JOSEPH MORASCO, et al.,

v. DOCKET NO. 94-MBOT-777

BOARD OF TRUSTEES,

WEST VIRGINIA UNIVERSITY, et al.

D E C I S I O N

Grievants Joseph Morasco and Shonnette Koontz each alleges he or she was misclassified effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) , as a Library Technical Assistant II ("LTA II"), Pay Grade 12. Grievants seek as relief classification as a Library Associate ("LA"), Pay Grade 14, effective January 1, 1994, and backpay from January 1, 1994. As alternative relief, Grievant Koontz seeks classification as an Accountant ("ACCT"), Pay Grade 16. (See footnote 2) Each Grievant challenged the degree levels received in severalpoint factors. (See footnote 3)

The following Findings of Fact are properly made from the record 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 Koontz was employed in the Library at West Virginia State College ("WVSC"), and completed a PIQ in 1991.

2. Grievant Morasco was employed at West Virginia University ("WVU") in 1991, but not in the same position he held on January 1, 1994. The position he held on that date was posted in 1993, and he applied for and was selected for the position. He did not complete a PIQ in 1991, but completed one in 1994. A Position Description had been prepared for his position in 1993, and signed by his supervisor. A Position Description form is similar to a PIQ, and the duties and responsibilities listed on this Position Description were nearly identical to those listed by Grievant Morasco on the PIQ.

3. Grievants were classified as Library Technical Assistant II's, Pay Grade 12, effective January 1, 1994.

4. On January 1, 1994, Grievant Morasco's primary job duties (with the percentage of time he spent performing each duty shown in parenthesis) were inspecting, cleaning, and performing minor maintenance on Library copy machines and related equipment, resupplying copy machines with paper, toner, and dry ink, logging equipment usage and repairs, and managing and assigning the preceding duties and operating duties to others, investigating new equipment and making recommendations on purchases, and removing money from machines in the Wise Library (65%); ordering copying and related equipment supplies, maintaining records of expenditures, counting, recording and depositing money removed from copiers, maintaining a running total of the number of copies made by faculty, preparing bills, issuing receipts, and supervising work study students (35%).

5. Grievant Morasco does not hold a Bachelor's Degree.

6. Grievant Morasco has contacts with faculty regarding photoduplication needs, complaints about copy quality and broken equipment, and procedures; and sometimes they are irate. He has contacts with staff about photoduplication needs, and sometimes has to explain why he has sent them an invoice. He has contacts with the business office regarding income and expenditures.

7. Grievant Morasco supervises six to eight work study students each semester, each working 10 to 12 hours per week for 32 weeks, and three to four students during the summer. Students do not work during breaks unless he is gone.

8. On January 1, 1994, Grievant Koontz's primary job duties (with the percentage of time she spent performing each duty shown in parenthesis) were processing purchase orders and invoices, and preparing information for bids (45%); verifying book identification numbers, entering data on book and government document purchases, filing order cards, and preparing books and government documents for shelving (20%); entering data to add gift books to the Library collection, checking for duplicates, typing gifts cards, thank-you letters and donation list (10%); compiling data on book budgets for academic departments, applying standard formula to total book budget to allocate budget to departments, and maintaining balance in each department's book budget (5%); searching bibliographic data and typing book orders (5%); unpacking orders, verifying shipments against orders, and checking for damaged or defective books (5%); comparing Library expenditure records to college records and reporting discrepancies to Fiscal Affairs Office, preparing monthly and annual reports on

budget balances, and developing forms (5%); and, answering the telephone in the secretary's absence (5%).

9. Grievant Koontz acquired an Associate Degree in Accounting in 1995.

10. Grievant Koontz does not maintain the official financial records used by WVSC for financial reporting. Because the official records are not current due to time lags in processing purchases and entering data, and because they do not provide as much detail as the Library needs, duplicate expense records are maintained by Grievant.

11. Neither Grievant has authority to sign purchase orders.

12. Grievant Koontz is not formally accountable or responsible for a budget or for a department.

13. The Library is a functional area.

14. Grievant Koontz communicates with the staff of the West Virginia Graduate College to be sure purchasing is not duplicated, and the Fiscal Affairs Office staff in processing purchase requisitions and about any discrepancies in documents or about credit memos. She talks to Robert Parker, an Accountant, to obtain permission to reallocate Title III funds. She has contact with supervisors in the Purchasing Office and Fiscal Affairs Office. She has contact with 20 chairpersons regarding their book budget balances, materials, audio visuals and books they need, and why a periodical is not available, six to eight times per month.

15. Grievant Koontz communicates with vendors to verify prices and availability of library materials, and about service and maintenance contracts.

16. Grievant Koontz spends four hours a day on average using the computer, and experiences some discomfort due to frequent use of a computer.

17. The LTA II Job Title received 1693 total points from the following degree levels in each of the thirteen point factors (See footnote 4): 5.0 in Knowledge; 3.0 in Experience; 2.5 in Complexity and Problem Solving; 2.0 in Freedom of Action; 1.0 in Scope and Effect, Impact of Actions; 2.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 1.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level of Contact; 1.0 in External Contacts, Nature of Contact; 3.0 in External Contacts, Level of Contact; 2.0 in Direct Supervision Exercised, Number; 3.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 2.0 in Physical Coordination; 1.0 in Working Conditions; and 2.0 in

Physical Demands. Respondents' Exhibit 4.

18. The point score range for a Pay Grade 12 is from 1655 through 1755 points. Respondents' Exhibit 3.

Discussion

A. Burden of Proof

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.19; W. Va. Code § 18-29-6. Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job 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 5) 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. State Bd. of Rehabilitation, Div. of Rehabilitation Services, Docket No. VR-88-006 (Mar. 28, 1989).

Finally, whether a grievant is properly classified is almost entirely a factual determination. As such, the Job Evaluation Committee's ("JEC") interpretation and explanation of the point factors and Generic Job Descriptions or PIQ's at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 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 6)

B. Grievant Morasco's General Challenges

Before addressing the point factors, Grievant Morasco's general arguments will be addressed. He argued the JEC erred in using a Position Description to classify him because the JEC had to use a PIQ, and he never signed the Position Description as he believed is required. Grievant cited no statute or regulation which requires the JEC to use only PIQ's for evaluation of positions. The Position Description provides the duties and responsibilities of the position, and information on the point factors, although in a different form from that of the PIQ. The information on the Position Description is nearly identical to that on the 1994 PIQ prepared by Grievant. In fact, Grievant referred to the statements on the Position Description throughout his written argument.

Grievant Morasco also argued it was unfair that others who were classified as Library Technical Assistant III's prior to 1994, as he was, were placed in the Library Associate classification under the Mercer system. If the only effect of the reclassification were that Job Titles were changed, that would probably demonstrate that there was no need for a new classification system. Further, the Mercer system looks at all the duties and responsibilities of each position, and applies each point factor to those duties. As will be discussed below, most of Grievant Morasco's duties involve routine maintenance of copy machines. Other persons whose duties fall within this same category should have received the same degree levels as Grievant, but persons whose duties place them in higher degree levels in various point factors should not be placed in the same classification as Grievant just because that's the way it has always been. Grievant Morasco entered into evidence PIQ's for a number of LA's at WVU, and stated his duties were "quite similar" to those of Deborah Davis. None of these persons performs duties at all similar to those of Grievant. Ms. Davis processes serials, does catalog preparation, and needs to know the Library of Congress classification system and how to use basic bibliographic tools.

Grievant Morasco pointed to what he characterized as errors, inconsistencies, and hiding of information by Respondent. For example, he stated that the responses given by another employee on her PIQ, a Ms. Armour-Gemmon, were nearly identical to his, yet she was classified as an LA.

First, Grievant's assertions did not prove that information had been hidden from him. Second, while the responses on degree levels marked by employees on the PIQ's were reviewed by the JEC, they were not determinative. The JEC also looked at the narratives provided by employees, and assigned degree levels keeping in mind a number of factors, such as the hierarchy in the departments, and the number of degree levels available to be assigned to various levels. As will be discussed below, the degree levels chosen by Grievant Morasco are not supported by his duties and responsibilities. Third, no doubt the JEC did make errors. However, even if all of Grievant's assertions were taken as true, the key is whether Grievant's duties and responsibilities support that he should have received a higher degree level in any point factor. If a grievant can show the JEC's decision was based upon a mistake of fact which would change the degree level assigned, then he has proven he should have been assigned a different degree level in that point factor.

Grievant also argued that he should be classified as an LA because half of Francesco Tovar's duties had been assigned to Grievant (prior to the reclassification) and Mr. Tovar was an LA. This is of no moment. The question is what degree levels should be assigned to those duties performed by Grievant.

C. Application of the Point Factor Methodology

The following table shows the differences between the degree levels assigned Grievants' Job Title in the point factors they challenged, the degree levels assigned the LA and ACCT Job Titles, and the degree levels Grievants argued they should have received. Where "NC" is used, the particular Grievant did not challenge that point factor.

	KN	EX	CPS	SE FA	SE IA	SE NA	IC BR	IC NC	EC LVL	DSE NC	DSE NUM	DSE WC	(See footnote 7)
LTA II	5	3	2.5	2	1	2	1	1	2	1	2	1	
LA	6	2	3	3	2	3	1	2	2	1	4	1	
ACCT	6	3	3.5	3.5	5	3	1	2	3	2	1	2	
Morasco Argument	6	NC	3	3	2	3	NC	2	NC	NC	3	NC	
Koontz													

Argument NC 4 4 3 5 4 4 3 3 3 NC 2 Respondents' Exhibit 4. Each of the point factors challenged by the Grievants will be addressed separately below.

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.

Grievant Morasco argued he should have received a degree level of 6.0 in this point factor, rather than a 5.0. A degree level of 5.0 is defined in the Plan as:

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

A degree level of 6.0 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 Morasco argued a Bachelor's Degree in Accounting is required to be able to perform his duties, because he accounts for all the copying money, keeps track of faculty copies and bills them for anything over 100 copies annually, bills departments, patrons and for interlibrary loans, uses spreadsheets to keep track of supplies and expenditures by category to make sure he stays within his appropriated budget for photocopy services of approximately $21,000.00, and compiles data to apprise the Dean monthly of the budget, how much has been spent and how many copies have been made.

His PIQ lists a Bachelor's Degree under Knowledge as the required educational level, however, it does not "justify how the level of education or training is essential to the performance of the duties and responsibilities," as is called for by the PIQ. It goes on to state that an understanding of photoduplication, familiarity with accounting and statistical software and academic library operations are needed. The other listed skills are not needed because Grievant testified WVU did not implement the anticipated word processing and desk-top publishing center listed on the PIQ, which would have required Grievant to assist and instruct staff and stay abreast of technological and software

developments.

Lu Ann Moore, Senior Compensation Analyst at WVU, and an alternate for WVU on the JEC, explained this point factor measures the minimum level of education necessary "for an entry level person to perform the job at an acceptable level, bearing in mind that there is a training period necessary before anyone is proficient in any position. In determining the education credentials for a job, the JEC considered what was the typical educational standard for the position." Respondents' Exhibit 2. She stated the JEC evaluated whether a degree was a bona fide occupational qualification. In Mr. Morasco's case she opined that he does not need a degree in accounting, pointing out he does not utilize generally accepted accounting principles or accounting theories, and does not examine or analyze accounts.

Grievant Morasco's testimony indicates that he needs to know how to keep a record similar to a check book record, so that he stays within his budget; he has to be able to compile data into a single report; and, he has to be able to keep track of simple accounts for faculty copying so he can bill them. Grievant failed to prove that these tasks are anything other than very basic accounting, which would be learned either in high school bookkeeping or at most, through an Associate Degree program. Certainly none of these tasks "requires a thorough knowledge of a professional discipline or technical specialty." (Emphasis added.) The fact that Grievant is able to perform these duties without an Accounting degree is also strong evidence that one is not needed. The undersigned can find nothing in the items listed on the PIQ under Knowledge which would require a Bachelor's Degree. Grievant failed in his burden of proof on this point factor.

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 Koontz argued she should have received a degree level of 4.0 in this point factor, rather than a 3.0. A degree level of 3.0 is defined in the Plan as "[o]ver one year and up to two years of experience." A degree level of 4.0 is defined in the Plan as "[o]ver two years and up to three years of experience."

Grievant argued that two to three years of experience was needed in "the total operation of an Academic Library[, and a] solid background in computer office skills for reports and spreadsheets."

Koontz Exhibit 1. Her PIQ states, however, "[a]ccounting/bookkeeping background with a thorough knowledge of computers. Being familiar with the academic departments. Good public relation skills a must." A degree level of 4.0 was marked by Grievant on her PIQ, and was agreed to by her supervisor and second-level supervisor. Her PIQ dealt with Library experience under the Knowledge point factor, whereas Grievant's argument at Level IV was in the reverse, dealing with accounting/bookkeeping experience under Knowledge and Library experience under Experience. Overall, the PIQ shows the same combined Knowledge and Experience levels as Grievant argued at Level IV. Grievant's supervisor (who is also her second-level supervisor) testified, but did not discuss this point factor. Therefore, it is unknown how she arrived at the opinion it would take over two years to acquire the skills listed on the PIQ, and whether this is the minimum level required to perform the job, or just what she would prefer.

Ms. Moore explained in applying this point factor the minimum level of experience necessary in order to perform the job at an entry level is measured. She noted if an educational program requires some work experience, this is included in the degree level assigned under Knowledge, and is not also counted under Experience. Respondents' Exhibit 2.

Part of Grievant's argument focused on the complexity involved and experience needed to set up new software in 1990 and 1991, so that when she entered purchase data, that information would not only be immediately accessible to the public as a new acquisition, but would also change the balance in the particular department's budget, or the Library's budget, and she could access and print budget reports through this system. However, Grievant testified that she "applied for and received an Accounting Internship and Mrs. Patricia Shafer, CPA, Associate Professor of Accounting supervised my implementation of the automated Financial Accounting System." Grievant referred to this Internship as part of her educational background. Koontz Exhibit 1. The undersigned concludes that this was part of her effort to acquire an Associate Degree in Accounting, which she achieved in 1995. Accordingly, the skill needed to set up the computer software was learned in acquiring an Associate Degree, and has already been credited under Knowledge. It cannot also be counted under Experience.

Grievant must know how to research information on the Library collection and in other sources to find certain information on books necessary to complete purchase requisitions, and she must know what information is needed for purchase requisitions. However, she presented no facts in support of

her opinion that it would take more than two years to acquire these skills. The evidence showed that with regard to purchasing, WVSC has a purchasing department, which assists departments with questions regarding purchasing requirements. While some training in purchasing requirements and in research techniques would certainly be called for, the undersigned cannot conclude from this that the JEC was clearly wrong or acted in an arbitrary and capricious manner in determining that this training would take two years or less.

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.

Grievants' Job Title received a degree level of 2.5 in this point factor. Grievant Morasco argued he should have received a degree level of 3.0, and Grievant Koontz argued she should have received a degree level of 4.0. Half-levels are not defined in the Plan. Ms. Moore explained, however, that "[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." Respondents' Exhibit 2.

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 Morasco stated he explains to faculty who have grant money to be used for photocopying the procedure for placing the money in an account at the Library for this purpose, and he has to keep track of when the grant expires so he can bill them. He has to explain the policy for charging copies. If a professor sends a student to do copying for him, he has to have proof that the professor has authorized the copying. He stated he has to select appropriate guides and references on his own, rather than calling the Dean every time a policy must be explained. He stated he must decide which vendor to use, which is usually the least expensive; whereas, other LTA II's do not make this decision. He must contact vendors for prices, and chooses what to purchase.

Grievant Koontz gave as an example of incomplete data, order cards for books which do not have all the information needed. When this occurs, she explained there are a limited number of easily recognizable solutions: she can either call the person ordering the book to get the information, check for the information on the library computer system, call the vendor, or cancel the order. She stated she does not analyze or interpret policies and procedures. She stated that if she does not understand a policy, she calls someone who can explain it to her.

Ms. Moore pointed out that the Director of the Library at WVSC and other professional positions received a degree level of 4.0 because they must deal with conflicting and complex data. She noted that Grievant Koontz may refer questions to her supervisor, and that Grievants are making basic decisions with a few easily recognizable solutions. She stated Grievant Morasco's testimony indicated the decisions he makes are basic decisions about what needs to be done, and he can usually choose from a few easily recognizable solutions.

Grievant Koontz focused her testimony on her more difficult duties. Performance of difficult duties does not automatically equate to a higher degree level in this point factor.

> [T]his point factor does not evaluate the difficulty of the job itself. One of the key questions in applying this point factor is whether the employee must make decisions about how to solve a problem, and if so, whether the number of possible solutions is limited by some policy, regulation, or procedure. In Gregg, et al., v. Bd. of Trustees, W. Va. Network for Educational Telecomputing, Docket No. 94-MBOT-863 (Dec. 18, 1996), in order to identify the source of errors, the grievants had to learn to recognize an error message on the computer screen, determine the computer language used in the error message, and then determine what the message meant. This was not a simple task, and sometimes required the grievants to go through a number of steps. However, a seemingly complex job did not equate to a high degree level in this point factor, because the grievants learned how to perform this task with education and experience, had reference manuals available which provided all the information

> necessary to determine the source of the problem, and could refer problems they had not encountered before to someone else.

Martin, et al., v. Bd. of Trustees, W. Va. Univ., et al., Docket No. 94-MBOT-658 (March 28, 1997). See also, Grimmett v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-497 (Apr. 10, 1997). Further, a review of the duties in Finding of Fact Number 8, and the percentage of time spent on each reveals that Grievant spends a significant amount of time performing routine duties such as entering data, typing, preparing purchase orders, verifying that book orders are correct, and that the books are not damaged or defective. When she is comparing the college's official financial report to the records of expenses she maintains, she is comparing data. See Martin, supra. When she is allocating the book budget to departments, she applies a set mathematical formula. With regard to implementing the computer software package previously discussed, Grievant learned how to perform this duty in the course of acquiring an Associate Degree, she had a manual available, and she could call the vendor for assistance.

Most of Grievant Morasco's job duties involve dealing directly with maintaining the copiers, yet, other than his testimony regarding vendors, he did not discuss the problems involved in this significant aspect of his job. The undersigned has no evidence from which to evaluate how Grievant goes about inspecting, cleaning and performing minor maintenance on equipment, either in applying this point factor or Freedom of Action. When resupplying copy machines with paper, toner and dry ink, and logging usage and repairs, it would appear that this would be structured, and involve very basic decisions. Many of his listed job duties appear to involve following standard training and practices, and require no decision making. He has to decide when to order supplies and from whom, which would appear to be basic decisions with a few recognizable solutions. When Grievant is explaining copy policies, the evidence does not support that he is exercising resourcefulness and originality, rather, he is simply applying established procedures. Grievants have not proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a 2.5, which recognized that some of their duties fall within a 2.0, while others fall within a 3.0.

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.

Grievants' Job Title received a degree level of 2.0 in this point factor. Both Grievants argued they should have received a degree level of 3.0. The definitions in the Plan show that at a degree level of 2.0:

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

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

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

Grievant Morasco stated that the Dean sets the general goal for copy services, and he interprets the goals. He gave as examples of unusual situations, patrons asking to make copies on credit, a student saying he is making copies for a faculty member and he has to obtain verification, making sure vendors are state approved, requests from abroad where the payment will be in credit vouchers or quid pro quo and he has to send them something explaining they have a pay as you go procedure. He stated he could go to his supervisor with questions, but he has no need to do so, except when the purchase of new equipment is being discussed and evaluated, or if an odd type of payment is received he asks his supervisor how she wants him to process it. He stated he meets with the Dean about once a month and she tells him if there have been service complaints, and she annually goes over statistics with him.

Grievant Morasco stated he decided how to keep track of faculty accounts, but that a billing system was in place when he was placed in his position. He stated he has made some improvements to fit his own work habits, and has placed the information on the computer. He stated he does the billing as it comes in because it is easier for him to keep track of that way, but he is not required to bill at any particular time. He stated he prepares work schedules for work-study students.

Grievant Koontz stated she encounters unusual situations, such as, if an employee orders books and does not tell her, when they arrive she has to get a purchase order issued and hold the books until an invoice with a purchase order arrives. She pointed out that she chooses vendors. She stated she could go to her supervisor with questions.

Ms. Moore stated Grievants' jobs are very structured. She believed Grievant Morasco had so many guidelines available that he would never need to seek solutions which were not covered by guidelines, or another way of performing the work.

Grievant Morasco's job is controlled by standard procedures and policies. As noted previously, he provided no detail on how he goes about performing his tasks. However, Grievant has specific tasks which he must perform, and he cannot choose not to perform these tasks. His tasks appear to be routine, recurring, and covered by standard procedures. The examples he gave of unusual situations are not situations he deals with independently; they are covered by a procedure developed by someone else. If he encounters an unusual situation not covered by a procedure, he goes to his supervisor. When setting up work schedules, procedure tells Grievant when the copy centers must be covered and how many hours each student may work, and the students' class schedule determines when the students cannot work. Grievant has little freedom in setting work schedules.

In performing her job duties Grievant Koontz follows standard procedures and policies. For example, much of her job involves purchasing. Purchasing is governed almost entirely by purchasing rules and regulations which must be followed. The proper forms must be filled out, they must be completed properly, and they must be signed by the proper person, or the purchase will not be processed. If Grievant Koontz encounters a new purchasing problem, or otherwise requires assistance with purchasing, she may call the purchasing department for help. When checking book shipments and preparing them for shelving, Grievant must follow particular procedures. The example she gave of an unusual situation was covered by purchasing regulations. When allocating the book budget, she collects the same data from the same sources each time, and allocates the budget to departments using the same formula. She has no authority to vary from any of these procedures.

Grievant Koontz's job is further structured in the way she receives assignments. When employees need to purchase an item, they supply her with the information, and she is supposed to follow procedures to place the order. When shipments arrive, she checks them. When it is time to allocate the budget, she does so. When someone calls to inquire about the balance in his budget, she supplies that information. She may have some discretion in deciding task priority, but she has particular tasks which must be accomplished.

Grievants have not proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level of 2.0.

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 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. Grievants are challenging the degree levels received in both parts. Grievants' Job Title received a degree level of 1.0 in Impact. Grievant Morasco argued he should have received a degree level of 2.0, and Grievant Koontz argued she should have received a degree level of 5.0.

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

> Work is limited to immediate work function and short-term situations.

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

> Work affects either an entire work unit or several major activities within a department.

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

> Work affects the operations of more than one school or division of a specialized school, branch campus, community college or baccalaureate-level Institution with an operating budget of less than $13M; a school or division of a graduate or baccalaureate-level Institution with an operating budget of $13-$18M; several departments within a graduate or baccalaureate-level Institution with an operating budget of $19-$25M; a major department within a graduate-level Institution with an operating budget of more than $50M; or a moderate-size department within a doctoral-level Institution with an operating budget of more than $200M.

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

> Work affects the entire operations of a specialized school, branch campus, community college or baccalaureate-level Institution with an operating budget of [less than] $13M; more than one school of division of a graduate or baccalaureate-level Institution with an operating budget of $13-$18M; a school or division of a graduate or baccalaureate-level Institution with an operating budget of $19-$25M; several departments within a

> graduate-level Institution with an operating budget of more than $50M; or a major department within a doctoral- level Institution with an operating budget of more than $200M.

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

> Work affects the entire operations of a graduate or baccalaureate-institution with an operating budget of $13-$18M; more than one school or division of a graduate or baccalaureate-level institution with an operating budget of $19-$25M; a school or division of a graduate- level institution with an operating budget of more than $50M; or several departments within a doctoral-level institution with an operating budget of more than $200M.

Grievant Morasco argued he has to deal with more than short- term situations, for example, keeping track of faculty copying for the entire year, and pointed out that all departments use the copiers. He also argued that photoduplication is a department.

Ms. Moore stated that a degree level of 1.0 is appropriate when considering Grievants' role with regard to the overall mission of the institutions. She noted that Grievant Koontz is not accountable for the budget, and characterized her duties as of a short-term nature. She stated Grievant Morasco's work is limited to his immediate work function and does not affect other departments. She stated the JEC decided in applying this point factor that photoduplication is a service, not a department.

Grievant Morasco is in charge of photoduplication within the Library. Although the Library Director considers photoduplication to be a department within the Library, that does not mean the JEC had to consider it a department when applying the definition of Scope and Effect. The definition of this point factor requires an inquiry into the impact on the overall mission of the institution. While it is certainly convenient and efficient to have copy machines in the various WVU libraries, the undersigned is not convinced that the JEC's decision that copiers have little impact on the overall mission of WVU is clearly wrong or arbitrary and capricious.

Grievant Koontz did not prove she should have received a degree level of 5.0. Her supervisor is ultimately responsible for Grievant's work, and that of the other employees who perform various services necessary to keep the Library open. Grievant's scope of responsibility is limited to performing her own duties. She is a part of Library services. The primary purpose of her job involves purchasing books for the Library. However, she does not decide what books to purchase, she does not sign the purchase orders, she does not submit purchase orders to vendors, and she does not decide how much money each department gets to spend on books. She prepares the paperwork and checks the books as they come in to be sure the right books are ordered, checks to see that book

orders are not duplicated, and lets departments know how much money they have left to spend. Her job represents one part of the service of purchasing books for the Library.

"The degree level definitions under Impact of Actions are not self-explanatory, and the definition of Scope and Effect lends little guidance in interpreting degree levels 1.0 and 2.0." Browning v. Bd. of Directors, Southern W. Va. Community College, Docket No. 94-MBOD-985 (Aug. 15, 1996). The undersigned cannot conclude that the JEC was clearly wrong or acted in an arbitrary and capricious manner in deciding that Grievant Koontz's role is best characterized as falling within degree level 1.0.

Grievants' Job Title received a degree level of 2.0 in Nature of Actions. Grievant Morasco argued he should have received a degree level of 3.0, and Grievant Koontz argued she should have received a degree level of 4.0.

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

> Work contributes to the accuracy, reliability, and acceptability of processes, services, or functions. Decisions are limited to the application of standardized or accepted practices and errors could result in some costs and inconveniences within the affected area.

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

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

A degree level of 4.0 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 Morasco stated if the copiers in the Library are not working, people will go elsewhere to make copies which impacts revenue, and is an inconvenience. He believed degree level 3.0 was a better fit because of the language about non-routine situations. He gave as examples of non-routine situations, a request from Finland for a copy of a thesis and he had to decide how to deal with getting paid for it, and a machine being down when someone has a lot of copies to make and he has to find a way to get the copies made. He also felt that errors could result in moderate costs and inconveniences.

Grievant Koontz stated she provides up to date record-keeping of expenditures, alleviates

duplication of purchasing, and patrons can check acquisitions on computer because she enters purchase order information into the computer. She felt the library is a vital link in providing student services.

Ms. Moore indicated that a degree level of 4.0 is representative of the Nature of Actions of upper management and directors. She reiterated that photocopying is a service, and Grievant Morasco is contributing services, not providing professional guidance.

"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 to say that the work performed by Grievants is better described as contributing "to the accuracy, reliability, and acceptability of" processes or services, rather than "providing guidance to an operation, program, function or service that affects many employees, students or individuals," or 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). See also, Perkins v. Bd. of Trustees, W. Va. Univ. - Parkersburg, Docket No. 94-MBOT- 733 (Oct. 30, 1996) ("[e]rrors or failure to complete her duties would be identified prior to the point where the entire unit would be adversely affected"). Certainly the decisions made by Grievants "are limited to the application of standardized or accepted practices," and do not generally "involve non-routine situations." As noted earlier, standard procedures and guidelines govern virtually every aspect of Grievant Morasco's job, and when he cannot find the answer in the standard procedures or guidelines, he refers the problem to his supervisor.

No one doubts the importance of the Library in higher education. However, neither Grievant is in charge of the entire Library. Each is a link in the total services provided by the Library. Under Grievant Koontz's theory, every Library employee would receive a degree level of 4.0. Grievants have not proven either should have received a higher degree level in this point factor.

6. Breadth of Responsibility

Grievant Koontz argued she should have received a degree level of 4.0, rather than a 1.0 in Breadth of Responsibility. Grievant is not responsible for the budget, nor is she formally accountable for a functional area. Her duties fall within a degree level of 1.0. See Burke, supra; and Floyd v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-932 (June 14, 1996).

7. Intrasystems Contacts

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

> appraises the responsibility for working with or through other people within the SCUSWV [State College and University Systems of West Virginia] to get results. Consider the purpose and level of contact encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, explaining policies or discussing controversial issues. This factor considers only those contacts outside the job's immediate work area.

This point factor also consists of two parts, Nature of Contact and Level of Contact. Grievant Koontz challenged the degree levels received in both parts, and Grievant Morasco challenged the degree level received in Nature only. Grievant Koontz argued she should have received a degree level of 3.0 in Level, rather than a 2.0.

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

> Staff and faculty outside the immediate work unit.

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

> Supervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office.

Ms. Moore explained that in order to receive credit for contact with a department chairperson, the conversation must be in connection with chairperson activities, as opposed to the type of conversation one would have with any faculty member. She stated:

> This factor does not measure incidental, infrequent or once in a while contact but the highest level of contact that the position is normally required to have in order to perform the essential functions of the job. This is the position's "normal" level of contact.

Respondents' Exhibit 2.

Grievant proved she has frequent contact with chairpersons regarding the book budget for their departments, which is a matter related to their duties as chairs. See Blake, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-475 (Oct. 16, 1996). The contact is essential because a

significant portion of Grievant's duties involve maintaining a record of expenses by department. Even when she is performing her purchasing duties, this is still related to maintaining accurate budget balances. As she enters purchase data, data is also being entered to alter the book balances by department. Accordingly, this is a key part of her job which routinely occurs. See Black v. Bd. of Directors, W. Va. State College, Docket No. 94-MBOD-967 (Apr. 17, 1996). Compare Braniff v. Bd. of Trustees, W. Va. Univ.- Parkersburg, Docket No. 94-MBOT-865 (Sept. 30, 1996); and Barber, et al., v. Bd. of Trustees, W. Va. Univ., et al., Docket No. 94-MBOT-872 (Oct. 31, 1996). Grievant Koontz has proven that, rating her position individually, she should have received a degree level of 3.0 in Level.

Grievants' Job Title received a degree level of 1.0 in Nature. Grievant Morasco argued he should have received a degree level of 2.0, and Grievant Koontz argued she should have received a degree level of 3.0. A degree level of 1.0 in Nature of Contact is defined in the Plan as:

> Routine information exchange and/or simple service activity; requires common courtesy (e.g., furnishing or obtaining factual information, ordering supplies, describing simple procedures).

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.)

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

> 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 Morasco argued he must exercise moderate tact because when faculty need something copied, but are not following procedures, they will complain that he is hindering their research, and that nearly everyday he has to deal with irate faculty complaining about things such as machines not working properly. He stated he receives complaints about bad copies. He also stated he sometimes has to explain to staff members why he has sent them an invoice, which can be controversial if it is to be paid from grant money and the grant has expired. On his PIQ Grievant listed his contacts as faculty and staff regarding photoduplication needs, and business office regarding income and expenditures. (See footnote 8)

Grievant Koontz argued her contacts are within a degree level of 3.0, because faculty and department chairs call her demanding that a book be purchased immediately, she has explain to them that the book cannot be purchased immediately because the vendor is not registered with the state yet, and listen to them continue to demand the book because they cannot understand why they cannot have what they want. She also pointed to the "hassle" involved in getting paperwork moved from one desk to another when trying to get a maintenance contract in place. She stated she has to keep after people to get purchase orders signed, it is unpleasant when a purchase order is lost, it upsets her when an invoice is paid twice, and people are uncooperative in filling orders. She stated that when one of the departments requested that a number of books on homosexuality be ordered, the Fiscal Affairs Office called her demanding to know why these books were being ordered, and there was a strained relationship between the Library and that office for a time. In summary, Grievant argued that anytime she is placed in a situation where things are not proceeding as smoothly as she would like, or which is unpleasant, the Nature of the Contact is at a degree level of 3.0.

Ms. Moore described substantially sensitive conversations as those involving financial affairs, financial aid, and counseling.

None of Grievant Koontz's contacts are within the examples given in degree level 3.0, and she has not proven her contacts are frequently controversial. When faculty and department chairs are complaining, her role is to explain to them that the purchasing regulations require the vendor to be registered. Grievant Morasco's role is also to explain that standard copy procedures require them to do certain things, and that he cannot vary the procedure. When they are complaining about copiers, his role is to take corrective action. If faculty are not satisfied with Grievants' answer, neither Grievant can help them. Grievants are not trying to convince them to take particular action. Their role is to provide faculty with information on purchasing procedures or copying procedures in a courteous manner.

Grievant Koontz is not explaining purchasing procedures so they will understand how to fill out a purchase order. Her conversation is better characterized as describing a simple procedure: she cannot obtain the book because the vendor is not registered. Likewise, when the Fiscal Affairs Office questions her about particular book purchases, she is not the person who has chosen the books and it is not her role to convince anyone that a particular book title is needed. Her role is to check the book balance in the budget, check to make sure the book is not already on hand, complete the

purchase orders following a standard procedure and forward them. It may be difficult for Grievants to control themselves while someone is yelling at them, but this does not change the purpose of the contact on Grievants' part, which is to provide information and describe procedures. See Lovely, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-762 (November 27, 1996). As Ms. Moore pointed out, dealing with irate faculty is not unusual for a higher education employee.

When people have not signed documents, Grievant Koontz did not indicate her role is to convince them there is some reason they should sign the documents. Just because someone is not moving quickly enough, and she believes she has to keep calling to check on the status of documents, which is irritating to her, does not mean she must exercise more than common courtesy. Further, "[u]nlike the Level of Contact element, the Nature of Contact element clearly involves a subjective determination regarding the amount of tact and sensitivity required to perform the essential duties of a particular position." Miller, supra. Grievants' contacts appear to involve routine information exchange. They have not proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level of 1.0.

8. 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.

This point factor also consists of Nature of Contact and Level of Contact. Grievant Koontz is challenging the degree level received in Nature only. She argued she should have received a degree level of 3.0, rather than a 1.0. The definitions are nearly identical to those of the degree levels in Intrasystems Contacts, Nature, and need not be reproduced here.

Grievant Koontz supported her argument that her contacts fall within a 3.0 with testimony that it is a "hassle" to locate out of print books, it is difficult to tell salespeople you are not going to use them, and she tries to convince people to perform maintenance work on equipment without a contract being in place when the contract has not yet been signed.

The purpose of Grievant's contacts with vendors is to provide and obtain information, whether she is obtaining pricing information, trying to locate out of print books, or telling a salesperson no. It is part of a salesperson's job to hear either yes or no on every sales call. It is no doubt part of the sales

technique to become irate or act hurt to play on Grievant's emotions so she will reconsider, or think twice next time. These tactics do not change the nature of the contact. She provided no evidence that she has regular, recurring and essential contact for the purpose of convincing persons to perform maintenance work on equipment without a contract. Further, the undersigned is not convinced that this is one of Grievant's required job duties. Obviously, the contracts are supposed to be in place before the work is done. Grievant has not proven she should have received a higher degree level in this point factor.

9. 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 Direct Subordinates and Level of Supervision. Grievant Morasco challenged the degree level received in Number only, arguing he should have received a degree level of 3.0, rather than a 2.0. A degree level of 2.0 is defined in the Plan as one direct subordinate, and a 3.0 is defined as two to three direct subordinates.

Grievant Morasco stated he works with other staff throughout the Library, assuring copier supplies are provided as needed, and answers questions about policies. He also pointed to his supervision of student workers.

Ms. Moore stated student workers are considered essential to Library operations, and explained that 37 1/2 hours per week is considered to be full-time. She pointed out that student workers do not work year round.

This point factor considers only employees formally assigned to be supervised. Hardee, et al., v. Bd. of Directors, Concord College, Docket No. 94-MBOD-373 (Jan. 10, 1997). When Grievant is providing guidance to other employees, those employees have not been formally assigned to him to supervise their work, and they are not counted under Number. Students are counted only if they are essential. Assuming the students Grievant supervises are essential, none of them works full-time, and they do not work year round. The testimony he provided on the number of hours they work is insufficient to prove that their combined hours equal at least two full-time positions at 37 1/2 hours per week. Grievant has not proven he should have received a higher degree level in this point factor.

10. 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 Koontz argued she should have received a degree level of 2.0 in this point factor, 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.

Grievant Koontz noted on her PIQ "[m]oderate inconvenience of heating and cooling[.] Some discomfort due to frequent use of a computer." She stated on cross-examination that she uses the computer four hours a day on average, noting that some days she uses it more than this, and some days less.

Ms. Moore stated generally this point factor looks at the job environment, and that Grievant works in a standard working environment. She did not address Grievant's use of a video display terminal.

Minor heating and cooling problems are within a degree level of 1.0. The Plan does not define or explain what qualifies as near-continuous use of a video display terminal. The American Heritage Dictionary, Second College Edition, defines continuous as, "1. Extending or prolonged without interruption or cessation; unceasing." Grievant has proven she works at the computer for a significant portion of her day, and that it is such an extended period of time that she experiences some discomfort. Grievant has proven she falls within the degree level 2.0 definition under near- continuous use of a video display terminal, and Respondent failed to offer evidence to rebut Grievant's testimony.

D. Summary

Grievant Koontz proved that if her position were rated individually, she should have received a

degree level of 3.0 in Intrasystems Contacts, Level of Contact, and a degree level of 2.0 in Working Conditions. These changes add 20 points to the point total for her Job Title, making the total 1713, which is still within a Pay Grade 12. Because the point factor analysis does not result in a change in Pay Grade, Grievants have not proven either was misclassified, and a comparison of Grievants' 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 is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

3. The Job Evaluation Committee's interpretation and explanation of 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 Grievants are Library Technical Assistant II's, Pay Grade 12, 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 Library Technical Assistant II is neither clearly wrong nor arbitrary and capricious.

Accordingly, the grievances of Joseph Morasco and Shonnette Koontz are **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County, or the circuit court of the county in which the grievance arose, and such appeal must be filed within thirty (30) days of

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

BRENDA L. GOULD

Administrative Law Judge

Dated: May 13, 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

In her post-hearing written argument Grievant Koontz's representative indicated Grievant was seeking classification as anAccounting Assistant II, Pay Grade 14, as alternative relief, and did not mention Accountant. There is no indication whether Grievant's representative meant by this that she was attempting to change the relief requested, and she was dropping her argument that she should be classified as an Accountant, or whether this was simply an error. A grievant may not change the requested relief in this manner post-hearing, so it will be treated as an error.

Footnote: 3

A Level IV hearing was held on October 22 and 23, 1996. This matter became mature for decision on December 17, 1996, upon receipt of the last of the parties' post-hearing written arguments. Grievant Morasco attempted to submit evidence in the form of exhibits with his post-hearing written argument. The undersigned was presented with no reason to reopen the record to accept these exhibits, and can find no reason to do so. Accordingly, those exhibits will not be considered evidence in this matter.

Footnote: 4 The thirteen point factors are set forth in 128 C.S.R. 62 § 2.27, and 131 C.S.R. 62 § 2.27. Burke, supra.

Footnote: 5 A grievant may challenge any combination of point factor degree levels, so long as 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: 6 This discussion is not intended to address challenges to the way the Mercer system as a whole is set up, that is, challenges to the methodology.

Footnote: 7 These headings are shorthand for the following point factors: KN is Knowledge; EX is Experience; CPS is Complexity and Problem Solving; FA is Freedom of Action; SE/IA is Scope and Effect/Impact of Actions; SE/NA is Scope and Effect/Nature of Actions; BR is Breadth of Responsibility; IC/NC is Intrasystems Contacts/Nature of Contact; IC/LVL is Intrasystems Contacts/Level of Contact; EC/NC is External Contacts/Nature of Contact; DSE/NUM is Direct Supervision Exercised/Number of Subordinates; and WC is Working Conditions.

Grievant Morasco identified which point factors he was challenging at the hearing, and stated he was not challenging the degree level received in Physical Coordination or Physical Demands. His post-hearing written submission raises a challenge to these two point factors. Consistent with this Grievance Board's practice, these arguments will not be considered as Respondent was not placed on notice that these two point factors were at issue, and to allow these arguments at this late date would be unfair. See Beckley v. Lincoln County Bd. of Educ., Docket No. 95-22-107 (Feb. 29, 1996).

Footnote: 8 Grievant also listed student contact under this point factor, and listed staff contacts regarding word-processing/desktop publishing. Students are by definition considered under External Contacts. As noted earlier, Grievant indicated the word- processing/desktop publishing center never materialized, nor did his projected duties in this area. As an aside, because Grievant did not perform these duties prior to January 1, 1994, and Grievant knew this when he completed his PIQ, it was improper to include them on a PIQ for the JEC's consideration in the appeal process.