintenance and supervision. Grievant's negotiation of a medical waste disposal contract could be considered an unusual situation, due to the fact that it was the result of a new regulatory

requirement, however, this occurs only once a year or less frequently. Grievant's testimony indicates that he would have available to him in reaching solutions to these types of problems, general policies, procedures, principles, and theories on maintenance, repair, supervision, and cost control, although there might be gaps in the guidelines, rather than typically being called upon to develop new programs, procedures or methods. Finally, while Grievant may at times evaluate the effectiveness of a policy or practice, the testimony indicates that Grievant would make recommendations to his supervisor, and his supervisor, or even those above him, would make decisions on whether a policy or practice should be discontinued.

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 4.0 in this point factor. He believes he should have received a degree level of 5.0, as did the Director Job Title.

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

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 noted he must plan the replacement of research and teaching equipment in order to work it into the budget, he must plan maintenance a week in advance, and must maintain an inventory of cleaning supplies. He stated the goal is to provide a clean and healthy atmosphere for all

patients, using Department of Health standards.

Ms. Nutter stated that departmental policies and procedures, and regulations guide the actions of Grievant in performing his job. She opined that Grievant works under general direction from established policies and objectives. While the supervisor sets the overall goals, the employee and supervisor work together to establish objectives. She stated in applying this point factor, the JEC looked at the amount of oversight and direction the employee receives while performing his duties and the latitude he has in making decisions. For example, all other things being equal, an employee with unlimited signature authority would have a higher degree level than an employee whose signature authority was more limited. She pointed out the highest degree level available is a 5.0, and someone with total budget accountability would receive this level.

While Grievant is in charge of building and equipment repair, maintenance, and recommending replacement of equipment, he is limited by the budget, and accordingly, the goals, which his supervisor sets. Although initially it would appear Grievant falls within a degree level of 5.0, when comparing the definitions with this limitation in mind, Grievant's duties and responsibilities better fit within a degree level of 4.0.

3. 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 received a degree level of 2.0 in this point factor. He argued he should have received a degree level of 4.0 or 5.0. The Director Job Title received a degree level of 3.0.

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.

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

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

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

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

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

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

Grievant cited several areas of responsibility which he believed should be counted as "functional areas". He noted responsibility for inventory control, equipment, off-campus clinical facilities, two separate buildings, and his work with three different operating organizations.

Ms. Nutter stated that the physical plant is one functional area. This interpretation is consistent with the examples of functional areas given in the definition of this point factor. Further, the PIQ Summary By Job Family (Joint Exhibit D) shows that most Job Titles received a 1.0 for Breadth of Responsibility. Those positions with a "Manager" or "Director" in the title received the 2.0's and 3.0's, and only a handful of positions received a 4.0 or 5.0 for this factor. Those positions receiving a 4.0 or 5.0 were in the top administrative levels of Associate Dean, Assistant Vice-President and Dean.

It is unclear why Mr. Miller received a degree level of 3.0 in this point factor. It is possible, within the definition, for capital improvements to be a functional area separate from physical plant repair and maintenance. Grievant has not proven that the JEC interpretation that the Marshall School of Medicine physical plant repair and maintenance is one functional area, rather than each area or building within the Marshall School of Medicine physical plant being treated as a functional area, was clearly wrong or arbitrary and capricious; nor has he proven he should have received the same degree level as Mr. Miller.

4. Intrasytems Contacts

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

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

This factor consists of two parts, Nature of Contact and Level of Regular, Recurring and Essential

Contact. Grievant is challenging the degree level received in both Nature and Level. Grievant received a degree level of 2.0 in Nature, and a 3.0 in Level. He argued he should have received a degree level of 3.0 in Nature and a 5.0 in Level, as did the Director Job Title. 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.

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.

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.)

In addition to the contacts listed in Finding of Fact Number 8, Grievant noted his daily contact with his immediate supervisor, the Associate Dean of Finance and Administration, and also his contact with his second level supervisor, who is a Vice-President. These contacts with persons in Grievant's immediate work area are, by definition, not credited under this point factor.

Ms. Nutter emphasized that the contact must be essential to performance of the employee's duties. She explained that when a person's contact with the Director's office is really with the Director's secretary or a staff member, that is not contact with the Director, but is contact with staff.

Ms. Nutter's explanation is consistent with the definition of this point factor, which requires the contact to be essential. When 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. This is the case with Grievant's contacts with the Director of Purchasing and the office of the Director of Physical Plant.

Likewise, Grievant did not prove his contact with the Director of Communications was essential to the performance of his job. He noted that he usually talks to the Director because the Director's secretary is in another location and the Director answers the telephone. This indicates that other persons in the Director's office are able to assist Grievant, and the fact he talks with the Director is happenstance. In addition, his contacts with this Director's office are regarding matters which are a very small portion of Grievant's job.

Grievant's contacts with Deans or department chairs to notify them that a contract's limitations have been exceeded ([See footnote 9](#)) would also be very infrequent, given that he spends only a small percentage of time dealing with any type of contracts. Grievant did not indicate how often a contract's limitations are exceeded. This contact does not meet the definitional requirement that it be regular.

Nearly all of Grievant's regular, recurring and essential Intrasystems Contacts are thus with staff, which is a degree level of 2.0 in Level of Contact. He does have one contact on a daily to weekly basis at the Assistant Vice President level regarding "[t]elex and communication problems". This contact is not representative of Grievant's contacts, and accordingly, the JEC was not clearly wrong, nor did it act in an arbitrary and capricious manner in not evaluating Grievant's "responsibility for working with or through other people" within higher education at the Assistant Vice President level. Grievant actually received a higher degree level than he should have.

For the most part, in Grievant's discussions with these persons he is seeking information, help or advice. These would not be controversial discussions. He may need to be cooperative. Grievant offered no evidence that his discussions were such that substantial sensitivity would be required.

5. External Contacts

External Contacts is defined in the Plan as:

This factor appraises the responsibility for working with or through other people outside 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, influencing others or negotiation. This factor also consists of two parts, Nature of Contact and Level of Regular, Recurring and Essential Contact. Grievant is challenging the degree level received in both Nature and Level. He argued he should have received a degree level of 3.0, rather than a 2.0 in Nature, as did the Director Job Title, and a 5.0 rather than a 3.0 in Level. The Director Job Title also

received a degree level of 3.0 in Level.

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 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.

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.)

A degree level of 3.0 in Nature of Contact 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 policies, resolution of problems.)

Ms. Nutter explained this factor is applied by looking only at that contact which is regular, recurring, and essential to the performance of the job duties. She stated if a person has contacts at several different degree levels, it is the majority of contacts which would receive credit. She stated in referring to Grievant's Level of Contact that his contacts are not with substantially prominent persons to the point that he could receive a 5.0. She stated that although Grievant deals with contractors, and they could be considered higher level product representatives, a 4.0 would not be best.

Most of Grievant's contacts are vendors and state agencies. Grievant did not indicate who his contacts at state agencies are, but given that his contacts are for the purpose of obtaining basic information, Grievant would not usually need to speak with a mid-level representative. Grievant's contacts with professionals at other colleges and universities regarding projects and technical concerns, while no doubt helpful to him, are not essential to the performance of his duties. The evidence does not support a finding that the Business Managers at area hospitals are community,

business, or industry leaders, or that the Red Cross personnel Grievant talks to about transporting blood are at a degree level of 5.0 under Level of Contact. Grievant's contacts seem to fit best in a degree level of 2.0 ("[g]eneral public, visitors, and/or service representatives and vendors"), rather than the 3.0 he received.

Ms. Nutter gave examples of sensitive matters, noting access to personal income tax records by a person dealing with financial aid, and knowledge of personal problems by a person in counseling. She acknowledged that Grievant talks to people about money and removal of laboratory animals, but he does not deal with the human donor program. She stated that if he did, that might be a substantially sensitive matter, but the discussions with contractors, sales engineers, product representatives, and others Grievant talks with do not involve any matters that are substantially sensitive.

From Grievant's own description of his contacts, he is simply seeking and receiving information, except in his discussions with vendors, sales engineers, contractors and product representatives. He did not indicate that his discussions with vendors, sales engineers, contractors and product representatives would frequently be controversial and require some delicacy, although at times they certainly would be. Grievant has not proven that his contacts are not "largely of a non-controversial nature handled in accordance with standard practices and procedures".

6. Indirect Supervision Exercised

Indirect Supervision Exercised is defined in the Plan as:

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

This factor also consists of two parts, Number of Indirect Subordinates and Level of Supervision. Grievant is challenging only the degree level received in Level. He argued he should have received a degree level of 4.0, rather than a 2.0. The Director Job Title also received a degree level of 2.0 in Level.

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

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

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

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

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

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

Grievant argued he should have received credit for supervision of two part-time work-study students who worked directly for him, and for some people who are assigned to the clinical sciences and to whom he is constantly giving advice and who work directly with him, such as the industrial safety man concerning in-house safety problems, and the parking facility. He observes the parking lot and calls the parking attendants to ticket violators. He has to work with the Veterans Area Medical Center to make sure the grounds are taken care of, and a civilian contractor on grounds at the Doctor's Memorial Building.

Ms. Nutter explained that this point factor counts only those employees supervised by employees Grievant supervises. She stated students are included only if they are essential to the operations, and very few student workers are essential. Non-employees are not counted.

Ms. Nutter stated Grievant directs and coordinates the work of the unit, including direct supervision over first-line supervisors, and indirect supervision over non-supervisors. She stated 3.0 would not fit, because he does not supervise managers. Grievant is at the manager level.

Grievant offers some interesting arguments, but his opinions regarding what should be counted under this point factor are insufficient to support overturning the Job Evaluation Plan. The undersigned is bound by the definitions in the Plan. Grievant does not supervise personnel above the first-line supervisor level, or have indirect supervision over manager-level personnel or first-line supervisors. Grievant's Level of Indirect Supervision falls squarely within the definition of a degree level of 2.0.

D. Summary

Grievant failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning his Job Title, and in assigning the degree levels in the point factors to his 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 a Director/Physical Plant II is not clearly wrong or arbitrary and capricious.
 5. The Job Evaluation Committee's assignment of degree levels to the point factors for the Manager/Medical School Maintenance 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 Cabell County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

BRENDA L. GOULD
Administrative Law Judge

Dated: August 26, 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](#)

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.

[Footnote: 6](#)

Respondent did not assert that the PIQ was not Mr. Miller's, or that the PIQ of some other person in the Job Title would be more representative. Ms. Nutter asserted that Mr. Miller's Job Title may have received more credit in certain point factors than he would have individually based on his PIQ, due to the fact that the PIQ's of other persons in his Job Title may have reflected duties in the higher degree level. However, Ms. Nutter offered no testimony of the types of duties found on other PIQ's which placed this Job Title in the higher degree levels. She stated Chuck Weston of WVSOM was on the JEC and would have addressed Mr. Miller's External and Internal Contacts. She likewise stated that two people from Marshall would have offered input to the JEC on Grievant's job duties during the evaluation process, but did not indicate what that input was. It is unclear how Mr. Weston or the unidentified persons from Marshall could have supplemented either PIQ without this information being reduced to writing and made a part of either the PIQ's or the JEC's decisions. Accordingly, Mr. Miller's PIQ will be utilized to compare the two Job Titles.

[Footnote: 7](#)

These headings are shorthand for the following point factors: CPS is Complexity and Problem Solving; FA is Freedom of Action; 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 Contacts, Nature of Contact; EC, LVL is External Contacts, Level of Contact; and ISE, LVL is Indirect Supervision Exercised, Level.

[Footnote: 8](#)

The Director/Physical Plant II Job Title also received a higher degree level than the Manager/Medical School Maintenance Job Title in the point factors Scope and Effect/Impact of Actions and Indirect Supervision Exercised/Number. Grievant is not challenging the degree level received in these point factors, and the undersigned will not address these point factors.

[Footnote: 9](#)

Grievant did not explain how this would occur. Based upon Grievant's testimony regarding the contracts he is responsible for, the only conclusion which the undersigned can draw is that there are dollar limitations on the repair work which will be performed on equipment.