JUNE RIGGS

v. **DOCKET NO. 94-MBOT-711**

BOARD OF TRUSTEES,

MARSHALL UNIVERSITY

D E C I S I O N

Grievant June Riggs alleges she was misclassified effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) . Grievant is classified as a Business Manager I, Pay Grade 17. She seeks to be classified as a Director of Budget, Pay Grade 21, effective January 1, 1994, and backpay to January 1, 1994. A Level IV hearing was held on October 19, 1995. This matter became mature for decision with the receipt of Respondent's proposed findings of fact and conclusions of law on November 20, 1995. (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 Marshall University. She was classified in the Mercer reclassification as a Business Manager I, Pay Grade 17, effective January 1, 1994.

2. In 1991 all higher education classified employees were asked to complete a Position Information Questionnaire ("PIQ") prior to the reclassification. 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 filled out a PIQ in 1991.

3. Grievant's primary job duties prior to January 1, 1994, were to prepare the budgets for departments within the medical school at Marshall, which are the foundation, school of medicine funds housed within the research corporation, and a $16 million budget for the medical school for state, federal and special funds; and to prepare various financial reports and information for the medical school departments. Grievant also assists in the development and implementation of goals and objectives. G Ex 1. (See footnote 3)

4. Grievant prepares the budget and financial reports for the physician's practice plan, which has a budget of nearly $24 million. The funds in the physician's practice plan do not belong to Marshall University. The physician's practice plan has a chief fiscal officer. 5. Grievant's supervisor, Jim Schneider, Associate Dean for Finance and Administration of the Medical School, is responsible for the budgets of all medical school departments. Mr. Schneider must approve expenditures from the accounts for the medical school. He is also Executive Director of the physician's practice plan.

6. Grievant supervises one position. She had supervised another position at one time, but it had been vacant four years.

7. The employees in facilities management (buildings and grounds) report to Grievant in the absence of their supervisor.

8. Grievant does not have daily accountability and ultimate responsibility for any department within Marshall University. 9. The Business Manager I Job Title received 2,361 total points from the following degree levels in the point factors: 6.0 in Knowledge; 4.0 in Experience; 4.0 in Complexity and Problem Solving; 4.0 in Freedom of Action; 5.0 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; 3.0 in Intrasystems Contacts, Level of Contact; 2.0 in External Contacts, Nature of Contact; 3.0 in External Contacts, Level; 5.0 in Direct Supervision Exercised, Number; 4.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 1.0 in Physical Coordination; 1.0 in Working Conditions; and a 1.0 in Physical Demands. R Ex 2.

10. There is one Director of Budget in the State College and University Systems. The primary job duties of the Director ofBudget position are "preparation, coordination and supervision of the Institution's internal and external Budgetary Process", including assistance in pre-budget scheduling, all stages of development of the budget, assisting in preparation of budget drafts, responsibility for preparation of the institution's budget in its final form, and examination and monitoring of subsequent budget amendments; overseeing the preparation of financial reports; supervising the payroll operation; and, assisting in the development and implementation of goals and objectives. R Exs 1 and 2.

11. Both the Business Manager I and the Director of Budget Job Titles are within the Finance

and Accounting Job Family.

12. The point range for Pay Grade 17 is from 2,255 points to 2,407 points. R Ex 3.

13. The point range for Pay Grade 21 is from 2,954 points to 3,169 points. R Ex 3.

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 she is not properly classified. 156 C.S.R. 1 § 4.17; 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 she feels she is performing. Otherwise the complaint becomes so vague as to defy anadequate 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 her burden of proof in a Mercer grievance merely by showing that the grievant's job duties better fit one job description than another, without also identifying which point factors she is challenging, and the degree level she believes she should have received. (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. W. Va. Code § 18B-9-4; Burke, supra. A Mercer grievant may prevail by demonstrating her reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Board of Rehabilitation, Div. of Rehabilitation Services and W. Va. Civil Serv. Comm'n., Docket No. VR-88-006 (Mar. 28, 1989).

Finally, in this case, whether Grievant is properly classified is almost entirely a factual determination. As such, the Job Evaluation Committee's ("JEC") interpretation and explanation ofthe point factors and Generic Job Descriptions at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Foundation, 459 S.E.2d 374 (W. Va. 1995); Burke, supra. The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that she is misclassified. (See footnote 5)

B. Comparison of Grievant's PIQ to the PIQ for Director of Budget

The JEC has not developed Generic Job Descriptions for Business Manager I or Director of Budget. A comparison of the PIQ for the one Director of Budget with Grievant's job duties shows that the duties of the two positions are not the same.

The Director of Budget position is at West Virginia State College. R Exs 1 and 2. Thirty percent of the duties and responsibilities of the Director of Budget position involves "preparation, coordination and supervision of the Institution's internal and external Budgetary Process". The PIQ describes this function listing eight items running from assistance in pre-budget scheduling through all stages of development of the budget, including assisting in preparation of budget drafts, responsibility for preparation of the budget in its final form, and examination and monitoring of subsequent budget amendments.

Grievant's PIQ shows her budget activities comprise nearly fifty-five percent of her duties and responsibilities. Grievant however, is not responsible for the budget. Her supervisor hasbudget responsibility. Grievant places the financial information into the budget. She develops "line item expenditure schedule (state formal budget procedure) which includes the state appropriated budget, fed[eral] grants budget, state grants budget, student fees budget and special revenues budget - - payroll, employer's share of fringe benefit costs, and operational needs. Project carryover funding availability and income availability from student fees. Prioritization of operational needs based on funding availability. Development of departmental budgets, short-term assessment." She prepares the "budget request document" two years in advance, and the annual operating budget document for the Board of Trustees, and develops "budgets for various grant proposals", works closely with financial officers "regarding budgetary controls for the School of Medicine, the School of Nursing, and the Social Work Program", and monitors the budget. Grievant testified that she prepares the budgets for the practice plan, foundation, school of medicine funds housed within the research corporation, and a $16 million budget for the medical school for state, federal and special funds.

About thirty percent of Grievant's job involves preparation of various financial reports, and monitoring cash flow, while thirty percent of the time the Director of Budget position oversees the performance of this type of work. The Director of Budget position supervises the payroll operation ten percent of the time, but Grievant does not perform any payroll related functions, except to "[p]re-determine payroll accumulations from vacant positions." Both positions assist in the development and implementation of goals and objectives. (See footnote 6)

While the duties of the two positions overlap, the duties are not the same. Margaret Robinson, Human Resources Administrator for the State College and University Systems and Chair of the JEC, testified that two people can have overlapping duties and be in different classifications and pay grades. Grievant did not place into evidence the PIQ's of any other persons classified as Business Manager I to demonstrate that her duties are more similar to those of a Director of Budget than to those of Business Manager I. Grievant has not met her burden of proving the Director of Budget Job Title is a better fit for her.

However, to compare the Job Titles Business Manager I and Director of Budget requires a comparison not just of the PIQs, but also of the degree levels assigned to the two positions in each point factor.

C. Application of the Point Factor Methodology

Following are the differences in the degree levels assigned the point factors for the two relevant Job Titles, and the degree level Grievant believes she should have received in each of these point factors:

	KN	EX	CPS	FA	NA	BR	SE LVL	IC LVL	EC NUM	DSE LVL	DSE NUM	ISE LVL	ISE LVL
Business Manager I	6	4	4	4	3	1	3	3	5	4	1	1	
Director of Budget	7	5	5	5	5	2	6	4	3	6	3	2	
Grievant's Argument	6	6	6	5	5	5	3	5	5	4	2	3	

(See footnote 7)

R Ex 2. Grievant is not challenging the degree levels received in the point factors Knowledge, External Contacts, Level, and Direct Supervision Exercised, Level. (See footnote 8)

Ms. Robinson testified that in determining the appropriate degree level in each point factor, the JEC would have read the duty statement on the PIQ to determine the duties which were performed the majority of the time. They would have then determined the degree level in each factor for those job duties by majority vote.

1. Experience

The Job Evaluation Plan ("the Plan") describes 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.

(R Ex 3; See also Burke, supra.)

Grievant received a degree level of 4.0 in this point factor, which is defined by the Plan as, "[o]ver two years and up to three years of experience." She believes she should have received a degree level of 6.0, which is defined by the Plan as, "[o]ver four years and up to six years of experience." The position Director of Budget received a degree level of 5.0 in this point factor, which is defined by the Plan as, "[o]ver three years and up to four years of experience."

Grievant made two arguments. She first pointed out that when she applied for her job, the posting stated the minimum experience requirement as five years, and that a Bachelor's Degree was also a requirement. Her second argument was that the PIQ for the Director of Budget (R Ex 1) states the experience requirement is five years, as does her own PIQ. Grievant's second argument is not persuasive. The degree level on both PIQs was marked by the employee, and represents the employee's opinion of the degree level she should have received. This can receive no more evidentiary weight than Grievant's own statement regarding the degree level she believes she should have received. Such statements standing alone merely show disagreement with Respondent's conclusion, but offer no reason to accept Grievant's position rather than Respondent's. Respondent did not address this point factor. "As noted by this Grievance Board in Zara v. Board of Trustees, Docket No. 94-MBOT-817 (Dec. 12, 1995), the minimum amount of experience required to perform the essential duties of a position represents a subjective determination regarding which reasonable people may reach different conclusions." Jones, et al., v. Bd. of Trustees, Docket No. 94-MBOT-978 (Feb. 29, 1996). In evaluating Grievant's first argument, the undersigned must take into consideration that when Grievant applied for her job, the Mercer system was not in effect. Under the Mercer system, Experience is also credited under the point factor Knowledge, as is noted in the definition of Experience. Knowledge is defined by the Plan 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 received a degree level of 6.0 in Knowledge, which is defined by 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.

This definition does not indicate that experience is being credited under this degree level.

The degree level in this point factor should be higher for the Director of Budget than for Grievant's position due to the fact that a Director of Budget must understand the budgetary process,just as Grievant must, have the experience to be responsible for the budget, and be able to supervise employees. Grievant did not address why five years of experience would be necessary to the performance of her job. While the undersigned is troubled by Respondent's unexplained change in the experience requirement for Grievant's job, the fact that the experience requirement was once stated to be five years does not provide a rationale for continuing that practice if it is not supported by the facts. Grievant has failed to meet her burden of proof on this point factor.

2. Complexity and Problem Solving

The Plan describes Complexity and Problem Solving as follows:

> 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.

A degree level of 4.0, as assigned to Business Manager I, 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, as assigned to the Director of Budget position, 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 oroptimum 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.

The degree level sought by Grievant, 6.0, is defined in the Plan as:

> Problems encountered are extremely complicated and require considerable resourcefulness and originality. Various strategies are examined to determine most feasible approach to resolution of problems. Long-range planning to resolve extraordinary problems is almost always required of positions at this level to attain desired goals. Advanced analysis which requires the employee to solve unusual and complex problems taking information from many different sources is required. Employee will often use initiative and resourcefulness in deviating from traditional methods, proposing new policies, and researching trends.

In her PIQ Grievant provided the following examples of the types of problems she encountered in

her job, and the solutions she had found:

> - $350,000 shortfall in employer's share of fringe benefits and a $200,000 shortfall in funding for the Health Science library. Recommended to senior administrators that payroll accumulations from vacant positions within the state appropriated acc[ount] be utilized to cover those shortfalls.
>
> - $200,000 shortfall in clinical dep[artment]'s budgets. Recommended to senior administrators that these budgets be funded from the Physicians Practice Plan.
>
> - The school's annual share of the state property and liability insurance cost was $64,000. Questioned current rationale resulting in a $30,000 reduction.
>
> - Maint[enance] contracts currently in effect were finan[cially] draining the school's budget. Recommended some equip[ment] be removed from contracts resulting in a $10,000 savings.

These examples demonstrate Grievant's use of analytical skills, accounting principles, resourcefulness, and her knowledgeof various accounts and the medical school's needs to solve financial problems. It is not clear from the definitions in the Plan whether these examples can be called development of "new methods" as is referred to in degree level 5.0. Neither Grievant's primary job duties nor these examples indicate, however, that Grievant develops new programs or procedures as referred to in degree level 5.0; nor that Grievant must "almost always" utilize "[l]ong-range planning to resolve extraordinary problems . . . to attain desired goals", or that she deviates "from traditional methods, proposing new policies, and research[es] trends", as is referred to in degree level 6.0.

Ms. Robinson stated that this point factor measures the types of problems the employee would solve, the level of difficulty, and whether the employee uses standard guidelines or is required to take the initiative in making decisions due to a lack of guidelines. She believed that Grievant encounters some complex problems, and there may be incomplete or conflicting data, but Grievant would use general policies and principals to solve problems. She further noted that in assigning the degree levels throughout the higher education hierarchy, the JEC reserved a degree level of 6.0 for very high level manager positions with responsibility for a major area and requiring a lot of long-range planning. The JEC assigned a degree level of 5.0 to positions with a very high level of responsibility, such as

Directors, Vice Presidents and Associate Deans. After reviewing Grievant's duties and the examples given of the types of problems Grievant encounters and the definitions in the Plan, and considering the JEC interpretation of this point factor, the undersigned concludes that Grievant has not proven the types of problems she encounters clearly fall within the definition of a degree level of 5.0, or that the JEC's application of this point factor to the hierarchy of positions in higher education was arbitrary and capricious.

3. Freedom of Action

The Plan defines Freedom of Action as:

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

Grievant's position received a degree level of 4.0 in this point factor. Director of Budget received a degree level of 5.0, and Grievant believes she should have received a degree level of 5.0.

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

> Tasks are minimally structured with incumbent working from broad goals set by the supervisor and established institutional policies. The employee and supervisor work together to establish objectives, deadlines and projects. The employee, having developed expertise in the line 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 todetermine feasibility, compatibility with other work, or effectiveness in meeting the objectives of the unit.

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.

While Grievant argued she has the freedom of action to decide how much the medical school budget will be, her supervisor is responsible for the budget, and approves it.

Ms. Robinson stated that the JEC looked at those areas listed in the Plan's description of this point factor. She pointed out that the JEC considered whether the employee was in daily contact with her supervisor, or whether the supervisor/employee relationship was more indirect. A position in

which every duty is reviewed by the supervisor received a degree level of 1.0. She stated that the JEC considered whether the employee has the freedom to go ahead and make a decision, or whether someone above the employee makes the final determination.

Grievant's duties do not fall within the definition of a degree level of 5.0. She prepares budget information and financial reports every year according to precedents, policies, procedures, laws, and regulations. She has some freedom in assisting with setting goals and objectives, and in assisting in deciding items tobe budgeted. However, this is not a job where "[v]irtually all tasks are unstructured; assignments are in terms of setting objectives within strategic planning goals." Grievant does not set goals and objectives, but does work with her supervisor to establish objectives. Rather, she "is responsible for planning and carrying out the assignment; resolving most of the conflicts which arise", and properly received a degree level of 4.0.

4. Scope and Effect

Scope and Effect is defined in the 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.

Grievant received a degree level of 3.0 in Scope and Effect, Nature of Actions. The Director of Budget position received a degree level of 5.0. Grievant believes she should have received adegree level of 5.0, because she believes the school of medicine falls within the definition.

A degree level of 3.0 in Scope and Effect, Nature of Actions, is defined in the Plan as:

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

A degree level of 4.0 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.

A degree level of 5.0 is defined in the Plan 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.

Ms. Robinson testified that Scope and Effect does not "kick- in" until you get to a Director, Manager or administrative level. In applying this point factor, the JEC looked at the employee's duties and responsibilities and the type of impact those duties have on the institution. The JEC analyzed whether the duties affected only the employee's immediate work area, that is, the few employees with whom the person worked directly, or whether it affected a large part of the institution. Ms. Robinson explainedthat a person whose position was critical to the operation of the campus and who made very high level decisions, a high level administrator, would have received a degree level of 5.0 under this point factor. An error made by a person in such a position would disrupt many things at the institution. Grievant presented no evidence that this interpretation was not consistently applied or that such an interpretation was precluded by W. Va. Code § 18B-9-4.

Ms. Robinson found a 3.0 appropriate for an employee who takes care of payroll and benefits for the medical school. The undersigned was unable to find evidence which supported Ms. Robinson's implication that Grievant's duties are to take care of payroll and benefits. Nonetheless, Grievant has not proven she should have received a degree level of 5.0. Grievant's position is not in charge of the medical school or any program or service within the medical school. Her supervisor is the person in charge of "planning, developing, and operating a major program or service having a broad impact within the institution". Grievant's primary duties are to prepare the financial reports and certain budget information for her supervisor's approval. (See footnote 9)

Grievant did not argue she should have received a degree level between 3.0 and 5.0 as alternative relief. Respondent did not specifically address the differences between a degree level of 3.0and 4.0, and the definitions are not self-explanatory. The undersigned cannot find from the

evidence presented, however, that the decision of the JEC to assign Grievant's position a degree level of 3.0 in this point factor was arbitrary and capricious or clearly wrong.

5. Breadth of Responsibility

The factor 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.]

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

> Accountable for only immediate work assignments but not for a functional area.

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

> In-depth knowledge of and accountability for one functional area as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations.

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

> In-depth knowledge of an accountability for two functional areas as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations.

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

> In-depth knowledge of and accountability for three functional areas as measured by the incumbent's abilityto answer detailed and complex questions relative to policies, procedures, laws and regulations.

A degree level of 5.0 is defined in the Plan as:

> In-depth knowledge of and accountability for four or more functional areas as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations.

Grievant believes she should have received a degree level of 5.0 in this point factor. Grievant cited as a functional area the physicians practice plan, but admitted she has no control over this area, and that its funds do not belong to Marshall University. She also cited her responsibility to perform cost assessment and cost containment for facilities management (buildings and grounds). She

watches the budget to make sure that department is falling within the budget guidelines. The employees report to her in the absence of the supervisor. She believed the Administrative Computing Division for the School of Medicine was a functional area, and she deals with all information systems for that area. None of the people in this area report to her. Finally, she believes the Basic Science Departments are a functional area, and she prepares the budget for that department.

Ms. Robinson described a functional area as an area for which the person has daily accountability and responsibility for a level which is at the institutional level. It's the person who is ultimately responsible for everything which goes on in that unit. This interpretation is consistent with the definitions provided in the Plan. While Grievant has knowledge of several areas, she is not responsible for any functional areas under this definition. As noted in Burke, supra., "[t]he PIQ Summary By Job Family (R Ex 8) shows that most Job Titles received a 1.0 for Breadth of Responsibility. Those positions with a 'Manager' or 'Director' in the title received the 2.0's and 3.0's, and only a handful of positions received a 4.0 or 5.0 for this factor. Those positions receiving a 4.0 or 5.0 were in the top administrative levels of Associate Dean, Assistant Vice-President and Dean."

While Grievant has much responsibility, she has not proven that the JEC interpretation was clearly wrong or arbitrary and capricious.

6. Intrasystems Contacts

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

> appraises the responsibility for working with or through other people within the 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, explaining policies or discussing controversial issues. This factor considers only those contacts outside the job's immediate work area.

This factor consists of two parts, Nature of Contact and Level of Regular, Recurring and Essential Contact. Grievant is not challenging the degree level received in Nature of Contact. She believes she should have received a degree level of 5.0 in Level, rather than a 3.0. She admitted, however, that a degree level of 3.0 would be correct if the contacts counted were only those she had on a daily basis, and were made in order to perform her job. Respondent did not address this point factor. A degree level of 3.0 is defined in the Plan as, "[s]upervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office." A degree level of 5.0 is defined in the Plan as, "Associate/Assistant Vice Presidents or Systems' Central Office Directors that

report to the Senior Administrator." Between these two degree levels, a 4.0 is defined in the Plan as, "Deans or Directors in an institution or Assistant Directors in the Systems' Central Office." Grievant did not argue she should have received a degree level of 4.0 in this point factor. The Director of Budget position received a degree level of 6.0, which is defined in the Plan as, "Vice Presidents or Systems' Central Office Senior Administrator."

The only evidence presented on this issue was Grievant's PIQ, and that of the Director of Budget. Grievant's PIQ states that she communicates with Department Chairs and Deans (School of Medicine and University) about the "budget - planning and implementation" - daily; with the University Vice President for Finance and the University Comptroller regarding financial reporting responsibilities and financial controls on a weekly basis. All of these contacts are essential to the performance of her job.

The Director of Budget PIQ states that position communicates with Vice Presidents, Managers, and Director about budget and fiscal questions and matters on a weekly basis; with the Central Office about reports and fiscal information exchange on a weekly basis; with WVNET about CUFS [College and University FinancialSystem] and related matters as needed; and with sister institution exchanging ideas, procedures and information as needed.

Comparing the contacts in the two PIQs and Respondent's Exhibit 2, it is apparent that the Director of Budget should have received a higher degree level than Grievant, and that "regular and recurring" does not mean the contact must occur daily, but can include weekly contact. Grievant's daily contacts are at a degree level of 3.0 and 4.0, but she has weekly contacts at a degree level of 6.0. Grievant has proven that her job duties are a degree level of 5.0.

7. Indirect Supervision Exercised

Grievant argued she should have received credit under Indirect Supervision Exercised for supervising certain employees in the absence of their supervisor. Ms. Robinson explained that Grievant would receive no supervision credit, either Direct of Indirect, for stepping in when a supervisor was absent. This point factor applies only to those employees who supervise first line supervisors who received credit for Direct Supervision Exercised. Grievant does not supervise anyone who received such credit.

The Plan definition of Indirect Supervision Exercised supports Ms. Robinson's testimony, providing:

> 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 did not prove she should have received credit in this point factor for filling in for a supervisor when absent.

D. Reduction in Degree Level for Direct Supervision Exercised

Respondent pointed out that Grievant received a higher degree level in Direct Supervision Exercised than her duties and responsibilities would have given her, because the JEC averaged the supervision listed by the five people classified as Business Manager I's, and Grievant received the benefit of this averaging. Ms. Robinson stated, however, that before imparting this benefit, the JEC would have determined if allocating the appropriate level of supervision would have placed Grievant in a lower pay grade than this job title was in, and if it did, the JEC would have created another level for this job.

Ms. Robinson explained that a person who has the authority to employ, do performance evaluations, handle disciplinary problems, fire, and assign responsibilities on a daily basis receives credit for direct supervision. Grievant had one person reporting to her, which would have given her a 2.0 in Direct Supervision Exercised, Number, and a 3.5 in Level. Grievant would have received a half level because she supervised only one individual. The position Grievant had supervised which was vacant is not counted. Grievant received no credit for filling in for a supervisor in his absence. The Plan defines Direct Supervision Exercised as:

> 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.

The Plan determines the degree level for the Number of Direct Subordinates in a straight forward manner. A person with one direct subordinate receives a degree level of 1.0. A person with seven to ten direct subordinates receives a degree level of 5.0, which is what the Business Manager I position received.

The Level of Supervision needed to attain a degree level of 4.0 is defined in the Plan as:

> Direct supervision over a unit of non-exempt employees or lead responsibility over a group of exempt employees. Some time spent performing the same work as the other

> employees, but this is not more than 50% of the time. 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 subordinate employees' performance appraisal, hire or fire decisions.

A degree level of 3.0 is defined as:

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

Grievant did not describe either on the PIQ or in her testimony the type of supervision she provides to the one employee, nor did she dispute Ms. Robinson's conclusion that she should have received a degree level of 3.5 in Level of Supervision. Accordingly, Ms. Robinson's explanation will be accepted.

E. Summary

Grievant failed to prove that her job duties are essentially the same as those of a Director of Budget. Grievant proved her duties and responsibilities were such that a higher degree level in one point factor, Intrasystems Contacts, Level, was appropriate. Changing the degree level from a 3.0 to a 5.0 in that one point factor would add 36 points to the 2,361 total points Grievant received in her Job Title, bringing the total points to 2,397, which is still a pay grade 17. Accordingly, no adjustment will be made to the degree level in this point factor.

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 she is not properly classified. 156 C.S.R. 1 § 4.17. The grievant asserting misclassification must identify the job she feels she 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 Foundation, 459S.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 interpretation of the point factors assigned to Business Manager I, Pay Grade 17 is not clearly wrong.

5. Grievant failed to establish by a preponderance of the evidence that she should have been classified as a Director of Budget, Pay Grade 21.

Accordingly, this grievance is **DENIED**.

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

BRENDA L. GOULD

Administrative Law Judge

Dated: April 29, 1996

Footnote: 1

The reader is referred to Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995), for a discussion of the background of the Mercer reclassification project, the procedural history of the Mercer grievances, and the definitions of various terms of art specific to the Mercer reclassification.

Footnote: 2

Grievant declined the opportunity to submit written argument.

Footnote: 3

Grievant's Level IV Exhibits and Respondent's Level IV Exhibits will be referred to as "G Ex __" and "R Ex __", respectively, with the Exhibit Number appearing in the blank.

Footnote: 4

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, West Virginia Univ., Docket No. 94-MBOT-1059 (Oct. 26, 1995); and Zara, et al., v. Bd. of Trustees, West Virginia 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

Grievant also argued her job duties were the same as those of another Marshall employee whose title prior to the reclassification was Director of Budget. Grievant based this conclusion upon a 1990 job description for this other employee, and upon her conversations with her. Grievant, however, did not know what job title that employee was given in the reclassification, or whether the job duties of her position had changed, and had not seen that employee's PIQ. Accordingly, no comparison can be made of the two positions.

Footnote: 7

These headings are shorthand for the following point factors: KN is Knowledge; EX is Experience; CPS is Complexity & Problem Solving; FA is Freedom of Action; SE, NA is Scope and Effect, Nature of Actions; BR is Breadth of Responsibility; IC, LVL is Intrasystems Contacts, Level of Regular, Recurring, and Essential Contact; EC, LVL is External Contacts, Level of Regular, Recurring, and Essential Contact; DSE, NUM is Direct Supervision Exercised, Number of Persons Supervised; DSE, LVL is Direct Supervision Exercised, Level of Supervision; ISE, NUM is Indirect Supervision Exercised, Number of Persons Supervised; and, ISE, LVL is Indirect Supervision Exercised, Level of Supervision. 128 C.S.R. 62 § 2.27, and 131 C.S.R. 62 § 2.27 list the 13 point factors. See also, Burke, supra.

Footnote: 8

Grievant did not clearly identify the degree levels she felt she should have received in the point factors. Grievant's challenges to the point factors have been gleaned from her testimony and her PIQ.

Footnote: 9

Ms. Robinson stated that the level of impact also affected nature. The higher the level of impact, the more likely that nature would be higher. It seemed significant that Grievant's position received the same degree level in impact of actions as the Director of Budget, a 5.0. Ms. Robinson's explanation was not borne out by Respondent's Exhibit 2, however.