

**DENISE REEDY,**

**Grievant,**

**v. DOCKET NO. 94-MBOD-721**

**BOARD OF DIRECTORS/WEST VIRGINIA STATE COLLEGE,**

**Respondent.**

### DECISION

\_\_\_Denise Reedy submitted a grievance challenging her classification as an Office Assistant in Pay Grade 7. She seeks the title Program Assistant I and Pay Grade 12. Grievant was classified by the Respondent Board of Directors ("BOD") under the Job Evaluation Plan for State College and University Systems of West Virginia. The Job Evaluation Plan was developed by the Respondent's Job Evaluation Committee ("JEC") with assistance from a private consultant, William M. Mercer, Inc. and is known as the "Mercer Plan." [\(See footnote 1\)](#)

The grievance was initiated in accordance with specific procedures established in §18 of the Legislative Rule for Personnel Administration promulgated by the State College System of West Virginia Board of Directors on March 28, 1994. 131 C.S.R. 62. In October 1994, BOD waived these grievances to Level IV. A Level IV hearing was conducted in this Board's office in Charleston, West Virginia, on August 30, 1996 and September 3, 1996. This matter became mature for decision on September 18, 1996, following receipt of timely post-hearing submissions from the parties.

Grievant specifically challenges the degree level ratings received in several point factors under the Mercer Plan. The point factors challenged are: Knowledge; Experience; Complexity and Problem Solving; Scope and Effect; Breadth of Responsibility; Intrasystems Contacts; External Contacts; Physical Coordination; Working Conditions and Physical Demands.

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

### FINDINGS OF FACT

1 1. All classified employees were asked to complete a Position Information Questionnaire ("PIQ")

prior to the reclassification. PIQs are detailed documents, 17 pages in length, on which individual employees described the duties of their position, as well as minimum qualifications required to carry out their duties. In addition to descriptions, employees were asked to rate various aspects of their position against a scale nearly identical to that set forth in the Plan. The PIQ was reviewed, commented upon in writing as needed, and signed by the employee's supervisor, and the supervisor's supervisor. Grievant filled out a PIQ in 1991. 2 2. Grievant is employed by West Virginia State College in the Developmental Math Program, a part of the Mathematics Department. Grievant was classified in the Mercer reclassification as an Office Assistant, Pay Grade 7, effective January 1, 1994.

3 3. Grievant's job duties include administering and scoring math tests; determining student eligibility for certain math classes; preparing and signing forms to place students in proper math classes; inputting information in databases and obtaining database reports; providing clerical support for approximately 9 instructors for 4 classes given in 27 sections; maintaining a spreadsheet in order to have an accurate account of laboratory assistant costs; and placing orders for books, tapes, software and other such supplies. She has also designed and is redesigning a Q & A database program.

4 4. Grievant signs Permission to Enroll cards and some other documents which pertain to student placement in classes. Grievant has set criteria for determining whether students may be placed in a given class, but has some discretion in placement when a student's test scores fall between two sets of criteria.

5 5. Grievant grades math tests by comparing multiple choice answers to an answer key. Grievant grades open-ended math tests by comparing the student's answer to a descriptive answer key. Grievant has some room for judgment in comparing a student's answer on the open-ended test, subject to approval from her supervisor. This function requires Grievant to have some knowledge of mathematical equivalencies. For instance, if the key says the answer is 0.75, and the student answers  $\frac{3}{4}$ , Ms. Reedy will give the student credit for a correct answer, after checking with her supervisor.

6 6. Grievant talks to students several times a week on average, about testing, grades, prerequisites for math classes, which math classes are available, required testing, and whether the student is or can be placed in the proper level math class.

7 7. Grievant distributes applications for math tutoring to parents of grade school children, and contacts the parents to tell them whether or not their child will receive tutoring. Someone other than

Grievant decides which children will receive tutoring.

8 8. Grievant works unsupervised during the summer months, as her supervisor, Ms. Orr, is a nine-month employee of WVSC. During the summer, Grievant generally runs the office. She also administers tests to students and performs other duties. Ms. Orr is available by telephone to assist Grievant during the summer months.

9 9. Grievant learned her job duties over the course of several semesters of employment. Grievant learned many facets of the job through trial and error, as no handbook was available. Some job duties occur infrequently, once or twice per semester. Examples of such job duties were requesting lists of students enrolled in the courses for which Grievant checks eligibility, and "dumping" files of students whose information no longer needs to be maintained on Grievant's database.

10 10. Examples of Grievant's decision-making duties are: she must evaluate students' test scores and compare them to eligibility guidelines in order to determine which classes the student is or is not eligible to take. Grievant has some discretion in placing a student into classes, when the student's scores fall between certain sets of criteria. Grievant must also use her own judgment to decide whether a student may retake placement tests. Generally, students are allowed to test only once per semester, but Grievant can allow retesting more frequently under special circumstances, such as if an instructor requests it or if the student's fees will not be paid by the student's financial aid or other program.

11 11. If Grievant errs in ensuring proper placement of a student in a math class, the student may lose a semester of class time and the cost of the class. It is possible that a student could drop below full-time student status and therefore lose financial aid.

12 12. Grievant has no formal accountability, budgetary or otherwise, for the entire math department at WVSC.

13 13. Grievant has regular and recurring contacts with math department faculty and staff. Grievant also has contact several times per semester with the Registrar. Some contacts involve confidential information, such as social security numbers and test scores.

14 14. The majority of Grievant's contact with students and parents occurs in the first few weeks of a semester. Grievant also has ongoing weekly contact with students, as students see her for testing throughout the year.

15 15. Grievant has contacts with book representatives and other vendors. Prior to January 1, 1994,

Grievant had authority to order up to \$500.00 per semester from such persons. Her contacts with these vendors consisted of basic supply and ordering information.

16 16. There are no specific speed requirements imposed upon Grievant's data entry or word processing tasks.

17 17. Grievant must go outside occasionally, when she is administering tests at a location outside her office building. Otherwise, her job is performed in a standard office environment.

18 18. Grievant carries tests and materials in ten to fifteen pound loads to testing locations several times a year. There is no requirement that prohibits Grievant from obtaining help with this lifting and carrying, or from dividing the load into several smaller loads.

19 19. The general function of the Office Assistant position is to "[p]erform[] a variety of clerical and basic office duties." Jt. Ex. B. The Office Assistant title was assigned a total of 1263 points. R. Ex. 2.

20 20. The general function of the Program Assistant I is to "[p]erform[] clerical and administrative services in support of a major program within an institution." Jt. Ex. C. The Program Assistant I job title was assigned a total of 1709 points. R. Ex. 2.

## **DISCUSSION**

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that he or she is not properly classified. 156 C.S.R. 1 §4.19; W. Va. Code § 18- 29-6. Burke, v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job he or she feels is being done. 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 or her burden of proof in a Mercer grievance merely by showing that the grievant's job duties better fit one job description than another, however. The grievant must also identify which point factor degree levels are challenged. This is because the Mercer reclassification system is not based upon "whole job comparisons" but is instead a largely "quantitative" system.

A "whole job comparison" system reviews a general description of activities and requirements for a job, and then compares that job to other general descriptions of other jobs. Rather than using such a generalized approach, the Mercer system is largely a "quantitative" system in which the

components of each job are analyzed separately. The components are then rated separately, using the point factor methodology contained in the plan. Burke, supra, p. 20. These point factor ratings are then applied to a formula, which results in a point total used to identify an appropriate pay grade for the job.

By viewing the job through specific components, rating the components one by one, and thereafter applying a formula to determine pay grades, it is thought that this type of system provides a more accurate and objective result than "whole job comparison" systems. Consequently, the point factor analysis is of greater importance than a comparison of generic job descriptions in reviewing the JEC's action. A Grievant may challenge any combination of point factor degree levels, so long as he or she clearly identifies the ones being challenged, and this challenge is consistent with the relief sought. See Zara v. Bd. Of Trustees, Docket No. 94-MBOT-817 (Dec. 12, 1995); and Jessen v. Bd. Of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995).

This classification 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. Burke, supra. Some "best fit" analysis is involved in determining which degree level of a point factor should be assigned. However, some evaluation must also be made as to where the position fits in the higher education classified employee hierarchy. In order to maintain the integrity of the overall classification scheme, the "best fit" must be determined in relation to other positions.

Because whether Grievant is properly classified is almost entirely a factual determination, the JEC's interpretation and explanation of the point factors and Generic Job Descriptions at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W. Va. 1995); Burke, supra. A Mercer grievant may prevail by demonstrating his or her reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehabilitation, Docket No. VR-88-006 (Mar. 28, 1989). However, the grievant will have to overcome a substantial obstacle in attempting to establish that he or she is misclassified, due to the deference given the JEC's interpretations.

# I. COMPARISON OF GENERIC JOB DESCRIPTIONS:

To develop Generic Job Descriptions ("GJDs") for job titles, the JEC read the PIQs submitted by all persons in a given title, looking for similarities and differences in the PIQs. The duties shown on the GJD are those duties most frequently appearing on the PIQs, and are considered the common

duties of that job. The duty which occurred most often or had the highest percentage of time, or some combination of the two, is listed first. GJDs were developed after January 1, 1994, when employees were reclassified.

The record contains GJDs for the titles Office Assistant ("OA"), Program Assistant I ("PA1"), and Administrative Secretary ("Secretary"). Jt. Exhs. B and C, and R. Exh. 4. [\(See footnote 2\)](#) General review of the OA GJD shows that it pertains exclusively to basic clerical and office duties, such as filing, typing, and sorting and routing mail. It does not encompass several of Grievant's essential job duties such as administering and grading of tests, comparing scores with eligibility criteria, or signing documents. Grievant's duties may go well beyond the OA classification.

Grievant has itemized work which she asserts meets the criteria found on the PA1 GJD. G. Ex. 1, Encl. 11. Respondent did not address Enclosure 11 directly. Respondent's witnesses were Barbara Rowell, Director of Human Resources at WVSC, and Patricia Hank, Director of Human Resources at Southern West Virginia Community and Technical College and a JEC member.

In general testimony, Ms. Hank and Ms. Rowell criticized Ms. Reedy's use of the term "advice" or "advise," indicating that it is not the same as the JEC's use. Respondent's witnesses also generally described PA positions at their respective institutions.

No PIQs were presented for these PA positions. It was not clear that the positions described were PA1 positions, rather than PA2 positions. The general descriptions suggested that PAs may perform in a broad spectrum of duties. In general, a PA I position performs not only clerical duties but also makes some minor decisions, tracks budgets, and may have some responsibility to supervise students or a lower level clerical person, according to Ms. Hank. An OA does more comparing information, and processing documents, paperwork and people through an office. The PA may support a particular and focussed area, or may support several different areas, she said.

Reference to a prior decision reveals more of what a PA position entails. In Henry v. Bd. of Trustees, Docket No. 94-MBOT- 1024 (July 31, 1996), it was found that PAs "provide technical support and secretarial services to a major program or multiple programs." Henry at 3. A "major program" provides some type of service to the local community or the state, rather than just to the particular institution. Henry at 7. Henry found that the Personal Rapid Transit system at West Virginia University did not constitute a "major program." By comparison with the facts and findings in Henry, it appears that the portion of the math department program with which Grievant is concerned

cannot be considered a "major program." Thus, even if Grievant's job duties otherwise fit the PA1 description, she does not perform these duties in relation to a "major program" as required.

Grievant has not shown that she must be reclassified as a PA1. While the comparison shows Grievant does more than the OA duties, the JEC's decision to slot Grievant's position as an OA is not so implausible that it cannot be ascribed to a difference of view. The standard of review in these cases does not allow an administrative law judge to substitute her judgment for that of the JEC in such a situation. Miller v. Bd. of Directors, 94-MBOD-495 (Oct. 29, 1996). Hastings v. Bd. of Trustees, Docket No. 94-MBOT- 943 (May 28, 1996). See generally, Staton v. Wyoming County Bd. of Educ., 184 W.Va. 369, 400 S.E.2d 613 (1990). However, further analysis is required to determine if the JEC's application of the Mercer Plan to specific point factors was appropriate. See Burke, *supra*. As explained in the Discussion section above, the point factor analysis is the more reliable gauge of appropriate classification.

## II. POINT FACTOR ANALYSIS:

Grievant challenged her ratings in several of the factors analyzed in assigning her position and pay grade. Each point factor which is subject to dispute in this grievance will be addressed separately.

### A. KNOWLEDGE:

This factor is defined in the Mercer Plan 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.

(R. Exh. 1. All definitions herein are quoted from the same exhibit, except as otherwise noted.)

Grievant was assigned level 3 in this factor, which is defined as:

Job requires basic knowledge of grammar, spelling, punctuation, and simple mathematical functions like percentages, ratios, etc., as might normally be acquired through attainment of a high school diploma or GED.

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

Job requires basic knowledge in a specific area typically obtained through a business, technical or vocational school as might normally be acquired through up to 18 months of education or training beyond high school.

Grievant seeks assignment of level 5, which is defined in the Mercer 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.

Both Grievant and her supervisor, Ms. Orr, testified that a two year associate's degree was required for entry level performance in this job. Ms. Orr alluded to the necessity of having computer science and office management skills in her letter supporting Grievant's challenge. Gr. Ex. 2. An associate's degree in computer science or clerical skills was required when Grievant entered the job in 1988. Gr. Ex. 1. Ms. Orr stated that completion and understanding of math through the Algebra I level was required. She also opined that an associate's degree would assure that the candidate would be mature and trustworthy. Grievant opined that the formal training received through attainment of an associate's degree would allow a new candidate to work without such a long on-the-job training period as Grievant had had. Ms. Orr opined that even with an associate's degree, a new employee would take one year to learn the job.

Ms. Hank explained that the Knowledge factor is not intended to account for experience required to enter into a job. The Experience factor covers prior experience requirements. Moreover, one cannot receive credit under both the Knowledge and Experience factors for the same training. She also testified that an individual incumbent's education, experience and performance are not considered in rating either this factor or the Experience factor. Rather, the JEC evaluated what minimum education and experience a new employee would have to have in order to perform at entry level. The JEC determined that a High School or equivalent degree was required in the Knowledge factor for Grievant's position. Ms. Orr's statement that a two year degree is required because the position requires completion of math courses through at least an Algebra I course does not comport with her other testimony, which indicated that Algebra I is a high school level course. Ms. Orr specifically declined to state that college algebra would be required for entry level work in this position. Consequently, the math course requirement cannot justify a higher level than Grievant was assigned in the Knowledge factor.

The Mercer Plan contains no recognition of or measurement for characteristics such as maturity or trustworthiness. There is no obvious or direct connection between any certain educational degree and the attributes of maturity, trustworthiness or other such qualities. Thus, those attributes do not justify a higher Knowledge rating.



It is clear that clerical and office management skills, as well as computer skills, are necessary in performance of Grievant's duties. Grievant relied upon the position's requirement of an associate's degree in 1988 to prove that such a knowledge level is needed.

However, the fact that an associate's degree was once required does not provide sufficient justification for continuing such a requirement if that practice is not supported by specific facts. See Riggs v. Bd. of Trustees, Docket No. 94-MBOT-711 (Apr. 29, 1996). Grievant did not show what specific training is required to develop computer and office management skills. The skills required might be gained by on-the-job experience rather than formal training. Grievant did not state other job requirements which could only be addressed through formal training at an associate's degree level. Thus, Grievant failed to show that the JEC was clearly wrong, arbitrary or capricious in assigning level 3 in the Knowledge factor to Grievant's position.

## B. EXPERIENCE:

The Mercer 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 was assigned level 1, which is defined as "[n]o experience or up to six months of experience." Level 2 is defined as "[o]ver six and up to twelve months of experience." Grievant seeks assignment of level 3, which is defined as "[o]ver one year and up to two years of experience."

Grievant testified that it took her several semesters to learn the job through trial and error, even with her associate's degree. Respondent pointed out that most of the examples given by Grievant of tasks which took several semesters to learn were tasks which could only be known through on-the-job training. No candidate would have such experience until after being on the job. Ms. Hank explained that the Experience factor does not credit the time during which a new employee is acclimated to the job. It measures prior experience required for entry into the job, recognizing that most new employees will have a six month orientation period before they become competent. She also explained that the Experience factor does not take into account how well the current employee does the job. Excellent performance is not the measure, but entry level performance is.

Although a new employee may need some prior experience in order to perform at entry level in Grievant's position, Grievant did not prove that any specific amount of prior experience is required.

Grievant's evidence addressed the vague requirement that the new employee know how to run an office and a computer. However, no specific duties were described which clearly require advance preparation separate from on-the-job orientation.

Undoubtedly, Grievant performs important work for her unit at a highly proficient level. However, the Experience factor does not look at such proficiency. If Grievant memorialized the procedures and tasks which she learned by trial and error, a new employee may well be able to function without prior experience, after a reasonable training period.

While a reasonable person might disagree with the JEC's opinion, and conclude that more credit should have been given in either the Knowledge or the Experience factor, such an opinion cannot be substituted for that of the Respondent. Miller, supra. Hastings, supra. See generally, Staton, supra. A difference of opinion does not rise to the level of showing that the JEC was clearly wrong, arbitrary or capricious. As Grievant made no specific showing of training which could only be received by prior experience, there is insufficient basis to find the JEC was clearly wrong.

#### C. COMPLEXITY AND PROBLEM SOLVING:

The Mercer Plan defines Complexity and Problem Solving as:

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

Grievant was assigned level 1.5, which Respondent stated is between the defined levels 1 and 2.

Level 1 is defined in the Mercer Plan as:

Routine problems are encountered involving simple solutions. Simple, standardized instructions (usually oral) covering all important aspects of the assignment are provided to the employee. Very little judgment is required by the position. Tasks are clear-cut and procedures well defined.

Level 2 is defined 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.

Grievant seeks assignment of level 3, which is defined 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.

Grievant pointed to several example problems, such as those contained in Finding of Fact number 10. She also noted that, during the summer months when she is unsupervised, she must solve any problems which arise on her own.

Ms. Rowell stated that Grievant explains and applies set criteria and procedures. The scores and prerequisites exist, and anyone could compare them to the set requirements. Ms. Hank stated that the problems encountered by Grievant are recurring, easy to identify, and controlled by policy. She also noted that Ms. Orr was available by telephone to help with or handle problems which arise during the summer. Ms. Hank stated that the discretion allowed Grievant in some specific and controlled areas was accounted for by assigning her the intermediate level of 1.5.

Ms. Reedy's devotion to her job is evident in the seriousness with which she views the problems which she must address in her position. Each of these problems have certain identifiable solutions. There are limited options from which to choose, either because of standards (testing criteria, score requirements) or self-limited options (classes from which to choose). Grievant's decisions are made primarily by reference to standardized instructions, such as how to drop a student from a class, or what scores are required prior to placement in a given course. While Grievant functions at a level 2 in this factor some of the time, she failed to show that the JEC did not properly account for this when it assigned her the 1.5 level, crediting her for some work under the level 2 definition.

#### D. SCOPE AND EFFECT:

According to the Mercer Plan:

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 the 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 factor is divided into two parts for assessment. The two parts are Nature of Action ("Nature") and Impact of Actions ("Impact"). Grievant challenged her rating in both parts.

#### 1. SCOPE AND EFFECT/NATURE OF ACTION:

Grievant was assigned level 1, which is defined in the Mercer Plan as:

Work provides limited or routine support-type services to others in a timely manner. Decisions are infrequent and errors could result in minor inconveniences and costs within the affected area.

Level 2 is defined 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.

Level 3 is defined 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 moderated costs and inconveniences within the affected area.

Grievant seeks assignment of level 4, which is defined as:

Work contributes to or ensures the effectiveness of operations or services having significant impact within the institution and involves application of policies and practices to complex or important matters. Errors could easily result in substantial costs, inconveniences, and disruption of services within the affected area.

Grievant pointed to the fact that, if her work resulted in a student being placed in the wrong math class, the student would potentially waste the time and cost of the class. She agreed that improper placement did not take any money from WVSC itself, but only from the student. She correctly stated that such errors would make the institution appear incompetent.

Respondent explained that this part of the Scope and Effect factor looks at the level of support and guidance available to Grievant. It also looks at the effect of the position on the entire institution,

not just on an individual student.

Grievant clearly does not function at level 3 or level 4. Rather, she deals with relatively simple policies and procedures, and has a limited area for discretionary decisionmaking.

It is noted that a Lifeguard is assigned level 1 under this factor. This shows some consistency in the JEC's measurement of affect directly on the institution, and not on individual students. After all, there can be no greater affect than life or death on a student.

Data Entry and Computer Operators were given level 2 in Nature, as were Word Processing Operators. Grievant was originally reclassified as a Data Entry Operator, before being reslotted to her current title. Thus, it is reasonable to conclude that her job duties are similar to those of a Data Entry Operator, at least insofar as data entry is involved. Grievant has substantial database responsibilities, which affect student grades, prerequisites, and instructor class information. The last item may indirectly affect the course material or teaching methods employed by an instructor, as the averages entered by Grievant indicate how successful an instructor has been in imparting knowledge, and a minimum standard of success is imposed on instructors.

Grievant's work was not distinguished from that of Data Entry Operators in terms of contribution to the accuracy, reliability and acceptability of processes, services or functions. Thus, there is no apparent rational basis for giving one title level 2 in Scope and Effect/Nature, while giving the other only level 1. In addition, as noted above under Complexity and Problem Solving, Grievant clearly makes decisions and exercises discretion within a narrow area allowed by standards and procedures. She makes decisions more than "infrequently." Thus, she meets the level 2 definition.

Respondent failed to distinguish Grievant's job duties from those of Data Entry Operator or similar titles which received a level 2 rating. Respondent also failed to explain why it gave Grievant some credit for discretion and decisionmaking in the Complexity and Problem Solving factor, but seemingly not in this factor. While analysis of the differences between levels in the Nature of Actions element involves a subjective value judgment in interpreting these similarly-worded provisions, and deference must be given to the JEC's interpretation of the factors and the definitions, no deference is required where the JEC is clearly wrong, arbitrary or capricious. Hastings, supra; Jessen, supra. The JEC was arbitrary and capricious, and clearly wrong, in assigning level 1 to Grievant. Grievant showed that she meets the level 2 definition in Scope and Effect/Nature of Actions.

## 2. SCOPE AND EFFECT/IMPACT:

Grievant was assigned level 1 of Scope and Effect/Impact, which is defined in the Mercer Plan as "[w]ork is limited to immediate work function and short-term situations."

Level 2 is defined in the Mercer Plan as "[w]ork affects either an entire work unit or several major activities within a department." Level 3 is defined in the Mercer 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 <\$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.

Grievant seeks assignment of level 4 of Impact, which is defined in the Mercer Plan as:

Work affects the entire operations of a specialized school, branch campus, community college or baccalaureate-level institution with an operating budget of <\$13M; more than one school of (sic) 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.

Grievant's arguments on this point are the same as or similar to the arguments regarding Scope and Effect/Nature of Action. Again, Respondent explained that this part looks at the impact of the position on the entire institution, not individual students, and stated that Grievant's work impacts on a function in her work area. Ms. Hank stated that most employees are in level 1. She acknowledged that Grievant's work may impact the math department.

No evidence was submitted regarding what the "work unit" or other organizational unit was for Ms. Reedy's position. Similarly, no evidence was submitted regarding the operating budget of either the math department or WVSC. While it seems that Grievant's position must necessarily have some effect on some portion of the math department (specifically on those classes for which she performs clerical work, checks eligibility or enters data), it is impossible to say with certainty that those portions constitute a "work unit" as that term was used by the JEC. Value judgments are an inherent element of the function of position classification. Jessen v. BOD, Docket No. 94-MBOD-1059 (Oct. 26, 1995). In the absence of any evidence by which to evaluate the JEC's assignment of level 1 to Grievant, the

assignment cannot be said to be clearly wrong or arbitrary and capricious.

#### E. BREADTH OF RESPONSIBILITY:

The factor Breadth of Responsibility is defined in the Mercer 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.]

Grievant was assigned level 1, which is defined as "[a]ccountable for only immediate work assignments but not for a functional area."

Grievant seeks level 2, which is defined as "[i]n-depth knowledge of and accountability for one functional area as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations." (Emphasis in original.)

Grievant stated that she is accountable for one functional area, the Math Department. She stated that the Math Department depends on her to give information to the Admissions Office, to the advisors, to the academic affairs office, students and parents.

Respondent's witnesses explained that this factor measures formal accountability, with budgetary responsibility. As noted in Burke, supra,

The PIQ Summary by Job Family...shows that most Job Titles received a 1.0 for Breadth of Responsibility. Those positions with a "Manager" or "Director" in the title received the 2.0'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..."

Grievant does not have formal or budgetary accountability for the whole math department. While her job is important and well-performed, it is not one which can be described as accountable at an institutional level. The JEC's assignment of level 1 in Breadth of Responsibility was correct.

#### F. INTRASYSTEMS CONTACTS:

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

appraises the responsibility for working with or through other people within the [State

College and University Systems of West Virginia] to get results. Consider the purpose and level of contact encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, explaining policies or discussing controversial issues. This factor considers only those contacts outside the job's immediate work area.

(Emphasis in original.) This factor is analyzed in two parts, Nature of Contact ("Nature") and Level of Regular, Recurring and Essential Contact ("Level").

#### 1. INTRASYSTEMS CONTACTS/NATURE:

Grievant was assigned level 1 in Nature, which is defined as:

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

Level 2 in Nature is defined 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.)

Grievant seeks level 3 in Nature, which is defined 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 gave examples of controversial subjects: when the student receives less credit in transferring from another institution than the student expected, or when the student is not qualified to take a given class at WVSC. She also stated that she supplied information about scores to instructors, students and others, and she explains policy regarding math placement. In addition, she contacts the Registrar's office to obtain or supply information.

Ms. Hank explained that controversial information is not the same as confidential information. She characterized Grievant's contacts as routine information exchange, although she acknowledged that Grievant's information may include confidential information.

The majority of Grievant's contacts with instructors are contacts within her work unit, and thus cannot be considered under the general definition of Intrasystems Contacts. Her contact with students is evaluated under the next factor, External Contacts, and thus also cannot be considered



here. Her communications with the Registrar and occasionally with computer support staff regarding scores and grades and database programs are primarily routine exchanges of information, even though they sometimes touch on confidential material such as social security numbers. Grievant has not proven that her contacts within the institutional system meet more than the level 1 definition.

## 2. INTRASYSTEMS CONTACTS/LEVEL:

Grievant was assigned level 2 in Level, which is defined in the Mercer Plan as "[s]taff and faculty outside the immediate work unit." Grievant seeks level 3, which is defined as "[s]upervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office."

Grievant pointed to her contact with the Registrar in supporting her quest for level 3. She explained that, although her contact with the Registrar occurred primarily within the first few weeks of a semester, the contact was absolutely essential to performance of her job.

Respondent explained that contact must be regular and recurring in order to be credited under this part of the Intrasystems Contacts factor. Contact which is limited to the first few weeks of a semester is not considered regular and recurring, Ms. Hank stated. She explained that Grievant must have been given the benefit of any doubt by being assigned level 2 in this part, as most of her contact is level 1, with the faculty and staff within her own work unit.

Grievant stated in her post-hearing submission that contact once or twice a semester can still be recurring and essential to performance of her duties. While this may be true, the JEC's interpretation of the term "regular" contact deserves thoughtful consideration and deference. Although there is no obvious frequency requirement in the definitions, it is not unreasonable to exclude contacts which occur only a few times a year from consideration as regular contact. It appears that this is what the JEC did.

The majority of Grievant's intrasystems contacts appear to be within her own work area, the math department. Thus, it appears that Grievant could have appropriately been assigned level 1 in this part of the factor. Certainly, the Grievant did not prove that the JEC was clearly wrong or arbitrary and capricious in assigning her level 2 under Level of Intrasystems Contacts.

## G. EXTERNAL CONTACTS:

External Contacts is defined in the Mercer 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.

(Emphasis in original.) This factor, like Intrasytems Contacts, is divided into Nature of Contact ("Nature") and Level of Regular, Recurring and Essential Contact ("Level").

#### 1. EXTERNAL CONTACTS/NATURE:

Grievant was assigned level 1 in Nature, which is defined as:

Routine information exchange and/or simple service activity; requires common courtesy (e.g., furnishing or obtaining factual information, ordering supplies, describing simple procedures). Level 2 in Nature is defined as:

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

Grievant seeks level 3 in Nature, which is defined as:

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

Grievant explained that parents must be handled with sensitivity when their child is not accepted into the tutoring program. Similarly, she must be sensitive when moving students into lower level classes. She stated that students and parents are often angry during these exchanges, and she tries to explain things and calm them. Grievant also has contact with vendors and book representatives about supplies and ordering. Ms. Hank stated that Grievant's contacts were not really controversial, but were merely routine exchanges of information.

No evidence was presented to show that Grievant's contact with vendors and book representatives is more than routine information exchange. The emotion of the persons with whom Grievant has contact is not determinative. One can be extremely angry and frustrated at a circumstance which is factual and not subject to dispute. Grievant's contacts generally seem of this type, as the situation is often not one which can be changed. Either the child has or has not been accepted for tutoring. Either the student is or is not eligible for a class. Thus, Grievant's contacts do not necessarily pertain to controversial matters, despite the emotional response. Moreover, the policy and procedure involved cannot be characterized as "complex policies," as they are standardized, with only a narrowly drawn area for discretionary action and limited options available. Grievant's

contacts do not meet the level 3 definition.

The difference between levels 1 and 2 of Nature is, at best, difficult to discern. Dictionary definitions of the terms included in the phrases "common courtesy" and "moderate tact" show that the two phrases have virtually identical meaning. The most obvious difference between the two levels is the inclusion of the term "cooperation" in level 2, and that the level 2 definition includes explanatory and coordinating communication, where level 1 appears limited to merely providing factual information.

It is difficult to determine when information regarding criteria and options is description, and when it is explanation. By reference to Webster's Collegiate Thesaurus, "description" can also be characterized as "recounting" or "reciting," while "explaining" can be characterized as "construing" or "interpreting." Thus, it appears that, to move from the descriptive to the explanatory, one must go beyond reciting a policy or requirement to interpretation of the policy or requirement.

Rating Grievant's contacts with students regarding math placement procedures and requirements is problematic. It seems that these contacts could be characterized as either "furnishingfactual information" and "describing simple procedures," or as "explaining simple policies and procedures." In the hearing, most of Grievant's discussion about the scoring requirements consisted of a description of the numerical requirements and the score differentials which allowed her some discretionary choices. She did not explain why the requirements were imposed, or how they might be interpreted. Grievant also outlines options to students regarding how they can proceed. For instance, Grievant tells them that they can furnish certain types of alternative information qualifying them for a class, such as test scores or transcripts. She apparently discusses alternatives in terms of class schedules, and directs them to the Registrar's office when the student must change a non-math class before adding a math class. These appear more descriptive than explanatory.

Ultimately, application of the Nature definitions involves a subjective value judgment in interpreting these similarly-worded provisions. Such value judgments are an inherent element of the function of position classification. Hastings, supra; Jessen, supra. The JEC's interpretations are entitled to great weight unless clearly wrong. As Grievant did not clearly show that her function is explanatory in nature rather than descriptive, the JEC's determination on this point cannot be said to have been clearly wrong, arbitrary or capricious.

## 2. EXTERNAL CONTACTS/LEVEL:

Grievant was assigned level 2, which is defined in the MercerPlan as "[g]eneral public, visitors, and/or service representatives and vendors." Grievant seeks level 3, which is defined as "[s]tudents, parents, alumni, faculty of institutions outside the systems, sales engineers, higher-level product representatives, recruiters and/or prospective students."

Grievant pointed to her contact with students, parents and vendors. Respondent's witness stated that most of this contact occurs in the first few weeks of a semester, and thus should not be considered as it constitutes only a small percentage of Grievant's time. Grievant responded that her contacts with students was not limited to just the first weeks of a semester, although she acknowledged that she had intensive contact with students during that time.

Grievant has shown that she has contact with students, parents and vendors. Even if contact with parents and vendors is discounted, her contact with students is inarguable. Contrary to Ms. Hank's assertions, it is clear that Grievant has at least weekly contact with students. The contact is regular, recurring and essential to performance of Grievant's duties. Grievant has shown that her contacts meet the level 3 definition. Respondent has failed to explain or justify its rating of Grievant below level 3.

#### H. PHYSICAL COORDINATION:

According to the Mercer Plan,

This factor assesses the amount of psychomotor skill involved in performing the job. Consider the complexity of body movements, speed/timing of movements, precision of movements, and need for close visual attention regularly required by the job in performing the work.

Grievant was assigned level 2, which is defined as:

Work requires simple hand/eye operations and some accuracy and regularity of motions, such as set-up and operation of basic instruments or equipment, and/or the occasional use of standard hand or power tools with minimal speed requirements.

Level 3 in Physical Coordination is defined as:

Work requires some speed and accuracy of hand/eye coordination in the use of somewhat complicated instruments, equipment or hand or power tools requiring some speed and adeptness.

Grievant seeks level 4, which is defined as:

Work requires skill and accuracy or other manual actions involving rapid physical motions and closely coordinated performance on or with office equipment; or a high degree of manual skill and exactness in the use of hand instruments or equipment.

Grievant stated that some speed and accuracy in matching test scores and finding information is required during the first weeks of the semester when so many students are demanding assistance with placement. She acknowledged that this is not a daily requirement throughout the year. She also pointed to her duties entering data, and in completing drop/add forms during the first weeks of a semester.

Respondent agreed that Grievant's job demands accuracy in data entry and retrieval, but stated that speed was not a requirement. Ms. Hank noted that Grievant had only a small amount of time over the course of a year when any speed was required, and that even then there was no specific, mandated speed requirement. Much other work is monitoring tests, comparing answers with the answer key, and other work which Grievant did not state had specific skill or speed requirements. Ms. Hank stated that office support positions such as this generally were assigned level 2 in Physical Coordination throughout the higher education system.

Grievant's evidence merely confirmed the correctness of the JEC rating in this factor.

## I. WORKING CONDITIONS AND PHYSICAL DEMANDS:

According to the Mercer Plan:

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.

This factor is divided into two parts, one being Working Conditions and the other Physical Demands.

### 1. WORKING CONDITIONS:

The Working Conditions part of this factor consists of four levels. Grievant was assigned level 1 of Working Conditions, which is defined 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.

Level 2 of Working Conditions is defined 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.

(Emphasis in original.) Grievant seeks level 3 of Working Conditions, which is defined as:

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

Grievant testified that there is always a risk of a chemical leak from Rhone-Poulanc, as her office is near that facility. She also testified that she must go out of doors when she administers a test in a location other than her building.

Ms. Hank noted that there was no job requirement mandating that Grievant work outside, and Grievant agreed that there was no ongoing, frequent discomfort associated with her working conditions. Grievant works in a standard office environment, which consistently received a level 1 assignment from the JEC.

This part of the factor was intended to measure discomforts experienced in an ongoing fashion, not potential discomforts which may never come to pass. Grievant's argument based on proximity to a chemical plant is purely speculative, and irrelevant.

The vast majority of Grievant's work time is spent in an office environment. Even if her occasional forays into the outdoors are taken into account, they do not occur often enough or for a long enough period to move her into a higher level definition. The JEC's assignment of level 1 in Working Conditions was correct.

## 2. PHYSICAL DEMANDS:

The other part of this factor is designated as Physical Demands, which is broken down into five levels. Grievant was assigned level 1, which is defined as:

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

Grievant seeks level 2, which is defined as:

Light physical effort required involving stooping and bending; individual has limited discretion about walking, standing, etc.; occasional lifting of lightweight objects (up to 25 pounds.)

Grievant showed that she carries test materials and/or books which weigh ten to fifteen pounds. Respondent explained that occasional lifting is not considered here. The activity must be regular and recurring, and a requirement of the job. Ms. Hank stated that Grievant did not spend enough time lifting such materials to merit the level 2 rating. She also stated that everyone has to move some paperwork and files, and that this was considered level 1 work.

Grievant is not required to lift the materials mentioned, nor is she required to move the materials in one mass at one time. She could choose to get help, to use a dolly, or to split up the materials into smaller loads. She has discretion about moving around while performing her various job duties, and she performs the majority of her work in a physically comfortable fashion. Grievant failed to prove that the JEC was clearly wrong or arbitrary and capricious in assigning her level 1 of Physical Demands.

### **SUMMARY**

The JEC erred in assigning Grievant point levels under the factors Scope and Effect, and External Contacts. By assigning Grievant the correct number of points, she is entitled to an increase of 18 points, for a total of 1281 points, which equates to pay grade 7. Neither the points nor the pay grade match with those of the Program Assistant I. Consequently, while Grievant's job duties do not seem to fit well in the Office Assistant title, a change in title is not confirmed by the point factor analysis. Grievant cannot be awarded the title Program Assistant I in this proceeding, nor has she shown that she is entitled to a change in Pay Grade. Grievant has similarly not shown that all persons in the OA title are entitled to changes in Scope and Effect and External Contacts ratings. The data line reflects average ratings for the entire job title, not the rating for one position. Therefore, a change in the OA data line in R. Ex. 2 is not appropriate.

## **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 § 4.19. 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. Determinations of the Job Evaluation Committee regarding application of the Mercer Plan's point factor methodology are essentially questions of fact. In that regard, the JEC's interpretation and explanation of the point factors and PIQs at issue will be given great weight unless clearly erroneous. Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). See generally, Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W. Va. 1995).
4. Subjective determinations of the JEC regarding application of the Mercer Plan's point factor methodology to an employee or group of employees are entitled to deference when being reviewed by this Grievance Board. Such determinations may nonetheless be found to be arbitrary and capricious if not supported by a rational basis, or to be clearly wrong if there is no substantial evidence in the record supporting the finding or if review of the evidence makes it clear that a mistake has been made. Burke, supra. See Frymier-Halloran v. Paige, 458 S.E.2d 780, 788 (W. Va. 1995); Bd. of Educ. v. Wirt, 192 W. Va. 568, 453 S.E.2d 402 (1994); Kyle v. W. Va. State Bd. of Rehabilitation, Docket No. VR-88-006 (Mar. 28, 1989).
5. Where the JEC's decisions are not supported by substantial evidence of record or are based upon an apparent mistake of fact, Grievants may be assigned the correct rating level in accordance with the Mercer Plan. Jones v. Bd. of Trustees, Docket No. 94- MBOT-978 (Feb 29, 1996). Jessen v. Bd. of Trustees, Docket No. 94- MBOT-1059 (Oct. 26, 1995).
6. The Job Evaluation Committee's assignment of degree levels to the point factors Knowledge, Experience, Complexity and Problem Solving, Scope and Effect/Impact, Breadth of Responsibility, Intrasystems Contacts/Nature, Intrasystems Contacts/Level, External Contacts/Nature, Physical Coordination, Working Conditions and Physical Demands for Grievant's



position is neither clearly wrong nor arbitrary and capricious.

7. By assigning the correct point values under Scope and Effect/Nature of Actions and External Contacts/Level of Contacts, Grievant would be assigned a total of 1281 points, which equates to a Pay Grade 7.

8. As the points and pay grade properly assigned to Grievant do not equate to the points and pay grade assigned to the Program Assistant I position, Grievant has failed to show she could be properly classified as a Program Assistant I.

Accordingly, this Grievance is **DENIED**.

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

**JENNIFER J. MEEKS**

**Administrative Law Judge**

**Dated: November 4, 1996**

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[Footnote: 1](#)

*The reader is referred to Burke v. Bd. Of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995) for a discussion of the background of the Mercer Plan mass reclassification project, the procedural history of the grievances arising from the reclassification, and the definitions of some terms of art specific to the Mercer Plan reclassification.*

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[Footnote: 2](#)

*Grievant did not argue she should have been classified as an Administrative Secretary. Consistent with this Grievance Board's past practice, whether the Grievant should have been classified as an Administrative Secretary will not be addressed. See Elkins, supra; Otey v. W. Va. Div. of Rehab. Serv., Docket No. 94-RS-538 (Jan. 31, 1995).*