LYNNMARIE E. HARKINS,

Grievant,

v. **DOCKET NO. 94-MBOT-924**

BOARD OF TRUSTEES
WEST VIRGINIA UNIVERSITY,

Respondent.

DECISION

Grievant, Lynnmarie E. Harkins challenges her classification, effective January 1, 1994, as a Catering Sales Representative, Pay Grade 14, by the Board of Trustees, West Virginia University (Respondent), under the Job Evaluation Plan (JEP) for the State College and University Systems of West Virginia developed by William M. Mercer, Inc. (See footnote 1) On October 18, 1996, a Level IV evidentiary hearing was conducted at the Grievance Board's office in Morgantown, West Virginia. On November 26, 1996, this matter became mature for decision upon receipt of Respondent's post-hearing submission. Grievant did not file a post-hearing submission.

Grievant seeks to be classified as a Catering Sales Manager, Pay Grade 17, effective January 1, 1994. Grievant also asserts she was not correctly evaluated on four of thirteen factors in the JEP.

The process under which Grievant was reclassified began with completion of a Position Information Questionnaire (PIQ). PIQs are highly-structured documents, seventeen pages in length, on which individual employees describe the duties of their position, as well as certain minimum qualifications required to carry out their duties. PIQs are essentially position descriptions that were primarily developed to facilitate the job evaluation process. Employees were asked to rate various aspects of their position, under a scale set forth in the JEP. PIQs were reviewed by the immediate supervisor and one level of management above the immediate supervisor, before being considered by the Job Evaluation Committee (JEC). The JEC consists of representatives from human resources and classified staff and is responsible for "review of classification decisions across the system." §

11.5, 128 C.S.R. 62 (1994).

Once all PIQs were completed, the JEC met as a committee and determined the application and interpretation of the various pointfactors contained in the JEP (See footnote 2) while conducting the process of reviewing the PIQs and assigning values to each factor. The JEC assigned degree levels for each factor listed in footnote number two. Listed in the table below are the factors Grievant challenged.

FACTOR	JEC ASSIGNED DEGREE LEVEL
Experience	3.0
Freedom of Action	2.5
Scope and Effect - Nature	2.0
Breadth of Responsibility	1.0

Using a mathematical equation which is not at issue, the degree levels of the twelve factors were calculated to award this position a total of 1929 total points, equating to a Pay Grade 14. The Point Score Range for Pay Grade 14 is 1,866 to 1,984. The Point Score Range for Pay Grade 17, which Grievant seeks, is 2,255 to 2,407.

Teresa Crawford, a Senior Compensation Analyst in the Department of Human Resources at WVU, testified for Respondent. Ms. Crawford has handled classification and compensation matters at WVU since 1984. In addition to holding a B.S. in Psychology, aB.S. in Business Administration, and a M.B.A., Ms. Crawford is certified as a compensation professional by the American Compensation Association.

Ms. Crawford explained that the basis of the Mercer classification system was to insure equity in classifications at all colleges and universities in the state system. PIQs are intended to assess the duties assigned to the position, not the qualifications of the individuals occupying the position.

The following Findings of Fact are made from the record developed at Level IV.

FINDINGS OF FACT

1. In 1991, all higher education classified employees, including Grievant, were asked to

complete a Position Information Questionnaire (PIQ) prior to the Mercer reclassification. Employees were to describe their job duties and responsibilities, along with the minimum qualifications for their positions, on the PIQ by answering a series of questions designed to elicit this information. Grievant completed a PIQ in 1991.

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

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

4. Under the JEP, positions are evaluated under a "point factor methodology" wherein point values are assigned to the thirteen "job evaluation factors."

5. Grievant, an employee of West Virginia University, was classified in the Mercer reclassification as a Catering Sales Representative, Pay Grade 14, effective January 1, 1994.

6. Grievant performs various duties associated with catering a luncheon or dinner (an event) for Respondent or the public. Grievant schedules the events, makes up the menus, prices the menus, and chooses or advises which foods should be served at an event. Grievant also attends and monitors each event.

DISCUSSION

Because grievances challenging pay or classification are not disciplinary in nature, a grievant has the burden of proving by a preponderance of the evidence that she has been misclassified. 156 C.S.R. 1 § 4.17 (1989). See W. Va. Code § 18-29-6 ¶ 5; Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). A grievant challenging her designated Mercer classification may prevail by demonstrating her reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. ofRehabilitation, Div. of Rehabilitation Services and W. Va. Civil Serv. Comm'n., Docket No. VR-88-006 (Mar. 28, 1989). The higher education employee challenging her classification thus will have to overcome a substantial obstacle in attempting to establish that he is misclassified.

(See footnote 3)

Whether a grievant is properly classified is substantially a factual determination that must be made on a case-by-case basis. Burke, supra. See Snider v. W. Va. Bureau of Environment, Docket No. 95-DEP-306 (Sept. 29, 1995). Determinations of the JEC regarding application of the JEP's point factor methodology are essentially questions of fact. As such, the JEC's interpretation and explanation of the point factors and Generic Job Description 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. However, no interpretation or construction of a term used in the JEP (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. Watts v. Dept. Of Health and Human Resources, 465 S.E.2d 887 (W.Va. 1995).

Subjective determinations of the JEC regarding application of the JEP'S point factor methodology to an employee or group of employees are entitled to deference when being reviewed by this Grievance Board. However, such subjective determinations may nonetheless be found to be arbitrary and capricious if notsupported by a rational basis. Furthermore, such subjective determinations may be clearly wrong if there is no substantial evidence in the record supporting the finding, or if review of the evidence of record makes it clear that a mistake has been made. Jessen v. Bd. of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995). See Frymier-Halloran v. Paige, 458 S.E.2d 780, 788 (W. Va. 1995); Bd. of Educ. v. Wirt, 192 W. Va. 568, 453 S.E.2d 402 (1994); Kyle, supra. These standards must now be applied in reviewing the decision challenged here.

Grievant contends that her position was undervalued when the JEC rated certain factors using the Point Factor Methodology. In particular, she challenges the degree levels assigned to the following factors: Experience, Freedom of Action, Scope and Effect - Nature of Actions, and Breadth of Responsibility. Each factor will be discussed separately.

Factor 2, Experience

In regard to Factor 2, Experience, the JEP is attempting to measure "the amount of prior directly related experience required before entering the job."

Degree levels in the JEP are described as follows:

A or 1 = No experience or up to six months of experience.

B or 2 = Over six and up to twelve months of experience.

C or 3 = Over one year and up to two years of experience.

D or 4 = Over two years and up to three years of experience.

E or 5 = Over three years and up to four years of experience.

F or 6 = Over four years and up to six years of experience.

The JEC evaluated the experience requirement for Grievant's position at Level "A" or 1. On her PIQ, Grievant marked an "E" or 5.

Grievant has many years of experience working in the food service and catering area. On her PIQ, Grievant listed the following areas in which she felt a Catering Sales Representative should possess experience: “Food and Beverage, Dining Room Etiquette, Telephone Etiquette, Billing experience, Budgeting, Menu Planning and Preparation, Food and Dining Procedures, Retail Sales, Excellent Management Skills, [and] Team Oriented Person.” However, Grievant failed to state specifically why the Catering Sales Representative should receive credit for at least five years of experience.

The JEC decided upon the least amount of experience necessary to perform the duties of this position, not the number of years Grievant has worked in the food service or catering area. In this case, the Catering Sales Representative position was also credited under Knowledge with having a baccalaureate degree. Grievant does not have a baccalaureate degree, and although it might have taken Grievant several years to learn these skills on-the-job, the JEC determined that one with a baccalaureate degree would already possess the training and skills necessary to perform the Catering Sales Representative position satisfactorily.

Based on evidence all of record, Grievant failed to prove by a preponderance of the evidence that the JEC's degree rating of a 1 was clearly wrong, or arbitrary and capricious.

Factor 4, Freedom of Action

The JEP defines Freedom of Action as:

> This factor measures the degree to which the position is structured as is determined by the types of controlplaced 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.

Within Joint Exhibit 2, under this factor Grievant wrote:

> This job is unique in that the job requires very little supervision from the Food Service Director. The Director of the Mountainlair allows me to make decisions on price

> changes when they deviate from the catering guide price list. I have the freedom of making decisions on discounts to certain organizations when I feel it warrants it, such as student organizations, United Way, faculty and staff. I do all my own pricing and menu selections for customers. I get my cost of each item from our head purchaser and I put a price on the item. Prices are not always predetermined. This job involves a lot of speciality recipes for different organizations requiring low-fat, low calorie menus. The President of WVU requests special menus for the wellness program. Foreign students also request ethnic menus. My work is not given to me by the Food Service Director, all my work comes from customers. I do several reports that go to the Food Service Director but they are initiated by me. All of the procedures that are now in force in our catering office are mostly ones that I implemented through the years that I have been here.

Grievant marked an “E” or 5 on her PIQ. A degree level of 5 is defined as:

> 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.

A degree level of “E” or 5 is too high for Grievant's position. Grievant does not plan or design any programs, projectsor studies; nor does she set goals and objectives for a major unit, program, or department. During the Level IV hearing, Ms. Crawford testified:

> The level 5 would definitely not be appropriate. This level is for someone who is overseeing, who has ultimate accountability for a large unit or function. This is a person who would be looking at the long-range and short- range goals and objectives for that department, supervising the staff, setting the objectives, what does this department want to achieve. Typically at this level you're looking at Directors at the smaller institutions, or possibly assistant directors or high level managers at WVU.

The JEC rated Grievant's position a degree level of 3.0 under Freedom of Action. A degree level of 3.0 is defined by the JEP as:

> 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.

Based on the record, a degree level of 3.0 corresponds to the duties and responsibilities of the Catering Sales Representative position. Grievant did not prove that her duties reach the 4.0 or 5.0 degree level. Grievant failed to prove, by a preponderance of the evidence, that the JEC's degree

rating of a 3.0 was clearly wrong, or arbitrary and capricious.

Factor 5, Scope and Effect

Factor 5, Scope and Effect, is comprised of two parts, Nature of Actions and Impact of Actions, which form a matrix. Scope and Effect is defined in the JEP 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 EducationSystems, 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.

On the PIQ under Nature of Actions, classified employees were asked to select the best response, from five choices, which best described their job, to the following question:

> This question measures the position's scope of responsibility with regard to the overall mission of the institution or the West Virginia Higher Education Systems, as well as the magnitude of any potential error. Decisions regarding the potential magnitude of an error should consider the level within the systems that could be affected as well as the size of the area and its impact on overall operations. In making these judgments, consider how far-reaching is the impact and of what importance to the institution and/or the higher education systems is the work product, service or assignment. Also, assume the one would have the normal education, training or experience to do the job and that errors are not due to sabotage, mischief or lack of reasonable attention and care. Check the <u>one</u> response which best describes this job.

Grievant marked "E" which states:

> Work involves planning, developing and operating a major program or service having a broad impact within the institution or the systems by solving criticaloperational 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 cost, problems, and disruptions within the affected area.

A degree level of “E” or 5 is inappropriate because the duties and responsibilities of the Catering

Sales Representative position do not “involve planning, developing and operating a major program or service.”

On her PIQ, Grievant wrote:

> This position affects the entire catering position, as the menus and services sold here must be consistent with the ever changing depth of our resources. A constant awareness must be maintained of the feasibility of providing requested services under varying conditions. Inability to consider these factors could result in overbooking of services and/or a general failure on our part to perform effectively.

The JEC rated the Catering Sales Representative position a 3.0 in Scope and Effect, Nature of Actions. A degree level of 3.0 is defined in the JEP 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.

During the Level IV hearing, Ms. Crawford testified:

> On this particular factor the three on nature is definitely appropriate. The Nature of Action portion is to measure, really its measuring the primary purpose of the position. Why does the position exist? What's the nature of the position? You can almost go back to the function statement and look at it. Why in the realm of the organizational structure do we need this position? What's it there for? Her position is there to provide guidance to the clients who call in to set-up, book, the various catering events. The position's purpose is toprovide guidance, and to help them work through that, to explain the policies and procedures to them, give them some advice on well, this item would be better than this item, this will fit in your budget, this won't. The level five that she's marked, again, the work involves planning, developing and operating a major program or service having a broad impact. Again, this is looking at high level managers and directors, assistant director positions. The primary purpose of her position is not to plan the goals and objectives of the food service unit. It's not to develop policy and procedures for the food service unit. The Director got a four on Nature which is ensuring effectiveness.

Based on the record, a degree level of 3.0 is appropriate for the Catering Sales Representative position under Scope and Effect, Nature of Actions. Grievant failed to prove, by a preponderance of the evidence, that the JEC's degree rating of a 3.0 was clearly wrong, and arbitrary and capricious.

Factor 6: Breadth of Responsibility

As specified in the JEP, Breadth of Responsibility “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.”

Within Joint Exhibit 2, under this factor Grievant wrote:

> The rating for this position should be a 4. Four functional areas, Reservations, Business Office, Kitchen and Housekeeping. Everything that is generated by my office affects these areas. We have weekly meetings of which I am in charge, reservations, all the kitchen staff, food service director and the catering manager attend. Meetings are held to discuss full details of all food events on and off the premises, room reservations, linen, paper supplies, specialty items, times and delivery and exactly what each and every customer will be getting and how many guests will be attending each party.

A 4.0 degree level under Breadth of Responsibility is defined in the JEP as:

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

A functional area is 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. See Riggs v. Bd. of Trustees, Marshall University, Docket No. 94-MBOT-711 (Apr. 29, 1996). This interpretation is consistent with the definitions provided in the JEP. Therefore, while Grievant has knowledge of several areas, she is not responsible for any functional areas under this definition.

The JEC rated the Catering Sales Representative position a 1.0 under this factor. A degree level of “A” or 1.0 is defined in the JEP as “[a]ccountable for only immediate work assignments but not for a functional area.”

During the Level IV hearing, Ms. Crawford testified:

> This factor was again put in place primarily for the director level positions at the smaller institutions. This was to give credit to the person ultimately accountable within a functional area. . . At WVU (See footnote 4) nobody received credit under Breadth because at WVU the person who is ultimately responsible for and accountable for the functional areas are our Deans and Directors who are non- classified. So it would not be appropriate for this position to have credit under Breadth.

While Grievant certainly has a lot of responsibility, she failed to prove, by a preponderance of the evidence, that she is accountable for an entire functional area, or that the JEC was clearly wrong, or arbitrary and capricious in its determination for Factor 6, Breadth of Responsibility.

In addition to the foregoing narrative and findings of fact, the following conclusions of law are appropriate in this matter.

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. Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995).

2. The burden of proof in a misclassification grievance is on Grievant to prove by a preponderance of the evidence that she was not properly classified. 156 C.S.R. 1 § 4.17; Burke, supra.

3. "A preponderance of the evidence is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary, 5th E., p. 1064.

4. Determinations of the Job Evaluation Committee regarding application of the JEP's point factor methodology are essentially questions of fact. In that regard, the JEC's interpretation and explanation of the point factors and PIQs at issue will be given great weight unless clearly erroneous. Burke, supra. Seegenerally, Tennant v. Marion Health Care Foundation, 459 S.E.2d 374 (W. Va. 1995). Likewise, subjective determinations of the JEC regarding application of the point factor methodology to an employee or group of employees are entitled to deference when being reviewed by this Grievance Board. However, such subjective determinations may nonetheless be found to be arbitrary and capricious if not supported by a rational basis, or to be clearly wrong if there is no substantial evidence in the record supporting the finding or, review of the evidence of record makes it clear that a mistake has been made. Jessen v. Bd. of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995). See Frymier-Halloran v. Paige, 458 S.E.2d 780, 788 (W. Va. 1995); Bd. of Educ. v. Wirt, 192 W. Va. 568, 453 S.E.2d 402 (1994); Kyle v. W. Va. State Bd. of Rehabilitation, Docket No. VR-88-006 (Mar. 28, 1989).

5. Grievant failed to prove by a preponderance of the evidence that the JEC was clearly wrong, or acted in an arbitrary or capricious manner in assigning degree levels to the Catering Sales Representative position, or that she was improperly classified.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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 VirginiaEducation 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.

Dated: 5/14/97 _____

JEFFREY N. WEATHERHOLT

ADMINISTRATIVE LAW JUDGE

Footnote: 1

This grievance was among over 540 grievances waived to Level IV at the same time by the Respondent and the Board of Directors for the State College System of West Virginia. See Burke v. Bd. of Directors, 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

According to the definitions set forth in Respondent's regulations, a "factor" is: "One of thirteen elements used to evaluate jobs." 128 C.S.R. 62 § 2.27 (1994). The thirteen factors are listed as Knowledge, Experience, Complexity and Problem Solving, Freedom of Action, Breadth of Responsibility, Scope and Effect, Intrasystems Contacts, External Contacts, Direct Supervision Exercised, Indirect Supervision Exercised, Working Conditions, Physical Coordination and Physical Demands. 128 C.S.R. 62 § 2.27 (1994). The JEP submitted into evidence by Respondent lists only twelve factors, with physical coordination and physical demands combined as Factor Twelve. Some factors, such as scope and effect, were further broken down into two or more elements so that each position was ultimately assigned point values in eighteen categories.

Footnote: 3

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: 4

Ms. Crawford clarified her statement, and was not including branch campuses such as Potomac State College.