BILLY JOE BLACK

v. **DOCKET NO. 94-MBOT-423**

BOARD OF TRUSTEES,

MARSHALL UNIVERSITY

D E C I S I O N

Grievant Billy Joe Black alleges he was misclassified effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) . Grievant seeks as relief classification as a Carpenter Lead, Pay Grade 14, rather than his current classification as a Carpenter, Pay Grade 12, effective January 1, 1994; and backpay from January 1, 1994.

A Level IV hearing was held on June 6, 1996. This matter became mature for decision on September 10, 1996, with the receipt of Respondent's Proposed Findings of Fact and Conclusions of Law. (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 in the Residence Services Department at Marshall University ("MU").

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. Grievant completed a PIQ in 1991.

3. Grievant was classified as a Carpenter, Pay Grade 12, effective January 1, 1994.

4. Grievant's primary job duties (with the percentage of time he performs these duties in parenthesis) are repairing doors, ceiling tile, broken windows, roofs, and furniture; installing doors, drop ceilings, vinyl and ceramic wall and floor coverings, and drywall; and, performing finishing work (67%); training workers in carpentry, assigning tasks, and checking their work (19.6%); ordering supplies and tools, and laying them out at the job site (6.7%); and, designing and installing structures

(6.7%).

5. Prior to employment in his present position, Grievant had completed his high school education, and had two years of experience as a Carpenter's helper at MU. Grievant received two years of vocational training in high school.

6. Except during the summer, Grievant's tasks are determined by the work orders he receives from his supervisor each day. He is also told when projects must be completed. 7. Except during the summer, Grievant's supervisor assigns a Trades Worker to work with Grievant each day, but it is not the same Trades Worker each day. The Trades Workers are generally rotated among the various trades every six months to a year. Grievant and a Trades Worker go through the work orders each day, discuss what needs to be done, and Grievant decides which work will be assigned to the Trades Worker. He generally assigns work orders originating with students to the Trades Worker, and he keeps carpentry projects such as building walls, because of his greater experience. Grievant and the Trades Worker work on projects together about 40% of the time, and only if the project requires more than one person, such as hanging a door. If a Trades Worker is unsure about how to complete a project, Grievant instructs him, and if the project is taking longer than it should, he checks to see if the Trades Worker needs additional instruction. If work is not completed properly by the Trades Worker, Grievant's supervisor asks him why. If the Trades Worker who is performing carpentry work is needed to help in another trade, Grievant's supervisor removes him from his carpentry assignment and assigns him where he is needed; but this does not happen very often.

8. When few students are on campus during the summer, Grievant generally does not receive work orders daily. He checks certain building fixtures, such as ceiling tiles, to see what repair or maintenance work needs to be done.

9. During the summer MU hires one or more temporary workers or student workers, and they work under Grievant's direction. Whentemporary or student workers are assigned to help Grievant, no Trades Workers are assigned to help him.

10. Grievant decides what the inventory should be, and what materials are needed each day. He calls vendors for pricing information. He prepares purchase orders or requests that they be prepared, and his supervisor signs the purchase orders. He has authority to purchase up to $100.00 in materials each day.

11. Grievant has no budgetary responsibility.

12. The Carpenter 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 in Physical Demands. Joint Exhibit 4.

Discussion

A. Burden of Proof

The burden of proof in misclassification grievances is on thegrievant 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 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, thepoint 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., 194 W. Va. 97, 459 S.E.2d 374 (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., 195 W. Va. 430, 465 S.E.2d 887 (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)

At the request of Grievant's attorney, a substantial volume of material was admitted as rebuttal evidence. However, no oral or written argument explained the purpose of these materials. It appears from the evidence that Grievant is asserting the JEC did not gather sufficient factual information, because Grievant was notadequately trained in how to complete the PIQ; and because the PIQ is not the best mechanism for understanding an individual's job duties. The argument apparently is that a decision based upon insufficient factual information should not be accorded deference. The undersigned is unable to guess whether Grievant intended these materials to be used to support other undisclosed arguments.

Deference is given to the JEC because of the fact specific analysis applied by the JEC. In order to overcome this deference, the burden on Grievant is the same in this case as in any other: to show that the information used by the JEC to classify this Grievant was erroneous. Even a successful showing that PIQ's in general are not the best source of information does not meet that burden. What is important is whether the JEC's decision is based upon a mistaken belief as to the particular employee's job duties and responsibilities. As in all Mercer grievances, where the Grievant shows the JEC decision on a particular challenged point factor was based upon a mistake of fact, the JEC decision may be found to be clearly wrong. Gregg, et al., v. Bd. of Trustees, W. Va. Network for Educational Telecomputing, Docket No. 94-MBOT-863 (Dec. 18, 1996).

In this case, Grievant's PIQ correctly listed his duties and responsibilities. Grievant's testimony indicated that he did not understand the words used in the definitions of some of the point factors; however, he did not indicate that he improperly completed the written descriptions of his work in any

part of the PIQ, except that he did not list supervision of Trades Workers in the sectionon Direct Supervision Exercised. Whether the JEC's decision on that point factor is based upon a mistake of fact will be addressed in the discussion of that point factor.

B. Application of the Point Factor Methodology

Grievant argued he functioned in a lead capacity, and should receive at least the same degree levels in the point factors as a Carpenter Lead ("Lead"). He also argued he should have received higher degree levels in some point factors than a Lead received. The following table shows the differences between the degree levels assigned Grievant's Job Title and the Lead Job Title in the point factors he challenged, and the degree levels he argued he should have received.

	EX	CPS	FA	NA	BR	SE LVL	IC NUM	DSE LVL	DSE (See footnote 6)
Carpenter	3	2.5	2.5	2	1	2	1	1	
Lead	4	3	3	2	1	2	3	3	
Black Argument	6	3	4	3	3	3	3	3	

Joint Exhibit 4. Each of the point factors challenged by Grievant will be addressed separately below.

1. Experience

The Job Evaluation Plan ("Plan") defines Experience as follows:

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

Grievant's Job Title received a degree level of 3.0, which is defined in the Plan as "[o]ver one year and up to two years of experience." He 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, which is defined in by the Plan as "[o]ver two years and up to three years of experience."

In support of his argument, Grievant stated that when he was hired by MU, the job posting required a minimum of four years of experience, or two years of vocational training and two years of experience. He explained the vocational training could be acquired in high school.

Brenda Nutter, Director of Human Resources at West Virginia Institute of Technology, pointed out

that Grievant's Job Title received a degree level of 4.0 in Knowledge, 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.

She stated Grievant received credit for up to 18 months of vocational training beyond high school in Knowledge, and the vocational training is not also counted under Experience.

A simple mathematical calculation shows that Grievant received credit for more vocational training and experience than MU requiredwhen Grievant was hired into the position. Grievant presented no evidence to support his opinion that more than four years of experience was necessary. The evidence is that Grievant had only about two years of experience when he was placed in his current position. Grievant failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level of 3.0.

2. 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 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 argued he should have received a degree level of 3.0, as did the Lead Job Title, rather than a 2.5. Half-levels are not defined in the Plan, but Ms. Nutter explained that a half-level was assigned in some point factors when some of the positions in the Job Title performed duties which were within one degree level (in this case a 2.0), and some of the positions in the Job Title performed duties which were within the next higher degree level (in this case a 3.0), and the JEC was split on whether to assign the Job Title the lower level or the higher level.

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 inthe 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.

Grievant pointed out that he must be aware of the health codes, fire codes and building codes applicable to particular jobs, and must sometimes examine blueprints. He stated, however, that he does the same thing nearly every day in dormitories, and he follows established procedures in performing his duties. On his PIQ he gave as an example of the common types of problems faced and the action taken to solve these problems:

> When coming across a problem like their building codes or fire code I get with my supervisor and the safety first man and describe the problem and try to solve.

Ms. Nutter stated that when Grievant modifies some of the methods he uses when working in the cafeteria because of the health code, that would fall within a degree level of 3.0 as diversified guidelines. She stated Grievant uses judgement, but his duties do not fall within all of degree level 3.0.

Grievant presented little detail about how he performs his work on a daily basis. The undersigned cannot conclude from the scant evidence that the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level of 2.5.

3. Freedom of Action

The Plan defines Freedom of Action as:

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

Grievant argued he should have received a degree level of 4.0, rather than a 2.5. The Lead Job Title received a degree level of 3.0.

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

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

The definitions in the Plan show that at a degree level of 3.0:

> Tasks are moderately structured with incumbent working from objectives set by the

> supervisor. At this level, the employee organizes and carries out most of the work assignments in accordance with standard practices, policies, instructions or previous training. The employee deals with some unusual situations independently.

The definitions in the Plan show that at a degree level of 4.0:

> Tasks are minimally structured with incumbent working from broad goals set by the supervisor and established institutional policies. The employee and supervisor work together to establish objectives, deadlines and projects. The employee, having developed expertise in the line ofwork, 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 argued his duties fit within a 4.0 because his supervisor tells him what needs to be done, and then he is expected to determine how to accomplish the job, and his supervisor does not check his work everyday. He stated his supervisor does ask him how the work is going and he keeps his supervisor advised of his progress. His supervisor sometimes looks at the completed project.

Ms. Nutter pointed to Grievant's lack of signature authority on purchases, and stated there are a limited number of ways to perform Grievant's work. She stated Grievant relies on standard carpentry specifications.

Grievant's tasks each day, except in the summer, are dependent upon the work orders received, which provides structure. His work is additionally structured by the codes he must follow, and standard carpentry rules, such as the one noted by Grievant that a load-bearing wall cannot be removed. There are a limited number of ways to perform his duties. Even when assigning work orders to Trades Workers, he makes his decision based upon standard procedures, keeping the more complicated carpentry work, and assigning work originating with students to the Trades Worker. His work is not checked each day by his supervisor, but by Grievant's own admission, his work is the same each day. It is also probable that Grievant is a good carpenter and a good employee, and hissupervisor does not need to check his work. Grievant does, however, keep his supervisor informed as to his progress. Grievant has not proven he should have received a higher degree level. See Flenniken, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94- MBOT-1020 (July 19, 1996); and, Hardee, et al., v. Bd. of Directors, Concord College, et al., Docket No. 94-MBOD-373 (Jan. 10, 1997).

4. Scope and Effect

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

> This factor measures the scope of responsibility of the position with regard to the overall mission of the institution, and/or the West Virginia higher education systems, as well as the magnitude of any potential error. Decisions regarding the nature of action should consider the levels within the systems that could be affected, as well as Impact on the following points of institutional mission: instruction, instructional support, research, public relations, administration, support services, revenue generation, financial and/or asset control, and student advisement and development. In making these judgments, consider how far-reaching is the impact and of what importance to the institution and/or higher education systems is the work product, service or assignment. Decisions regarding the impact of actions should take into account institutional scope and size as reflected by operating budget, student enrollment and institutional classification. Also, consideration should be given for the possibility that a unit, program or department within a large institution may be equivalent in size to multiple units, programs or departments within a smaller institution. In making these interpretations, assume that the incumbent would have normal knowledge, experience and judgment, and that errors are not due to sabotage, mischief or lack of reasonable attention and care.

This point factor consists of two parts, Impact of Actions and Nature of Actions. Grievant challenged the degree level received in Nature only. He argued he should have received a degree level of 3.0, rather than a 2.0 in Nature of Actions. The Lead Job Titlereceived 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 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.

Grievant argued that if he did not follow the fire code and building guidelines, it could cause a lot of problems. He argued his duties affect students every day because he takes care of problems in dormitory rooms, and if he did not perform his work correctly, students could be hurt; and if he did not follow the health code, the cafeteria could be closed.

Ms. Nutter stated that Grievant's work does not provide guidance to a program, function or service, because he is not in charge of an operation. She stated that carpentry work is a service provided to his department, not to students. She stated that tutoring would be a service to students. She stated a degree level of 3.0 would require the performance of a lot of non-routine duties, while Grievant receives work orders and performs his work, makes basic decisions, such as what materials to keep on hand, when to replenish inventory, and what needs to be done to complete thework

orders, and keeps his supervisor informed of what he has done.

Grievant has not proven his duties fall within a degree level of 3.0 under Nature of Actions. He is not providing guidance to the residence services department or to carpentry services, but is the person performing carpentry. The decisions Grievant makes on how to perform his duties are routine, and are based upon the application of accepted practices. See Browning v. Bd. of Directors, Southern W. Va. Community College, Docket No. 94-MBOD- 985 (Aug. 15, 1996). See, also, Stephenson, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-825 (Dec. 30, 1996), and Hardee, supra.

5. Breadth of Responsibility

Grievant argued he should have received a degree level of 3.0, rather than a 1.0 in Breadth of Responsibility, because he has purchasing duties, as well as duties within the housing department. The Lead Job Title also received a degree level of 1.0. Grievant 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).

6. Intrasystems Contacts

Intrasystems 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 orobtaining information, explaining policies or discussing controversial issues. This factor considers only those contacts outside the job's immediate work area.

This point factor consists of two parts, Level of Contact and Nature of Contact. Grievant is challenging the degree level received in Level of Contact only. He argued he should have received a degree level of 3.0, rather than a 2.0. The Lead Job Title received a degree level of 2.0.

A degree level of 2.0 in Level of Contact is defined in the Plan as "[s]taff and faculty outside the immediate work unit." A degree level of 3.0 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.

Grievant stated he has weekly contacts with project coordinators, his direct supervisor, and managers, such as the student hall residence directors. He stated these persons work in the Residence Services department, and his PIQ describes the content of his communications with these

persons as "building projects."

Ms. Nutter stated that the coordinators, supervisors and managers listed by Grievant are all faculty and staff. She believed coordinators were either students or part-time employees.

This point factor, by definition, does not consider persons within Grievant's immediate work area. This would clearly include Grievant's supervisor. Grievant works in the residence halls, and stated the managers he speaks with are employed in his department, which may be considered to be within Grievant's immediate workarea.

Grievant did not elaborate on the identity of "project coordinators." Given Grievant's duties and that he works only in particular buildings, most (if not all) of which are either residence halls or the student union, Grievant would have no identified need to have contact with persons coordinating projects outside his work area. The undersigned concludes these persons are also within Grievant's work area. Grievant failed to prove he should have received a degree level of 3.0 in this point factor.

7. 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. Grievant challenged the degree levels received in both parts. Grievant argued he should have received a degree level of 3.0 in Number of Subordinates, as did the Lead Job Title, rather than a 1.0. 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.

Grievant argued he should have received a degree level of 3.0in Level, 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-essential basis.

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.

Grievant argued he should have received supervisory credit for the Trades Worker who helps him, and the temporary or student worker(s) during the summer. He stated David Clay, who is a Lead Painter at MU, has one temporary worker under his supervision, and has 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.

Grievant further stated that Cletis Richards and Cal Stephenson each has one Trades Worker working for him, and may have temporary workers, depending on the work load. They are classified as Trades Worker Leads, and that Job Title received a degree level of 4.0 in Number and 3.0 in Level. He also stated that Mr. Richards and Mr. Stephenson each has responsibility for a building.

Ms. Nutter stated that temporary workers are contractual employees, their length of employment is unknown, and they are notcounted in applying the Plan. She also stated there were only five Trades Workers assigned to help six persons, which led her to conclude a Trades Worker could not be assigned to Grievant all the time. She noted Grievant's supervisor decides whether to assign a Trades Worker to assist Grievant or another employee.

The definition of this point factor supports Ms. Nutter's explanation that it precludes an employee from receiving any supervisory credit for supervision of temporary workers, when it refers to supervision over "subordinate jobs in the organization." Hardee, supra. Grievant's supervision of one student worker during the summer is not equal to one full-time worker as required by the definition of this point factor, and is not counted.

The same MU Trades Worker is not always assigned to perform carpentry work when help is needed in that area. Whether any MU Trades Workers are performing carpentry 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's supervisor. No Trades Workers are assigned to perform carpentry work when temporary or student workers are assigned to help Grievant during the summer. Grievant has failed to prove that any employees are formally assigned to him, as is required by this point factor. See, Hardee supra. Compare Jones, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-978 (Feb. 29, 1996).

Although Grievant 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, andinsures 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 spends approximately six months training a new Trades Worker, and then they are able to perform carpentry work on their own when his supervisor decides Grievant needs some help. Grievant 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. Hardee, supra.

Grievant's argument that he should receive the same supervisory credit as Messrs. Clay, Richards and Stephenson fails, because the way the Mercer point factor methodology is applied, the duties of two employees cannot be compared in one point factor alone. Pay grades are assigned a Job Title based upon where the total points fall on a pay grade table. Total points result from the degree levels assigned in each point factor to the Job Title. Degree levels are assigned to Job Titles, not individuals. An individual's duties may differ somewhat from those of the other persons in the Job Title, and that individual's duties, if rated individually may receive different degree levels in several point factors than the degree levels the other individuals in the Job Title would receive if their duties were rated individually. However, persons with similar duties who receive total points which put them in the same Pay Grade, may be placed in the same Job Title, and they all receive the Job Title's degree levels. The JobTitle's degree levels, called a data line, is a mix of the degree levels received by the individuals.

The PIQ's of the persons to whom Grievant compared himself were not placed into evidence, so the undersigned cannot review them to determine what information the JEC relied upon in classifying them. Further, no evidence was presented as to the duties and responsibilities of Messrs. Clay, Richards and Stephenson. Therefore, the undersigned cannot compare the data line received by their Job Titles to that received by Grievant's Job Title. See Barber, et al., Bd. of Trustees, W. Va. Univ., et al., Docket No. 94-MBOT-872 (Oct. 31, 1996); Campbell-Turner, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-1035 (Jan. 1, 1996); Jordan, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-983 (Nov. 25, 1996); and, Hughes v. Bd. of Trustees, W. Va. School of Osteopathic Medicine, Docket No. 94- MBOT-1002 (Jan. 28, 1997).

C. Summary

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

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 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., 194 W. Va. 97, 459 S.E.2d 374 (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 a Carpenter, 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 Job Title Carpenter is neither clearly wrong nor arbitrary and capricious.

Accordingly, the grievance of Billy Joe Black is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Cabell 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: January 31, 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 declined to submit post-hearing 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

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