SIDNEY COOPER

v. **DOCKET NO. 94-MBOD-927**

STATE COLLEGE AND UNIVERSITY

SYSTEMS OF WEST VIRGINIA

D E C I S I O N

Grievant Sidney Cooper alleges he was misclassified effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) . He seeks as relief classification as a Director/Student Support Services, Pay Grade 19, rather than Educational Outreach Counselor, Pay Grade 16, and backpay from January 1, 1994. As alternative relief, he seeks creation of a Job Title for Job Training Partnership Act counselors in a pay grade higher than a 16, and backpay. He challenges the degree levels received in Knowledge, Experience, Complexity and Problem Solving, Breadth of Responsibility, Intrasystems Contacts/Level of Contact, and Direct Supervision Exercised/Numberof Subordinates and Level of Supervision. (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 by the State College and University Systems of West Virginia, and works in the Systems' Central Office.

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 an Educational Outreach Counselor, Pay Grade 16 ("Counselor"), effective January 1, 1994.

4. Grievant's primary job duties (with the percentage of time he performs these duties in parenthesis) are providing academic, career and personal counseling services to Job Training

Partnership Act ("JTPA") program participants (30%); screening credentials and conducting JTPA program applicant interviews (20%); public relations (15%); developing comprehensive organizational administrative systems for the JTPA program and supervising their implementation and maintenance (10%); preparing JTPA programproposals, including participant projections, budgetary and staffing requirements (10%); developing and implementing recruiting strategies (10%); and supervising (5%).

5. Grievant's supervisor is responsible and accountable for the JTPA program.

6. Grievant must follow JTPA program policies and procedures, and higher education policies and procedures.

7. Grievant supervises one secretary.

8. The Counselor Job Title received 2212 total points from the following degree levels in each of the thirteen point factors (See footnote 3) : 6.0 in Knowledge; 3.0 in Experience; 3.5 in Complexity and Problem Solving; 4.0 in Freedom of Action; 7.0 in Scope and Effect, Impact of Actions; 3.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 2.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level of Contact; 2.0 in External Contacts, Nature of Contact; 3.0 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; 1.0 in Physical Coordination; 2.0 in Working Conditions; and 2.0 in Physical Demands. Joint Exhibit 2.

9. The point score range for a Pay Grade 16 is from 2114 through 2254 points. The point score range for a Pay Grade 17 is from 2255 through 2407 points. Joint Exhibit 1.

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 which degree level of a point factor should be assigned, where theposition 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 degreelevels assigned in the point factors challenged by Grievant for the Counselor, the Director/Student Support Services ("Director"), and the degree levels Grievant argued he should have received.

	KN	EX	CPS	IC BR	DSE LVL	DSE NUM	LVL (See footnote 6)
Counselor	6	3	3.5	1	2	1	1
Director	7	4	4	2	3	4	6

Grievant's

Argument 7 5 5 3 3 6 4

Joint Exhibit 2. Grievant also challenged the degree levels received in Indirect Supervision Exercised/Number and Level, in the alternative, arguing that if JTPA program participants are not considered under Direct Supervision, they should be considered under Indirect Supervision. Grievant conceded his position should receive lower degree levels in Scope and Effect/Impact of Actions (a 4.0, rather than a 7.0), Working Conditions (a 1.0, rather than a 2.0), and Physical Demands (a 1.0, rather than a 2.0). Each of the point factors challenged by Grievant 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.

Grievant's Job Title received a degree level of 6.0 in Knowledge, and he argued he should have received a degree level of 7.0. 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.

A degree level of 7.0 is defined in the Plan as:

> Job requires a broad or in-depth body of knowledge such as would normally be acquired through a Master's education program that is directly related to the type of work being performed. Advanced knowledge in a particular field of expertise with the skill in applying this knowledge to difficult and complex work assignments is characteristic of this level.

Grievant testified he holds a Master's Degree in Public Administration ("MPA"), and has taken some graduate level courses in counseling, and attended several workshops. He opined his responsibilities are beyond the baccalaureate level, and referred to his administrative responsibilities in developing systems to keep the program at an optimal level, budgeting, and personnel management. He stated he needs to know those things he was taught in the MPA program because he is running a public program, and is responsible for implementation of all facets of the program. However, he testified that his supervisor has responsibility for the direction of the JTPA program.

Grievant's PIQ states that a Master's Degree is required.

Margaret Robinson Buttrick, Human Resources Administrator forthe State College and University Systems and JEC chair, stated Grievant's position is seen by the Central Office as a case management, program review type of position, for which a Master's Degree is not required. She stated if a Master's Degree were required, the degree should be in counseling, but then it would be a very different job. She stated a Bachelor's Degree with some experience has always been required, although a Master's Degree may be preferred, which is typical in West Virginia higher education recruiting. She described Grievant's counseling duties as assisting participants with their program activities, rather than professional level counseling which would be done by a person with a Master's Degree in counseling. She stated Grievant may know of a problem because of a participant's poor performance or by probing, but problems such as substance abuse would be referred to a professional. She did not address Grievant's administrative responsibilities.

Grievant provided little detail to explain exactly what his duties are and how he goes about performing his duties. Although he stated he is running a public program and is responsible for implementing all facets of it, his supervisor is responsible for the JTPA program, and Grievant's PIQ does not reflect that he has high level administrative duties. Grievant's budgetary duties seem minimal, and with the scant evidence provided on this area, the undersigned cannot find any support to Grievant's assertion that a Master's Degree is necessary to be able to perform this duty. Likewise, no evidence was provided to support that Grievant managespersonnel, other than a secretary.

The only duty listed on Grievant's PIQ which relates to program development is the ten percent of his time he spends developing comprehensive organizational administrative systems for the JTPA program and supervising their implementation and maintenance. Again, Grievant did not explain what is involved in performing this duty. Although Grievant may call upon his MPA training in performing this duty, and may do a more thorough, efficient job because of this training, he has not proven a Master's Degree is required in order to be able to perform this duty; particularly considering it is his supervisor who is responsible for the JTPA program. Accordingly, Grievant has not proven he should have received a higher degree level in 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 3.0, which is defined in the Plan as "[o]ver one year and up to two years of experience." Grievant argued he 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 someone could not function as a director responsible for a program with only one to two years of experience. He stated experience in administration, higher education, andcounseling were needed.

Mrs. Buttrick stated Grievant's position is an entry-level position. She stated the experience level for this Job Title has provided an abundance of applicants when positions are advertised.

While Grievant has administrative program development responsibilities, he is not the JTPA program director. Grievant presented no facts from which the undersigned can determine exactly how much training time is needed to be able to perform Grievant's duties. That Grievant's opinion is different from that of the JEC is insufficient to prove the JEC is clearly wrong or acted in an arbitrary and capricious manner.

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's Job Title received a degree level of 3.5 in this point factor, and he argued he should have received a degree level of 5.0. Half-levels are not defined in the Plan, however, Mrs. Buttrick explained that a half credit (.5) was given "in cases where the position was performing significant portions of duties and responsibilities in both levels, i.e.: part in 2 and part in 3, hence a 2.5." Respondent's Exhibit 1.

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 areusually 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.

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

Grievant stated he must develop solutions to complex program problems, "including the interpretation and implementation of policies and procedures governing higher education, the host institution and those Federal and State guidelines with the JTPA Program." Grievant's Exhibit 1, p. 3-6. He stated he develops non-traditional academic programming to provide effective remedial training. Id. He stated guides or precedents are available for him to refer to occasionally, but at times he has to improvise and develop policies internally. He stated his role in developing policies is to suggest policies, and he must obtain approval forhis suggestions.

Grievant's PIQ lists as examples of the common types of problems encountered and the action taken to solve these problems:

> 1. Failure of participants having math and reading skills at the required level of competency.
>
> Solution: Proposed and implemented a summer remediation program.
>
> 2. Difficulty of participants' significant others understanding the demands placed on participants.
>
> Solution: Expanded activities designed to promote interactions among non participants.

Mrs. Buttrick stated guidelines are usually available for solving a problem. She stated Grievant is not developing policies; he is developing procedures which he recommends to his supervisor for approval.

It is not clearly wrong or arbitrary and capricious to evaluate developing programming to provide

remedial training at a degree level of 4.0, not a 5.0, as it appears to involve application of teaching principles and theories to the problem. Reviewing Grievant's other duties, counseling, likewise, may fall within a degree level of 4.0, although some of this may fall within a degree level of 3.0, particularly where standard procedures clearly set forth the course of action. Applicants being screened and interviewed must meet JTPA guidelines, which places this duty within a degree level of 3.0, or lower. Public relations duties may fall within a degree level of 4.0. No detail was provided on how Grievant goes about developing participant projections, budgetary and staffing requirements, developing and implementing recruiting strategies, or the problems encountered in supervisionfrom which the undersigned can determine the degree level applicable to these duties.

Solving the problems Grievant encounters does not rise to a level of 5.0. Some of the problem solving falls within a degree level of 3.0, and some within a degree level of 4.0. Grievant failed to prove his duties are so often within a degree level of 4.0 that he should have received this degree level, rather than a 3.5.

4. Breadth of Responsibility

Breadth of Responsibility is defined in the Plan as:

> This factor describes the variety of specific functional areas in which the job may have formal and ongoing accountability. In reviewing this factor, consider the level of in-depth knowledge required as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations. [Examples of some functional areas within the following divisions would include: (1) Student Services--Housing, Admissions, Financial Aid, Counseling; (2) Business and Finance--Purchasing, Auditing, Grants and Contracts, Bursar.]

Grievant's Job Title received a degree level of 1.0, and he argued he should have received a degree level of 3.0. He described his budgetary responsibility as maintaining the budget and requesting funding. He stated he prepares a quarterly fiscal report. He argued he must have an in-depth knowledge of policies, procedures, and laws governing the JTPA program.

Mrs. Buttrick explained this point factor looks at formal accountability and responsibility, and Grievant's supervisor has formal accountability and responsibility for the JTPA program. She stated Grievant is only accountable for his immediate workassignment.

Grievant has some budgetary duties, but the evidence does not make clear the extent of his responsibility for the budget. It appears, although it is not clear, that the fiscal report Grievant prepares is a JTPA report to the governing agency, not a report to higher education on the budget. It is clear that it is Grievant's supervisor, not Grievant, who is formally accountable or responsible for a

functional area. One must have formal accountability for a functional area in order to receive a higher degree level in this point factor. Grievant is responsible only for performing his work assignment, which falls 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).

5. 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 or obtaining 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 only. He argued 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:

> Staff and faculty outside the immediate work unit.

A degree level of 3.0 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 contact on a "regular basis" with just about all the administrative supervisors and managers, such as in the Registrar's Office, the Bookstore, the Cashier's Office, and the Computer Center. He did not explain why he has these contacts. His PIQ lists his contacts as his supervisor, quarterly contacts with two Vice Presidents, weekly contact with a Dean, and daily contact with faculty.

Mrs. Buttrick noted Grievant's immediate supervisor is not considered a statewide coordinator when applying this point factor to Grievant's position, but is considered his supervisor, which is a degree level of 1.0.

Grievant presented no evidence that his contacts at a degree level of 3.0 are essential to performance of his duties. He has not proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level of 2.0 in this point factor.

6. 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 headcount.

This point factor consists of two parts, Number of Subordinates and Level of Supervision. Grievant challenged the degree levels received in both parts. He argued he should have received a degree level of 6.0 in Number, 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 6.0 is defined in the Plan as 11 or more direct subordinates.

Grievant stated he has supervised a secretary for eight years, including preparing annual performance appraisals. Grievant also argued he should receive credit under this point factor for supervising JTPA program participants, because he sees them at least once every two weeks when they turn in their class attendance records, monitors their progress, and counsels them. He stated he has the right to terminate participants if they fail to abide by the rules of conduct. He referred to the contracts they must sign and suggested they were paid employees.

Mrs. Buttrick stated Grievant is the only person in the Job Title who supervises anyone, and he would receive a degree level of 2.0 in Number, evaluating his position individually.

It is clear that this point factor, by definition, considers only formal employment relationships. The undersigned finds no evidence in the contract which JTPA program participants must sign (which is part of Grievant's Exhibit 1) that they are higher education employees; and therefore, they are not considered inapplying this point factor. The scant evidence indicates that the payment received by program participants is some type of public assistance or financial aid, not compensation, and if they are considered employees, they are employees of the JTPA program, which is funded by the West Virginia Bureau of Employment Programs, Job Training Programs Division. However, none of the documents submitted into evidence by Grievant refer to program participants as employees. They are referred to as students or participants. Grievant has proven he supervises one person, and that his duties fall within a degree level of 2.0 in Number.

Grievant argued he should have received a degree level of 4.0 in Level, 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.

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

> Direct supervision over a unit of non-exempt employees or lead responsibility over a group of exempt employees. Most of the time is spent assigning, reviewing, and checking work or eliminating normal difficulties involving standard policies, procedures, or work practices. Input would be significant in subordinateemployees' performance appraisal, hire or fire decisions.

Mrs. Buttrick stated Grievant would receive a degree level of 3.5 in Level, because he supervises only one person, and the JEC created a half-level for supervision of one person. Respondent's Exhibit 1. Grievant did not argue with the JEC application of a 3.5 under such circumstances. He has proven his duties fall within a degree level of 3.5.

7. Indirect Supervision Exercised

Indirect Supervision Exercised is defined in the Plan as:

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

Grievant argued that if program participants are not counted under Direct Supervision, then they should be counted under Indirect Supervision. He did not indicate specifically what degree levels he should have received. Grievant's Job Title received a degree level of 1.0 in Level, which is defined in the Plan as:

> No indirect supervisory responsibility; has formal authority over lead and/or non-supervisory personnel only.

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

> Directs and coordinates the work of a unit or department, including direct supervision

over first-line supervisors and indirect supervision over non-supervisors who are under the position's line of authority.

Program participants are not considered in applying this point factor. It is clear from the definition of the point factor, andthe definition of the various degree levels, including the two set out above, that only persons who supervise first-line supervisors receive more than a 1.0 in Number of Subordinates and Level of Supervision. See Carlton v. Bd. of Directors/Southern W. Va. Community College, Docket No. 94-MBOD-430 (July 15, 1997). Grievant has no indirect supervisory responsibility.

C. Summary

Grievant proved that if his position were rated individually, he should have received a degree level of 2.0 in Direct Supervision Exercised/Number of Subordinates, and a 3.5 in Level of Supervision. The documents submitted by Respondent which allow conversion of the degree levels into points do not indicate how to convert a 3.5 in Level of Supervision into an exact number of points, but it can be determined that the change in points in Direct Supervision is between 66 and 78 points. Adding this increase in points to the total points for the Job Title of 2212 points changes the total points to between 2263 and 2290, both of which are within a Pay Grade 17.

Grievant conceded he should have received a degree level of 1.0 in both Working Conditions and Physical Demands, rather than 2.0's, and a 4.0 in Scope and Effect/Impact of Actions, rather than a 7.0, and Respondent agreed. Based upon the agreement of the parties, for purposes of evaluating Grievant's position, the degree levels in these three point factors will be reduced as indicated above. These changes in degree levels decrease the total number of points by 104 points, making the total points for Grievant'sposition between 2173 and 2186, which is within a Pay Grade 16. Because the point factor analysis does not result in a change in the pay grades, Grievant is properly classified.

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 Grievant is an Educational Outreach Counselor, Pay Grade 16, is not clearly wrong or arbitrary and capricious. 5. The Job Evaluation Committee's assignment of degree levels to the point factors for the Educational Outreach Counselor Job Title is neither clearly wrong nor arbitrary and capricious.

Accordingly, the grievance of Sidney Cooper is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County, and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the ap propriate court.

BRENDA L. GOULD

Administrative Law Judge

Dated: July 21, 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

A Level IV hearing was held on January 7, 1997. This matter became mature for decision on March 3, 1997, with receipt of Respondent's post-hearing fact/law proposals. Grievant declined to submit post-hearing written argument. This matter was subsequently reassigned to the undersigned for administrative reasons.

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; BR is Breadth of Responsibility; IC/LVL is Intrasystems Contacts, Level of Contact; DSE, NUM is Direct Supervision Exercised/Number of Subordinates; and DSE, LVL is Direct Supervision Exercised/Level of Supervision.