DEBORAH HUGHES

v. DOCKET NO. 94-MBOT-1002

BOARD OF TRUSTEES,

WEST VIRGINIA SCHOOL OF OSTEOPATHIC MEDICINE

D E C I S I O N

Grievant Deborah Hughes alleges she was misclassified effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) . Grievant seeks as relief creation of the institution-specific Job Title Payroll Specialist, Pay Grade 19; classification in that Job Title, rather than her current classification as a Payroll Representative, Pay Grade 14, effective January 1, 1994; and backpay from January 1, 1994.

Two days of hearing were held at Level IV on March 6 and August 12, 1996. This matter became mature for decision on September 17, 1996, with the receipt of Respondent's Proposed Findings of Fact and Conclusions of Law.

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

Findings of Fact.

1. Grievant is employed at the West Virginia School of Osteopathic Medicine ("WVSOM").

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, and revised her PIQ on February 7, 1994.

3. Grievant was classified as a Payroll Representative, Pay Grade 14, effective January 1, 1994.

4. Grievant's primary job duties (with the percentage of time she performs these duties in parenthesis) are preparing and revising various payroll related reports, including state and federal tax reports, retirement, and insurance reports (35%); providing new employees with written information

which explains benefits and explaining benefit options to them, and answering employee questions on benefits (20%); making adjustments in payroll, including entering data (8%); completing other forms and verifying information (8%); processing new employee forms (6%); processing payroll transmittal sheets (5%); processing payroll, including entering data (5%); processing payroll checks for distribution (5%); monitoring the flow of documents to ensure timely delivery of payroll checks (5%); and, verifying that W-2's and 1099's prepared in the State Auditor's Office are accurate(3%). (See footnote 2) Grievant also talks to staff at governmental agencies about employee benefits, payroll, and payroll reports. The purpose of these conversations is to provide or receive information. At times she is helping employees solve a problem with medical insurance or retirement benefits or premiums. She could not state how much time she spends performing this duty.

5. The WVSOM employs 150 to 154 salaried employees and 45 to 70 part-time hourly employees, who are paid every two weeks. From time to time it also employs visiting lecturers, which may increase the payroll by as much as 100 employees for a payroll period.

6. Grievant does not hold a Bachelor's Degree.

7. Grievant must follow guidelines in preparing payroll, and all payroll and insurance reports.

8. Grievant has no budgetary responsibility.

9. When preparing payroll and insurance reports, processing payroll, and verifying reports prepared in the Auditor's Office, Grievant uses a calculator. She also uses a typewriter when performing some of her duties.

10. The Payroll Representative Job Title received 1892 total points from the following degree levels in each of the thirteenpoint factors (See footnote 3): 5.0 in Knowledge; 4.0 in Experience; 3.0 in Complexity and Problem Solving; 2.5 in Freedom of Action; 2.0 in Scope and Effect, Impact of Actions; 2.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 2.0 in Intrasystems Contacts, Nature of Contact; 3.0 in Intrasystems Contacts, Level of Contact; 2.0 in External Contacts, Nature of Contact; 3.0 in External Contacts, Level of Contact; 2.0 in Direct Supervision Exercised, Number; 3.5 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 2.0 in Physical Coordination; 2.0 in Working Conditions; and 1.0 in Physical Demands. Joint Exhibit C and Testimony of Margaret Buttrick.

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 aMercer 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, 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 pointfactors 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)

B. Application of the Point Factor Methodology

The following table shows the differences between the degree levels assigned Grievant's Job Title in the point factors she challenged, and the degree levels she argued were appropriate.

	KN	EX	CPS	FA	IA	NA	BR	NC	LVL	PC (See footnote 6)
						SE	SE	EC	EC	
Payroll Rep.	5	4	3	2.5	2	2	1	1	3	2
Hughes Argument	6	5	4	4	4	4	3	2	4	4

Joint Exhibit C. Each of the point factors challenged by Grievant will be addressed separately below. Before addressing the point factors, Grievant's comparison of her duties to those of Juanita Mitchell, who is employed at West Virginia State College as a Supervisor/Payroll Accounting, Pay Grade 16, will be addressed. Ms. Mitchell's Mercer grievance, in which she asked to be placed in an institution specific Job Title at a higher pay grade, was denied by the undersigned on May 21, 1996, in Mitchell v. Bd. of Directors, W. Va. State College, Docket No. 94-MBOD-348. Ms. Mitchell's testimony, and her PIQ (Grievant's Exhibit 3) show that her duties and responsibilities are very similar to Grievant's. The distinctions are that Ms. Mitchell supervises two employees, and those employees perform some of the same duties as Grievant, such as preparing the hourly payroll, putting employees on the payroll, and remitting supplemental insurance checks.

Margaret Robinson Buttrick, Human Resources Administrator for the State College and University Systems of West Virginia and Chair of the JEC, opined that Ms. Mitchell was misclassified and should be in the same classification as Grievant, that is, a Payroll Representative, Pay Grade 14.

Grievant did not ask to be placed in the same classification as Ms. Mitchell, rather, she was using the evidence of their similar duties to show that she too should be in a higher pay grade. 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. Anindividual'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 Job Title's degree levels, called a data line, is a composite of the degree levels received by the individuals.

No evidence was presented as to the duties and responsibilities of the two other persons in Ms. Mitchell's Job Title. Therefore, the undersigned cannot compare the data line, or pay grade, received by Ms. Mitchell's Job Title to that received by Grievant's Job Title.

Also, Ms. Mitchell's supervisory duties alone are of significance. Ms. Mitchell's Job Title received higher degree levels in both parts of Direct Supervision Exercised than did Grievant's Job Title. These supervisory duties may impact other point factors as well. Comparing Grievant's lack of supervisory duties to Ms. Mitchell's supervisory duties, the difference in Direct Supervision is 96 points on a table where the difference between a Pay Grade 14 and a Pay Grade 16 is 130 points. "This exercise demonstrates how easily a minor change in duties can affect the classification, and that it is not sufficient in this case to argue that the duties are nearly identical. See also,Barber[, et al., Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT- 872 (Oct. 31, 1996)]; and Campbell-Turner, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-1035 (Jan. 1, 1996)." Jordan v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-983 (Nov. 25, 1996).

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.

Grievant argued she should have received a degree level of 6.0, rather than a 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.

A degree level of 6.0 is defined in the Plan as:

> Job requires a thorough knowledge of a professional discipline or technical specialty as would normally be acquired through a relevant baccalaureate education program. Knowledge of principles, concepts, and methodology of a highly technical, professional, or administrative occupation is indicative of this level.

Grievant opined that a strong accounting background, knowledge of state and federal tax laws, and a background in marketing, management, business, personnel and computers were required in order to perform her duties. She stated marketing was necessary in order to explain which health care choice was more economical; andmanagement skills were necessary for her to prioritize her work, and to make sure she completed all her work in a timely manner. Grievant's supervisor marked a degree level of 5.0 on her PIQ.

Mrs. Buttrick stated that the duties of this position do not require a baccalaureate degree in accounting, business or any other field. The undersigned agrees.

Further, Grievant's opinion is not supported by any evidence. Rather, the evidence that Grievant does not hold a Baccalaureate Degree, is contrary to Grievant's opinion. "Such [opinion] statements standing alone merely show disagreement with Respondent's conclusion, but offer no reason to accept Grievant's position rather than Respondent's." Riggs v. Bd. of Trustees Marshall Univ., Docket No. 94-MBOT-711 (Apr. 29, 1996). Grievant failed in meeting her burden of proof on this point factor.

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.

Grievant's Job Title received a degree level of 4.0, which is defined by the Plan as "[o]ver two years and up to three years of experience." She argued she should have received a degree level of 5.0, which is defined in the Plan as "[o]ver three years and up to four years of experience."

Grievant opined that over three years of experience is needed because she explains insurance benefits and changes in tax laws regarding how much employees can contribute to retirement plans. She testified, however, that she has been provided with software which makes the retirement deduction calculation. She argued experience was needed in payroll and in human resources. Her supervisor marked a degree level of 3.0 on Grievant's 1994 PIQ, and he marked a degree level of 4.0 on her 1991 PIQ.

Mrs. Buttrick stated that if an associate's degree were not required, the JEC would probably have increased the Experience requirement by two years.

Grievant presented no evidence to support her opinion that more than three years of experience, combined with an associate's degree, was required to be able to process payroll, prepare payroll

reports, and explain benefits. Grievant has again failed in meeting her burden of proof.

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 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 she should have received a degree level of 4.0, rather than a 3.0. 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 4.0 is defined in the Plan as:
>
> Problems encountered are complex and varied due to incomplete and/or conflicting data. General policies, procedures, principles, and theories of specific professional disciplines are available as guidelines; however, these guides may have gaps in specificity or lack complete applicability to work assignments. Employee must utilize analytical skills in order to interpret policies and procedures, research relevant information, and compare alternative solutions.

Grievant characterized errors on reports prepared by the state Auditor's Office as conflicting data. Grievant did not explain her work in detail, but it appears that her role in looking at reports generated by the Auditor's Office is to compare numbers to verify the report is accurate. Comparison of data is within the definition of a degree level of 2.0.

As "an example of the common type of problem faced during the past year and the course of action taken to solve these problems," Grievant stated on her 1994 PIQ:

> The reporting of FICA taxes has been a problem due to the changes in Federal legislation. Having analyzed the relating [sic] reports and realizing the most effective and efficient method of implementation, and with the help of the computer systems analyst, spreedsheets [sic] were devised in order to comply with the new federal laws. These spreadsheets have been tested and checked to assure accuracy.
>
> I have pushed for imp[r]ovements and the development and implementation of improved computer reporting systems for in house and external reporting requirements.

Under Freedom of Action, Grievant stated on her 1994 PIQ:

> This position is guided by the policies, prodecures [sic], and laws governed by the: (1) State of WV Department of Labor (2) Federal Government (IRS) for all aspects pertaining to tax laws (3) individual state agencies or companies for various reports (4) State Auditors' office for procedures in processing payrolls (5) Institutional and Board of Trustees for policies andprocedures.

Mrs. Buttrick noted guidelines are available to Grievant in preparing all reports. She stated that a degree level of 4.0 is assigned to professional or higher level positions, where very general policies and theories are followed.

Grievant presented no evidence that the guidelines she must follow in preparing payroll and payroll related reports are "general policies, procedures, principles, and theories of specific professional disciplines," and the undersigned does not find them to be such. She presented no evidence that she interprets policies and procedures, rather than applies diversified guidelines and procedures, and locates and selects the most appropriate guidelines, references, and procedures for application.

Grievant stated she researches information on benefits, but her testimony indicates that what she is doing is looking at the payroll records to see what payments have been made (comparing information), talking to governmental agency staff to check information, and looking at benefit information to find the section which is applicable to the situation. This latter activity can be characterized as locating and selecting the most appropriate guidelines. It is not clearly wrong or arbitrary and capricious to conclude that the other two activities are not research. Grievant has not proven a degree level of 4.0 is a better fit for her duties. See also, Gregg, et al., v. Bd. of Trustees, W. Va. Network for Educational Telecomputing, Docket No. 94-MBOT-863 (Dec. 18, 1996).

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.

Grievant argued she should have received a degree level of 4.0, rather than a 2.5. Half-levels are not defined in the Plan, but Mrs. Buttrick explained that a half-level was assigned when the duties of some persons in the Job Title were within a 2.0, while the duties of others were within a 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 workingfrom 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.

Mrs. Buttrick stated this point factor measures the structure or control over the work assignments. She pointed out that Grievant does not develop guidelines and procedures; rather they are in place and she must know them and apply them. She also noted that Grievant does not have the responsibility associated with signing payroll or reports, and others review the payroll.

Grievant's tasks are structured by state and federal payroll procedures. The duties performed on a particular day are dependent in large part on deadlines imposed, not by her supervisor, but by law, and upon employee requests for information or to change information. Insurance benefits are set by someone other than Grievant, and when she is explaining benefits to new employees, she stated she has a checklist. All of this is within a degree level of 2.0. See Braniff v. Bd. of Trustees, W. Va. Univ. - Parkersburg, Docket No. 94-MBOT-865 (Sept. 30, 1996); and Jordan, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-983 (Nov. 25, 1996). Grievant has failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level of 2.5.

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. Grievant challenged the degree levels received in both parts. She argued she should have received a degree level of 4.0 in Impact of Actions, rather than a 2.0.

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

> Work affects either an entire work unit or several major activities within a department.

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

> Work affects the operations of more than one school or division of a specialized school, branch campus, community college or baccalaureate-level Institution with an operating budget of less than $13M; a school ordivision 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.

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

> Work affects the entire operations of a specialized school, branch campus, community college or baccalaureate-level Institution with an operating budget of [less than] $13M; more than one school of division of a graduate or baccalaureate-level Institution with an operating budget of $13-$18M; a school or division of a graduate or baccalaureate-level Institution with an operating budget of $19-$25M; several departments within a graduate-level Institution with an operating budget of more than $50M; or a major department within a doctoral- level Institution with an operating budget of more than $200M.

Mrs. Buttrick pointed out that Grievant is not accountable for payroll, and does not make sure the money is available for payroll. Payroll is obviously very important to the WVSOM, and Grievant's duties are a key part of the payroll process, but her duties are just one part of this service. She is responsible for performing her duties, but she is not the person responsible for payroll. She has not proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level of 2.0. See Henry, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-1024 (July 31, 1996).

Grievant argued she should have received a degree level of 4.0, rather than a 2.0 in Nature of Actions. A degree level of 2.0 in Nature 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.

A degree level of 4.0 in Nature 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.

Again, Grievant is responsible for performing her payroll duties, but is not the person responsible for payroll. Grievant has not proven some other degree level is a better fit, and has failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level of 2.0 in Nature.

6. Breadth of Responsibility

Grievant argued she should have received a degree level of 3.0, rather than a 1.0 in Breadth of Responsibility, because of her payroll and benefits duties. Grievant has no budgetary responsibility, nor is she formally accountable for a functional area. Her 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, Nature of Contact and Level of Contact. Grievant

again challenged the degree levels received in both parts. Grievant argued she should have received a degree level of 4.0, rather than a 3.0 in Level. A degree level of 3.0 in Level of Contact is defined in the Plan as:

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

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

> Mid-level representatives of government agencies, professional contacts with other colleges and universities outside the systems.

Grievant stated she contacts the eligibility and claims departments at PEIA, and the Health Economics Corporation claims department regarding employee billing problems. Her PIQ lists her contacts as the Internal Revenue Service occasionally regarding tax information and forms, Patty Abbott of WV P.E.I.A. (retirement) periodically regarding premiums, Rae Wakala of WV P.E.I.A. periodically regarding "[i]nformation concerning eligibility of employee or dependants [sic]," Dale Elswick of WV P.E.I.A. periodically regarding verification of information, Debra Levi of T.I.A.A. (teacher's retirement) periodically regarding retirement information, Janet Tessell of T.I.A.A. periodically regarding CRSsystem information, and Miriam Hernandez of T.I.A.A. periodically regarding information on calculation of maximum tax deferred contributions to a Supplemental Retirement Annuity. (See footnote 7) Grievant did not know the job titles of the persons she speaks with, and did not explain what "CRS system information" is.

Mrs. Buttrick stated Debra Levi is a higher-level product representative, but she was not familiar with the other persons listed. This would indicate that T.I.A.A. is not a governmental agency, but the undersigned was not provided with conclusive evidence from either party on this. She also opined that occasional and periodic contacts are not regular, recurring and essential to get the job done.

Grievant failed to prove the persons she speaks with are anything other than staff, and her testimony regarding the type of contact she has indicates that she speaks with staff of government agencies. Staff of government agencies are not mid-level representatives. See also, Carrere v. Bd. of Directors, Southern W. Va. Community College, Docket No. 94-MBOD-1017 (Jan. 16, 1997).

Grievant argued she should have received a degree level of 2.0, rather than a 1.0 in Nature of Contact. A degree level of 1.0 in Nature of Contact is defined in the Plan as:

> Routine information exchange and/or simple service activity; requires common courtesy (e.g., furnishing or obtaining factual information, ordering supplies,describing

simple procedures).

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

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

Grievant's contacts with state and federal agency staff involve furnishing payroll and other factual employee information, and obtaining factual information about policies and insurance claims. She must be courteous, but she failed to prove her contact entails more than information exchange.

8. Physical Coordination

Physical Coordination is defined in the Plan as:

> 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.

Grievant argued she should have received a degree level of 4.0, rather than a 2.0.

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

> Work requires simple hand/eye operations and some accuracy and regularity of motions, such as set-up and operation of basic instruments or equipment, and/or the occasional use of standard hand or power tools with minimal speed requirements.

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

> Work 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.

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

> Work 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.

Grievant argued she must have good hand and eye coordination to use calculators, computers and typewriters efficiently and accurately. She stated she works with a calculator daily.

Mrs. Buttrick pointed out this point factor measures the skill required in performing the job; that is, the hand/eye coordination required to accomplish the tasks. She stated this point factor and Working Conditions and Physical Demands were included in the Plan to evaluate positions such as those in the Physical Plant and Laboratory Job Families and others, where there would be a need to be

precise, a lack of hand/eye coordination would result in bodily injury, persons were exposed to diseases, or extreme temperatures were encountered in working outside, for example. She stated a standard office job would not receive a degree level of 4.0, unless the job required data entry nearly 37 1/2 hours a week.

Preparation of payroll reports and processing payroll certainly requires accuracy; however, degree level 2.0 includes that the work requires some accuracy. Grievant is under deadlines to complete payroll calculations and reports, however, she did not present evidence that her use of the calculator, computer or typewriter require speed or skill. Grievant has not proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level of 2.0. See also, Barber, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-872 (Oct. 31, 1996).C. Summary

Grievant failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning her Job Title, or in assigning the degree levels in the point factors to her Job Title. (See footnote 8)

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. MarionHealth 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 Payroll Representative, Pay

Grade 14, 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 Payroll Representative is not clearly wrong nor arbitrary and capricious.

Accordingly, the grievance of Deborah Hughes is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Greenbrier 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 28, 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 did not include explaining benefits to new employees on her 1994 PIQ, but testified she spent about 20% of her time in this activity and 20% of her time preparing certain payroll reports (which is part of the 39% shown). She could not state how the percentages of time she had assigned to other duties on her PIQ should be reduced. The undersigned has therefore reduced the percentage of time spent performing other duties proportionately.

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, NC is External Contacts/Nature of Contact; EC, LVL is External Contacts/Level of Contact; and PC is Physical Coordination.

Footnote: 7

Grievant also listed WVNET [West Virginia Network for Educational Telecomputing] as a contact. The undersigned will take notice that WVNET is within the higher education systems. See Gregg, et al., v. W. Va. Network for Educational Telecomputing, Docket No. 94-MBOT-863 (Dec. 18, 1996).

Footnote: 8

Mrs. Buttrick pointed out that Grievant's Job Title received a degree level of 2.0 in Direct Supervision Exercised/Number of Subordinates, which is defined as supervision of 1 employee, and a 3.5 in Level of Supervision, while Grievant does not supervise any employees. Respondent did not argue that Grievant should be placed in a lower pay grade. Given the conclusions reached herein, it is not necessary to address this point factor.