JO ANN JORDAN, et al.,

v. **DOCKET NO. 94-MBOT-983**

BOARD OF TRUSTEES,

MARSHALL UNIVERSITY

D E C I S I O N

Grievants Jo Ann Jordan and Meena Wadhwa each alleges she was misclassified effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) . Each Grievant seeks as relief to be classified as a Library Technical Assistant II ("LTA II"), Pay Grade 12, effective January 1, 1994, and backpay from January 1, 1994. (See footnote 2) Each Grievant also challenges the degree levels received in several point factors. A Level IV hearing was held on March 4 and 5, and May 2, 1996. This matter became mature for decision on August 12, 1996, with receipt of Respondent's fact/law proposals. (See footnote 3) The following Findings of Fact are properly made from the record developed at Level IV.

Findings of Fact.

1. Grievant Jordan has been employed in the Library at Marshall University ("MU") 17 years, and works in the book bindery.

2. Grievant Wadhwa has been employed in the Library at MU since 1989, and works in the reserve section of the circulation department.

3. 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. Each Grievant completed a PIQ in 1991.

4. Grievants were classified as Library Technical Assistant I's ("LTA I"), Pay Grade 10, effective January 1, 1994.

5. Grievant Jordan's primary job duties (with the percentage of time she performs these duties

shown in parenthesis) are determining whether damaged books or unbound materials should be commercially bound or repaired or bound in-house, and the appropriate method for doing so, cleaning and repairing books, binding materials, making book pockets and boxes, hand letteringspines, and covering spines or corners with plastic (25%); lamination, reinforcement with transparent tape or lamination, and pamphlet binding to prevent damage (25%); picking up mail from five locations within the library and processing outgoing and campus mail (25%); clerical duties such as maintaining data on books passing through the bindery and on postage used, data entry of information on book location, locating books in the bindery, returning books to the library, maintaining supply inventory, requesting supplies, photocopying, maintaining a running total of the bindery budget balance for her own use, and refilling the postage meter (10%); preparation of books for shipment to commercial bindery (10%); and supervision and training of student workers (5%).

6. Grievant Wadhwa's primary job duties (with the percentage of time she performs these duties shown in parenthesis) are maintaining the reserve materials in the library, including training and scheduling student workers to check reserve materials in and out for patrons and to shelve reserve materials, assigning reference codes to reserve materials based upon the professor's name, course number and number of reserve materials for the professor and course, labeling reserve materials, and entering data on reserve materials into the computer so they can be located, contacting professors to obtain reserve materials, and counting fine money at the end of the day (80% to 90%); and answering the telephone, working the circulation desk during lunch time, opening and closing the library one morning and one evening each week,overseeing the work of work study students in the evenings and on weekends, and covering the reserve desk when needed (10 to 20%).

7. Grievant Jordan teaches work study students to laminate paperback books using the vela-bind machine in one-half hour, and then they are able to operate this machine on their own with a little experience. She teaches student assistants to use the dry mounting press in one hour, and then watches while they use it for up to six months.

8. Supervision of a regular employee involves performance appraisals. A student worker who is not performing acceptably can simply be referred back to financial aid.

9. The bindery laminates the covers of all paperback books as they arrive at the library. All journals and the school newspaper are always sent to a commercial bindery to be bound. In deciding

whether to send other publications to the commercial bindery, Grievant Jordan considers several factors, including the type of paper, previous type of binding, and funds remaining in the bindery budget. A paperback book with a glued spine, which is frequently used, will be sent to the commercial bindery because it can be hard bound and oversewn, and she can give special instructions that this be done. She does not oversew and does not apply hard covers to paperback books, but she does on occasion recase books and makes covers. However, if the budget allows, she usually sends them to the commercial bindery. If the paper is brittle, she will bind it, because hand binding is not as hard on the paper. She uses a number of different repair methods, rangingfrom fixing a torn page to taking a book apart and hand-binding it.

10. The commercial bindery has guidelines which Grievant Jordan must stay within in choosing the binding. Before materials can be sent to the commercial bindery, Grievant Jordan's supervisor must sign the purchase order.

11. The reserve section of the Library has guidelines regarding how many copies of one book or article can be kept on reserve, how long material can be kept on reserve, what materials from the MU Library can be placed on reserve, how reserve materials are assigned reference numbers, the amount of fines, and the amount of notice which must be given to place something on reserve. The professor determines how long the material may be checked-out by a student.

12. Grievant Wadhwa can waive fines if materials are a few minutes late. If a student has not been properly informed of the time the material is due, and the time when the material is due is not initialed, then she makes allowances for this in assessing the fine. If material is two or three hours late, her supervisor decides whether the fine should be waived under the circumstances.

13. Grievant Jordan has no control over the Library budget.

14. The Director of the MU Library received a degree level of 2.0 in Breadth of Responsibility. The Library is a functional area.

15. Grievant Jordan uses a variety of hand binding tools, such as razor blades, exacto knives, rulers, bone folders, a sewing frame and book presses; and a variety of machinery, such as a drillpress, velo-bind machine, video display terminal, postage meter machine, electronic scales, spiral bind machine, light box and dry mounting press. She uses a drill press monthly. She uses the velo-bind machine daily, the dry mounting press weekly and sometimes daily, two to three hours at a time. She uses razor blades and exacto knives daily.

16. The bindery is located in the basement of the Library. The temperature ranges from 60 to 75 degrees, but is usually between 68 and 70 degrees. She has been provided portable electric heaters to provide additional warmth. Occasionally there is a strong sewer gas odor in the basement, and the air circulation is poor when the air conditioning is off, making it stuffy.

17. Grievant Jordan is exposed to high temperatures when using the dry mounting press and tacking iron.

18. Grievant Jordan must go outside to collect mail and books, but is out no longer than ten minutes at a time. Usually the student workers collect the mail and books, and she sometimes takes a student worker with her for assistance when she is collecting books.

19. Grievant Jordan uses a light box and a video display terminal everyday, and occasionally uses a video display terminal for several hours at a time. She performs detailed work with sharp instruments.

20. Grievant Jordan is exposed to high levels of dust from old books, poly vinyl acetate used in repairing books, flushing solution applied with a cloth to clean books, gum remover which issprayed and freezes and can cause frostbite, thinner for rubber cement, and other cleaning solvents.

21. Grievant Jordan loads mail into mail bags and must drag or carry them to the adjacent receiving area. The bags regularly weigh over 25 pounds. She must stoop to put mail into a cage. She also shelves books in her office, loads, unloads, and stacks bindery boxes that weigh over 50 pounds, and stands for long periods of time when repairing books.

22. When Grievant Jordan applied for and was selected to fill a posted LTA II position in 1995, she added as a duty supervision of the LTA I in the bindery.

23. The LTA I Job Title received 1514 total points from the following degree levels in each of the thirteen point factors (See footnote 4) : 5.0 in Knowledge; 1.0 in Experience; 2.0 in Complexity and Problem Solving; 2.0 in Freedom of Action; 1.0 in Scope and Effect, Impact of Actions; 2.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 1.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level of Contact; 1.0 in External Contacts, Nature of Contact; 3.0 in External Contacts, Level of Contact; 2.0 in Direct Supervision Exercised, Number; 2.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 2.0 in Physical Coordination; 1.0 in Working Conditions; and 2.0 in Physical Demands. Joint Exhibit C. 24. The point score range for a Pay Grade 10 is from 1475

to 1560 total points. Joint Exhibit B.

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 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).

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, 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 5) While some "best fit" analysis of thedefinitions of the degree levels is involved in determining which degree level of a point factor should be assigned, where the position fits in the higher education classified employee hierarchy must also be evaluated. In addition, this system must by statute be uniform across all higher education institutions; therefore, the point factor degree levels are not assigned to the individual, but to the Job Title. W. Va. Code § 18B-9-4; Burke, supra. A Mercer grievant may prevail by demonstrating her 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 her classification thus will have to overcome a substantial obstacle to establish that she is misclassified. (See footnote 6) B. Application of the Point Factor Methodology

Grievant Jordan challenged the degree levels received in Experience, Complexity and Problem Solving, Freedom of Action, Breadth of Responsibility, Physical Coordination, Working Conditions and Physical Demands. Grievant Wadhwa challenged the degree levels received in Experience and Complexity and Problem Solving. (See footnote 7)

Following are the differences between the degree levels assigned in the challenged point factors for the LTA I and II, and the degree levels Grievants argued they should have received:

	EX	CPS	FA	BR	PC	WC	PD
LTA I	1	2	2	1	2	1	2
LTA II	3	2.5	2	1	2	1	2
Jordan Argument	3	3	4	4	3	2	3
Wadhwa Argument	3	3					

(See footnote 8)

Joint Exhibit C. Each of the point factors challenged by Grievantswill be addressed separately below.

1. Experience

The Job Evaluation Plan ("the Plan", Joint Exhibit B) 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.

Both Grievants argued they should have received a degree level of 3.0, as did the LTA I Job Title, rather than a 1.0. A degree level of 1.0 is defined in the Plan as, "[n]o experience or up to six months of experience." A degree level of 2.0 is defined in the Plan as "[o]ver six and up to twelve months of experience." A degree level of 3.0 is defined in the Plan as "[o]ver one year and up to two years of experience."

Grievant Jordan argued that one to two years of experience is required because of the diverse duties of the position. The position obviously requires book repair and binding experience to be able to evaluate damaged books to determine the proper repair method, to properly repair, bind, laminate

and clean books. Grievant Jordan also argued, however, that at least one year of experience is needed to learn postal regulations, and supervisory experience is needed in order to supervise student workers.

Grievant Wadhwa argued more than one year of experience was needed to learn her job duties and to be able to provide better service to 13,000 to 14,000 MU students, and to deal with faculty. She believed training was necessary to be familiar with faculty and their courses to properly classify materials. She stated onecourse may have as many as 400 different publications on reserve. She pointed out that this is a more difficult job than working the circulation desk, where she stated the LTA I's simply check material in and out. On her PIQ she stated that one year of supervisory experience was needed, and some computer skills. Her supervisor disagreed, and marked "A" or 1.0.

Respondent did not directly dispute Grievant Jordan's opinion regarding the amount of experience required to perform her job. However, Glenna Racer, a Compensation Analyst Senior in the Human Resources Office at MU, pointed out that Experience cannot be considered without also looking at the Knowledge requirement for the job. LTA I's received a degree level of 5.0 in Knowledge, which is defined in the Plan as:

> Job requires broad trade knowledge or specific technical or business knowledge received from a formal registered apprentice or vocational training program or obtained through an associate's degree of over 18 months and up to 3 years beyond high school.

She stated that two years' work experience would normally be accepted by MU in lieu of an associate's degree. She felt that Grievant Jordan's testimony regarding the amount of experience necessary to perform her duties was suspect because Grievant is able to train student workers to perform her duties. She stated on cross-examination that an associate's degree would not prepare a person for bindery work, and MU would look for someone with prior bindery experience for this position, rather than an associate's degree. She also noted that Postal Workers are in a Pay Grade 8, and there is no experience required and much less educationrequired to perform their duties.

Patricia Hank, Director of Human Resources at Southern West Virginia Community and Technical College and a JEC member, added that, in filling out PIQ's, many employees marked the education and experience they possessed, either at that time or when they entered the job, and supervisors tended to mark the ideal education and experience because they wanted the best person they could get for the job. Importantly, she pointed out that if job requirements were inflated it could lead to

discrimination by limiting the applicant pool.

Grievant Jordan marked "E" or 5.0 on her PIQ under Knowledge, stating:

> Two years of a vocational or technical training or college coursework in book repair or preservation. This training or education is needed to know the structure of the book and how to repair. Also to learn preservation information and its importance.

Her supervisor agreed with this assessment. Grievant Wadhwa also marked "E" on her PIQ under Knowledge, and stated that a degree in management was required in order to supervise staff and students, and that a person with Library Science classes would be better able to perform the job. Grievant Wadhwa's supervisor did not agree that a management degree was required, and marked "D" or 4.0 on the PIQ.

Grievant Jordan failed to prove that six months or more of experience is required to be able to operate much if not all of the equipment in the bindery. The undersigned is not convinced that any prior mail experience is necessary or that prior supervisoryexperience is needed to oversee the work of student workers. Rather, it would seem that training and overseeing the work of student workers would be a good way to gain the supervisory experience which would be a prerequisite to many other supervisory positions. She did prove that experience and training is needed to learn how to evaluate the condition of books to determine the proper course of action, but presented no facts which substantiate her opinion, and that of her supervisor, that both three years of book binding apprenticeship and over one year of experience are necessary. Rather the evidence of her job duties supports the JEC's decision that a three year apprenticeship and up to six months of experience would train Grievant in book repair and evaluation.

Grievant Wadhwa likewise has failed to prove that supervisory experience is necessary, or that an Associate's Degree in Library Science and up to six months of experience would not adequately prepare her to be able to interact with students and faculty and to file and locate reference materials.

2. Complexity and Problem Solving

The Plan defines 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.

Both Grievants argued they should have received a degree level of 3.0 in this point factor, rather than a 2.0. The LTA II Job Title received a degree level of 2.5. A degree level of 2.5 is notdefined in

the Plan, but Ms. Hank explained that the JEC assigned a "half-level" in both Complexity and Problem Solving and in Freedom of Action when the duties and responsibilities fell partially within the lower degree level and partially within the next higher degree level, or when the JEC was split on which degree level was appropriate.

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 3.0 is defined in the Plan as:

> Problems encountered can be somewhat complex and finding solutions to problems may require some resourcefulness and originality, but guides, methods and precedents are usually available. Diversified guidelines and procedures must be applied to some work assignments. Employee must exercise judgment to locate and select the most appropriate guidelines, references, and procedures for application, and adapt standard methods to fit variations in existing conditions.

Grievant Jordan argued that book repair problems are complex and finding solutions requires resourcefulness. She stated that in book repair different factors must be considered, such as paper quality and type, frequency of use of the material, some material cannot be bound using certain methods, the general condition of the material, and the type of binding on the material, for example. She stated that if the book has had adhesive on it before, you cannot sew through the fold because there is none, but you can consider an oversew method of binding. She has to decide whetherto repair, hand-bind, or send the book to a commercial binder with or without special instructions. She must set work priority. She receives a large volume of materials from all Library departments. She assigns priority to repairs considering the type of damage and frequency of use; for example, water damage can quickly cause mold and water damaged material would attain priority.

Grievant Wadhwa argued her job is complex because she must deal with professors and students, and students become upset if the material has not yet been placed on reserve by the professor. To solve this problem, she will try to reach the professor to obtain the material. Professors are supposed to put the materials on reserve, but if they have not done so, she may be able to take the information the student has been given and find the material herself and place it in the reserve section so it is available to the students as soon as possible. She stated that there is a $1.00 per hour

fine for overdue reserve materials, and students do not understand this. She tries to locate students to let them know the materials are overdue, so as to keep the amount of the fine as low as possible, and she must be careful to charge the proper amount. She stated every problem is different because she is dealing with human beings, and her job requires patience.

Ms. Hank pointed out that this point factor does not measure the difficulty of the tasks performed, but the degree of problem solving required in the job, the types of problems encountered and difficulty involved in identifying problems and determining the appropriate course of action. She testified that tasks are learnedwith education. She stated that in applying this point factor, the guidelines, rules and different types of decisions made by the employee must be considered. If the position regularly deals with problems for which there are no guidelines or procedures, or common way to handle the problem, that position would receive a higher degree level than one which has guidelines and procedures established which allows the individual to work on her own without a lot of supervision. For example, she stated that a watchmaker's work is detailed, but his education would have taught him how to perform this detailed work, and he would not receive credit under Complexity and Problem Solving for performing detailed work. She pointed out that a Postal Worker has many rules and regulations which must be followed, which tends to reduce the complexity of the job. She characterized the tasks performed by Grievant Wadhwa as routine and repetitive, and requiring little decision-making.

Ms. Racer stated that choosing whether to send something to the commercial bindery was a problem requiring the employee to make a basic decision. She pointed out that Grievant Jordan has guidelines from the commercial bindery and can call the commercial bindery for assistance. She noted that in evaluating a book for repair, Grievant Jordan looks at several factors, or guidelines, and that there are very few repair alternatives. She stated that in deciding the correct postal rate there are few alternatives and strict postal guidelines which must be followed. She stated that the problems encountered by Grievant Jordan on a daily basis are not complex, and that in-house binding was probably the mostcomplex issue Grievant Jordan deals with, but that she spends only 25% of her time on repairs.

Ms. Racer noted that Grievant Wadhwa was given guidelines to follow when she began working at the MU Library, and those guidelines have not changed. She pointed out that Grievant Wadhwa's supervisor is readily available, and she goes to him when she needs clarification on an issue.

Both Grievants are guided in their daily work by guidelines and procedures, and when they must make decisions, the options are limited and defined, which falls within a degree level of 2.0. See also, Jones, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-978 (Feb. 29, 1996).

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 Jordan argued she should have received a degree level of 4.0 in this point factor, rather than a 2.0. The LTA II Job Title also received a 2.0.

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

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

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

> Tasks are moderately structured with incumbent working from objectives set by the supervisor. At this level, the employee organizes and carries out most of the work assignments in accordance with standard practices, policies, instructions or previous training. The employee deals with some unusual situations independently.

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

> Tasks are minimally structured with incumbent working from broad goals set by the supervisor and established institutional policies. The employee and supervisor work together to establish objectives, deadlines and projects. The employee, having developed expertise in the line of work, is responsible for planning and carrying out the assignment; resolving most of the conflicts which arise; and coordinating the work with others. The employee keeps the supervisor informed of progress and potentially controversial matters. Completed work is checked only to determine feasibility, compatibility with other work, or effectiveness in meeting the objectives of the unit.

Grievant Jordan argued she works independently. She stated she works with the head of technical services to establish goals, such as special binding projects and budget needs. She stated she plans the daily work flow of the bindery, schedules, trains and supervises student workers, trains and oversees the work of some full-time staff who occasionally help in the bindery, resolves any conflicts which arise, for example, if there are any problems with the commercial bindery, such as a

billing error or lost book, initiates searches for materials lost in the mail, checks all work going to the commercial bindery, and all work that leaves thebindery for errors and quality, and requests all supplies needed for the bindery. She stated she keeps her supervisor informed, and he becomes involved only if, for example, the commercial bindery wants to substitute materials for lost materials. She stated her supervisor does not check her work.

Ms. Hank explained that whether the supervisor stands over the employee is not determinative. She stated this point factor looks at the amount of independence the employee has in making decisions, how instructions are given to the employee, how work assignments are checked, and how priorities, deadlines and objectives are set. She stated that clerical or manual jobs do not typically have a high degree of freedom, because the persons in these jobs are not establishing the direction of the job. The direction is established by the supervisor. She concluded that the position's freedom is therefore limited by where it fits in the organizational structure.

Ms. Hank stated that Grievant Jordan makes no policy decisions, the work is routine and structured to the point that her supervisor does not need to stand over her and tell her what to do each day or how to do it, and she has the training to perform the work well. She stated that Grievant Jordan makes recommendations to her supervisor, but her supervisor makes decisions about what will go to the commercial bindery when he signs the purchase order, and whether to accept substitutions from the commercial bindery. She pointed out that Grievant Jordan mentioned several instances where she referred questions or decision-making to her supervisor,and concluded that her work is very structured. She stated that the fact that Grievant Jordan does not have hiring authority is a type of control placed on her work. Ms. Racer pointed out that Grievant Jordan has minimal impact with the budget.

As noted in Burke, supra:

> Across the higher education system, those positions with a degree level of 4.5 or above are directors or deans, for example. They are positions where direct supervision is exercised, and are more responsible jobs. There are more than 6000 higher education employees, and only five degree levels for Freedom of Action. Degree levels of 4.0 and 5.0 would be assigned to positions in the top group, such as the administrative group, the top managers and directors.

Further, several other Grievance Board Decisions have addressed this point factor, finding that in cases like this, where the Grievant's day to day job duties were dependent upon circumstances such as what purchase requests were made that day and what shipments arrived (Flenniken, et al., v. Bd.

of Trustees, W. Va. Univ., Docket No. 94-MBOT-1020 (July 19, 1996), or whether requests for materials were made by patrons or new materials had arrived (Browning v. Bd. of Directors, Southern W. Va. Community College, Docket No. 94-MBOD-985 (Aug. 15, 1996), Grievant's duties fell within a degree level of 2.0. Much of Grievant Jordan's work is dependent upon how many books are sent to the bindery and their condition, whether it is time to send journals or newspapers to the bindery, or whether paperbacks have arrived which must have their covers laminated. In evaluating, binding, repairing, preserving and shipping books, Grievant Jordan is guided by standard operating procedures. See Jones, supra; and Henry, et al., v. Bd. ofTrustees, W. Va. Univ., Docket No. 94-MBOT-1024 (July 31, 1996). Her mail related duties are so routine that they may well fall within a degree level of 1.0. Grievant has failed to prove she is entitled to a higher degree level in this point factor.

4. Breadth of Responsibility

Grievant Jordan argued she should have received a degree level of 4.0 in Breadth of Responsibility, rather than a 1.0. Grievant Jordan argued she is knowledgeable of the rules governing, and responsible for, in-house book repair and preservation, mail, and preparing books to be sent to a commercial bindery.

As discussed in many previous Decisions, the definition of this point factor makes it clear that each position or job duty does not constitute a functional area, but rather indicates that the Library would be one functional area, as was decided in Burke supra. Grievant Jordan is not formally accountable for any functional areas, and accordingly, her duties fall within a degree level of 1.0. See Burke, supra; and Floyd v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-932 (June 14, 1996).

5. Physical Coordination

Physical Coordination is defined in the Plan as:

> This factor assesses the amount of psychomotor skill involved in performing the job. Consider the complexity of body movements, speed/timing of movements, precision of movements, and need for close visual attention regularly required by the job in performing the work.

Grievant Jordan's Job Title received a degree level of 2.0 in this point factor, and she argued she should have received a degree level of 3.0.

> A degree level of 2.0 is defined in the Plan as:
>
> Work requires simple hand/eye operations and some accuracy and regularity of motions, such as set-up and operation of basic instruments or equipment, and/or the

> occasional use of standard hand or power tools with minimal speed requirements.

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

> Work requires some speed and accuracy of hand/eye coordination in the use of somewhat complicated instruments, equipment or hand or power tools requiring some speed and adeptness.

Grievant Jordan argued she must be proficient in using hand tools. She uses sharp instruments to do detailed work, which can easily result in cuts or serious injury. She pointed out there is no emergency release on the vela-bind machine, and if your hand is back too far when the locking bar comes down, you will be hurt and are stuck until the procedure is completed. She explained that a dry-mounting press is a sheet press. Material is placed in the machine with fusion paper between it or heat activated plastic. The temperature reaches between 350 and 360 degrees, and the heating element can cause severe burns. She characterized operation of this equipment as somewhat complicated and dangerous.

Ms. Hank stated this point factor measures psycho-motor skills, the hand-eye coordination that's required, and the speed and accuracy required. She stated that Grievant Jordan's job requires some degree of accuracy and coordination, but there is no speed requirement, nor is a high degree of skill required. She noted that students are trained to operate much of the equipment. She also noted that Grievant Jordan operates equipment which requires hand-eye coordination only 25% of the time, so it is notthe major focus of her position.

Grievant Jordan failed to prove that degree level 3.0 is a better fit for her job duties. By definition, the work must require both speed and accuracy. Speed in the operation of equipment is not required of Grievant Jordan's position.

6. Working Conditions

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.

Grievant Jordan's Job Title received a degree level of 1.0 in this point factor. She argued she should have received a 2.0, because of the bindery location in the cold basement, exposure to dust, fumes from book repairs, fumes from the adjacent darkroom, and sewer gas, eye strain from work on

a video display terminal and light box, long periods of standing, and exposure to the elements when she must go outside to collect campus mail and to the post office.

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

> 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.

A degree level of 2.0 is defined in the Plan 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. (Emphasis in original.)

Ms. Hank opined that Grievant Jordan's job duties, if rated individually, would fall within a degree level of 2.0.

7. Physical Demands

Grievant Jordan's Job Title received a degree level of 2.0 in this point factor. She argued she should have received a 3.0, because she must stand for long periods of time, walk outside in all types of weather to collect the mail, work with the dry mounting press which reaches high temperatures, lock down the material in the heat press, load, unload and stack bindery boxes which exceed 50 pounds, carry the mailbag to the receiving area and carry mail which must be insured to her vehicle and from her vehicle to the post office.

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

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

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

> Moderate physical effort required involving long periods of standing, walking on rough surfaces, bending and/or stooping; periodic lifting of moderately heavy items (over 25 and up to 50 pounds).

Both Ms. Racer and Ms. Hank agreed that Grievant Jordan's job duties, if rated individually, would fall within a degree level of 3.0.

C. Summary

Grievant Jordan proved that her job duties, if rated independently, would entitle her to a degree level of 2.0 in Working Conditions and a 3.0 in Physical Demands. These changes would add 28

points to the LTA I total points, making the total 1542, which is still a Pay Grade 10. Because degree levels are assigned to Job Titles and not individuals, and the pay grade is unaffected, no change will be made in the LTA I data line, and Grievant Jordan is properly classified. (See footnote 9) See Riggs v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-711 (Apr. 29, 1996); Barber, et al., v. Bd. of Trustees, W. Va. Univ., et al., Docket No. 94-MBOT-872 (Oct. 31, 1996).

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

Because the point factor analysis does not result in a change in the pay grades, a comparison of Grievants' duties to those found in the Generic Job Descriptions for the Job Title sought is not necessary. Grievant Jordan's argument that her job is the same now as it was January 1, 1994, and therefore, she should have beenplaced in the LTA II Job Title initially, is rejected. The one difference is that she now supervises an LTA I. Respondent pointed out this means she is now responsible for a performance appraisal for that person, and for supervising her work, which would add to the complexity of the job. It obviously would also affect Direct Supervision Exercised/Level of Supervision, if her individual job duties were being evaluated, changing the degree level from a 2.0 to a 3.0, and adding an additional 24 points. (See footnote 10) This change, in combination with the changes made above to Working Conditions and Physical Demands, would place her in a Pay Grade 11. This exercise demonstrates how easily a minor change in duties can affect the classification, and that it is not sufficient in this case to argue that the duties are nearly identical. See also, Barber, supra.; and Campbell-Turner, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-1035 (Jan. 1, 1996). The job duties on January 1, 1994, must be analyzed point factor by point factor.

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 Grievants are Library Technical Assistant I's is not clearly wrong or arbitrary and capricious.

5. The Job Evaluation Committee's assignment of degree levels to the point factors for the Library Technical Assistant I Job Title is neither clearly wrong nor arbitrary and capricious.

Accordingly, the grievances of Jo Ann Jordan and Meena Wadhwa are **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 arose, 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: November 25, 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 Jordan was promoted to a LTA II on January 1, 1996, and agreed her claim to backpay ran only to that date.

Footnote: 3

Grievant Jordan elected not to submit post-hearing written argument. Grievant Wadhwa's representative submitted late-filed written argument on September 6, 1996, stating as the reason forher tardiness that she had been off work. The undersigned is aware that Grievant's representative had been seriously ill. Respondent did not object to the late filing. Due to the lack of any objection, and the good cause for late filing, this written submission will be considered by the undersigned as if timely filed.

Footnote: 4

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: 5

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: 6

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: 7

It appeared at the hearing that Grievant Wadhwa also challenged the degree level received in Direct Supervision Exercised, Level of Supervision, arguing a degree level of 3.0 was more appropriate to her duties than the 2.0 her Job Title received. However, in her written post-hearing submission, she stated she should have received a 2.0, rather than a 1.0, arguing she supervises students essential to the operation of the reserve section. Obviously, Grievant was confused about the degree level assigned. The undersigned concludes that Grievant is not challenging this point factor. Even if she were, a 3.0 could not be assigned because she does not supervise other employees.

Footnote: 8

These headings are shorthand for the following point factors: EX is Experience; CPS is Complexity and Problem Solving; FA is Freedom of Action; BR is Breadth of Responsibility; PC is Physical Coordination; WC is Working Conditions; and, PD is Physical Demands.

Footnote: 9

Ms. Hank stated that if Grievant Jordan's position were being rated individually, all the point factors would be reviewed, and she would not receive as high a degree level in Intrasystems Contacts and External Contacts as did her Job Title,

because she has little contact with people outside her work area. Respondent did not argue, however, that Grievant Jordan's Pay Grade should be reduced. Accordingly, this point need not be addressed in this Decision.

Footnote: 10

It is noted that Respondent's witnesses testified that supervision of an LTA I was not a requirement of the LTA II position. However, when evaluating an individual employee's duties to determine the degree levels which would appropriately be assigned the individual in the point factors (rather than the degree levels assigned the Job Title), the fact that the employee now supervises another employee affects the individual's assigned degree levels. This change can affect the Pay Grade, and thereby affect the employee's classification. An individual who did not supervise anyone, but whose duties resulted in higher degree levels in other point factors, so that the individual's total points fell within a Pay Grade 12, could be placed in the LTA II Job Title. This is not the case with Grievant Jordan.