PAUL DEMPSEY,

Grievant,

v. **DOCKET NO. 94-MBOT-933**

BOARD OF TRUSTEES/

MARSHALL UNIVERSITY,

Respondent.

DECISION

Grievant alleges he was improperly classified during the "Mercer" reclassification of higher education employees. (See footnote 1) Effective January 1, 1994, he was classified as a Piano Technician at Pay Grade 15. Grievant does not allege that he was placed in the wrong job title, but argues that he should be compensated at Pay Grade 19. In addition, Grievant has also challenged specific point factors used in the Mercer system. (See footnote 2) If this grievance is granted, Grievant seeks back pay and benefits in the new pay grade to January 1, 1994.

A level four hearing was held in the offices of this Grievance Board in Charleston, West Virginia, on December 19, 1996, and February 24, 1997. This matter then became mature for decision on April 2, 1997, the deadline for submission of the parties' proposed findings of fact and conclusions of law.

The following factual findings are made from the record developed at level four.

Findings of Fact

1. Grievant has been employed by Marshall University ("MU") since 1970 in the Music Department. Effective January 1, 1994, he was classified as a Piano Technician at Pay Grade 15.

2. In 1991, all higher education classified employees, including Grievant, were asked to complete a Position Information Questionnaire (PIQ) prior to the Mercer reclassification. Employees were to describe their job duties and responsibilities, along with the minimum qualifications for their

positions, on the PIQ by answering a series of questions designed to elicit this information. Grievant completed a PIQ in 1991.

3. During the job evaluation process, whereby the Mercer classification system was applied to each individual higher education employee, “data lines” of particular degree levels for each point factor were developed for each job title in the system. Employees with similar duties were grouped together in a job title for purposes of developing this data line. The final step of the classification process was the “slotting” of each employee into the job title which most closely fit his or her duties.

4. The degree levels for each point factor in a job title were used to arrive at a numerical total, which determined each job title's Pay Grade.

5. The purpose of Grievant's position is to tune, maintain and repair the pianos owned by MU, and he has performed the same duties since he was hired. He performs daily service pursuant to a set schedule and repairs as requested by students and faculty.

6. Grievant must make sure that pianos are in top condition and properly tuned when guest performers come to MU, which occurs approximately 5 to 10 times per year.

7. The Piano Technician job title received a total of 2034 points under the Mercer system, placing it in Pay Grade 15. The point range for Pay Grade 15 is from 1985 to 2113 points.

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 § 4.17; W.Va. Code § 18-29-6. Burke 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.” It is largely a “quantitative” system, in which the components of each job are evaluated separately by applying the point factor methodology contained in the Job Evaluation Plan (hereinafter “Plan”). Therefore, the focus in Mercer grievances for this

Board is upon the point factors the grievant is challenging. (See footnote 3) 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. The 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 hisreclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehabilitation, Div. of Rehabilitation Services and W. Va. Civil Serv. Comm'n., 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 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 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 Resources, 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 4)

In accordance with the foregoing discussion, a grievant must show that he was slotted into the wrong job title, that the point factor degree levels assigned to his job title are incorrect, or that he is entitled to an individual data line because of the unique nature of his position. In order to determine if Grievant was misclassified, the point factors and degree levels disputed must be discussed separately in detail.

B. Application of the Point Factor Methodology

___Prior to making arguments regarding the ratings he received for specific point factors, Grievant testified that he does not believe that some of the point factors can be used to measure his job. He stated that the point factors Intrasystems Contacts, External Contacts and Direct SupervisionExercised do not measure his job duties, because his job does not necessitate or require much contact with other people, nor does he need to supervise subordinates to perform his duties and responsibilities. Therefore, Grievant challenged these factors generally as being inapplicable to his position.

As set forth above, the Mercer system is a quantitative system whereby each aspect of an employee's job is evaluated through the point factor methodology. Previous Decisions of this Board have established that a grievant must challenge the point factors as applied to his position in order to establish that he was misclassified. Burke, supra. Grievant argues that he was somehow “penalized” by receiving lower ratings in the categories listed above. However, as explained by Respondent's witness from the JEC, the Plan was designed so that no one factor would have an adverse effect on any particular employee. For example, very physical, labor-intensive positions received very high ratings for such factors as Physical Demands or Working Conditions, but would usually receive low ratings for factors such as Knowledge or Complexity and Problem Solving.

Grievant's burden is to prove by a preponderance of the evidence that the JEC's decisions regarding his classification were clearly wrong or were made in an arbitrary and capricious manner. This burden of proof cannot be met by general, non-specific challenges to point factors in which Grievant received low ratings, which he admits were not necessarily the incorrect levels for his position according to the wording of the Plan.

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 skillsrequired, and the complexity and diversity of the required skills.

Grievant's job title received a degree level of 6.0, which 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.

Although Grievant himself has only a bachelor's degree, he believes that his position should have been evaluated at a degree level of 8.0 for this factor, defined as follows:

> Job requires substantial professional and administrative knowledge in a singular advanced professional discipline as would normally be acquired through a doctoral education program, or requires broad knowledge within multiple fields such as would be attained from education programs covering several specialized disciplines. Knowledge at this level would typically qualify the incumbent as an expert or authoritative source of knowledge and enable the incumbent to develop and recommend policies and programs which impact a large and complex organization.

Initially, Grievant argued at level four that he considers himself an expert and authority on piano tuning, repair and rebuilding. He also stated that he proposes policies and programs, such as ways to remedy the variations in temperature and humidity to which the instruments are exposed, which are not necessarily followed by the chair of his department. Grievant is also considered a master craftsman, which means that he belongs to a professional association of piano technicians; it is not a certification or license.

Under cross examination, Grievant testified that a bachelor's degree alone would not qualify someone to perform his job duties, because the necessary skills are acquired through a combination of knowledge and experience. He then stated that someone with a bachelor's degree and six years of experience could minimally perform his duties. Grievant was given credit under the Experience factor for up to six years of experience, which he did not challenge. Margaret Buttrick, chairperson of the JEC, testified on behalf of Respondent. She believed that the combination of a bachelor's degree and several years of experience was the appropriate minimum level to fill Grievant's position, which he admitted. She also explained that degree level 8.0, which is the highest possible Knowledge level, applies to persons with doctoral degrees, high level administrators and professional positions. She did not believe it was appropriate for a technician within the music department, such as the grievant.

The Mercer point factors measure the minimum level of ability necessary to enter the job, taking into consideration that there is a “learning curve” for any individual entering a new position. Perkins v. Bd. of Trustees, Docket No. 94-MBOT-733 (Oct. 31, 1996). By his own admission, Grievant agrees that a bachelor's degree with the experience level he was credited with are enough to minimally perform his job, so he was appropriately evaluated in this factor.

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 received a degree level of 2.0 for this factor, and he alleges entitlement to a 5.0. A degree level of 2.0 is defined in the Plan as:

> Problems encountered require the employee to make basic decisions regarding what

> needs to be done, but the employee can usually choose among a few easily recognizable solutions. Established procedures and specific instructions are available for doing most work assignments, with some judgment required to interpret instructions or perform basic computation work such as in the comparison of numbers or facts.

A degree level of 5.0 is defined 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.

___Examples of problems with which Grievant must deal include scheduling piano service to accommodate conflicting schedules, appeasing guest artists, and having to do work without sufficient budget money. However, further testimony revealed that Grievant usually has a set schedule of piano service, and that only a small portion of his time is spent doing unexpected repairs or service. Nonetheless, in such situations, Grievant's PIQ indicates that the scheduling conflicts are resolved by the parties involved, not Grievant. He described his problems with guest artists, stating that conflicts may arise if he tunes the instrument a certain way for the artist and the faculty is unhappy with it afterwards. However, he also stated that this occurs infrequently. When there is insufficient money for needed repairs, Grievant may adjust the instrument temporarily or use his own materials.

Respondent argues that Grievant was appropriately evaluated at degree level 2.0. Ms. Buttrick testified that Grievant's everyday piano tuning duties would only require basic decisions, because he knows the methods and procedures used in his trade. As to insufficient funds for making repairs, she observed that this is a budgetary issue to be solved by a management level person with budget responsibility, not by Grievant.

___Grievant has described infrequent situations which do not necessarily require him, personally, to solve problems. His everyday duties are governed by established procedures, and he makes basic decisions about how work is to be done. Grievant has not described any situations which fall within the level 5.0 definition, and he is not entitled to any higher degree level.___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.

The Piano Technician job title received a degree level of 3.0, and Grievant seeks a degree level of 5.0. 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 5.0:

> Virtually all tasks are unstructured; assignments are in terms of setting objectives within strategic planning goals. At this level, the employee has responsibility for planning, designing and carrying out programs, projects and studies; employee sets goals and objectives for a major unit, program, or department. Approval from higher supervision may be necessary only in terms of financial impact and availability of funds, but little reference to detail is discussed with the next level supervisor. Work review concerns matters such as fulfillment of goals and objectives.

Grievant's supervisor is Donald Williams, Music Department Chair. Grievant testified that he and Mr. Williams meet daily to discuss scheduling of service and ordering supplies. As to the technical aspects of his job, Grievant is the only person at MU who knows anything about piano tuning and repair. He stated that there are established standards for tuning, along with reference books and technical journals. Additionally, manufacturers publish reference manuals for their pianos. Grievant stated that there are many exceptions to the established rules and that old instruments may be more difficult to repair. However, reference books may give him a starting pointin such situations.

Ms. Buttrick testified that, although Grievant prioritizes his regular duties, his supervisor sets his overall goals, such as maintaining MU's pianos. Also, when Grievant and Mr. Williams meet each day to discuss scheduling, Mr. Williams sets the objectives regarding what the most important jobs are at that time. She believed that level 3.0 was appropriate, since Grievant is able to accomplish his daily duties independently because of his knowledge and background. Ms. Buttrick opined that level 5.0 was completely wrong for Grievant's position, because he does not set goals and objectives for an entire department. Level 5.0, the highest level of Freedom of Action, was reserved for management level positions which are completely unstructured and whose purpose is to set goals for others.

Grievant's position appears to be accurately described by the level 3.0 definition, and he has not proven that the JEC's evaluation was clearly wrong.

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 havenormal knowledge, experience and judgment, and that errors are not due to sabotage, mischief or lack of reasonable attention and care.

This point factor is divided into two aspects, Impact of Actions and Nature of Actions. Grievant has only challenged the degree level 2.0 he received for Nature of Actions, which 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.

He argues he should have received a degree level of 5.0, which is defined as:

> Work involves planning, developing, and operating a major program or service having a broad impact within the institution by solving critical operational problems or developing and/or implementing new procedures and concepts. Work also involves extensive and consequential support, development, or recommendation of major objectives, policies, programs or practices. Errors could easily result in major costs, problems and disruptions within the affected area.

___Grievant did not address this point factor in his testimony, but his PIQ discusses how his work affects MU's inventory of instruments, valued at hundreds of thousands of dollars. Errors on his part could also spoil a concert, recital or other event. Ms. Buttrick believed that level 2.0 was correct, because Grievant's responsibility is only to make sure that the pianos perform properly, not to make sure that the concert itself occurs or that a guest artist is brought to MU.

___As Ms. Buttrick explained, Grievant's work contributes to the accuracy and reliability of some services provided by the Music Department. There is absolutely no evidence that he operates an

entire program of broad impact, nor does his work involve critical operational decisions. He was correctly evaluated at level 2.0.

5. Intrasystems Contacts Intrasystems Contacts is defined in the Plan as a factor which:

> [A]ppraises 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 also has two aspects, Nature of Contact and Level of Regular, Recurring and Essential Contact. Grievant received a degree level of 1.0 for both, which he contests. A degree level of 1.0 in Level of Contact is “[l]imited to immediate associates and own supervisor within immediate office, unit, or related units.” Grievant believes he is entitled to a degree level of 3.0, which is defined as “[s]upervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office.”

Grievant's daily contacts are with the Chair of the Music Department, along with the Dean of the College of Fine Arts, regarding scheduling and related matters. On an infrequent basis, he has contact with faculty, the Development Office or other departments. As pointed out by Ms. Buttrick, the Chair and Dean (who is the Chair's supervisor) are within Grievant's immediate work unit and direct line of supervision, so they are credited at degree level 1.0. The other contacts Grievant described are, in his words, essential but infrequent, so he has not established that they are regular, recurring and essential so as to qualify for a higher degree level.

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).

Grievant believes he should have received a degree level of 2.0 in Nature, which is definedin the Plan as:

> Moderate tact and cooperation required; communication is largely of a non-controversial 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 alleges that his communications always require moderate tact and cooperation. Ms. Buttrick disagreed, stating that Grievant's normal, everyday duties in scheduling and accomplishing service on pianos only involves routine information exchange. He stated that some special needs situations may cause some controversy, calling for a higher level of tact. However, Ms. Buttrick explained that the JEC considered the employees' normal, usual duties, not exceptional situations.

Grievant's job, by definition, is a “service activity.” There is nothing in the evidence that indicates that scheduling service and repairs is complex or difficult on any regular or recurring basis. Accordingly, he was correctly evaluated at level 1.0 for Nature of Contact.

___6. 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 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.

Also divided into Nature and Level, Grievant received a degree level of 1.0 and 3.0 for each aspect, respectively. 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.

Grievant argues he is entitled to a degree level of 5.0, which is defined as:

> Substantially prominent persons (e.g., community leaders, business and industryleaders) and officials of government agencies, financial agencies, and other important constituents.

Grievant was given credit at level 3.0 because of his constant contact with students who use the instruments and request repairs or tuning. He is requesting additional credit for his dealings with guest artists who perform at MU, who he believes are “substantially prominent persons.” However, the record indicates that guest performances occur only five to ten times per year, which is not a regular and recurring type of contact. In addition, and as noted by Ms. Buttrick, visiting performers would be encompassed within level 3.0 or lower, because level 2.0 includes visitors to the institution.

Grievant's regular, recurring and essential contacts are with students, and he was appropriately evaluated for this point factor.

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).

Grievant seeks a degree level of 4.0, which is defined as:

> Diplomatic/negotiative interactions on complex and important issues; tact, diplomacy and persuasion usually required (e.g., problem-solving discussions about key issues which have substantial impact of the organization.)

Grievant's external contacts concern piano repairs and tuning, which, again, involves routine information exchange and is a simple service activity. He is entitled to no higher degree level.

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 beconsidered. 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.

As discussed earlier in this Decision, Grievant's challenge to this point factor is a general one, because he alleges he has been penalized for not having any subordinates. This issue has been decided, so no further discussion is necessary. Grievant has no subordinates, so is entitled to no additional credit under this point factor.

8. Working Conditions and Physical Demands

Working Conditions is defined in the Plan in conjunction with Physical Demands as:

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

The two aspects form a matrix, and Grievant's job title was given a 1.0 for Working Conditions, along with a 2.0 for Physical Demands. A degree level of 1.0 for Working Conditions is defined as follows:

> No major sources of discomfort, i.e., standard work environment with possible minor inconveniences due to occasional noise, crowded working conditions and/or minor heating, cooling or ventilation problems.

He claims entitlement to a degree level of 2.0, defined as:

> Occasional minor discomforts from exposure to less-than-optimal temperature and air conditions. May involve dealing with modestly unpleasant situations, as with occasional exposure to dust, fumes, outside weather conditions, and/or near-continuous use of a video display terminal.

Grievant described temperature and humidity fluctuations in the music building. He stated that, during the summer, the building may be 80 degrees with 80% humidity, and that it can beuncomfortably cold during a couple of months of the winter. However, he emphasized that the temperature and humidity changes are far more damaging to the instruments than to human beings.

Grievant also discussed his exposure to fumes from some solvents he uses in his work, but stated that this does not occur on any regular basis. Moreover, Grievant stated that this occurs only when he is doing major jobs at his own shop, which is not funded or required by MU. Accordingly, this should not be considered as part of his normal work environment, because he voluntarily performs this work at home.

According to Ms. Buttrick, Grievant is not entitled to the degree level 2.0, because he is not regularly exposed to uncomfortable conditions, such as someone who is required to work outside on a normal basis. She opined that the temperature and humidity conditions he described are minor inconveniences.

As in so many cases, interpretation of these degree level definitions involves subjective determinations. However, the discomforts Grievant has described seem to be minor and infrequent, so the JEC's allocation of degree level 1.0 to his position cannot be found clearly wrong or arbitrary and capricious.

A degree level of 2.0 for Physical Demands is defined as:

> Light physical effort required involving stooping and bending; individual has limited discretion about walking, standing, etc.; occasional lilfting of lightweight objects (up to 25 pounds).

Grievant alleges he should have received a degree level of 5.0, which is defined in the Plan as:

> Extremely strenuous, with frequent physical exertion such as the lifting of very heavy items (more than 75 pounds), deep bending, climbing and/or working in difficult or cramped postitions for long periods of time.

Grievant explained that the inner mechanical workings of a piano pull out like a drawer, which is called the “action.” This portion of the instrument weighs 70 to 100 pounds, and Grievant lifts actions several times per day every day. He also must frequently stoop and bend while performing his job duties.

Ms. Buttrick testified that lifting was not a function of Grievant's position, such as with the physical plant jobs. She also stated that this was not necessarily required of him.

The undisputed evidence is that Grievant performs his job duties alone and independently. Therefore, if removing the action from a piano is necessary when making repairs, Grievant must be required to do so to complete his work. He also testified that his tool box weighs approximately 60 pounds, which he must lift and carry by himself on a daily basis. Accordingly, Grievant has proven that he is entitled to a degree level of 5.0 for Physical Demands. This increases the total points he received by 42 points, for a total of 2076 points.

C. Summary

Grievant did not prove by a preponderance of the evidence that he was incorrectly evaluated on the point factors of Knowledge, Complexity and Problem Solving, Freedom of Action, Scope and Effect--Nature, Intrasystems Contacts, External Contacts, Direct Supervision Exercised or Working Conditions. However, he proved that, if individually evaluated, he would have received a 5.0 degree level for Physical Demands. This increases his total points to 2076 points, which is still within Pay Grade 15. Because the point factor analysis does not result in a change in pay grade, Grievant has not proven he was misclassified. See Riggs v. Bd. of Trustees, Docket No. 94-MBOT-711 (Apr. 29, 1996).

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 classification for all classified employees in the higher education system.

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 § 4.19.

3. Determinations of the Job Evaluation Committee (“JEC”) regarding application of the Mercer Plan's point factor methodology are essentially questions of fact. In that regard, the JEC's interpretation and explanation of the point factors and PIQs at issue will be given great weight unless clearly erroneous. Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). See

generally, Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W.Va. 1995).

4. Subjective determinations of the JEC regarding application of the Mercer Plan's point factor methodology to an employee or group of employees are entitled to deference when being reviewed by this Grievance Board. Such determinations may nonetheless be found to be arbitrary and capricious if not supported by a rational basis; they may also be clearly wrong if there is no substantial evidence in the record supporting the finding or if review of the evidence reveals that a mistake has been made. Burke, supra. See Frymier-Halloran v. Paige, 458 S.E.2d 780, 788 (W.Va. 1995).

5. The JEC's decision that Grievant is appropriately classified as a Piano Technician is not clearly wrong or arbitrary and capricious.

6. The JEC's assignment of degree levels to the point factors for the job title of Piano Technician is neither clearly wrong nor arbitrary and capricious.

Accordingly, this grievance is **DENIED**.

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

DATE: June 30, 1997 _____ **V.**

DENISE MANNING

Administrative Law Judge

Footnote: 1

The reader is referred to Burke 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

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: 3

A grievant may challenge any combination of point factor degree levels, so long as she clearly identifies the point factor degree levels she 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: 4

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.