MERRY J. BROWN,

Grievant,

v. Docket No. 94-MBOT-973

BOARD OF TRUSTEES,
MARSHALL UNIVERSITY,

Respondent.

DECISION

Grievant Merry J. Brown filed a level four grievance challenging her classification under the "Mercer" reclassification system. (See footnote 1) Effective January 1, 1994, she was classified as an Information System Specialist at Pay Grade 17, and alleges that she should have been classified as either a Manager/Departmental Information Systems or an Information Systems Specialist Senior, both of which are at Pay Grade 19. Grievant also requests her new classification, if granted, be retroactive to January 1, 1994, with back pay to that date. She has also made challenges to specific point factors used in the Mercer system.

A level four hearing was conducted on July 9, 1996, and this matter became mature on July 26, 1996, the deadline for submission of the parties' proposed findings of fact and conclusions of law. Thereafter, this grievance was reassigned to the undersigned for administrative reasons.

The following findings of fact are properly made from the record developed at level four.

Findings of Fact

1. Grievant is employed by Marshall University in the library. Her title prior to theMercer reclassification was Manager of Library Automation Systems.

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

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

3. When the Mercer reclassification was implemented on January 1, 1994, Grievant was classified as an Information Systems Specialist at Pay Grade 17.

4. Generic job descriptions were developed for the various job titles within the higher education system in 1994 after the implementation of the new classification system. These descriptions were compiled by looking at the common duties and responsibilities of all incumbents in each job title as reflected on the PIQs. Generic job descriptions were not used in the classification process; they were not meant to serve as position descriptions and are merely a compilation of the common duties performed by persons in the particular job title.

5. The generic job description for Information Systems Specialist states that the general function of the job is to "[p]rovide . . . systems analysis and information systems counseling services for the faculty, staff and students within a department/school/college involving multiple micro-computer environments including administration, research and academics." L IV, Joint Ex. C.

6. Prior to January 1, 1994, Grievant's primary responsibilities involved the daily management, operation, and monitoring of the library's computer systems. Additional duties related to these responsibilities included research and development of new automation systems; acquisition, implementation and maintenance of software used in the library systems; and training of library staff and other users on the computer system. She worked directly under the supervision of the Library Director.

7. The Information Systems Specialist job title received 2291 total points from the degree levels allocated in each of the thirteen point factors (See footnote 2).

8. The Manager/Departmental Information Systems job title received 2644 total points from the degree levels allocated in each of the point factors, and the Information Systems Specialist Senior title received 2628 total points.

9. The point range under the Job Evaluation Plan for a Pay Grade 17 is 2255 points to 2407 points.

10. Grievant challenged the degree levels she received in the point factors of Knowledge, Experience, Complexity and Problem Solving, Freedom of Action, Scope and Effect (Nature), Intrasystems Contacts (Nature and Level), External Contacts (Nature and Level), Direct Supervision

Exercised (Level and Number) and Working Conditions.

11. Some of the degree levels for the point factors challenged by Grievant are the same for the classification she received and for the alternative job titles she has requested.

Discussion

A. Burden of Proof

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that she is not properly classified. 156 C.S.R. 1 § 4.17; W.Va. Code § 18-29-6. Burke 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.” It is largely a “quantitative” system, in which the components of each job are evaluated separately by applying the point factor methodology contained in the Job Evaluation Plan (hereinafter “Plan”). Therefore, the focus in Mercer grievances for this Board is upon the point factors the grievant is challenging. (See footnote 3) While some "best fit" analysis of the definitions of the degree levels is involved in determining which degree level of a point factor should be assigned, where the position fits in the higher education classified employee hierarchy must also be evaluated. During the job evaluation process, once a data line of particular degree levels for each point factor was developed for a job title, then each employee was “slotted” into the job title which most closely fit their duties. The system must by statute be uniform across all highereducation 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 and W. Va. Civil Serv. Comm'n., Docket No. VR-88-006 (Mar. 28, 1989).

Finally, whether grievants are properly classified is almost entirely a factual determination. As such, the Job Evaluation Committee's ("JEC") interpretation and explanation of the point factors and

classifications 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 Plan (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. Watts v. Dept. of Health and Human Resources, 465 S.E.2d 887 (W. Va. 1995). The higher education employee challenging her classification thus will have to overcome a substantial obstacle to establish that she is misclassified. (See footnote 4)

In accordance with the foregoing discussion, a grievant must either show that she was slotted into the wrong job title or that the point factor degree levels assigned to her job title are incorrect. In order to determine if Grievant was misclassified, the point factors and degree levels she disputes must be discussed separately in detail.

B. Application of the Point Factor Methodology

Although she did not articulate why, Grievant has not only challenged point factors in whichher job title and those she requests received different degree levels, but she has challenged factors in which the requested job titles did not receive any higher rating. This is difficult to understand, because Grievant has not argued that her individual position deserves a data line of its own; on the contrary, she has specifically requested placement into another job title with an established set of degree levels. Nonetheless, each challenged factor will be discussed individually.

1. Knowledge

The Job Evaluation Plan ("the Plan") defines Knowledge as:

> This factor measures the minimum level of education equivalency and/or training typically required for an incumbent to reach acceptable occupational competence on the job. The factor considers the technical, theoretical, and/or mechanical skills required, and the complexity and diversity of the required skills.

The Information Systems Specialist job title, along with the two job titles Grievant is requesting, received a level 6.0 in this point factor, which is defined in the Plan as:

> Job requires a thorough knowledge of a professional discipline or technical specialty as would normally be acquired through a relevant baccalaureate education program. Knowledge of principles, concepts, and methodology of a highly technical, professional, or administrative occupation is indicative of this level.

Grievant seeks a level 7.0, which is defined as:

> Job requires a broad or in-depth body of knowledge such as would normally be acquired through a Master's education program that is directly related to the type of

> work being performed. Advanced knowledge in a particular field of expertise with the skill in applying this knowledge to difficult and complex work assignments is characteristic of this level.

Grievant acquired a Master's in Library Information Science in 1992, and she has a bachelor's degree in Fine Arts with an emphasis on Computer Science. She alleges that, if she were replaced, her position would be advertised as requiring a Master's degree in Library Science. Her basis for this allegation was a review of library journals where such positions are advertised. However, Grievant did not introduce any particular examples or other proof to support her claim that the positions requiring a master's degree were similar to hers at Marshall. She also provided lengthy testimony regarding her coursework in the master's program, which emphasized the common procedures, processes, and systems used to operate libraries. Grievant insisted that such a degree and computer knowledge are both absolutely necessary to be qualified for her position.

Respondent presented the testimony of Margaret Robinson Buttrick, Chair of the JEC, in support of its position that Grievant's assertions are incorrect. She emphasized that the purpose of Grievant's job is automation of library services and that, in her everyday duties, she is not using most of the knowledge obtained in the master's program, which focused on librarian responsibilities. Ms. Buttrick also explained that the Plan contemplates the level of knowledge required for entry- level in the job; the particular qualifications of the incumbent may exceed the minimum requirement and do not necessarily comport with the actual duties and responsibilities of the job. In addition, the Plan is also designed to account for a “learning curve” period for any employee who enters into a new position. Perkins v. Bd. of Trustees, Docket No. 94-MBOT-733 (Oct. 31, 1996).

The duties and responsibilities listed by Grievant on her PIQ all clearly concern various aspects of automation, such as setting up systems, teaching others how to use them, and daily oversight of all of the library's automation. There is nothing in the evidence offered by Grievant that indicates to what degree, if any, her knowledge of library science is used by her on a daily basis. Although this knowledge may be helpful to her in performing her duties, she has not proven that it is required for her position managing the library's automation. Grievant has not met her burden of proof regarding this point factor, and the evidence supports the JEC's allocation of a 6.0 degree level.

2. Experience

The Plan 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.

Grievant's job title received a 4.0 for Experience, and the Manager/Departmental Information Systems and Information Systems Specialist Senior titles received a level 5.0. A degree level of 4.0 in this point factor is defined by the Plan as “[o]ver two years and up to three years of experience.” A degree level of 5.0 is defined as “[o]ver three years and up to four years of experience.” Grievant requests a level 6.0, which is “[o]ver four years and up to six years of experience.”

Grievant's testimony regarding this point factor was quite detailed and extremely technical, which, frankly, makes it difficult to understand. She discussed various computer-related activities in which she is involved on an everyday basis. She argued that at least four years of computer experience plus another two to four years of library experience are required to perform her job. Grievant believes that, only through such experience, could an individual have the necessary knowledge of computer equipment, software programs, library records systems, and networking of computer systems.

On behalf of Respondent, Ms. Buttrick pointed out that Experience and Knowledge must be considered together; thus, the bachelor's degree required for this job title encompasses four years of experience in and of itself. Combined with an additional two to three years of on-the-job experience, Ms. Buttrick opined that this would be sufficient to perform Ms. Brown's duties.

Unfortunately, Grievant's testimony on this point factor is so technical that it is difficult to assess whether or not it supports her argument that more experience is required to perform her job. However, Grievant's failure to articulate the reasons which support her position contribute also to her failure to meet her burden of proof regarding this point factor. Grievant did not counter Ms. Buttrick's explanation that Experience and Knowledge must be added together to determine the minimum level of qualification needed. Also, Ms. Buttrick testified that the necessary level of experience for any given job is determined at a recruiting level, although the institution will usually try to exceed the minimum requirements when hiring a new employee.

Grievant's job clearly requires the advanced technical knowledge obtained through a bachelor's degree in a computer-related field, and it would not seem unreasonable that an additional two to three years' experience thereafter, either in a library or in some type of technical job, would be quite sufficient to perform her duties at an entry level. “While it would be advantageous to the employer . . . for new employees to report for work at a fully functional level, this situation is not attainable as a

practical matter." Deavers v. Bd. of Trustees/Bd. of Directors, Docket No. 94- MBOT-914, at p. 12 (Dec. 10, 1996). Grievant did not prove that the allocation of level 4.0 to her job title and to her position was incorrect or arbitrary and capricious.

3. Complexity and Problem Solving

The Plan defines Complexity and Problem Solving as:

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

Grievant's job title received a level 4.0, and the two job titles she requests received a level 4.5. However, Grievant again requests an even higher level for this point factor, level 5.0. A degree level of 4.0 is defined in the Plan as:

> Problems encountered are complex and varied due to incomplete and/or conflictingdata. 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.

The definition of degree level 5.0 is:

> Problems encountered involve unusual circumstances, variations in approach, and incomplete or conflicting data. Employees exercise considerable analytical, valuative and reasoning skill in researching information and developing new methods to perform work assignments or optimum solutions to problems. The development of new programs, procedures or methods are typical end results of the problem- solving process. Determination of the effectiveness of a policy or practice may be involved at this level.

In support of her argument, Grievant provided several examples of everyday problems for which she must find solutions. All of the problems Grievant has dealt with involved automation of a particular area or function within the library which had previously been manual. Examples she gave were acquisition of new materials, scanning of campus ID cards, and setting up a network between the campus system and the Internet. Each time something needs to be automated, Grievant decides what is the best method, selects the software and equipment, manages the installation of the equipment, and adapts the system to perform the particular functions needed. She testified that, no matter what the situation, all computer systems have to be adapted in some respects once they are installed, and this is not peculiar to libraries. Grievant also gets involved in requesting funding for each automation project.

Ms. Buttrick explained that this point factor required the JEC to look at the types of problems the employee encounters and what mechanisms, standards, or guides are available to them to reach solutions. Based upon Grievant's testimony, she opined that Grievant's job very clearly requires research, comparison of alternative solutions, and some adaptation of systems which are not entirelysuitable to the situation, which falls squarely within the level 4.0 definition. Although Grievant must use analytical skills, such as in choosing computer programs and adapting them for library use, her work does not result in new policies and procedures. In addition, Grievant stated that she frequently meets with her supervisor, the library director, who makes the final decisions.

Although it is true that Ms. Brown must come up with a solution each time the library wants to automate a procedure, she has specific computer systems, equipment, and software available from which to make her choices. These would qualify as “guides” available to her. Adjustment or adaptation of an existing system to the needs of the library may require some analytical and technical skill on the part of the grievant, but she is not “developing” the system itself, as is contemplated by the level 5.0 definition. Grievant's duties easily fit within the level 4.0 definition, and the JEC's decision on this point factor cannot be deemed to be inappropriate.

4. Freedom of Action

The Plan defines Freedom of Action as:

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

The Information Systems Specialist job title received a level 4.0 for Freedom of Action, and the two job titles Grievant is seeking received a level 4.5.

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 thework 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.

The definitions in the Plan show that at a degree level of 5.0:

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

Grievant's testimony on this point factor unequivocally establishes that the JEC decision was correct. She referred many times to her frequent, regular meetings with her supervisor, in which she keeps the director informed of all progress made on ongoing projects. Also, as mentioned above, Grievant has not disputed that the library director has final approval decisions over automation projects. Grievant may develop the goals to be achieved, but Ms. Fidler must review and approve them.

Respondent argues that Grievant is clearly responsible for planning and carrying out assignments, but does not have ultimate decision-making authority. Ms. Buttrick believed that Grievant's frequent contact with her supervisor was indicative of significant control on the part of Ms. Fidler.

Grievant has not met her burden of proof on this point factor, and she was properly evaluated at level 4.0.

5. 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 theoverall 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 is divided into two aspects, Nature of Actions and Impact of Actions, which are evaluated separately. Grievant contests only the rating she received in Nature of Actions, a level 3.0.

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

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

Grievant seeks a level 4.0, which the Manager/Departmental Information Systems job title received. It is defined 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.

Ms. Brown argued that errors made by her could result in interruption or disruption of library services and substantial costs to the university. She stated that, without the library's automatedservices, access would be unavailable to students, staff, faculty and the public. However, she mentioned that automated services can be performed manually by the library staff. This may cause inconvenience, but Grievant's testimony indicates that the library would not necessarily be completely shut down.

It was Ms. Buttrick's opinion that even a complete shut-down of the library would be only a moderate inconvenience to the university as a whole. Respondent's position is that Grievant's work with automation provides guidance to the operation and functioning of the library. This is not an unreasonable interpretation of Grievant's job duties, and the various terms used in the level 4.0 definition do not seem to fit. The library's automated services, while important in keeping library functions running smoothly, do not qualify as “complex” matters. Level 3.0 provides an accurate description of Ms. Brown's job.

As has been previously noted by this Grievance Board, assessment of this point factor “involves subjective value judgments about the characterization of one's tasks and duties.” Wise v. Bd. of Directors, Docket No. 94-MBOD-401, at p. 18 (Jan. 30, 1997). Indeed, Grievant herself admitted in her testimony that the definitions for the degree levels were subjective enough that several of them could potentially be used to describe her job. It cannot be said that the JEC evaluated her incorrectly or arbitrarily and capriciously regarding Scope and Effect, Nature.

6. Intrasystems Contacts

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

> appraises the responsibility for working with or through other people within the [State College and University Systems of West Virginia] to get results. Consider the purpose and level of contact encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, explaining policies or discussing controversial issues. This factor considers only those contacts outside the job's immediate work area. Grievant's job was rated at level 2.0 for Nature of Contact, and she requests the level 3.0 received by the two titles that she seeks. Intrasystems Contacts are evaluated with respect to Nature of Contact and Level of Regular, Recurring and Essential Contact.

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

> Moderate tact and cooperation required; communication is largely of a non-controversial nature and handled in accordance with standard practices and procedures (e.g., explaining simple policies and procedures, coordinating/scheduling complex meeting or conference arrangements.)

Level 3.0 is defined as follows:

> Substantial sensitivity and cooperation required; discussions are frequently controversial and require some delicacy (e.g., project interactions, interpretation of complex policies, resolution of somewhat difficult problems.)

Grievant's argument regarding this point factor is somewhat vague. She pointed out in her testimony that, although she had originally felt she was entitled to a level 3.0, she had adjusted her updated PIQ to reflect a level 2.0. However, she did discuss at the level four hearing how her work with automation may affect the entire staff and management of a particular department, or of many departments, by altering the way their work is accomplished. Grievant believes that, if she does not deal with these people sensitively and with an awareness of how changes will affect them, her work can be very disruptive. She also argues that her work, which mostly requires implementing new projects or dealing with computer system problems, is controversial, in that she often must divide her time between several departments needing her services. She also has frequent contacts with other institutions, which involve sharing information.

Respondent's arguments regarding Grievant's contacts are persuasive. As Ms. Buttrick testified, Ms. Brown's communications are largely non-controversial, information-sharing, and are handled according to standard practices and procedures. Although occasional situations may leadto controversial contact due to conflicting needs, automating departments and fixing problems would normally involve simple coordination and cooperation. The evidence supports the JEC's evaluation of Grievant on this point factor.

Grievant also contests the rating she received for Level of Contact. She received a 2.0 and is

asking for a level 3.0, although the titles she has requested both received level 4.0. A degree level of 2.0 in Level of Contact is defined in the Plan as “[s]taff and faculty outside the immediate work unit.” Level 3.0 is defined as “[s]upervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office.” It should be kept in mind that Level measures “regular, recurring and essential contact,” not occasional or unnecessary contact.

Ms. Brown testified that she may deal with a department chair as needed, but that usually a faculty member will bring a project to her; she then works with the faculty person on the ongoing project. She has contact with department managers who must assist her in getting the cooperation of their staff people when Grievant is working on a project affecting their department. Also, when she shares information with other institutions, her initial contact is normally with a manager or supervisor; however, Grievant did not elaborate on how frequently this contact occurs or of what it consists.

Grievant simply has not met her burden of proof regarding Level of Contact. On her PIQ, she listed contact with Directors or staff of other libraries for information exchange as occurring “quarterly.” In addition, she stated she had weekly contact with the senior engineer in the computer center, faculty and staff. As observed by Ms. Buttrick, the only contact which Grievant has established is regular and recurring is with faculty and staff, which are both at the level 2.0 rating which her job title received. Thus, Grievant was properly evaluated. 7. External Contacts

External Contacts is defined in the Plan as:

> This factor appraises the responsibility for working with or through other people outside the SCUSWV to get results. Consider the purpose and level of contact encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, influencing others or negotiation.

As with Intrasystems Contacts, this factor is divided into Nature and Level. Again, the Information Systems Specialist title received level 2.0, and Grievant requests a 3.0. The degree level definitions at issue for Nature of Contact are identical to those set forth above for the same levels of Intrasystems Contacts.

The individuals and entities which Grievant listed as contacts on her PIQ were vendors (of software, hardware and supplies) on a daily and weekly basis and the technical staff of the West Virginia Library Commission, along with the systems managers of the Cabell and Kanawha County Public Libraries monthly. These communications, according to Ms. Brown, usually involve

discussions of problems with an automated system or its components. Once again, Grievant has provided mostly examples of information-sharing situations, which are not usually controversial. She has not established entitlement to a level 3.0 for Nature of Contact.

As to Level of External Contacts, Grievant's job title received a 2.0, and she believes she deserves a 4.0. A degree level of 2.0 for Level of Contact is defined as “[g]eneral public, visitors, and/or service representatives and vendors.” Level 3.0 is defined in the Plan as “[s]tudents, parents, alumni, faculty of institutions outside the systems, sales engineers, higher-level product representatives, recruiters and/or prospective students,” and level 4.0 consists of “[m]id-level representatives of government agencies, professional contacts with other colleges and universitiesoutside the systems.”

Grievant specifically stated that her contacts at the Library Commission are technical staff people; she provided no examples of mid-level government representatives. She argues that her contacts at the public libraries should entitle to her to the level 4.0 rating, but it does not appear that she has named any persons who could be considered mid-level agency representatives or professionals with other higher education institutions. However, Grievant has provided evidence of regular contacts with students and higher-level product representatives. She has daily dealings with students who are using the library system, and she must communicate with technical specialists for hardware/software vendors when problems occur.

Ms. Buttrick agreed that, if evaluated individually, Grievant's contacts would entitle her to a level 3.0 rating for Level of External Contacts. She explained that Grievant received a level 2.0 because of the “averaging process,” whereby the qualification levels of all the incumbents in each job title were averaged to develop the data line. This process benefitted some employees and harmed others, such as Ms. Brown. Evaluating Grievant at level 3.0 for Level would raise the number of points she received under the Plan for External Contacts from 89 to 113, an increase of 24 points. This is insufficient to raise her position to the next pay grade level.

8. 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 factor measures both the Level of Supervision and the Number of Direct Subordinates,which are evaluated individually. For Level of Supervision, Grievant received a 1.0 and seeks a 2.0. The two alternative job titles into which Grievant would like to be placed received levels 4.0 and 5.0 for Level. However, Grievant is not arguing entitlement to these higher levels. The Plan defines level 1.0 under this point factor as “[m]inimal or no responsibility for the work of others; however, may provide functional guidance to student workers or lower-level employees on a non-essential basis.” The level 2.0 definition for Level of Supervision is defined as “[r]esponsible for directing and monitoring the work of student workers essential to the operations of the unit.”

Grievant had daily supervision of three student workers, whom she interviewed, hired, trained, and fired. The students' work consisted of running “batch jobs,” printing out form reports and overdue notices, and performing computer backups. She testified that their work is different from hers, and that, if they were not there, she would have to do their work. Grievant did not supervise any other persons.

Under the provisions of the Plan, one rarely receives credit in this factor for supervision of student workers, because very few are considered “essential.” With regard to the instant situation, Ms. Buttrick stated that Grievant's student workers are not essential, because operation of the library's computer system would not shut down without them. She provided the example of the food service workers at the Mountainlair at West Virginia University as students who are essential, because the restaurant could not operate at all if the students were not there on any given day. Respondent's argument is correct. Student workers are not considered essential if their work could be performed by regular employees, even if it would require a longer period of time. Deavers, supra. Grievant stated that she would perform the students' work if they were not there, so she clearly is not entitled to a level 2.0 for Level of Supervision. Since Grievant only supervises non-essential student workers, she is not entitled to any higher rating than the level 1.0 that she received for Number of Direct Subordinates. Non-essential student workers “cannot be considered for giving credit for Direct Supervision Exercised, either for Number or Level.” Kretzmer v. Bd. of Directors, Docket No. 94-MBOD-751, at p. 25 (Feb. 6, 1997).

9. Working Conditions

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

> 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 has challenged only the Working Conditions portion of this point factor, in which she received a level 2.0 and argues entitlement to a level 3.0. Level 2.0 is defined by 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.

The Level 3.0 definition reads as follows:

> 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.

Grievant's office is in the computer equipment room, which is maintained at a temperature somewhere between sixty and seventy degrees, and she alleges it is closer to sixty degrees on thefloor. She uses a small electric heater under her desk to keep her feet warm and states that she must wear a sweater or jacket at all times when in the room. An additional discomfort to Grievant is the noise level in her office caused by the equipment. The telephone is equipped with a special headset to filter out the noise in the room, and there are “sound-dampening” materials on the walls. Grievant believes that these temperature and noise conditions fulfill the level 3.0 definition of routine, moderate levels of discomfort.

Ms. Buttrick pointed out that, of 6,000 employees classified during the Mercer project, only three individuals received higher than a level 2.0 for the Working Conditions point factor. She opined that “moderate” temperature and noise levels would be those which would fluctuate to one extreme or the other, such as with employees who must work outdoors routinely. She viewed Ms. Brown's discomforts as less-than-optimal conditions occurring on an occasional basis. Another notable consideration is that Grievant has apparently been provided with the resources necessary to adapt to these conditions.

Noting that level 4.0 represents the most extreme of Working Conditions, involving “frequent or prolonged exposure to extreme levels of temperature,” etc., the undersigned does not believe that Grievant has demonstrated that the conditions she has described rise to the level of “moderate” temperature or noise levels. In fact, it has been held that, in at least one Mercer grievance, a constant temperature of 66 degrees (also in a computer equipment room) was only a “minor inconvenience,” as contemplated by the level 1.0 definition. See Hameed v. Bd. of Trustees, Docket No. 94-MBOT-928 (Jan. 15, 1997). Grievant has not met her burden of proof regarding Working Conditions.

C. Summary

In accordance with the burden of proof standards set forth above and application of the pointfactor methodology, Grievant has not established that she or the Information Systems Specialist job title were improperly evaluated with regard to the point factors Knowledge, Experience, Complexity and Problem Solving, Freedom of Action, Scope and Effect, Intrasystems Contacts, External Contacts-Nature, Direct Supervision, or Working Conditions.

However, Grievant did prove that her job duties, if rated independently, would entitle her to a degree level of 3.0 for External Contacts, Level. This change would add 24 points to the 2291 points allocated to the Information Systems Specialist job title, for a total of 2315. The point range for Pay Grade 17 is 2255 to 2407, so this would not place Grievant's position in any higher pay grade. Because degree levels are assigned to job titles and not to individual employees, and since Grievant's pay grade is unaffected, no change is warranted for the Information Systems Specialist data line, and Ms. Brown is properly classified. See Riggs v. Bd. of Trustees, Docket No. 94- MBOT-711 (Apr. 29, 1996).

Conclusions of Law

1. The governing boards are required by W.Va. Code § 18B-9-4 to establish and maintain an equitable system of job classification for all classified employees in the higher education system.

2. The burden of proof in a misclassification grievance is on the grievant to prove by a preponderance of the evidence that she is not properly classified. 156 C.S.R. 1 § 4.19.

3. Determinations of the Job Evaluation Committee (“JEC”) regarding application of the Mercer Plan's point factor methodology are essentially questions of fact. In that regard, the JEC's interpretation and explanation of the point factors and PIQs at issue will be given great weight unless

clearly erroneous. Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). Seegenerally, Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W.Va. 1995).

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

5. The JEC's assignment of degree levels to the point factors Knowledge, Experience, Complexity and Problem Solving, Freedom of Action, Scope and Effect, Intrasystems Contacts, External Contacts-Nature, Direct Supervision Exercised, and Working Conditions to Grievant's position and to the Information Systems Specialist job title were neither clearly wrong nor arbitrary and capricious.

6. The JEC's assignment of a 2.0 degree level to the Information Systems Specialist job title for External Contacts, Level, was not clearly wrong nor arbitrary and capricious.

7. Grievant proved that she individually is entitled to a degree level of 3.0 for External Contacts, Level, but she did not prove that her duties and responsibilities warrant a different classification or compensation at any higher pay grade.

Accordingly, this grievance is **DENIED**.

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

DATE: February 26, 1997 _____ **DENISE**

MANNING

Administrative Law Judge

Footnote: 1

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

Footnote: 2

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

Footnote: 3

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

Footnote: 4

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