ROBERT RILEY,

Grievant,

v. DOCKET NO. 94-MBOD-450

BOARD OF DIRECTORS/WEST VIRGINIA STATE COLLEGE,

Respondent.

DECISION

Grievant Robert Riley challenges his classification under the "Mercer" reclassification system. (See footnote 1) He was classified as an Electronic Media Technician at Pay Grade 13. He seeks classification as an Electronic Media Technician-Senior, at Pay Grade 14. Mr. Riley was classified under the Job Evaluation Plan ("Plan") for the State College and University Systems of West Virginia, which was developed by the Respondent's Job Evaluation Committee ("JEC"). The Plan employs a "point factor methodology" which evaluates each job title by analyzing specific characteristics termed "factors" (See footnote 2) , assigning a rating or "degree level" within each factor, and applying a weighted equation to the assigned levels to arrive at a numerical total. This total then determines the job title's Pay Grade.

A Level IV hearing was conducted in this Board's office in Charleston, West Virginia, on December 3, 1996. This matter became mature for decision on January 14, 1997, following the receipt of timely post-hearing submissions from Respondent. Grievant specifically challenges the degree level ratings received in several point factors used to evaluate his position and assign it a Pay Grade under the Mercer Plan. The point factors challenged are: Freedom of Action; Scope and Effect; Physical Coordination; Working Conditions and Physical Demands.

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

FINDINGS OF FACT

1 1. Prior to the reclassification, all higher education classified employees were asked to complete a Position Information Questionnaire (PIQ) in which employees described their job duties and responsibilities and other aspects of their jobs by answering a series of questions designed to elicit this information. Mr. Riley completed a PIQ in 1991.

2 2. Mr. Riley is employed as an Electronic Media Technician for the Educational Network (EdNet). EdNet is located on the campus of West Virginia State College (WVSC). 3 3. EdNet serves all higher education institutions in West Virginia by providing satellite distance education, video production services, teleconference downlinking services, audio-conferencing and technical support services. EdNet also provides these services to state agencies outside the higher education system and to private businesses. EdNet was created in 1987. It operates 14 hours per day with eight people, and is the only uplink facility in the State higher education system.

4 4. Grievant's job duties are essentially the same as they were on January 1, 1994, and include (with approximate percentages of time): operation of EdNet's Master Control room, including operation of transmitters by remote control, monitoring of incoming and outgoing signals to ensure that they are within specifications and trying to fix incoming signals if they are not within specifications, connecting and disconnecting transmissions to the satellite, controlling the amount of power going to the transmitter, controlling the movement of the transmitter dish, starting and stopping tape machines, adjusting video levels, answering telephones and troubleshooting questions from the field, and similar activities (55%); supervising and providing technical support for in-house live or recorded productions, including creating and supplying graphics, and operation of cameras, audio equipment, taping equipment, and editing equipment (10%); supervising a production assistant (5%); providing technical training (5%); consulting with clients to provide design and development assistance for programming (5%); installing andrepairing all video, audio, and satellite equipment (5%); maintaining electronic and mechanical equipment (5%); operating the telephone bridge for teleconferences and classes, including connecting up to 48 telephone lines and troubleshooting problems (5%); and other duties as assigned (5%).

5 5. Mr. Riley operates the systems' Master Controls with the two engineers working for EdNet. He operates Master Controls alone at times, and he then performs the same duties as the

EdNet Engineers. He performs such work alone when the Engineers are not present due to the shift work schedule, or when they are performing maintenance, repair or other tasks elsewhere. The EdNet Engineers perform maintenance and repair approximately 40-60% of their work time.

6 6. Connecting and disconnecting transmissions to the satellite entails telephone contact with the satellite services vendor in order to verify the availability of the time and that it has been purchased, sending an unmodulated signal to the satellite so that the vendor can determine that the transmitter is operating correctly and not interfering with adjacent transponders, then increasing power to the transmitter, modulating the signal to obtain a picture on the screen, running the test signal while switching up the studio where the program originates; ensuring that all equipment is operating correctly; and troubleshooting problems experienced by reception sites.

7 7. When working on production sets, Mr. Riley must ensure that enough seats are available for the persons who will be present, andhe must ensure that the set looks nice. He moves and places furniture and props. He must also ensure proper lighting of individual participants and of the entire set.

8 8. Mr. Riley has authority to make some decisions about transmission of individual class sessions. For example, he can extend the satellite time booked for a class if the class starts later than scheduled; and he can decide not to air a class if the transmission signal is not within certain specifications.

9 9. Mr. Riley follows Federal Communication Commission (FCC) regulations for technical operations. He applies EdNet policies and procedures, which are generally unwritten, in performing his tasks. He employs a process of elimination in troubleshooting equipment problems. If he has questions, Mr. Riley can go to his supervisor for advice or guidance. Mr. Riley works from a daily schedule of productions, which dictates the work to be done for that day. The schedule is drawn up by the EdNet Operations Manager, Mr. Wise.

10 10. A class may be transmitted through EdNet for distance learning purposes to as many as 120 different sites, serving up to 400 students. Satellite time for each class session costs $800 to $1,000.

11 11. Mr. Riley troubleshoot problems in signal transmission by finding where a transmission

problem originates and deciding what to do to address it. In performing his equipment maintenance and repair duties, he troubleshoots equipment by reading diagrams, and then trying working parts or components in the faulty equipment todetermine which parts or components are not functioning properly. He also installs new equipment. Generally, he determines how to address a perceived need in conjunction with other EdNet staff, determines the equipment necessary, orders the equipment, and then sets it up according to specifications and design requirements.

12 12. Mr. Riley's equipment installation, repair and maintenance tasks require soldering of tiny parts on a daily or weekly basis, manipulation of tiny parts and components, and holding a component in place while properly soldering it. If not done correctly, parts or components may overheat or short out, and may affect other components, as well. Mr. Riley works around high voltages and radio frequency energy (RFEnergy). He may occasionally work outdoors. He carries tape decks weighing 50-75 pounds two to three times per week, and must perform other lifting and carrying. He must also carry equipment up ladders. He can get help with heavy lifting and carrying.

13 13. In preparing graphics, Mr. Riley works from a producer's description to create pie charts, bullet outlines, and computer animation. The graphics are then included as appropriate in televised programs. When he is preparing graphics, he continuously uses a video display terminal (VDT).

14 14. While Mr. Riley is encouraged to minimize satellite "downtime", no specific speed requirements are applied as a regular part of his job.

15 15. The job title Electronic Media Technician (EMT) received 1822 total points under the reclassification Plan. The point rangefor Pay Grade 13 is from 1756 to 1865. There are currently three persons holding the EMT title. Jt. Ex. G.

16 16. The job title Electronic Media Technician-Senior (EMTSr) received 1962 points under the reclassification Plan. The point range for Pay Grade 14 is from 1866 to 1984 points. There are currently two persons holding the EMTSr title. Jt. Ex. G.

DISCUSSION

I. BURDEN OF PROOF AND STANDARD OF REVIEW:

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that he or she is not properly classified. 156 C.S.R. 1 §4.19; W. Va. Code § 18- 29-6. Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant must identify the job he or she feels is being done. Elkins v. Southern W. Va. Community College, Docket No. 90- BOD-124 (Mar. 4, 1991). The grievant must also identify which point factor degree levels are challenged. This is because the Plan's reclassification system is not based upon whole job comparisons. It is largely a "quantitative" system, in which the components of each job are evaluated separately by applying the point factor methodology contained in the Plan. Therefore, the focus in these grievances is upon the point factors the grievant is challenging. Burke, supra. A grievant may challenge any combination of point factor degree levels, so long as he or she clearly identifies the ones being challenged, and this challenge is consistent with the relief sought. See Zara v. Bd. Of Trustees,Docket No. 94-MBOT-817 (Dec. 12, 1995); and Jessen v. Bd. Of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995).

Some "best fit" analysis is involved in determining which degree level of a point factor should be assigned. However, this system must by statute be uniform across all higher education institutions. Therefore, the point factors are not assigned to the individual position, but to the job title. Burke, supra. In order to maintain the integrity of the overall classification scheme, the "best fit" must be determined in relation to other similar positions. The individual grievant's case must be analyzed with reference to where the position fits in the higher education classified employee hierarchy.

In this case, whether Mr. Riley is properly classified is almost entirely a factual determination. As such, the JEC's interpretation and explanation of the point factors at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W. Va. 1995); Burke, supra. Of course, no interpretation or construction of a term is necessary where the language is clear and unambiguous. See Watts v. Dept. Of Health & Human Resources, 465 S.E.2d 887 (W. Va. 1995). A grievant may prevail by demonstrating his or her reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehab., Docket No. VR-88-006 (Mar. 28, 1989). Generally, action is arbitrary and capricious if it did not rely on criteria intended to be considered,

entirely ignored important aspects of the problem, explained or reached the decision in amanner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of view. See Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); Yokum v. W. Va. Schools for the Deaf and the Blind, Docket No. 96-DOE-081 (Oct. 16, 1996). While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not substitute her judgment for that of the JEC. See generally, Harrison v. Ginsberg, 286 S.E.2d 276, 283 (W.Va. 1982).

In order to determine if Grievant was misclassified, the point factors and ratings disputed must be discussed separately in detail.

II. POINT FACTOR ANALYSIS:

Mr. Riley challenged his ratings in several of the factors analyzed in assigning his job title and Pay Grade. Each point factor which is subject to dispute in this grievance will be addressed separately.

A. 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.Jt. Ex. F. (All subsequent definitions are taken from this exhibit, unless otherwise noted.)**

The EMT job title was assigned level 2.5 in this factor, which is between the defined levels 2 and 3. Level 2 is defined as: "[t]asks 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." Level 3 is defined as: "[t]asks 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."

Mr. Riley argues that his position should be assigned level 4 in Freedom of Action. Level 4 is defined 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.**

In support of his position, Mr. Riley noted his lone operation of the system's Master Controls. He also noted that, in troubleshooting problems, he is told that there is a problem andthen he must find the cause and fix it on his own. He also testified that, while Mr. Wise would be accountable if there was a transmission error, the class instructor or the satellite service provider would call Mr. Riley, if he was the person in the EdNet control room that evening, as he would be in a position to take action. Mr. Wise would not be contacted until the next day. Mr. Riley stated that FCC guidelines and EdNet's policies and procedures cover many aspects of his work. The daily schedule of productions dictates work to be performed, although Mr. Riley stated that he performs the work independently once he is given the schedule.

Respondent's primary witness was Ms. Brenda Nutter, Director of Human Resources at WVU Institute of Technology and member of the JEC. Ms. Nutter opined that Mr. Riley's job duties met the definition in level 2 part of the time, and the definition in level 3 part of the time. She stated that there did not appear to be very much creative thinking required of one in Mr. Riley's position, as his work is covered by FCC regulations, guidelines and past practices. She added that he could ask his supervisor about any tasks or events not covered by such guidelines.

The specific amount of time Mr. Riley is alone in Master Control was not established, nor was sufficient evidence provided from which the amount of time can be accurately deduced. "The level of supervision exercised over the employee is not the key issue for measuring this point factor, rather it is whether the employee has the option to make decisions on [his] own if and whensuch situations arise." Kretzmer v. BOD, DN -751 (Feb. 6, 1997). Thus, that he is unsupervised in performing his duties for some part of the time is not determinative, in itself.

Mr. Riley has authority to extend satellite transmission time in unusual situations, and to otherwise address problems which arise when he is on duty. Again, though, no evidence was provided to establish how frequently Mr. Riley encounters such circumstances, or the degree to which his choices are limited by standard procedure and policy. Mr. Riley clearly carries out most of his work in accordance with standard practices, policies, instructions or previous training. He works from a daily schedule of EdNet productions, but there was no evidence regarding the content of the schedule. The schedule might be very detailed, and essentially dictate all aspects of Mr. Riley's work. Thus, to what degree Mr. Riley actually utilizes independent judgment, organizes his own work assignments or works from "objectives" is unclear. Even if the facts were clear, they would likely be subject to characterization based upon value judgments. For example, while his tasks are structured somewhat by standard procedure and regulations, whether the structure is "moderate" is essentially a value judgment.

It is well settled that "[d]egree levels of 4.0 and 5.0 would be assigned to positions in the top group, such as the administrative group, the top managers and directors." Burke, supra. Mr. Riley is not eligible for such high level ratings in this factor, as he is clearly not a manager or director. Moreover, prior grievance decisions have held that, where standard operating procedures are generally applied a level 2.5 rating in Freedom of Action is not clearly wrong, even if the employee is also required to independently handle unusual situations. Hastings v. Bd. of Trustees, Docket No. 94-MBOT-943 (May 28, 1996). Thus, Electronics Technicians working at the Personal Rapid Transit department were unable to prove a level higher than 2.5 was appropriate. See also, Hardee v. Bd. of Directors, 94-MBOD-373 (Jan. 10, 97), where Electrician's rating at level 2.5 was upheld, as grievant had not shown that his duties were so unstructured that level 4 was a better fit.

Where value judgments are involved, the undersigned is prohibited from simply substituting her judgment for that of the JEC. The relative merits of rating Mr. Riley's position at level 2.5 or level 3 are debatable. There is insufficient evidence to state unequivocally that the JEC's determination was clearly wrong, or that it was implausible in light of the evidence. Where a subjective value judgment is involved, this Board is reluctant to second guess the JEC absent compelling evidence. Mr. Riley has not shown that the JEC's rating in Freedom of

Action was so implausible that it cannot be ascribed to a difference of view.

B. SCOPE AND EFFECT:

According to the Plan:

> **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 the 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 factor is analyzed in two parts, Impact of Actions (Impact) and Nature of Action (Nature). The EMT job title was assigned level 1 of Scope and Effect/Impact, which is defined in the Plan as "[w]ork is limited to immediate work function and short-term situations." Level 2 of Impact is defined as "[w]ork affects either an entire work unit or several major activities within a department." Mr. Riley seeks assignment of level 3, 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 <$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. Mr. Riley notes the number of institutions and individuals involved in distance learning, and the costs of producing and transmitting classes by satellite. He suggests that, although his work may not impact the <u>entire</u> operations of any one institution, it affects classes within many institutions.**

Ms. Nutter testified that the JEC considered EdNet to be a work unit, and that it evaluated Mr. Riley's individual tasks and actions in assigning his rating in this factor. She speculated that someone at a higher level of supervision would likely be checking Mr. Riley's work to

avoid mistakes, and that level 3 was the highest level available for anyone at WVSC. She admitted that, in reviewing the PIQ alone, Mr. Riley's duty statement suggested less decision-making than testimony had shown he had, and that clarification on this point may have impacted the rating in this factor.

As noted in Wise v. Bd. of Directors, Docket No. 94-MBOD-401 (Jan. 30, 1997), EdNet as a whole affects part of the operations of several departments throughout higher education institutions. However, Mr. Riley's individual work has more limited impact.

When he is alone in Master Control, Mr. Riley has exclusive control of technical operations, and oversight or assistance is not readily available. Mr. Riley's work directly affects EdNet's productions, and his errors cannot always be discovered prior to the point where the production or transmission would be impacted. Moreover, Mr. Riley has authority to make decisions which result directly in transmission costs. The JEC did not consider somerelevant data about this position's decision-making authority, and the JEC's rating was clearly wrong as applied to this position. Mr. Riley is entitled to a level 2 rating in Scope and Effect/Impact, as his individual work directly impacts the entire EdNet unit.

In Nature, the EMT job title was assigned level 2, which is defined as "[w]ork 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." Level 3 is defined as "[w]ork 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." Mr. Riley seeks assignment of level 4, which is defined as "[w]ork 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."

Mr. Riley pointed out that he must identify the source of transmission problems, and troubleshoot equipment problems, install new equipment, and create graphics. He noted his authority to makedecisions up to and including not airing a class under certain

circumstances, and that his transmission and phone bridge work affects many students. He also noted that he works with guidelines which are unwritten.

Ms. Nutter testified that Mr. Riley's job addresses the accuracy and reliability of technical support, not guidance of the entire EdNet operations. He applies standard procedures, and the costs associated with errors are not high. She also testified that Mr. Riley's position does not deal with unusual problems regularly, such that he would get a higher rating for the rare odd problem that he may address.

Level 4 under Nature was consistently awarded only to higher level management positions. Jessen, supra. Mr. Riley is clearly not a management level employee. He thus is not eligible for the level 4 rating. The choice between assignment of levels 2 or 3 in Nature involves a subjective value judgment in interpreting these similarly-worded provisions, which subjectivity is an inherent element of the function of position classification. Miller, supra. In this case, while the undersigned may have been inclined to assign a higher rating to Mr. Riley's position, the JEC's assignment of level 2 is not clearly wrong or so implausible that it cannot be ascribed to a difference of view. Therefore, Mr. Riley's rating in Scope and Effect/Nature cannot be changed.

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

The EMT job title was assigned level 3 in this factor, which is defined as "[w]ork requires some speed and accuracy of hand/eye coordination in the use of somewhat complicated instruments, equipment or hand or power tools requiring some speed and adeptness." Mr. Riley seeks assignment of level 4 in Physical Coordination, which is defined as "[w]ork requires skill and accuracy or other manual actions involving rapid physical motions and closely coordinated performance on or with office equipment; or a high degree of manual skill and exactness in the use of hand instruments or equipment."

Mr. Riley noted the soldering and manipulation of tiny parts and components required in his position, and that he must be able to hold a component while properly soldering it, which he stated requires significant coordination. If his work is not performed correctly, parts may

overheat or short out, and they may also affect other components and parts. He testified that he must minimize the time in which transmissions are not working.

Ms. Nutter stated that Mr. Riley did not spend a large enough proportion of his work time in precision work such as soldering, and therefore did not get a higher level rating. She stated that,while speed was desirable to minimize "downtime" costs, speed was not regularly required of one in Mr. Riley's position.

Ms. Nutter's testimony indicates that the JEC interpreted the "regularly required" language of the definition as requiring a significant amount of one's total work time. This interpretation is not unreasonable. Mr. Riley did not provide enough evidence regarding the amount of time he actually spends performing precision work to determine that the JEC's assessment on this factor is clearly wrong.

D. WORKING CONDITIONS AND PHYSICAL DEMANDS:

These two factors are jointly defined by the Plan as one factor, which:

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

It is then analyzed in two parts. The EMT job title was assigned level 1 in the Working Conditions part of this factor, which is defined as "[n]o major sources of discomfort, i.e., standard work environment with possible minor inconveniences due to occasional noise, crowded working conditions and/or minor heating, cooling or ventilations problems." Mr. Riley seeks assignment of level 2, which is defined as "[o]ccasional minor discomforts from exposure to less-than-optimal temperature and air conditions. May involvedealing with modestly unpleasant situations, as with occasional exposure to dust, fumes, outside weather conditions, and/or near- continuous use of a video display terminal." (Emphasis in original.)

Mr. Riley noted his potential exposure to high voltages and to RFEnergy, which is similar to the radiation from a microwave oven. He must work with equipment utilizing up to 1,000 volts of electricity, and works around equipment using RFEnergy. He also stated that the average temperature in the Master Control room is approximately 60 degrees Fahrenheit, that

he monitors five to six VDTs simultaneously in the control room, and engages in continuous use of a VDT when working on graphics. Such graphics work takes approximately 10% of his work time, he said. In all, he opined that approximately 65% of his work time involved use of VDTs. He also testified that his disability insurance rate was higher than average due to the risks involved with his work.

Ms. Nutter acknowledged that "discomfort" is a subjective matter. She stated that due care in performing repairs and maintenance would address any potential exposure to electricity, and that the room temperature was not considered a major discomfort. She also stated that Mr. Riley's work did not require him to stare at a VDT a significant percentage of his work time, like someone in a data entry position would.

Mr. Riley's use of VDTs cannot be considered "near-continuous use," particularly when one remembers that he also spends time in equipment repair, maintenance and installation, and other suchtasks. Nor does the room temperature qualify for a higher level rating. However, Mr. Riley's installation, repair, maintenance and use of a wide variety of highly technical equipment, some of which uses high voltages, distinguishes the conditions of his work from those of a typical office worker. His work with and on equipment using the type of energy involved here does qualify as "occasional exposure" to modestly unpleasant situations. This is confirmed by Mr. Riley's unrebutted testimony that his insurance rate is higher due to such exposure. Consequently, Mr. Riley's position is entitled to assignment of level 2 in Working Conditions.

In Physical Demands, the EMT job title was assigned level 3, which is defined as "[m]oderate physical effort required involving long periods of standing, walking on rough surfaces, bending and/or stooping; periodic lifting of moderately heavy items (over 25 and up to 50 pounds.)" Mr. Riley seeks assignment of level 4, which is defined as "[c]onsiderable physical exertion required involving bending, stooping, climbing, lifting or carrying heavy items (over 50 and up to 75 pounds) and periodically working in difficult or awkward positions."

Mr. Riley emphasized his work carrying 50-75 pound equipment two to three times per week short distances. He also stated that he must carry equipment up ladders, and stand on concrete while performing some repairs. He cannot sit down in the studio when a show is

being produced, and accuracy is required to reduce costs and comply with FCC regulations. Ms. Nutter testified that lifting two to three times per week was not considered to constitute a significant amount of work time. She also noted that Mr. Riley was not required to lift heavy objects by himself, but could get help.

The interpretation of this factor as measuring tasks covering a significant period of one's work time is reasonable. Assessing whether "considerable physical exertion" is demanded rather than "moderate physical exertion" is a subjective judgment. Clearly, long periods of standing, and working on concrete surfaces are covered by the level 3 definition. Mr. Riley provided insufficient evidence about percentages of time spent in performance of more demanding physical tasks to show that the JEC's judgment on this point was clearly wrong. The evidence tends to prove that, indeed, Mr. Riley's position was appropriately rated in Physical Demands.

SUMMARY

Mr. Riley has not shown that the JEC was clearly wrong in rating the EMT job title in the factors Freedom of Action, Scope and Effect/Nature of Actions, Physical Coordination, and Physical Demands. He has shown that the JEC's ratings for that title would be clearly wrong in assigning his position individual ratings in the factors Scope and Effect/Impact of Actions and Working Conditions. By assigning the number of points associated with the appropriate ratings in these factors, Mr. Riley's position is entitled to 1856 total points, which does not result in a change in Pay Grade. As Mr. Riley has not shown that his individual positionshould receive points such that it would be placed in a higher Pay Grade, no change in his title is appropriate. As Mr. Riley is not the only person in the EMT job title, no changes in the EMT data line are appropriate.

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 classifi cations 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 or she is not properly classified. 156 C.S.R. 1 § 4.19.

3. Determinations of the Job Evaluation Committee("JEC") regarding application of the Plan's point factor methodology are essentially questions of fact. In that regard, the JEC's interpretation and explanation of the point factors and PIQs at issue will be given great weight unless clearly erroneous. Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). See generally, Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W. Va. 1995).

4. The JEC's interpretation of the term "regularly required" in the definition of Physical Coordination, as meaning a significant proportion of one's work time, is not clearly erroneous.

5. Subjective determinations of the JEC regarding application of the Plan's point factor methodology to an employee or group ofemployees are entitled to deference when being reviewed by this Grievance Board. Such determinations may nonetheless be found to be arbitrary and capricious if not supported by a rational basis, or to be clearly wrong if there is no substantial evidence in the record supporting the finding or if review of the evidence makes it clear that a mistake has been made. Burke, supra. See Frymier- Halloran v. Paige, 458 S.E.2d 780, 788 (W. Va. 1995); Bd. of Educ. v. Wirt, 192 W. Va. 568, 453 S.E.2d 402 (1994); Kyle v. W. Va. State Bd. of Rehab., Docket No. VR-88-006 (Mar. 28, 1989).

6. The JEC's decision that Mr. Riley is an Electronic Media Technician is not clearly wrong, arbitrary or capricious.

7. The JEC's assignment of degree levels to the point factors for the Electronic Media Technician 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. 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 appropri ate court.

JENNIFER J. MEEKS **Administrative Law**

Judge

Dated: February 21, 1997

Footnote: 1

The reader is referred to Burke, et al. v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995), for the background of the reclassification project, the procedural history of the grievances arising therefrom, and definitions of some terms of art specific to the reclassification.

Footnote: 2

The point factors are set forth in 128 C.S.R. 62 §2.27 and in 131 C.S.R. 62 §2.27.