WILLIAM HARDEE, et al.,

v. **DOCKET NO. 94-MBOD-373**

BOARD OF DIRECTORS,

CONCORD COLLEGE, et al.

D E C I S I O N

Grievants William Hardee and Dana Edmonds each alleges he was misclassified effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) . Grievant Hardee seeks as relief a Pay Grade 16 for his classification of Electrician, Pay Grade 12, effective January 1, 1994, and backpay from January 1, 1994. Grievant Edmonds seeks as relief classification as an Electrician Lead, Pay Grade 14, rather than Electrician, and backpay from January 1, 1994. A Level IV hearing was held on June 27, 1996. This matter became mature for decision on August 22, 1996, with receipt of Respondent's post-hearing 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 Hardee has been employed at Concord College ("Concord") since 1984. Grievant Edmonds has been employed at Marshall University ("MU") since 1988.

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

3. Each Grievant was classified as an Electrician, Pay Grade 12, effective January 1, 1994.

4. Grievant Hardee's primary job duties (with the percentage of time he performs these duties in parenthesis) are performing repairs on heating units, lighting, and receptacles (40%); performing repairs on fire alarms (10%); performing repairs on and replacing TV cables (10%); performing repairs on water heaters, the public address system, and the flexible surface on the air conditioning

system, and performing repairs on and servicing exhaust fans, battery lights, and outdoor lighting (5% each, or 30% total); running conduit, pulling wire and making electricalconnections for all circuits which must be added (5%); and replacing light and receptacle fixtures (5%). In performing these duties he services motors, replaces burnt out components, replaces wiring, troubleshoots to determine the source of the problem, repairs and replaces receptacles in TV cable, replaces amplifiers in TV cable, replaces wire, and checks signals using a field strength meter. He replaces belts, bearings and motors on exhaust fans, and lubricates them. Troubleshooting entails checking the circuitry with meters to determine which component is bad.

5. Grievant Edmonds' primary job duties (with the percentage of time he performs these duties in parenthesis) are repairing lights and other electrical problems in kitchens, a cafeteria and dormitories (40%); checking and repairing kitchen equipment (25%); installing new circuits and equipment (20%); repairing heating and cooling units (10%); and filling out work orders and forms (5%).

6. Grievant Hardee received 72 hours of commercial electrician training and 72 hours of training in residential electricity after high school. Each course was completed by him in two semesters, attending classes for two hours per week.

7. Grievant Hardee was required by Concord College to hold an Electrician's License when he was hired, and Concord College has paid the $50.00 fee to renew his license the last five years.

8. Grievant Edmonds holds a journeyman Electrician License. He acquired this license by working under a Master Electrician and passing a test.

9. Employees receive a half-level credit in Knowledge whenthe employee is required by statute to hold a certification or license in order to perform his job duties. No credit is given for licensure or certification for Electricians, because the Job Evaluation Committee believes Electricians employed by the state are not required to be licensed.

10. Grievant Hardee sometimes has blueprints of the equipment he repairs, but some equipment is obsolete and no blueprints or schematics are available. Some of the parts needed are no longer available, but may be replaced with similar parts. If a part is no longer available, he may have to rewire the equipment to make the new part fit.

11. When a piece of equipment is not working properly, Grievants follow a checklist of procedures to determine the source of the problem. They check first to see whether there is power to

the equipment, and then run through a series of other checks, depending on the symptoms exhibited by the equipment. The National Electrical Code provides standard specifications used by Grievants in performing their duties. Grievants review equipment manuals and schematics. When pieces of equipment at MU do not have schematics, Grievant Edmonds must be familiar with the equipment and what the parts do. He sometimes draws schematics.

12. Grievants' tasks each day are dependent upon what equipment needs to be repaired. Grievant Hardee picks up work orders each morning from the physical plant and at the dormitory front desk. He determines which work orders to tackle first. A building without power is always top priority. In the winter,heating problems are given next priority, then lighting, then safety, such as the fire alarm system. He carries a pager so his supervisor can reach him.

13. Grievant Edmonds receives work orders from his supervisor, who assigns priority levels to them. If there are several work orders with the same priority level, he decides which should be completed first. He decides which tasks to assign to the Trades Worker when one is assisting him. He carries a pager and a radio to receive emergency assignments.

14. Grievant Edmonds has no budgetary responsibility. 15. Concord students are to report electrical problems to the Residence Assistant, who is to report them to the Residence Director. The Residence Director is to prepare a work order, which is then passed on to housing, and then to the physical plant where electrical work orders are given to Grievant Hardee. Grievant Hardee has contacts with students who bypass the reporting system to obtain faster service.

16. Grievant Hardee has two to three employees helping him for three months in the summer. Not all of these employees are working with him full-time. He also sometimes has a student worker in the summer. He assigns and checks the work of these workers.

17. Each Trades Worker at MU spends six months to one year learning each trade. Grievant Edmonds trains each Trades Worker in electrical repair work. Once the Trades Workers have been trained in all crafts, they can perform work on their own, and are assigned by Grievant's supervisor to perform electrical work as needed. When Trades Workers are performing electrical work, Grievant decides which work orders to give them, makes sure they complete each task properly, and that their time is accounted for on work orders. If the Trades Worker is performing a maintenance or small job, which is at least 50% of the time, the Trades Worker will get the materials needed from the stock room. Grievant Edmonds has one or more Trades Workers assisting him in completing electrical

tasks 95% of the time. The Trades Workers work on some jobs alone, but about 50% of the time they are working with Grievant Edmonds on a job. He also assigns tasks to four to five temporary workers during the summer. The organizational chart for Grievant Edmonds' area does not show any employees formally assigned to him.

18. The Electrician Job Title received 1723 total points from the following degree levels in each of the thirteen point factors (See footnote 3) : 4.0 in Knowledge; 3.0 in Experience; 2.5 in Complexity and Problem Solving; 2.5 in Freedom of Action; 1.0 in Scope and Effect, Impact of Actions; 2.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 1.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level of Contact; 1.0 in External Contacts, Nature of Contact; 2.0 in External Contacts, Level of Contact; 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; 4.0 in Physical Coordination; 3.0 in Working Conditions; and 4.0 inPhysical 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 § 4.19; W. Va. Code § 18-29-6. Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

A grievant is not likely to meet his burden of proof in a Mercer grievance merely by showing that the grievant's job duties better fit one job description than another, because the Mercer classification system does not use "whole job comparison". The Mercer classification system is largely a "quantitative" system, in which the components of each job are evaluated using the point factor methodology. Therefore, the focus in Mercer Decisions issued by this Grievance Board is upon the point factors the grievant is challenging. (See footnote 4) While some "best fit" analysis of the definitions of the degree levels is involved in determining whichdegree level of a point factor should be assigned, where the position fits in the higher education classified employee hierarchy must also

be evaluated. In addition, this system must by statute be uniform across all higher education institutions; therefore, the point factor degree levels are not assigned to the individual, but to the Job Title. W. Va. Code § 18B-9-4; Burke, supra. A Mercer grievant may prevail by demonstrating his reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehabilitation, Div. of Rehabilitation Services, Docket No. VR-88-006 (Mar. 28, 1989).

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

B. Application of the Point Factor Methodology

The following table shows the differences between the degree levels assigned in the point factors challenged by Grievants for the Electrician, the Electrician Lead ("Lead"), and the degree levels Grievants argued they should have received. (Where "NC" is used, the Grievant did not challenge this point factor.)

	KN	EX	CPS	FA	IA	NA	BR	SE LVL	SE NUM	EC LVL	DSE NUM	DSE LVL
Electrician	4	3	2.5	2.5	1	2	1	2	1	1		
Lead	4	4	3	3	1	2	1	2	3	3		
Hardee Argument	5	4	5	4	2	4	NC	3	1.5	NC		
Edmonds Argument	NC	6	3	3	NC	3	2	NC	2	3		

(See footnote 6)

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

1. Knowledge

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

> This factor measures the minimum level of education equivalency and/or training typically required for an incumbent to reach acceptable occupational competence on the job. The factor considers the technical, theoretical, and/or mechanical skills required, and the complexity and diversity of the required skills. Grievants' Job Title received a degree level of 4.0, which is defined in the Plan as:
>
> Job requires basic knowledge in a specific area typically obtained through a business, technical or vocational school as might normally be acquired through up to 18 months of education or training beyond high school.

Grievant Hardee argued he should have received a degree level of 5.0. A degree level of 5.0 is defined in the Plan as:

> Job requires broad trade knowledge or specific technical or business knowledge received from a formal registered apprentice or vocational training program or obtained through an associate's degree of over 18 months and up to 3 years beyond high school.

Grievant Hardee argued he must perform a lot of duties not normally required of an electrician. He believed it would take more than 18 months to learn to trouble-shoot all the systems for which he is responsible, and to replace panels and conduits, noting that parts and schematics are not always available for old equipment. He stated the International Brotherhood of Electrical Workers' electrical apprenticeship program is four years. Grievant Hardee, however, had only 72 hours of commercial electrician training and 72 hours of training in residential electricity, completed in four semesters, at two hours per week. He also completed 144 hours of training in heating and air conditioning repair, which he completed subsequent to his employment at Concord. He stated that most of the duties are learned on the job, such as learning how to pull wire, bend conduit, and trouble-shooting, because every problem is different. Grievant Hardee also appeared to argue at the hearing that he should have received credit for holding an Electrician's License, although this argument was notaddressed in his post-hearing written argument.

Brenda Nutter, Director of Human Resources at West Virginia University Institute of Technology and JEC member, stated the minimum level of knowledge was determined by the JEC after evaluating the PIQ's and researching job advertisements. She pointed out the classification system must, by statute, be uniform; therefore, it is no longer possible for one institution to require a license in a field while other institutions do not.

Ms. Nutter's statement that the system must be uniform is correct. No evidence was presented regarding why Concord had required an Electrician's License when Grievant Hardee was hired. The JEC has determined that such a license is not required of this position. Concord cannot have a different standard under this new system.

Grievant Hardee failed to present any facts upon which the undersigned can properly rely to conclude that more than 18 months of education or training beyond high school is required in order to perform his job duties. Significantly, neither he nor Grievant Edmonds has more than 18 months of education or training.

2. Experience

The Plan defines Experience as follows:

> This factor measures the amount of prior directly related experience required before entering the job. Previous experience or training should not be credited under this factor if credited under Knowledge.

Grievants' Job Title received a degree level of 3.0, which is defined in the Plan as "[o]ver one year and up to two years of experience." Grievant Hardee argued he should have received adegree level of 4.0, which is defined in the Plan as "[o]ver two years and up to three years of experience." Grievant Edmonds argued he should have received a degree level of 6.0, which is defined in the Plan as "[o]ver four years and up to six years of experience." The Lead Job Title received a degree level of 4.0.

Grievant Hardee felt that it took over four years to become a good electrician, and to be able to perform all his job duties, pointing specifically to trouble-shooting problems using a multi- meter, working with fire alarms, and bending conduit.

Ms. Nutter explained the Lead Job Title received a higher degree level in this point factor because an employee leading other employees, who are formally assigned to him, would usually need supervisory experience. Ms. Nutter stated Grievant Edmonds' supervisor assigns Trades Workers to him and to other employees on a rotating basis, and that the Trades Workers are not assigned to a particular employee on a formal basis. She stated Grievant Edmonds' supervisor would supervise these workers.

Neither Grievant presented any facts from which the undersigned can conclude that the JEC was clearly wrong or acted in an arbitrary and capricious manner in deciding that someone with over one year of experience could perform the duties of an Electrician. As will be discussed under Direct

Supervision Exercised, Grievant Edmonds does not lead other workers.

3. Complexity and Problem Solving

The Plan defines Complexity and Problem Solving as:

> This factor measures the degree of problem-solving required, types of problems encountered, the difficultyinvolved in identifying problems and determining an appropriate course of action. Also considered is the extent to which guidelines, standards and precedents assist or limit the position's ability to solve problems.

Grievants' Job Title received a degree level of 2.5 in this point factor. Grievant Hardee argued he should have received a degree level of 5.0, and Grievant Edmonds argued he should have received a degree level of 3.0, as did the Lead Job Title.

Half-levels are not defined in the Plan, however, Ms. Nutter explained that a half-level was assigned by the JEC when the job duties were not within the higher level, but were more complex than the lower level. She stated that this occurred because the definitions of the various degree levels contain multiple parts.

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 assignments, with some judgment required to interpret instructions or perform basic computation work such as in the comparison of numbers or facts.

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

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

A degree level of 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, valuative and reasoning skill in researching informationand 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 Hardee argued that the source of many problems is hard to find. He gave as an example that he must sometimes trace a circuit through the entire building to find the source of a problem, and

he characterized this as "incomplete data".

Ms. Nutter stated that most of Grievants' work was performed following standard operating procedures. She agreed that Grievants encounter problems from time to time, but they rely on standard trouble-shooting methods and their training to solve them. She pointed out that Grievants have reference manuals, schematics and equipment manuals. She stated Grievants were free to contact their supervisors to resolve problems.

Grievants received credit for some work at a degree level of 3.0. Grievant Edmonds has not proven that his job duties are within a degree level of 3.0 so often that he should have been assigned that level.

Grievant Hardee does not research and develop new methods, rather he relies on established procedures, references and guidelines in carrying out his work assignments. He does not typically develop new electrical programs, procedures or methods, rather he relies on standard electrical procedures and methods. While the source of a problem may not always be immediately apparent, this does not mean the data is incomplete. There are a limited number of possible problem sources, and he uses a standardprocedure and his training to follow the problem to its source. Grievant Hardee has not proven that any other degree level is a better fit for his duties than a 2.5.

4. Freedom of Action

The Plan defines Freedom of Action as:

> This factor measures the degree to which the position is structured as is determined by the types of control placed on work assignments. Controls are exercised in the way assignments are made, how instructions are given to the employee, how work assignments are checked, and how priorities, deadlines and objectives are set. Controls are exercised through established precedents, policies, procedures, laws and regulations which tend to limit the employee's freedom of action.

Grievants' Job Title received a degree level of 2.5 in this point factor. Grievant Hardee argued he should have received a degree level of 4.0, and Grievant Edmonds argued he should have received a degree level of 3.0, as did the Lead Job Title.

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

> 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.

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

> Tasks are moderately structured with incumbent working from objectives set by the supervisor. At this level, the employee organizes and carries out most of the work assignments in accordance with standard practices, policies, instructions or previous training. The employee deals with some unusual situations independently.

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 worktogether 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 Hardee argued he assigns the priority level to work orders, sees his supervisor in the evenings, advises his supervisor of items he believes are important, and his supervisor does not check his work.

Ms. Nutter stated this point factor measures how assignments are given, how work is checked by the supervisor, and the degree to which the employee is bound by policies and procedures in performing his duties. She stated Grievants must generally follow schematics and the National Electrical Code, and there are a limited number of ways in which to perform the work.

Grievants receive assignments in the form of work orders. Although they perform their duties with little supervision, they do so in accordance with standard trouble-shooting procedures, standard procedures for prioritizing work, manuals, and the National Electrical Code. They may ask their supervisors for assistance, and the supervisor decides whether to assign other workers to assist them. Grievant Edmonds decides what materials are needed for each job.

Parts of degree levels 2.0 and 3.0 seem to fit Grievants' duties. Grievant have not proven their duties better fit a degree level of 3.0 than a 2.5, and Grievant Hardee has not proven hisduties are so unstructured that a degree level of 4.0 is a better fit.

5. Scope and Effect

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

> This factor measures the scope of responsibility of the position with regard to the overall mission of the institution, and/or the West Virginia higher education systems, as well as the magnitude of any potential error. Decisions regarding the nature of action should consider the levels within the systems that could be affected, as well as Impact on the following points of institutional mission: instruction, instructional support, research, public relations, administration, support services, revenue generation, financial and/or asset control, and student advisement and development. In making these judgments, consider how far-reaching is the impact and of what importance to

> the institution and/or higher education systems is the work product, service or assignment. Decisions regarding the impact of actions should take into account institutional scope and size as reflected by operating budget, student enrollment and institutional classification. Also, consideration should be given for the possibility that a unit, program or department within a large institution may be equivalent in size to multiple units, programs or departments within a smaller institution. In making these interpretations, assume that the incumbent would have normal knowledge, experience and judgment, and that errors are not due to sabotage, mischief or lack of reasonable attention and care.

This point factor consists of two parts, Impact of Actions and Nature of Actions. Grievants challenged the degree levels received in both parts. Grievant Hardee argued he should have received a degree level of 2.0 in Impact of Actions, rather than a 1.0. A degree level of 1.0 in Impact of Actions is defined in the Plan as "[w]ork is limited to immediate work function and short-term situations." A degree level of 2.0 in Impact of Actions is defined in the Plan as "[w]ork affects either an entire work unit or several major activities within a department." Grievant Hardee argued he is responsible for a nine floor and a seven floor dormitory, and that if he were not knowledgeable, he could burn up equipment, or cause injury to himself or others. He also argued he is responsible for the TV cable, and a problem would affect teleconferencing and special programming used in classrooms.

Ms. Nutter stated that the department would be the Physical Plant, the work unit would be Residential Services, and that Grievant Hardee is responsible for electrical service which affects only the immediate work function and short term situations. She pointed out that volume of work is not measured by this point factor.

"The degree level definitions under Impact of Actions are not self-explanatory, and the definition of Scope and Effect lends little guidance in interpreting degree levels 1.0 and 2.0." Browning v. Bd. of Directors, Southern W. Va. Community College, Docket No. 94-MBOD-985 (Aug. 15, 1996). Grievant Hardee's scope of responsibility is limited to making electrical repairs and servicing equipment. His supervisor is ultimately responsible for his work, and that of the other employees who perform various services necessary to keep the dormitories open. Grievant has not proven that his work affects an entire work unit, or even several major activities within a department. See Stephenson, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-825 (Dec. 30, 1996).

Grievant Hardee argued he should have received a degree level of 4.0 in Nature of Actions, and Grievant Edmonds argued he shouldhave received a degree level of 3.0, rather than a 2.0. The Lead Job Title also received a degree level of 2.0.

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

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

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

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

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

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

Grievant Hardee again pointed to his responsibility for the TV cable, and the costs of burning up equipment.

Ms. Nutter stated Grievants' duties involve routine situations, and there are guidelines and policies which must be followed. She stated that management level positions have responsibility for operations, and have to make decisions and create policies which impact the institution, and for that reason received degree level 4.0 or higher. Grievants are engaged in providing one of many services necessary to keep the campuses functioning. They have not proven that some other degree level is a better fit than a 2.0 in Nature. See Stephenson, supra.

6. Breadth of Responsibility

Grievant Edmonds argued he should have received a degree level of 2.0, rather than a 1.0 in Breadth of Responsibility. Grievant Edmonds has no budgetary responsibility, nor is he formally accountable for a functional area. His duties fall within a degree level of 1.0. See Burke, supra; and Floyd v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-932 (June 14, 1996).

7. External Contacts

External Contacts is defined in the Plan as:

> This factor appraises the responsibility for working with or through other people outside the SCUSWV [State College and University Systems of West Virginia] to get results. Consider the purpose and level of contact encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, influencing others or negotiation.

This point factor also consists of two parts, Level of Contact and Nature of Contact. Grievant Hardee challenged the degree level received in Level of Contact only, arguing he should have received a degree level of 3.0, rather than a 2.0. A degree level of 2.0 in Level of Contact is defined in the Plan as "[g]eneral public, visitors, and/or service representatives and vendors." A degree level of 3.0 in Level of Contact is defined in the Plan as:

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

Grievant Hardee argued he deals with outside repair technicians, and he "receives the bulk of his work requests from the students", noting the formal reporting process is rarely used.

Grievant Hardee has not proven his contacts with repair technicians are regular, recurring and essential, or that these persons are sales engineers or higher-level products representatives. Students do not need to report electrical problems directly to Grievant Hardee, nor are they supposed to do so, but they receive faster service if they use this reporting method rather than reporting a problem to the Residence Assistant. Therefore, these contacts are not essential to the performance of his job duties. See also, Braniff v. Bd. of Trustees, W. Va. Univ. - Parkersburg, Docket No. 94-MBOT-865 (Sept. 30, 1996).

8. Direct Supervision Exercised

> This factor measures the job's degree of direct supervision exercised over others in terms of the level of subordinate jobs in the organization, the nature of the work performed, and the number supervised. Only the formal assignment of such responsibility should be considered; informal work relationships should not be considered. Supervision of student workers may be taken into account if they are essential to the daily operation of the unit. The number of subordinates should be reported in full-time equivalency (FTE) and not head count.

This point factor consists of two parts, Number of Subordinates and Level of Supervision. Grievants challenged the degree levels received in both parts. Grievant Hardee argued he should have received a degree level of 1.5 in Number of Subordinates, rather than a 1.0. Grievant Edmonds argued he shouldhave received a degree level of 3.0 in Number, as did the Lead Job Title. A degree level of 1.0 is defined in the Plan as no direct subordinates. A degree level of 2.0 is defined in the Plan as one direct subordinate, and a degree level of 3.0 is defined in the Plan as two to three direct subordinates. Neither Grievant listed any supervisory responsibilities on his PIQ in describing his duties and responsibilities.

A half-level is not available in either Number or Level, except that a 3.5 is available in Level for positions which have direct supervision over one position. Grievant Hardee bears a greater burden in his challenge that he should have received a half-level, because not only is he challenging the JEC's application of the Plan to his own job duties, he is challenging the JEC's decision that half-levels are not available for any Grievant in Number.

Grievant Hardee argued he should have received some credit for the two or three employees assigned to him full-time for three months of the year. This argument fails to state a reason why the JEC was clearly wrong or acted in an arbitrary and capricious manner in deciding that half-levels would not be assigned in Number; and accordingly, Grievant has failed in meeting his burden.

Ms. Nutter stated that temporary workers are not counted in applying this point factor, because it is unknown from month to month whether the workers will be there, the identity of the workers and their number are subject to constant change, and they may be assigned to different employees from month to month. Thedefinition of this point factor supports Ms. Nutter's statement that temporary workers are not counted, when it refers to supervision over "subordinate jobs in the organization."

She stated the MU Trades Workers assigned from time to time to perform electrical work are supervised by Grievant Edmonds' supervisor, and they are not formally assigned to Grievant. She explained that formal assignment is when the employee is told that another employee is permanently assigned to him and he is the lead or supervisor, the employee is told the extent of his responsibility for the other employee's work assignments, evaluations and discipline, and this is written into his job description.

The two full-time and one or two part-time helpers assisting Grievant Hardee during three months of the year do not equal one full-time worker, and they may be considered temporary. The same MU Trades Worker is not always assigned to perform electrical work when help is needed in that area. Whether any MU Trades Workers are performing electrical work on a given day depends upon which trade needs extra help, and how many Trades Workers are needed to help perform work in the other trades, as determined by Grievant Edmonds' supervisor. Grievant Edmonds has failed to prove that any employees are formally assigned to him, as is required by this point factor. (See footnote 7)

Although neither party brought this case to the attention of the undersigned, it is appropriate to distinguish Jones, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-978 (Feb. 29, 1996). In that case, the Administrative Law Judge found that where one employee had worked under the

direction of one Grievant for ten years, "it cannot be said that this represents an 'informal work relationship.'" Another Grievant normally had the same worker assigned to help him. These helpers were not trained to work in the trade on their own, but performed tasks such as mixing materials to be used by Grievants in performing their duties. In this case, there are a number of Trades Workers, and Grievant's supervisor decides whether to assign one or more Trades Workers to perform electrical work, or to assign the Trades Workers elsewhere. This assistance is not in the form of getting materials ready for Grievant to perform electrical work, but rather the Trades Workers perform the same work as Grievant, and are trained to perform this work on their own. They function as a second, third or fourth Electrician when the volume of work requires it, or a second, third or fourth Painter or Plumber when the volume of work requires it.

Grievant Edmonds argued he should have received a degree level of 3.0 in Level of Supervision, as did the Lead Job Title, rather than a 1.0.

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

> Minimal or no responsibility for the work of others; however, may provide functional guidance to student workers or lower-level employees on a non-essentialbasis.

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

> Responsible for directing and monitoring the work of student workers essential to the operations of the unit.

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

> Lead control over non-exempt employees performing the same work as this job. Lead responsibility includes training, assigning tasks, checking the work of others, and insuring supplies and tools are provided at the work site.

Although Grievant Edmonds does, in fact, train new Trades Workers to perform the same work he performs, decides which work orders they will receive, checks their work while they are in training, and at times insures that supplies are at the work site, they are not formally assigned to him, and he does not have control over any employees. His supervisor has control over the Trades Workers. Grievant Edmonds spends approximately six months training a new Trades Worker, and then they are able to perform electrical work on their own when his supervisor decides Grievant Edmonds needs some help. Grievant Edmonds decides which of the work orders he will complete, and which he will give to the Trades Worker, but it is his supervisor who decides when a Trades Worker will perform some of Grievant's tasks.

Grievant Edmonds stated David Clay, who is a Lead Painter at MU, has temporary workers under his supervision, and had no full- time employees ever working under his supervision. The Painter - Lead Job Title received a degree level of 4.0 under Number and 3.0 under Level. Ms. Nutter had not reviewed Mr. Clay's PIQ, but stated that based upon Grievant Edmonds' description of Mr. Clay'ssupervisory duties, she believed Mr. Clay to be misclassified. Mr. Clay's PIQ was not placed into evidence, so the undersigned cannot review it to determine what information the JEC relied upon in classifying Mr. Clay. The definition of this point factor would preclude an employee from receiving any supervisory credit for supervision of temporary workers.

C. Summary

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

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. The governing boards are required by W. Va. Code § 18B-9- 4 to establish and maintain an equitable system of job 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 is not properly classified. 156 C.S.R. 1 § 4.17. The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991). 3. The Job Evaluation Committee's interpretation and explanation of the Generic Job Description and point factors will be given great weight unless clearly wrong, where the proper classification of a grievant is almost entirely a factual determination. See Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W. Va. 1995); Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995).

4. The Job Evaluation Committee's decision that Grievants are Electricians, Pay Grade 12, is

not clearly wrong or arbitrary and capricious.

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

Accordingly, the grievances of William Hardee and Dana Edmonds are **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the circuit court of the county in which the grievance occurred, 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: January 10, 1997

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

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

These headings are shorthand for the following point factors: KN is Knowledge; EX is Experience; CPS is Complexity and Problem Solving; FA is Freedom of Action; SE, IA is Scope and Effect, Impact of Actions; SE, NA is Scope and Effect/Nature of Actions; BR is Breadth of Responsibility; EC, LVL is External Contacts/Level of Contact; DSE, NUM is Direct Supervision Exercised/Number of Subordinates; and DSE, LVL is Direct Supervision Exercised/Level of Supervision.

Footnote: 7

If Grievant Edmonds were given credit for supervision of one employee, it would add only 12 points, which would make his total points 1735. This is not enough to place him in a higher pay grade; and, accordingly, would not affect his classification. See Riggs v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-711(Apr. 29, 1996).