MARY LUIKART

v. **DOCKET NO. 94-MBOD-766**

BOARD OF DIRECTORS,

WEST VIRGINIA STATE COLLEGE

D E C I S I O N

Grievant Mary Luikart alleges she was misclassified effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) , as a Bookstore Manager II ("II"), Pay Grade 16. Grievant seeks as relief classification as a Bookstore Manager III ("III"), Pay Grade 19, effective January 1, 1994, and backpay from January 1, 1994. Grievant challenged the degree levels received in Complexity and Problem Solving, Freedom of Action, Scope and Effect/Nature of Actions, Direct Supervision Exercised/Level of Supervision, Physical Coordination, Working Conditions, and Physical Demands. (See footnote 2)

The following Findings of Fact are properly made from therecord developed at Level IV.

Findings of Fact

1. In 1991, all higher education classified employees were asked to complete a Position Information Questionnaire ("PIQ"). Employees were to describe their job duties and responsibilities and the job requirements on the PIQ, by answering a series of questions designed to elicit this information. Grievant was employed at West Virginia State College ("WVSC"), and completed a PIQ in 1991.

2. Grievant was classified as a Bookstore Manager II, Pay Grade 16, effective January 1, 1994.

3. On January 1, 1994, Grievant's primary job duties (with the percentage of time she spent performing each duty shown in parenthesis) were ordering books and taking inventory of books (40%); waiting on customers, talking to salespeople about products, and typing and mailing or delivering bills (25%); unpacking shipments, verifying that the order was correct, pricing items, shelving, recording pricing information, invoice number and date, and dealing with publishers on

incorrect orders (15%); clearing cash register drawers, counting and balancing money received, preparing daily cash report, picking up mail, turning in cash receipts to the WVSC cashier, assisting with special projects, arranging ring sales, ordering commencement invitations, and arranging student book buys (15%); and, typing department course cards (5%). 4. Faculty choose the books to be ordered and Grievant's role in ordering books is to make sure all the information is correct on the forms completed by faculty members, check the inventory to see how many books to order, and place the order.

5. The bookstore has a return policy, procedures for exceptions, and procedures for faculty to place book orders. When returning books to publishers, Grievant must follow the publisher's procedures.

6. Grievant drafts the budget for the bookstore, but has no authority to approve it. She signs purchase orders, but they must also be signed by a supervisor.

7. Grievant supervises one bookstore clerk, completes her performance evaluations, and both she and her supervisor sign her leave forms. This employee does not supervise other employees. When a new employee is to be hired, Grievant and her supervisor interview the applicants and jointly decide who to hire. Grievant recommends that employees be fired. She spends approximately 40% of her time performing the same duties as the person she supervises. Grievant also assigns some duties to a Building Service Worker who spends half his time cleaning the bookstore, but she does not complete or sign his performance evaluations.

8. Grievant uses a cash register one to two hours on Mondays and Tuesdays, and occasionally every other day. She uses a calculator 15 to 30 minutes daily. She uses a typewriter about 20 minutes every day, and more often when ordering books.

9. Grievant is seated about 10% of the time she isperforming her job duties.

10. The II Job Title received 2146 total points from the following degree levels in each of the thirteen point factors (See footnote 3) : 6.0 in Knowledge; 4.0 in Experience; 2.5 in Complexity and Problem Solving; 3.5 in Freedom of Action; 3.0 in Scope and Effect, Impact of Actions; 3.0 in Scope and Effect, Nature of Actions; 2.0 in Breadth of Responsibility; 2.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level of Contact; 2.0 in External Contacts, Nature of Contact; 3.0 in External Contacts, Level of Contact; 3.0 in Direct Supervision Exercised, Number; 5.0 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 1.0 in Physical Demands. Joint Exhibit D.

11. The point score range for a Pay Grade 16 is from 2114 through 2254 points. Joint Exhibit C.

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 assertingmisclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

A grievant is not likely to meet his burden of proof in a Mercer grievance merely by showing that the grievant's job duties better fit one job description than another, because the Mercer classification system does not use "whole job comparison". The Mercer classification system is largely a "quantitative" system, in which the components of each job are evaluated using the point factor methodology. Therefore, the focus in Mercer Decisions issued by this Grievance Board is upon the point factors the grievant is challenging. (See footnote 4) While some "best fit" analysis of the definitions of the degree levels is involved in determining which degree level of a point factor should be assigned, where 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 his reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. StateBd. 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., 194 W. Va. 97, 459 S.E.2d 374 (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., 195 W. Va. 430, 465 S.E.2d 887 (1995). The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. (See footnote 5)

B. Application of the Point Factor Methodology

The following table shows the differences between the degree levels assigned Grievant's Job Title in the point factors she challenged, the degree levels assigned the III Job Title, and the degree levels she argued she should have received.

	CPS	SE FA	SE NA	DSE LVL	PC	WC	PD (See footnote 6)
II	2.5	3.5	3	5	1	1	1
III	4.5	4	4	6	1	1	1
Luikart Argument	4	4	4	6	2	3	3

Joint Exhibit D. Each of the point factors challenged by Grievant will be addressed separately below.

1. Complexity and Problem Solving

The Job Evaluation Plan ("Plan") defines Complexity and Problem Solving as:

> This factor measures the degree of problem-solving required, types of problems encountered, the difficulty involved in identifying problems and determining an appropriate course of action. Also considered is the extent to which guidelines, standards and precedents assist or limit the position's ability to solve problems.

Grievant's Job Title received a degree level of 2.5 in Complexity and Problem Solving, and she argued she should have received a degree level of 4.0. Half-levels are not defined in the Plan. Patricia Hank, Director of Human Resources at Southern West Virginia Community and Technical College and JEC member, explained that in applying both this point factor and Freedom of Action, "[t]he JEC was sensitive to positions where multiple functions were performed and gave half credit (.5) in cases where the position was performing significant portions of duties and responsibilities in both levels, i.e.: part in 2 and part in 3, hence a 2.5." Respondent's Exhibit 1.

A degree level of 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.

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

> Problems encountered are complex and varied due to incomplete and/or conflicting data. General policies, procedures, principles, and theories of specific professional disciplines are available as guidelines; however, these guides may have gaps in specificity or lack complete applicability to work assignments. Employee must utilize analytical skills in order to interpret policies and procedures, research relevant information, and compare alternative solutions.

Grievant argued she should receive a higher degree level because she makes all decisions by herself, and refers only extremely difficult persons to her supervisor. Grievant gave examples of the types of problems encountered, such as students asking for a policy waiver on book returns because they were told something different from the policy, customers asking to return used merchandise, instructors ordering the wrong book, and instructors requesting special books which are not approved. Grievant's testimony showed that returns of books or other items are completely governed by policies and procedures which have been in place a long time, and she cannot deviate from these. She stated when the wrong book is ordered and a professor is complaining to her, the solution is to pull the book order to see who was in error, follow the publisher's return policies to return the book, and order the correct book. She stated she simply cannot order special books which are not approved, so the solution to such a faculty request is to tell the faculty member she cannot place the order. She stated each problem is different.

Ms. Hank agreed that Grievant takes care of problems, but pointed out that Grievant has guidelines and rules which she applies to solve them, and she would refer problems not covered by guidelines or procedures to her supervisor.

The examples of problems given by Grievant all have solutions provided by the policies Grievant

must follow. While each problem may be different, and she may have to deal with people who are blaming her for a problem she did not create or are trying to get around a policy, Grievant's testimony was that she solves all types of problems by following policies and procedures. Further, all of Grievant's duties must be evaluated, including the significant amount of time she spends waiting on customers and shelving books. These duties do not fall within a degree level of 3.0 or 4.0. She has not proven she should have received a higher degree level.

2. 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 Job Title received a degree level of 3.5 in Freedom of Action, and she argued she should have received a degree level of 4.0. The definitions in the Plan show that at a degree level of 3.0:

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

The definitions in the Plan show that at a degree level of 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 argued she makes the decisions about what has to be done, such as what to do if the wrong books are ordered or books are not received. She stated that she decides if changes need to be made in the bookstore operations or design and then takes these proposals to her supervisor for her approval. She stated that ifit is a minor expense, she makes the decision without her supervisor's approval.

Ms. Hank stated that Grievant's supervisor does not assign her tasks or check her work because

Grievant has been in her position a long time and knows what needs to be done, and is a responsible worker. She stated Grievant's job is structured by rules, policies and regulations. She pointed out that Grievant does not have budgetary responsibility or authority to sign purchase orders.

While Grievant has some freedom to decide what work will be done in the bookstore each day, and what changes should be made, much of her job is governed by standard procedures and policies, which provide structure. Her supervisor must approve all but minor changes in the bookstore. Her job is also structured by certain tasks which must be performed at particular times. She must do the daily cash report and pick up the mail each day. The procedure is to unpack and shelve books as they arrive. Books are ordered as directed by the faculty, and must be ordered by a certain time. Books are returned to publishers in accordance with their procedures. She waits on customers as they need assistance. She drafts the budget for the bookstore, but has no authority to approve it. She signs purchase orders, but they must also be signed by a supervisor. Grievant offered no evidence to establish her role in setting goals and objectives for the bookstore.

The definitions of degree levels 3.0 and 4.0 are very similar. However, the undersigned must conclude from the evidence that Grievant's job is structured by policies, standard procedures, andlimits placed upon her by her supervisor. Grievant has not presented evidence sufficient to establish that the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level which recognized that the duties of the Job Title fall somewhat within both a degree level of 3.0 and 4.0.

3. Scope and Effect

Scope and Effect is defined in the Job Evaluation Plan as:

> This factor measures the scope of responsibility of the position with regard to the overall mission of the institution, and/or the West Virginia higher education systems, as well as the magnitude of any potential error. Decisions regarding the nature of action should consider the levels within the systems that could be affected, as well as Impact on the following points of institutional mission: instruction, instructional support, research, public relations, administration, support services, revenue generation, financial and/or asset control, and student advisement and development. In making these judgments, consider how far-reaching is the impact and of what importance to the institution and/or higher education systems is the work product, service or assignment. Decisions regarding the impact of actions should take into account institutional scope and size as reflected by operating budget, student enrollment and institutional classification. Also, consideration should be given for the possibility that a unit, program or department within a large institution may be equivalent in size to multiple units, programs or departments within a smaller institution. In making these interpretations, assume that the incumbent would have normal knowledge, experience and judgment, and that errors are not due to sabotage, mischief or lack of reasonable attention and care.

This point factor consists of two parts, Nature of Actions and Impact of Actions. Grievant is challenging the degree level received in Nature only, arguing she should have received a degree level of 4.0, rather than a 3.0.

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

> Work provides guidance to an operation, program, functionor 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 in Nature 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.

Grievant argued that if she orders the wrong books, WVSC would incur substantial freight charges to return them, and instruction would be disrupted.

Ms. Hank stated that the bookstore's financial impact on the institution is not significant, but it would have a significant impact on the department. She stated that the hierarchy in a department or unit is significant in the application of this point factor, and that Grievant's supervisor would receive a higher degree level than Grievant, and in fact, did receive a 4.0.

"As noted in previous decisions interpreting the Plan, interpretation of these similarly-worded provisions involves a subjective value judgment, which is an inherent element of the function of position classification. Hastings [v. Bd. of Trustees, Docket No. 94-MBOT-943 (May 28, 1996)]; Jessen [v. Bd. of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995)]." Miller v. Bd. of Directors, Shepherd College, Docket No. 94-MBOD-495 (Oct. 29, 1996). It is not inconsistent with the language used, and taking into account the hierarchy in the departments, to say that the workperformed by Grievant is better described as "providing guidance to an operation, program, function or service," rather than contributing "to . . . the effectiveness of operations or services." See Wood v. Bd. of Directors, W. Va. State College, Docket No. 94-MBOD-480 (March 11, 1997); Hughes v. Bd. of Trustees, W. Va. School of Osteopathic Medicine, Docket No. 94-MBOT-1002 (Jan. 28, 1997); Gregg, et al., v. Bd. of Trustees, W. Va. Network for Educational Telecomputing, Docket No. 94-MBOT-863 (Dec. 18, 1996).; and Henry, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-1024 (July 31, 1996). Grievant has not proven she should have received a higher degree level

in this point factor.

4. Direct Supervision Exercised

> This factor measures the job's degree of direct supervision exercised over others in terms of the level of subordinate jobs in the organization, the nature of the work performed, and the number supervised. Only the formal assignment of such responsibility should be considered; informal work relationships should not be considered. Supervision of student workers may be taken into account if they are essential to the daily operation of the unit. The number of subordinates should be reported in full-time equivalency (FTE) and not head count.

This point factor consists of two parts, Number of Subordinates and Level of Supervision. Grievant is challenging the degree level received in Level only, arguing she should have received a degree level of 6.0, rather than a 5.0. She could not explain why she believed she should have received a 6.0.

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

> Direct supervision over exempt employees (and non-exempt employees, if applicable). Responsible for results in terms of costs, methods, and personnel. In a position to hire/fire or strongly recommend such personnel actions. A degree level of 6.0 in Level is defined in the Plan as:
>
> Manages the operation of a unit, including general supervision over first-line supervisors (and non- supervisors, if applicable).

Ms. Hank pointed out that the definition of degree level 6.0 makes it clear that only persons who supervise first-line supervisors fall within this degree level. She noted that the parenthetical reference is joined with an "and," which means the position may also supervise non-supervisors in addition to supervising first-line supervisors. This interpretation is consistent with the language used in the definition. (See footnote 7) Grievant does not supervise any first-line supervisors, and cannot receive a degree level of 6.0.

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 argued she should have received a degree level of 2.0, rather than a 1.0. A degree level of 1.0 is defined in the Plan as:

> Work requires normal level of ability common in almostevery job, such as writing, sorting, filing/reviewing text materials, and/or occasional use of office equipment

> without any demand for speed.
>
> 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.

On her PIQ Grievant noted she must use a typewriter, calculator, and cash register, and that accuracy is required. She stated that minimal speed is required when waiting on customers. Ms. Hank agreed that Grievant's position falls within a degree level of 2.0.

Grievant's operation of equipment does not fall within any of the examples given in degree level 1.0. It can be described as "operation of basic instruments or equipment." Grievant has proven a degree level of 2.0 is a better fit.

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 argued she should have received a degree level of 3.0, rather than a 1.0. 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.

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

> Routine discomforts from exposure to moderate levels of heat, cold, moisture/wetness, noise and air pollution. May involve routine exposure to light chemical substances such as cleaning solutions or occasional exposure to hazardous conditions such as radiation, chemicals, diseased laboratory animals, contagious diseases, heights, and moving parts.

On her PIQ Grievant noted exposure to what she characterized as extreme heat and cold in the

bookstore. She noted a lack of ventilation, and moisture, stating that condensation had caused the ceiling tile to fall. She stated she was exposed to asbestos from the old roof and worked in dust when the roof was replaced. Finally she stated the bookstore is located in the Student Union which is loud, and the lighting is terrible. In her testimony Grievant added that she is exposed to cleaning solutions once a month or once every three months when something was moved in the storage room adjoining the bookstore, and explained that it was hot in the bookstore when the old air conditioning unit was broken, and it was cold when the heating unit was broken.

Ms. Hank stated that persons who work inside are typically working in a normal office environment, which takes into accountfluctuations in temperature and individual temperature preferences, and falls within a degree level of 1.0. She noted that Job Titles receiving a 3.0 were labor-intensive positions.

It is clear from Grievant's description of the bookstore conditions that several of her complaints are about conditions which occurred one time or at one time, and do not describe the conditions under which the job is normally performed, as is required by the definition. Further, while this particular bookstore may have less than ideal conditions, the undersigned is not convinced that this is measured by this point factor. A bookstore operation does not require inadequate lighting, temperature extremes, moisture, improper ventilation, or location in a student union. In fact, Grievant noted that the bookstore was remodeled in 1994, and none of these conditions exist now. "Grievant's job duties could be performed in a normal office environment. The undersigned is of the opinion that this point factor is designed to measure the conditions under which the duties must be performed, not the conditions under which the duties happen to be performed because of the location of one individual's office." Hameed v. Bd. of Trustees, Marshall Univ., Docket No. 94- MBOT-928 (Jan. 15, 1997); and Saulton v. Bd. of Directors, W. Va. State College, Docket No. 94-MBOD-800 (Dec. 5, 1996).

7. Physical Demands

Grievant argued she should have received a degree level of 3.0, rather than a 1.0 in Physical Demands. A degree level of 1.0 is defined in the Plan as:

> Job is physically comfortable; individual is normally seated and has discretion about walking, standing, etc. May occasionally lift very lightweight objects.

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).

On her PIQ, Grievant stated that daily she must walk to wait on customers and bend and stretch to unpack and shelve books. She stated that she would spend several days unpacking and shelving books, and stopping to wait on customers at the beginning of the semester, and would unpack and shelve supplies throughout the semester. She stated she is seated at times, but not usually. Ms. Hank agreed that Grievant's position falls within a higher degree level than her Job Title received, but not within a 3.0. She opined that Grievant's position fell within a degree level of 2.0.

The evidence shows that Grievant is not normally seated, but regularly stoops, bends, lifts books and supplies to check and shelve them, and stands. The evidence does not support a finding that Grievant must stand, stoop or bend for long periods of time, or that she must lift moderately heavy items. See Saulton, supra; and Blake, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-475 (Oct. 16, 1996). Grievant has proven a degree level of 2.0 is a better fit for her duties.

C. Summary

Grievant proved that if her position were rated individually, she should have received a degree level of 2.0 in Physical Coordination, and a degree level of 2.0 in Physical Demands. These changes add 48 points to the point total for her Job Title, making the total 2194, which is still within a Pay Grade 16. (See footnote 8) Joint Exhibit C. Because the point factor analysis does not result in a change in Pay Grade, Grievant has not proven she was misclassified, and a comparison of Grievant's duties to those of the Job Title sought is not necessary. See Riggs v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-711 (Apr. 29, 1996).

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 isperforming. 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 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., 194 W. Va. 97, 459 S.E.2d 374 (1995); Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94- MBOD-349 (Aug. 8, 1995).

4. The Job Evaluation Committee's decision that Grievant is a Bookstore Manager II, Pay Grade 16, is not clearly wrong or arbitrary and capricious.

5. The Job Evaluation Committee's assignment of degree levels to the point factors for the Job Title Bookstore Manager II is neither clearly wrong nor arbitrary and capricious.

Accordingly, the grievance of Mary Luikart is **DENIED**.

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

BRENDA L. GOULD

Administrative Law Judge

Dated: April 18, 1997

Footnote: 1

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

Footnote: 2

A Level IV hearing was held on November 7, 1996. This matter became mature for decision on November 15, 1996, upon receipt of Respondent's post-hearing written argument. Grievant declined to submit written argument.

Footnote: 3

The thirteen point factors are set forth in 128 C.S.R. 62 § 2.27, and 131 C.S.R. 62 § 2.27. Burke, supra.

Footnote: 4

A grievant may challenge any combination of point factor degree levels, so long as he clearly identifies the point factor degree levels he is challenging, and this challenge is consistent with the relief sought. See Jessen, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-1059 (Oct. 26, 1995); and Zara, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-817 (Dec. 12, 1995).

Footnote: 5

This discussion is not intended to address challenges to the way the Mercer system as a whole is set up, that is, challenges to the methodology.

Footnote: 6

These headings are shorthand for the following point factors: CPS is Complexity and Problem Solving; FA is Freedom of Action; SE/NA is Scope and Effect/Nature of Actions; DSE/LVL is Direct Supervision Exercised/Level of Supervision; PC is Physical Coordination; WC is Working Conditions; and PD is Physical Demands.

Footnote: 7

In Blake, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-475 (Oct. 16, 1996), the Administrative Law Judge found that the degree level 5.0 definition did not require the supervision of exempt employees, even though the parenthetical is joined with an "and," finding Respondent's explanation inadequate. Respondent's explanation in this case is quite clear and consistent with the plain words used in the definition, and may be distinguished from Blake for that reason. To the extent Blake is not distinguishable, it is overruled.

Footnote: 8

Respondent argued that if Grievant's position were rated alone, she would have received a 2.0 in Direct Supervision Exercised/Number, and a 3.5 in Level (rather than a 3.0 and 5.0), because she supervises only 1 employee; she would have received a 1.0, rather than a 2.0 in Breadth of Responsibility, because she is not responsible for the budget; and she would have received a lower degree level in Knowledge. It is not necessary to address these arguments, inasmuch as Grievant's successful challenges have not resulted in a change in Pay Grade.