JOHN BURKE, et al.,

v. **DOCKET NO. 94-MBOD-349**

BOARD OF DIRECTORS,

FAIRMONT STATE COLLEGE.

D E C I S I O N

I. Background. (See footnote 1)

In 1993 the West Virginia Legislature amended W. Va. Code §18B-9-4 to provide, among other things, "an equitable system of job classifications" for classified employees (See footnote 2) of the University System of West Virginia Board of Trustees ("BOT") and the Board of Directors of The State College System of West Virginia ("BOD") (collectively "the governing boards"). As amended, W. Va. Code §18B-9-4 required the governing boards to establish by rule and to implement a system establishing uniform classifications in all institutions of higher education within West Virginia. (See footnote 3) Thisreclassification is commonly referred to as the "Mercer reclassification." (See footnote 4)

On March 28, 1994, the Legislative Rule promulgated by the BOD to implement W. Va. Code §18B-9-4 became final (131 C.S.R. 62); and on May 5, 1994, the Legislative Rule promulgated by the BOT to implement this Code Section became final (128 C.S.R. 62). The Legislative Rules promulgated by the governing boards set forth identical procedures for a classified employee to seek review of his initial classification under the new system. (See footnote 5)

The review procedure in these cases, as set forth in the Legislative Rules at §18, began with the employee filing a request for review form with the president of the institution. The president's recommendation on the employee's request for review wasmade to the Job Evaluation Committee ("JEC"). If the JEC failed to act on the employee's request for review by June 30, 1994, or if the employee disagreed with the JEC decision and wished to pursue a challenge to his initial classification, he then proceeded through the grievance procedure of W. Va. Code §§18-29-1, et seq., beginning at Level III. (See footnote 6)

The grievances of those employees who did not waive the statutory period for hearing before the respective governing board, moved immediately from Level III to the Grievance Board at Level IV. At

meetings held during the first week of October 1994, both governing boards passed resolutions waiving the right to decide any Mercer grievances at Level III, placing all remaining grievances arising from W. Va. Code §18B-9-4 before the Grievance Board, without any lower level hearings. Five hundred forty-five (545) Mercer grievances advanced to Level IV.

II. Procedure.

This matter involves three Grievants: John Burke, Nancy Sloan, and David Matthews. Grievants Sloan and Matthews eachfilled out a Position Information Questionnaire ("PIQ") (See footnote 7) in 1991, and made revisions to their PIQs February 4, 1994, and February 8, 1994, respectively. R Ex 4, 6. (See footnote 8) Grievant Burke was not employed at Fairmont State College ("FSC") in 1991, so he did not fill out a PIQ. However, on February 4, 1994, he did make revisions to the PIQ submitted by his predecessor. R Ex 5.

Each of these Grievants was initially classified in the Mercer reclassification as a Staff Librarian, pay grade 17 (See footnote 9). On February 2, 1994, each sought review by the JEC of his or her initial classification. Each requested that he or she be removed from classified status, and be granted faculty status. On June 30, 1994, the JEC determined that each of these Grievants was properly classified. Each then grieved his or her initial classification, beginning at Level III, on July 21, 1994, and sought as relief to be classified as a Senior Staff Librarian/Instructor, pay grade 19. Because these Grievants did not waive the statutory time period fora Level III hearing, these grievances were waived by the Board of Directors to Level IV on July 25, 1995. (See footnote 10)

On November 3, 1994, the grievances of Grievants Burke and Sloan were consolidated by this Board with Monica Brooks, et al., v. Board of Directors, West Virginia State College, et al., Docket No. 94-MBOD-334, for hearing and decision. Grievants Burke and Sloan requested that their grievances be separated from Brooks because they were not seeking faculty status at Level IV, as were the other grievants consolidated into that matter. On November 22, 1994, these two grievances were separated from Brooks, and were consolidated into John Burke, et al., v. Board of Directors, Fairmont State College, Docket No. 94-MBOD-349, for hearing and decision.

Prior to this matter being set for hearing, Respondents in all the Mercer grievances proposed a Two-Phase Litigation Plan. During Phase I, all Mercer grievances would be consolidated, and, Respondents would go forward to provide information on the Mercer reclassification. At the end of Phase I, a ruling would be made on any challenges to the Mercer classification system itself. In

Phase II, individual classification issues would be addressed. After a public hearing, on March 10, 1995, Administrative Law Judge Lewis G. Brewer issued an Order declining to adopt Respondents'Two-Phase Litigation Plan, and this Board began to set Mercer grievances for hearing.

The Level IV hearing in this matter, held May 16, 1995, was the first Mercer grievance hearing on the merits. This matter became mature for decision on June 12, 1995, the last day for Grievants to submit responses to Respondent Board of Directors, Fairmont State College's brief in support of its Motion to Dismiss.

III. Respondent's Motions.

Before addressing the merits of this matter, two motions presented by Respondent must be ruled upon. Respondent moved to dismiss this matter, and at the close of Grievants' presentation, asked for a directed verdict. These motions are **DENIED** for the reasons set forth below.

A. Respondent's Motion to Dismiss.

Respondent asked that this matter be dismissed, and advanced as one ground for dismissal that Grievants must seek the same classification (relief) through the grievance procedure as they sought in their request to the JEC for review. Respondent is asserting that a Grievance Board Administrative Law Judge (hearing examiner) has no authority to allow Grievants to change the relief requested, without the consent of all the parties; even though, the clear language of W. Va. Code §18-29-3(k), as correctly quoted by Respondent, allows a change in relief "at level four within the discretion of the hearing examiner." Respondent has not argued that it would be an abuse of discretion to allow a change in relief in this case at Level IV.

Respondent cited Parsons v. W. Va. Bureau of Employ. Programs, 428 S.E.2d 528 (W. Va. 1993), in support of its position, stating the Supreme Court of Appeals of West Virginia "did not even consider the second part of this section [W. Va. Code §18-29-3(k)] which speaks to the discretion of the hearing examiner..." Respondent is grasping at straws. Parsons involved a change in relief allowed by a Level III grievance evaluator without the consent of the parties, which is not allowed by the statute. Our Supreme Court of Appeals in Parsons did not declare invalid the clear language of the statute which gives the Grievance Board hearing examiner the discretion to allow a change in relief. The obvious reason the Court did not address the second part of the Code Section is that it was not applicable to the situation before the Court.

Respondent has also argued that the Mercer grievances are appeals of the JEC decisions, and

as such, these grievances are subject to a limited appellate-type review process which binds Grievants to the same strategy they used when they appealed to the JEC.

W. Va. Code §18B-9-4 provides that a classified employee may appeal his or her initial assignment to a classification. The regulations enacted by the governing boards (128 C.S.R. 62 and 131 C.S.R. 62) likewise characterize the JEC decision as a review of the initial classification, and characterize these grievances, not as appeals of the JEC decision, but as a review of the employee's initial classification assigned by the governing boards:

> §18.1 An employee may seek a review of his/her initial classification under the new program implemented pursuant to this rule and may appeal such initial classification through the procedures of W.Va. Code §18-29 after completing such review. ... (Emphasis added.)

> §18.7 If an employee is dissatisfied with the determination of the job evaluation committee the employee may grieve his/her initial classification under this program, including the job or position description and assignment to pay grade or salary schedule, within thirty (30) work days from receipt of the notification set out in Section 18.5 of this rule, by filing a grievance pursuant to the procedures of W.Va. Code §18-29. ... (Emphasis added.)

The statute and regulations allow Grievants to grieve the initial classification, which is exactly what these Grievants have done. The statute places these grievances under W. Va. Code §§18-29-1, et seq., which specifically allow a change in the relief requested in the discretion of the hearing examiner. Nothing in the statute or the regulations enacted to implement the Mercer reclassification limits this grievance procedure to an appellate review.

The JEC was charged with properly classifying Grievants. It does not matter what classification the Grievants asked for before the JEC. The issue before the JEC was whether Grievants were properly classified, and that is the issue before this Board. The testimony presented by one JEC member in this matter demonstrates that the JEC understood its charge:

> Q [By Ms. Brandt]: Okay, so, then did you, since they were asking for faculty status at the time of review, did you then review each one in detail for other issues, as well, or did you just look into the issue of faculty status?

> A [By Mr. Weston]: We still looked at the PIQ, we would have read that PIQ, we would have looked at it, with the(inaudible) that if we found anything wrong in the evaluation line, we would have discussed it at that point and time. However, the

> decision which was requested and the relief sought was to have faculty status, and we denied it based on that.

Respondent has also argued that Grievants may not request a classification which does not exist, that is, they may not propose a new classification. Respondent's basis for this argument is twofold. First, Respondent argues that a Grievance Board hearing examiner has no jurisdiction to modify the system as designed. Second, Respondent argues that it cannot properly prepare for hearing if Grievants are allowed to propose new classifications.

In regard to this second argument, the undersigned has never understood from the first time this argument was advanced by Respondent, how this situation prevents Respondent from preparing for hearing, particularly when in the instant matter, the parties were required to exchange exhibits well before the hearing. One of those exhibits was the new job description proposed by Grievants. Respondent appeared at the hearing to be able to cross-examine Grievants without a problem, and was able to present its own case. Certainly, if Respondent were taken by surprise at the hearing, and unable to present its case or cross-examine witnesses, it would be proper to request a recess to allow Respondent time to digest the material presented. It would not, however, be proper to disallow a remedy for such reasons. Respondent did not request a recess of the hearing.

Further, the issue presented in these grievances is whether the governing boards properly classified Grievants. In this case,Respondent presented evidence in support of its defense that Grievants were properly classified. That evidence should not change substantially, regardless of what classification Grievants seek.

As to the first argument, Respondent recognizes in its Brief that there are limits to the power of the governing boards and the JEC, when Respondent states:

> The subjective decisional process is best left to the professional judgment of those presumed to possess a special competency in making the evaluation **unless shown to be arbitrary and capricious or clearly wrong.** (Emphasis added.)

Indeed, as will be discussed below, in reviewing a misclassification claim, this Board must give deference to the decision-maker. However, if the classification is shown to be clearly wrong, or the action taken by the governing boards was arbitrary and capricious, or an abuse of discretion, this Board may correct such erroneous action.

Nothing in the statute or regulations limits the arguments Grievants may make in their challenge of their initial classification. If Grievants believe their initial classification is wrong because the JEC and governing boards abused their discretion in failing to create an additional position, they may advance that argument. This Board has previously held that in the state classification system:

> It is within the jurisdiction of the Grievance Board to determine whether a classification should have been created that would more closely fit the duties and responsibilities of a grievant. Pridemore v. West Va. Bureau of Employ. Programs, Docket No. 92-BEP-435 (Aug. 17, 1993). Compare AFSCME v. Civil Service Com'n ofW.Va., 380 S.E.2d 43 (W.Va. 1989). The standard under which such a case should be decided is whether the Division of Personnel abused its broad discretion in not creating an additional classification.

Nida v. W. Va. Dept. of Health and Human Res./Div. of Health and W. Va. Dept. of Admin./Div. of Personnel, Docket No. 93-HHR-240 (Aug. 20, 1993). This analysis was recently reaffirmed in Johnston v. W. Va. Dept. of Health and Human Res./Div. of Personnel, Docket No. 94-HHR-206 (June 15, 1995).

Respondent presented evidence that the JEC worked very hard to assure that the statutory mandate was carried out. That evidence, however, does not prove that the system created is perfect. Grievants may challenge their initial classification by asserting that the JEC and governing boards should have developed another classification. Grievants taking this path, however, have a nearly insurmountable burden to prove that the JEC and governing boards abused their broad discretion in failing to create an additional classification.

B. Respondent's Motion for a Directed Verdict.

At the close of Grievants' presentation, Respondent moved for a directed verdict. As grounds, Respondent stated that Grievants had not proven they were misclassified. The undersigned declined to issue a ruling at the hearing, and Respondent presented its case, renewing its motion at the end of the hearing.

Grievants represented themselves in this matter, as do many grievants who appear before the Grievance Board's administrative law judges. Further, this was the first Mercer grievance to be heard. It was in this hearing that Respondent first began topresent evidence on how the Mercer classification system works; thus, it is not appropriate in this proceeding to consider such a motion. Furthermore, if it were appropriate to consider such a motion, viewing the evidence in the light most favorable to Grievants, Grievants presented sufficient evidence that Respondent would not be entitled to a

directed verdict.

IV. How the Mercer Classification System Works. (See footnote 11)

Respondent presented two witnesses to explain why Grievants were properly classified. The first was Charles L. Weston, Director of Human Resources III, West Virginia School of Osteopathic Medicine ("WVSOM"). Mr. Weston has been Human Resources Director at WVSOM for nine years. He was an Administrator two years at the WVSOM clinic, and was in hospital administration 23 years. He has been a member of the JEC since its inception, approximately 5 years ago. He was vice-chair of the JEC, and was the primary reader of every PIQ of an employee who appealed; that is, he read the PIQs to the total committee. The JEC reviewed over 1000 appeals over a period of approximately one and one-half years.

The other witness was Patricia Ann Hank, Director of Human Resources III, Southern West Virginia Community and Technical College ("SWVCC"). Ms. Hank has been employed at SWVCC since 1982. She was an original member of the Steering Committee of the JEC, formed in January 1990, and has been a member of the JEC since it was formed sometime shortly thereafter. She worked closely on the Library Job Family (See footnote 12) PIQs. She was on the committee which drafted the initial Job Specifications for the Library Job Family from the lowest levels up through the directors.

The JEC had 13 members. (See footnote 13) The JEC held meetings to make decisions on the reclassification. All decisions were made by a majority rule vote. When the JEC voted on the proper classification for an individual or group of individuals, each JEC member in attendance at the time of the vote signed the Job Evaluation Committee Review form, an example of which is shown as the second page of R Ex 5. At the very top of that form is a "data line" which lists each of the thirteen factors used by the JEC in determining the appropriate pay grade. (See footnote 14) The data line on this form would only be filled out if there was any change made by theJEC in the data line (from that found in the PIQ Summary by Job Family, R Ex 8).

Ms. Hank explained that William M. Mercer, Inc. ("Mercer"), is a national human resources consulting firm, which specializes in developing classification programs for higher education institutions and state governments. The office which worked with the JEC was based in Louisville, Kentucky. A consultant from Mercer worked with the JEC in developing this classification plan. Mercer took the lead, developing much of the language, and working with the JEC in weighing and

assigning points and regression analysis to make sure the plan was mathematically valid and complete. The JEC would tell the consultant what it wanted to do, and the consultant would take that directive and develop it into a form which was valid and correct.

Ms. Hank stated that a great deal of expertise is required to apply the Mercer plan. First, a basic understanding of classification and the issues involved with classifying jobs is a must. Second, an understanding of higher education and its organizational structure, the different institutions and the different degrees or levels of jobs, is necessary. Ms. Hank stated that it is the job of a classification specialist to design a system such as the Mercer classification system. Creation of a job title and data line should be reserved for someone competent in classification. That was the responsibility of the JEC.

Ms. Hank and Mr. Weston described how the Generic Job Description (See footnote 15) for Staff Librarians was developed by the JEC. The PIQ of each Staff Librarian in the state higher education system, some 28 in all, was read. The JEC looked for similarities and differences in the PIQs, and based upon that analysis, there were more similarities than dissimilarities in the major functions assigned to that job (See footnote 16).

Each duty listed on the first PIQ reviewed, and on each PIQ thereafter, was written down. If a duty was listed on a PIQ which another Staff Librarian PIQ already reviewed by the JEC had listed, the JEC noted the repetition and kept track of how many Staff Librarians listed that duty. The duties shown on the Generic Job Description are those duties most frequently appearing on the PIQs, and are considered the common duties of that job.

All Staff Librarians were doing basically the same work, although they may have different specialties. The most prominent duty statement, the one which occurred most often or consumed the highest percentage of time, or combination thereof, is listed first. Where the duty is listed as one the Staff Librarian "may" perform, some employees listed this duty on their PIQs and some did not, but the duty was repeated enough that the JEC felt it needed to be listed on the Generic Job Description. While teaching, for example, is listed as a duty a Staff Librarian "may perform", teaching is one of the responsibilities of a Staff Librarian, even though some Staff Librarians may not be called upon to carry out this duty.

The definition of "Job Title" in §2.4 of the regulations adopted by the governing boards supports the approach taken by the JEC:

> Job Title. The label that uniquely identifies and generally describes a job. The same descriptive job title shall be given to a group of jobs, regardless of institutional location, which are substantially the same in duties and responsibilities, and which require substantially the same knowledge, skills and abilities performed under similar working conditions.

In Job Families where a particular Job Title has levels such as I, II and III, or a Lead or Senior level, there would have been some significant difference in minimum education, or number of people supervised, or minimum years of experience, for example. Ms. Hank explained that this classification system was not intended to have a classic definition of a "career ladder." There are no Job Titles within the system that were specifically developed toallow someone doing that same job, just because they had done it a long time or they had received more education, to move up into a different title or a different classification. The Job Titles were created because of the duties and responsibilities assigned at those levels. It was not a goal of the reclassification to reduce the number of Job Titles, but that was one of the results.

The regulations adopted by the governing boards set forth thirteen factors (See footnote 17) which are to be weighed to assign pay grades. These thirteen factors and their application are described in the Job Evaluation Plan adopted by the JEC. (See footnote 18) These factors were developed based on input from constituent groups. At the beginning of the process the JEC met with different groups of employees, advisory council members, computer center people, and many other groups, who told the JEC what they thought was important. The overwhelming input received was that higher education had historically not considered interpersonal contacts - internal and external - in the pay scheme.

Ms. Hank asserted that there is a fallacy in someone attempting to classify himself after the system is in place,because it's easy to pick where you want to be and back into that place by manipulating the numbers. She opined that the system is more than just saying, "if I change this and this, that will make me the pay grade that I think's appropriate." You have to look at the jobs above and below, and the levels that are assigned to them. She explained that the JEC did not take its job lightly. The JEC members spent a great amount of time reading and rereading, rewording and developing the Generic Job Description.

V. Standard of Review.

The Grievance Board's administrative law judges have been hearing and deciding state and higher education misclassification grievances for a long time, and have developed legal standards for

evaluating whether a grievant is properly classified. This section will first briefly review the legal standards in place, and then discuss their applicability to the Mercer classification system.

Under the classification system previously in place in higher education, this Board has ruled that "[i]t is well settled that a college employee may challenge the classification of his position through the procedure contained in W. Va. Code §§18-29-1, et seq., and may prevail by demonstrating that his position more closely matches one BOD classification than another." Foss v. Concord College, Docket No. 91-BOD-351 (Feb. 19, 1993). See Akers v. W. Va. Tax Dept., Docket No. 89-T-173 (Sept. 22, 1989). The employee asserting misclassification was required "to identify and produce the description for the job he feels he [was] doing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal oranalysis." Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

The focus of the inquiry in a misclassification grievance was upon which job classification constituted the "best fit" for the grievant, and "[a] careful examination of the wording of the descriptions [was] required to discern the originator's intent." Foss, supra. "A certain amount of deference [was] shown the determinations of the CRC [Classification Review Committee] and [the college's Personnel Officer]." Id.

The reclassification of a job series and its implementation by the appointing authority had to be conducted in a manner which was not arbitrary and capricious. Kyle v. W. Va. State Board of Rehabilitation, Div. of Rehabilitation Services and W. Va. Civil Serv. Comm'n., Docket No. VR-88-006 (Mar. 28, 1989). "The implementation of the reclassification plan for [a] job series within the Division's [of Rehabilitation Services] District Five was not reasonably based on the actual duties of the employees involved and was therefore arbitrary and capricious." Id.

In state classification cases, Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. W. Va. Dept. of Health v. Blankenship, 189 W.Va. 342, 431 S.E.2d 681, 687 (1993). The holding of the Supreme Court of Appeals of West Virginia in Blankenship presents a state employee contesting his classification with a substantial obstacle to overcome in attempting to establish that he is misclassified.

Both the state classification system and the prior higher education classification system are "position classification systems." Such systems:

> focus on the position, not the employee. They approach the whole job as an integral unit rather than breaking it down for purposes of comparison. They have historically involved nonquantitative rather than quantitative methodologies.

Hays, Steven W., and T. Zane Reeves, Personnel Management in the Public Sector, 1984, at p. 104.

The Mercer classification system, however, is not a position classification system. The Mercer classification system is largely a "quantitative" system, in which the components of each job are evaluated using the point factor methodology developed by the JEC, and adopted by the governing boards. As such, the legal standards applied will vary somewhat from those used in evaluating state misclassification grievances and grievances which arose under the classification system previously in place in higher education.

In Mercer grievances, the burden of proof remains on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 §4.17. As in other classification systems, a Mercer grievant may prevail by demonstrating his reclassification was made in an arbitrary and capricious manner. See Kyle, supra. Unlike challenges made under the previous higher education classification system, however, 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 in one category than another, without also challenging thepoint factors assigned. 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 factors are not assigned to the individual, but to the job.

Finally, in this case, whether Grievants are properly classified is almost entirely a factual determination. As such, the JEC's interpretation and explanation of the point factors and Generic Job Description at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Foundation, Appeal No. 22642 (June 15, 1995). The higher education employee challenging his classification will have to overcome a substantial obstacle in attempting to establish that he is misclassified. (See footnote 19)

VI. Discussion of the Proper Classification of Grievants.

The Generic Job Description for the "Staff Librarian" was introduced into evidence as R Ex 3, and is attached to this Decision as Appendix A, and by this reference made a part of this Decision.

Grievants proposed that a new classification be added to the Library Job Family: Senior Staff Librarian/Instructor, Pay Grade 19. The Job Description for this proposed position was introduced into evidence as part of G Ex J, and is attached to thisDecision as Appendix B, and by this reference made a part of this Decision.

Grievants supported their position that another Job Title should be created with two arguments. First, they argued that the Staff Librarian Generic Job Description does not adequately describe their duties. Second, Grievants argued that the Library Job Family offers no career ladder for professional librarians, while it does offer a career ladder for non-professional librarians and directors. Grievants believe the addition of the Senior Staff Librarian/Instructor position would allow career librarians opportunities to improve skills and be recognized for that.

Grievants also challenged four of the point factors. Grievants' arguments will be addressed separately below.

A. The Generic Job Description.

The Generic Job Descriptions for the Positions within the Library Job Family have four sections as follows: General Function, Characteristic Duties and Responsibilities, Job Specifications, and Knowledge/Skills/Abilities. It is the Characteristic Duties and Responsibilities Section which was the focus of the challenge by Grievants.

Grievant Sloan is a Staff Librarian, and has been employed at FSC five years. She is responsible for cataloging of new acquisitions, the data base, student work study and internships, and service to the public. Every sixth weekend she works as the sole librarian. She is not responsible for reference services.

All three Grievants work the circulation desk. All three Grievants are required to teach library science classes at FSC, to ten to fifteen students per semester. (See footnote 20) Each of the Grievants recommends items for purchase, assists the director in budget preparation, prepares reports for the director to include in the budget, and participates in strategic planning efforts. They must stay aware of new developments in information technology. Grievants do not believe the statement in the "Knowledge/Skills/Abilities" section of the Generic Job Description which states, "[k]nowledge of computers hardware and software" shows the importance of information technology in their jobs.

Grievants have more duties and responsibilities than the two newer Staff Librarians at FSC. As an

example, the two new Staff Librarians are not required to teach. In addition, the two professional librarians at FSC who have faculty status now have faculty responsibilities, and more responsibility for the library accordingly falls on Grievants.

Grievant Burke acknowledged that Grievants do everything described in the General Function section of the Staff Librarian Generic Job Description. Grievant Burke also agreed that duties performed by Grievants are reflected in the Characteristic Duties and Responsibilities Section of the Staff Librarian Generic JobDescription, although Grievants do not perform all the duties listed.

Grievants' proposed job description provides more detail as to what these particular Grievants do than does the Generic Job Description for Staff Librarian. This fact, however, does not render the method used by the JEC to develop the Generic Job Descriptions invalid. As noted above, the duties shown on the Generic Job Description were copied from the PIQs submitted by Staff Librarians, and are the common duties of the position. The JEC was not obligated to list every duty of every person. The Generic Job Description for Staff Librarian may not be exactly as Grievants would have written it, but it generally describes the duties of a Staff Librarian, including the duties performed by Grievants. The JEC determined that all persons classified as Staff Librarians were performing duties which were sufficiently similar that another Job Title was not needed. Grievants have not demonstrated that this conclusion was clearly wrong or arbitrary and capricious.

While Grievants do have more responsibility than newly hired Staff Librarians at FSC, Grievants did not demonstrate that the distinction in duties is so significant that they should be in a different classification than newly hired Staff Librarians at FSC. Further, this fact does not demonstrate that Grievants are misclassified, inasmuch as they fit the Generic Job Description for Staff Librarian throughout the state college and university systems. If anything, this fact would tend to show that the newlyhired Staff Librarians at FSC may be misclassified. However, that is not an issue in this proceeding, and there is insufficient information about the duties of these newly hired Staff Librarians to reach a conclusion about their classification.

B. Career Ladder.

The Library Job Family has eight Generic Job Descriptions. The Generic Job Descriptions for four of these positions (Director/Library I, Director/Library II, Manager/Library Services, and Staff Librarian) state the educational requirement for holding these positions as a Masters Degree in Library Science. The remaining four (Library Associate, Library Clerk, Library Technical Assistant I,

Library Technical Assistant II) state varying educational requirements ranging from a high school diploma or G.E.D., to a bachelor's degree.

Grievants define professional librarians as persons holding a bachelor's degree plus a Masters of Library Science, or certificate of advanced degree or a Doctorate in Library Science. The Library Job Family includes four professional librarian positions, with the Staff Librarian being the least senior level of the four. A comparison of the "Characteristic Duties and Responsibilities" of these four positions shows some overlap in the duties of each. R Ex 3. Even the most senior level, Director II, "may teach Library Science classes," even though the majority of the duties of that position are administrative. This overlap indicates, however, that each classification is related, with the next step up having more library management responsibility than Grievants.

Grievants' argument that this structure provides them with no opportunity for advancement is without merit. Grievants' support for this assertion is based upon the personal desires of these Grievants not to move into an administrative role, and upon the size of the FSC library staff. Grievants admit, however, that they do have administrative duties, such as being responsible for a part or department within the library, assisting with budget preparation, and recommending purchases. (See footnote 21) Grievants pointed out that there is currently only one director position at the FSC library, and one manager position at that library, and those positions are filled.

Grievants noted that in some other Job Families there are different levels within a single Job Title, such as computer consultant, pay grade 17, and computer consultant lead, pay grade 19. However, Grievants did not produce any evidence that these different levels represented a career ladder. As described above, there are different levels to some Job Titles because of a significant difference in minimum education, number of people supervised, or minimum years of experience, for example, not because the JEC intended to create a career ladder. The comparisons to other Job Families are not persuasive.

While the undersigned can certainly sympathize with an employee who has no advancement opportunities due to the structureof his organization, that is not the case in the Library Job Family throughout the state college and university systems. Further, the lack of advancement opportunities does not render the classification system invalid, nor does that fact alone require the creation of a new Job Title. The JEC and the governing boards were not required in their legislative charge to create career ladders. Respondent presented a rational basis for the manner in which Job Titles were

created, i.e., by similar duties. Again, Grievants have not demonstrated that the JEC was clearly wrong or acted in an arbitrary and capricious manner.

C. Challenges to the Point Factor Methodology.

The Staff Librarian position was assigned the following points by the JEC (R Ex 8):

Knowledge	7.0
Experience	3.0
Complexity and Problem Solving	3.5
Freedom of Action	3.5
Scope and Effect - Impact of Actions	3.0
Scope and Effect - Nature of Action	3.0
Breadth of Responsibility	1.0
Intrasystems Contact - Nature of Contact	2.0
Intrasystems Contact - Level of Regular, Recurring, and Essential Contact	2.0
External Contacts - Nature of Contact	2.0
External Contacts - Level of Regular, Recurring, and Essential Contact	4.0
Direct Supervision - Number of Direct Subordinates	3.0
Direct Supervision - Level of Supervision	4.0
Indirect Supervision - Number of Indirect Subordinates in Line of Authority	1.0
Indirect Supervision - Level of Supervision	1.0
Physical Coordination	2.0

Working Conditions	1.0
Physical Demands	2.0
TOTAL POINTS	2265 (See footnote 22)

Grievants challenged the points assigned to them under four point factors: Experience, Complexity and Problem Solving, Freedom of Action, and Breadth of Responsibility. With the changes proposed by Grievants, the Point Total for their position would be 2590, a pay grade 19. The arguments advanced by each party will be discussed factor by factor.

1. Experience.

Grievants believe they should have received a 4.0 ("[o]ver two years and up to three years of experience"), rather than a 3.0 ("[o]ver one year and up to two years of experience"), in the point factor Experience, to reflect a position requirement of a minimum of two years of experience.

The Job Evaluation Plan describes 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.

Respondent's witnesses explained that the Experience factor is not designed to allow credit for actual experience. Actual experience is reflected in the salary schedule. Points are assigned to this factor based upon minimum level of experience for entry into position.

Grievants did not explain why the position should require a two year experience minimum. The PIQs submitted by Grievants reflected the minimum level of experience needed to perform the duties of this position as no experience up to 6 months of experience, a degree level of 1.0 under the Job Evaluation Plan.

Staff Librarians were given a 3.0 for this factor, meaning the minimum level of experience for entry into this position is over one year and up to two years of experience. No explanation was offered for this minimum level of experience either. Grievants, however, had the burden of proving an error in the points assigned. Without some explanation as to why the experience level picked by Grievants is more accurate than that assigned by the governing boards, Grievants cannot be found to have proven error.

2. Complexity and Problem Solving.

Grievants received a 3.5 for the point factor Complexity and Problem Solving. The Job Evaluation Plan provides:

> 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 believe they should have received a 4.0 to reflect the complexity of the questions and problems they must handle. A degree level of 4.0 is defined in the Job Evaluation 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 tointerpret policies and procedures, research relevant information, and compare alternative solutions.

Grievants pointed out they must use extensive analytical skills to consult a variety of resources to answer reference questions and other questions, such as in cataloging books. Grievants characterized the decisions they often must make as "difficult", and stated that often there is no resource material available to them which fully explains how to make the decision.

The JEC determined 3.5 was the appropriate degree level because this position fell between a 3.0 and a 4.0. This was considered an entry level professional position, and all entry level professional positions received a 3.5. In assigning point factors to all jobs within the higher education classified service, the JEC had only six degree levels of this point factor to work with.

A degree level of 3.0 is defined in the Job Evaluation 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.

Reading the definitions of 3.0 and 4.0 alone, Grievants do not clearly fall within one category or the other, but look a little more like a 4.0 than a 3.0. Rather than assigning Staff Librarians to one degree level or the other, the JEC placed Staff Librarians between the two. The JEC interpretation

must be given greatweight. The JEC determination that Staff Librarians should be assigned a 3.5 for this point factor has not been demonstrated to be clearly wrong or arbitrary and capricious.

3. Freedom of Action.

In the point factor Freedom of Action, Staff Librarians received a degree level of 3.5. Grievants believe they should have received a 4.5. The Job Evaluation 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 definitions in the Job Evaluation Plan show that at a degree level of 3.0:

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

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

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

Finally, the definitions in the Job Evaluation 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.

Grievants explained they fall between working without supervision and working with their supervisor to set goals and objectives which they carry out. The Director sets a general agenda for

the library as a whole for the year or semester, but Grievants also turn in goals and objectives which they are going to see met by the end of the year. Most of their day to day work is self-directed.

The JEC determined, after reading through all the Staff Librarian PIQs, that some Staff Librarians fell within the degree level of 3.0, and some fell within 4.0. After extensive discussions, Staff Librarians were assigned a degree level of 3.5 by the JEC, because the group as a whole did not have the Freedom of Action of a degree level of 4.0. Across the higher education system, those positions with a degree level of 4.5 or above are directors or deans, for example. They are positions where direct supervision is exercised, and are more responsible jobs. There are more than 6000 higher education employees, and only five degreelevels for Freedom of Action. Degree levels of 4.0 and 5.0 would be assigned to positions in the top group, such as the administrative group, the top managers and directors.

Reading the definitions alone, Grievants appear to fall within the degree level 4.0. However, the JEC interpretation of how the degree levels are applied must be given great weight. The JEC found some Staff Librarians have less freedom of action than Grievants, and the JEC also weighed where Staff Librarians fall in the Library Job Family. The JEC determined Staff Librarians do not have the same amount of Freedom of Action as a Director, which received a 5.0, or a Manager of Library Services, which received a 4.0. The JEC determination that Staff Librarians should be assigned a 3.5 for this point factor has not been demonstrated to be clearly wrong or arbitrary and capricious.

4. Breadth of Responsibility.

The factor Breadth of Responsibility is defined in the Job Evaluation Plan as:

> This factor describes the variety of specific functional areas in which the job may have formal and ongoing accountability. In reviewing this factor, consider the level of in-depth knowledge required as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations. [Examples of some functional areas within the following divisions would include: (1) Student Services--Housing, Admissions, Financial Aid, Counseling; (2) Business and Finance--Purchasing, Auditing, Grants and Contracts, Bursar.]

Ms. Hank explained that this factor was created to give a degree of credit or recognition for jobs that had more than one functional area of responsibility. She gave as an example, aposition with responsibility for a bookstore and a business office, or a bookstore and a snack bar, and then buildings and grounds, would have higher breadth than someone just responsible for a bookstore.

Grievants believe they should have received a 4.0 in the area Breadth of Responsibility rather

than a 1.0, because each Grievant is responsible for work in multiple functional areas of the library. Grievants pointed out that each has responsibility for a department in the library. Each manages a department or area of the library, and is responsible for every function in that area.

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

> Accountable for only immediate work assignments but not for a functional area.

A degree level of 4.0 is defined as:

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

Ms. Hank explained that the library is a functional area, and the person responsible for the library would receive a degree level of 2.0. None of these Grievants is responsible for the entire library. Each performs a number of tasks within the functional area, and therefore, Staff Librarians received a degree level of 1.0.

The PIQ Summary By Job Family (R Ex 8) shows that most Job Titles received a 1.0 for Breadth of Responsibility. Those positions with a "Manager" or "Director" in the title received the2.0's and 3.0's, and only a handful of positions received a 4.0 or 5.0 for this factor. Those positions receiving a 4.0 or 5.0 were in the top administrative levels of Associate Dean, Assistant Vice-President and Dean.

While Grievants certainly have a lot of responsibility, they have not proven that the JEC interpretation that the library as a whole is a functional area, rather than each area or department within the library being treated as a functional area, was clearly wrong or arbitrary and capricious.

The following formal findings of fact and conclusions of law summarize the preceding discussion, and support the decision that these grievances must be denied.

VII. Findings of Fact.

1. Each Grievant is employed in the Fairmont State College ("FSC") library. Each was initially classified in the Mercer reclassification as a Staff Librarian, pay grade 17.

2. In the request that the Job Evaluation Committee ("JEC") review each Grievant's initial classification, each Grievant sought to be removed from the classified service, and granted faculty

status.

3. In the grievances filed, each Grievant sought as relief a classification which does not exist in the new higher education classification system, Senior Staff Librarian/Instructor, pay grade 19. Grievants developed a Generic Job Description for the proposed position, and presented it to Respondent before the hearing.

4. All classified employees were asked to complete a Position Information Questionnaire ("PIQ"). The employee was to describe his job duties and responsibilities, and the job requirements (knowledge, skills, education) on the PIQ, by answering a series of questions designed to elicit this information.

5. Grievants Sloan and Matthews each filled out a PIQ in 1991, and made revisions to their PIQs February 4, 1994, and February 8, 1994, respectively. R Ex 4, 6. Grievant Burke was not employed at FSC in 1991, so he did not fill out a PIQ. However, on February 4, 1994, he did make revisions to the PIQ submitted by his predecessor. R Ex 5.

6. To develop the Generic Job Description for Staff Librarians the JEC read the PIQ of each Staff Librarian in the state higher education system, looking for similarities and differences in the PIQs. There were more similarities than dissimilarities in the major functions assigned to that job. The duties shown on the Generic Job Description are those duties most frequently appearing on the PIQs, and are considered the common duties of that job. The most prominent duty statement, the one which occurred most often or had the highest percentage of time, or combination thereof, is listed first. Where the duty is listed as one the Staff Librarian "may perform", that duty is a responsibility of a Staff Librarian, even though some Staff Librarians may not be called upon to carry out this duty.

7. In Job Families where a particular Job Title may have levels I, II and III, or a Lead or Senior level, there would have been some significant difference in minimum education, or number of people supervised, or minimum years of experience, for example. This classification system was not intended to have a classic definition of a career ladder. The Job Titles were created because of the duties and responsibilities assigned at those levels.

8. The regulations adopted by the governing boards set forth thirteen factors which are to be weighed to assign pay grades. The factors are knowledge, experience, complexity and problem solving, freedom of action, breadth of responsibility, scope and effect, intrasystems contacts, external

contacts, direct supervision exercised, indirect supervision exercised, working conditions, physical coordination, and physical demands. These thirteen factors and their application are described in the Job Evaluation Plan adopted by the JEC.

9. Grievants have more duties and responsibilities than the two newer Staff Librarians at FSC.

10. Grievants perform the duties described in the General Function section of the Staff Librarian Generic Job Description. The duties Grievants perform are reflected in the Characteristic Duties and Responsibilities Section of the Staff Librarian Generic Job Description, although Grievants do not perform all the duties listed.

11. The Library Job Family has eight Generic Job Descriptions. Four of these positions (Director/Library I,Director/Library II, Manager/Library Services, and Staff Librarian) are professional librarian positions, with the Staff Librarian being the least senior level of the four. A comparison of the "Characteristic Duties and Responsibilities" of these four positions shows some overlap in the duties of each. R Ex 3.

12. Staff Librarians received a 3.0 in the point factor Experience, to reflect a minimum requirement of over one year and up to two years of experience. The Experience factor is not designed to allow credit for actual experience. Actual experience is reflected in the salary schedule. Points are assigned to this factor based upon minimum level of experience for entry into position.

13. The PIQs submitted by Grievants reflected the minimum level of experience needed to perform the duties of this position as no experience up to 6 months of experience, a degree level of 1.0 under the Job Evaluation Plan.

14. Grievants must use extensive analytical skills to consult a variety of resources to answer reference questions and other questions, such as in cataloging books. Grievants often must make difficult decisions. Often there is no resource material available to them which fully explains how to make the decision.

15. The JEC determined 3.5 was the appropriate degree level for Staff Librarians for the point factor Complexity and Problem Solving, because this position fell between a 3.0 and a 4.0. This was considered an entry level professional position, and all entry level professional positions received a 3.5. In assigning pointfactors to all jobs within the higher education classified service, the JEC had only six degree levels of this point factor to work with.

16. Grievants work without supervision, but also work with their supervisor to set goals and

objectives which they carry out. The Director sets a general agenda for the library as a whole for the year or semester, but Grievants also turn in goals and objectives which they are going to see met by the end of the year. Most of their day to day work is self-directed.

17. The JEC determined that some Staff Librarians fell within the degree level of 3.0 for the point factor Freedom of Action, and some fell within 4.0. Staff Librarians were assigned as degree level of 3.5 by the JEC, because the group as a whole did not have the Freedom of Action of a degree level of 4.0. Across the higher education system, those positions with a degree level of 4.5 or above are directors or deans, for example. They are positions where direct supervision is exercised, and are more responsible jobs. There are more than 6000 higher education employees, and only five degree levels for Freedom of Action. Degree levels of 4.0 and 5.0 would be assigned to positions in the top group, such as the administrative group, the top managers and directors. 18. Each Grievant manages a department or area of the library, and is responsible for every function in that area.

19. The point factor Breadth of Responsibility was created to give a degree of credit or recognition for jobs that had more than one functional area of responsibility. The library is a functionalarea, and the person responsible for the library would receive a degree level of 2.0.

VIII. 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 classifications 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.

3. In order to prevail on a claim that a classification and pay grade should have been created that would more closely fit the duties and responsibilities of a grievant, the grievant has the burden of proving an abuse of the broad discretion extended to the governing boards in not creating an additional classification. See Pridemore v. West Va. Bureau of Employ. Programs, Docket No. 92-BEP-435 (Aug. 17, 1993); Compare AFSCME v. Civil Service Com'n of W.Va., 380 S.E.2d 43 (W.Va. 1989); Nida v. W. Va. Dept. of Health and Human Res./Div. of Health and W. Va. Dept. of Admin./Div. of Personnel, Docket No. 93-HHR-240 (Aug. 20, 1993); Johnston v. W. Va. Dept. of Health and Human Res./Div. of Personnel, Docket No. 94-HHR-206 (June 15, 1995).

4. The Job Evaluation Committee's interpretation and explanation of the Generic Job

Description and point factors will be given great weight unless clearly wrong, where the proper classification of a grievant is almost entirely a factualdetermination. See Tennant v. Marion Health Care Foundation, Appeal No. 22642 (June 15, 1995).

5. The Job Evaluation Committee's interpretation of the Generic Job Description and point factors assigned Staff Librarian, pay grade 17, is not clearly wrong.

6. Grievants have failed to establish by a preponderance of the evidence that they should have been classified in a cited job and pay grade other than Staff Librarian, pay grade 17.

7. Grievants have failed to establish an abuse of discretion by the governing boards in not creating an additional classification.

Accordingly, these grievances are **DENIED**.

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

BRENDA L. GOULD

Administrative Law Judge

Dated: August 8, 1995

Footnote: 1 This is the first decision issued on a "Mercer" reclassification grievance, and this background information is intended to assist the reader.

Footnote: 2 This amendment, however, did not nullify or void any personnel classification system in effect prior to July 1, 1989. W. Va. Code §18B-9-4(a).

Footnote: 3 W. Va. Code §18B-9-4, provides, in pertinent part, as follows: "(a) Before the first day of January, one thousand nine hundred ninety-four, the governing boards shall establish by ruleand implement an equitable system of job classifications, with the advice and assistance of staff councils and other groups representing classified employees, each classification to consist of related job titles and corresponding job descriptions for each position within a classification, together with the designation of an appropriate pay grade for each job title, which system shall be the same for

corresponding positions in institutions under both boards: Provided, That before implementing the classification system, each classified employee is given an opportunity in a public hearing setting to address decisions affecting his or her classification assignment and pay scale. The system of job classifications shall be submitted to the secretary of education and the arts for review and approval prior to implementation."

Footnote: 4 This name is derived from the name of the company which assisted higher education in developing the classification system, William M. Mercer, Inc.

Footnote: 5 It should be noted that these regulations set out time periods for classified employees to begin the review process of their initial classifications, which preceded the effective date of the regulations.

Footnote: 6 W. Va. Code §18B-9-4 provides in its second paragraph: "[b]y such date and with consideration to recommendations of the institutions, the appropriate governing board shall furnish each classified employee written confirmation of the assignment to the appropriate classification, job title and pay grade and of the proper placement on a salary schedule. Such assignment may be appealed in accordance with article twenty-nine [§ 18-29-1 et seq.], chapter eighteen of this code and all agencies are directed to expedite and give priority to grievances regarding the employee's initial assignment under the terms of this section ...".

Footnote: 7 The testimony presented in this case was that all classified employees were asked to complete PIQs. The employee was to describe his job duties and responsibilities, and the job requirements (knowledge, skills, education) on the PIQ, by answering a series of questions designed to elicit this information. The PIQs completed by the employees were used to develop the Generic Job Descriptions used in the Mercer classification system.

Footnote: 8 Respondent's Exhibits will be referred to in this Decision as "R Ex __", and Grievants' Exhibits will be referred to as "G Ex __".

Footnote: 9 The regulations adopted by the governing boards define "pay grade" in §2.7 as: "[a] range of compensation values for a job defined by a series of step values. Positions which occupy the same job title shall be assigned to the same pay grade. Job titles having similar factor levels, shall be classified within the same pay grade."

Footnote: 10 These grievances were docketed as John Burke v. Board of Directors, Fairmont State College, Docket No. 94-MBOD-349; Nancy Sloan v. Board of Directors, Fairmont State College, Docket No. 94-MBOD-350; and David Matthews v. Board of Directors, Fairmont State College, Docket No. 94-MBOD-355.

Footnote: 11 The reader is cautioned that this summary of how the Mercer classification system works was gleaned by the undersigned from the testimony of the two witnesses presented at the hearing on this matter, the exhibits introduced, and the regulations adopted by the governing boards. The Grievants challenged only four of thirteen factors used to slot grievants into pay grades. Grievants' also challenged their classification because they are required to teach, while other Staff Librarians are not required to teach, and the Generic Job Description for Staff Librarian states that the Staff Librarian

"may teach"; and, Grievants argued there should be a career ladder for the professional Librarian.

Footnote: 12 The regulations adopted by the governing boards define "Job Family" in §2.29 as: "A series of job titles in an occupational area or group."

Footnote: 13 While the record reflects that seven members were human resource representatives, the regulations adopted by the governing boards, at §11.5, provide for nine human resource representatives. Four members were classified employee representatives.

Footnote: 14 These thirteen factors will be discussed below.

Footnote: 15 The Regulations define "Generic Job Description" in §2.6 as: "[a] summary of the essential functions of a job, including the general nature of the work performed, a characteristic listing of duties and responsibilities, and the specifications necessary to perform the work. Generic job descriptions shall be prepared for systems-wide and institution-specific titles occupied by more than one employee. For a job occupied by only one employee, the position description becomes the job description."

Footnote: 16 The regulations adopted by the governing boards define "position" in §2.2 as: "[a] set of duties and responsibilities performed by a specific employee at a particular institution." "Job" is defined in §2.3 as: "[a] collection of duties and responsibilities performed by one or more employees at one or more institutions whose work is substantially of the same nature and which requires the same skill and responsibility level. For jobs occupied by only one employee, the terms 'position' and 'job' shall be considered the same."

Footnote: 17 The regulations adopted by the governing boards define "factor" in §2.27 as, "[o]ne of the thirteen (13) items used to evaluate jobs. The items are knowledge, experience, complexity and problem solving, freedom of action, breadth of responsibility, scope and effect, intrasystems contacts, external contacts, direct supervision exercised, indirect supervision exercised, working conditions, physical coordination, and physical demands."

Footnote: 18 The regulations adopted by the governing boards describe the Job Evaluation Plan as the "Point factor methodology", and explain its purpose in §2.28 as: "[t]he instrument used to assign weights to the factors. The total of the weights determines the pay grade to which a job title is assigned."

Footnote: 19 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: 20 Additional duties added to Grievant Sloan in 1994 and 1995, after the reclassification, including additional teaching duties, must be disregarded in this decision. The issue in this case is whether the initial classification was correct. Therefore, the evidence which must be examined in this analysis is that of the duties Grievants were performing at the time the reclassification occurred.

Footnote: 21 In fact, as will be discussed later, Grievants argued they should have received a different degree level on one point factor because of their responsibility for parts (or departments) of the FSC library.

Footnote: 22 No explanation was provided as to how the points assigned under each factor were translated into total points, but Grievants did not challenge the way total points was calculated.