

BARRY GREGG, et al.,

v.

DOCKET NO. 94-MBOT-863

BOARD OF TRUSTEES,

WEST VIRGINIA NETWORK FOR EDUCATIONAL TELECOMPUTING

DECISION

Grievants Barry Gregg, Randall Long, Larry Pierce and Larry Pugh each alleges he was misclassified effective January 1, 1994, in the "Mercer reclassification" ([See footnote 1](#)). Grievants Long and Gregg seek as relief a Pay Grade 17 (rather than 12) for their Job Title of Computer Operator II, effective January 1, 1994, and backpay from January 1, 1994. Grievant Pierce seeks as relief to be classified as a Supervisor, Pay Grade 19, effective January 1, 1994, and backpay from January 1, 1994. Grievant Pugh seeks as relief that the CO I and CO II Job Titles be collapsed into a new Job Title, and that he be classified in this new Job Title of Network Computer Operator, Pay Grade 14, effective January 1, 1994, and backpay from January 1, 1994. Three days of hearing were held at Level IV, on March 7, June 10, and July 1, 1996. ([See footnote 2](#)) This matter became mature for decision on August 13, 1996, with receipt of the parties' fact/law proposals.

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

Findings of Fact.

1. Grievants are employed at the West Virginia Network for Educational Telecomputing ("WVNET").
2. In 1991, all higher education classified employees were asked to complete a Position Information Questionnaire ("PIQ"). Employees were to describe their job duties and responsibilities and the job requirements on the PIQ, by answering a series of questions designed to elicit this information. Grievant Pierce completed a PIQ in 1991. All CO I's at WVNET completed one joint PIQ, and all CO II's at WVNET completed one joint PIQ.
3. Effective January 1, 1994, Grievant Pugh was classified as a Computer Operator I ("CO I"),

Pay Grade 10; Grievants Long and Gregg were each classified as a Computer Operator II ("CO II"), Pay Grade 12; and, Grievant Pierce was classified as a Computer Operator Lead ("Lead"), Pay Grade 14.

4. WVNET provides central computing facilities (via main- frame computers) linking the campus computing systems at most of the colleges and universities throughout the state, and portions of state government. WVNET also acts as a server for these institutions and some private industry, connecting them to the Internet. The hardware at WVNET includes several main-frame computers, mini-computers, a super computer, personal computers and all the peripheral devices which go with these computers.

5. Grievant Pugh's primary job duties (with the percentage of time he performs these duties shown in parenthesis) are monitoring system consoles for messages [\(See footnote 3\)](#) which require operator intervention (30%); mounting magnetic tapes and cartridges and refilling all tapes and cartridges in the tape library (20%); monitoring the laser printer for adjustments and malfunctions, setting up and aligning print forms on line printers, distributing output to mail boxes, and keeping an inventory of print forms, paper and printer ribbon (10%); responding to operational problems and assisting senior operators in diagnosis of undocumented operational problems to determine the appropriate systems personnel to contact for remedial action (10%); performing system backup procedures (10%); answering the telephone, responding to alarms and acting as building security after hours (10%); assisting in maintenance of printers and tape drives, and in maintaining daily log reports of hardware, software and operational problems (5%); and reviewing technical manuals and operational procedures on hardware and software changes, and participating in training (5%).

6. Grievant Long's and Grievant Gregg's primary job duties(with the percentage of time they perform these duties shown in parenthesis) are monitoring job flow and resource use of systems to maintain operating efficiency (20%); monitoring consoles for messages which require operator intervention (20%); mounting and removing magnetic tapes and filing them in the tape library (12%); maintaining form and paper inventory, aligning forms on printers, and distributing printer output to mail boxes (8%); diagnosing undocumented problems and assisting vendors, engineers, and programmers in correcting hardware and software problems (8%); following operating procedures to correct malfunctions (7%); ensuring routine operational procedures, such as system backups, are completed on schedule (7%); answering the telephone and fielding questions from users, acting as

building security after hours, and responding to alarms from the uninterruptible power supply (7%); studying technical and operations manuals on operation of main-frame computers (6%); and participating in maintenance and cleaning of peripheral devices, and maintaining a log of hardware and software failures and all system operation problems (5%).

7. Grievant Pierce's primary job duties (with the percentage of time he performs these duties in parenthesis) are watching computer consoles for operator related messages and acting on messages as required, correcting errors when units malfunction, monitoring job flow and resource use of system and identifying misuse of computer time to maintain efficiency, serving as liaison with consultant on system failures and user problems, and mounting and removing magnetic tapes (45%); supervising the work of CO I's and II's (30%); studying operational procedures and technical manuals on new hardware and software, writing and approving sections of the Operator's manual, and conducting training sessions (8%); assuring that all hardware and software maintenance is performed, filing tapes, delivering output to mail boxes, maintaining supply inventory, and answering the telephone (8%); determining cause of hardware and software failure and notifying appropriate personnel, working with Telecommunications Network Technician in diagnosing and correcting communication line problems, and assuring system dumps are produced (4%); and acting as Manager of Operations in the supervisor's absence (5%). [\(See footnote 4\)](#)

8. There is a difference in the duties and responsibilities of a CO I and a CO II. CO II's handle the more difficult error messages. They learn how to handle the more difficult messages with experience, and this is reflected in the degree level assigned under Experience for the CO I, CO II and Lead.

9. On January 1, 1994, Grievant Pugh was voluntarily performing work at the CO II level, but he was not required to do so, and was evaluated based upon his performance as a CO I.

10. About 50% of the messages which require operator action are highlighted. With experience, CO I's and II's learn which non-highlighted messages require operator action. When they receive a message which requires operator action, they attempt to determine the source of the message. The first step is to determine whether it is a hardware or software problem. Some problem sources are immediately recognizable, and others require Grievants to enter commands to determine what is still on line and what is still processing. This may take from 30 seconds to two hours or more. Frequently, the problem is solved by Grievants entering a new message (instruction) into the system in the

appropriate language. Grievants' work each day depends on what messages come up on the consoles and what print jobs must be completed.

11. Grievants must be familiar with many system operating languages [\(See footnote 5\)](#). They have reference manuals which are used to determine the language being used, the meaning of the phrase in the language, and what steps to follow to locate the source of an error message. In order to perform their duties in a timely manner, they must learn to recognize the languages and some phrases, so they do not always have to use the reference guide. Sometimes Grievants must translate a command code before they can use the reference index.

12. For handier reference, the Computer Operators have compiled an Operator's Guide over many years, which is a collection of procedures which are used daily, common phrases, and more complicated or detailed information for handier reference. It was written prior to 1991, but is updated from time to time. Grievant Pierce is solely responsible for updating some sections.

13. If a CO I or II cannot find the source of the message, he takes it to Grievant Pierce. Grievant Pierce tries to identify the source and correct the problem before referring it to someone else, and is able to do so 75% of the time.

14. Once the source of the problem is identified, if Grievants cannot fix it from their area, or do not know how to solve the problem, the problem is referred to the appropriate person for action. For example, programming problems are referred to programmers, and maintenance problems are referred to the appropriate maintenance persons. When a problem is referred to a programmer, Grievant Pierce informs the programmer of the problem and assists in deciding on a course of action. If a programmer resolves the problem, Grievants are trained in the procedure so they can correct the problem the next time it occurs.

15. Grievants set the printer to the size and shape of the paper to be used in printing a job, enter commands into the computer for some print jobs, and monitor print jobs.

16. Grievant Pierce's work hours are 8:00 a.m. to 4:30 p.m., Monday through Friday, but he is always on call. The remaining Grievants work three 12 1/2 hour shifts each week.

17. A CO I and a CO II are scheduled to work each shift. If both Computer Operators on a shift want to do the same task, Grievant Pierce gets them together and tries to work it out. However, the CO I reports to the CO II, and the CO II reports to Grievant Pierce, so generally, the CO II would decide who would do what tasks. If two CO II's were on the job, the CO II with more seniority would

decide. The CO II decides the priority of print jobs using established guidelines; if there is a problem, the CO II is the one who handles it; and if someone needs to be called, the CO II places the call.

18. Grievant Pierce makes the decision in a power outage whether to power down the main frame computers at WVNET. In making this decision, he knows the computers will suffer significant damage if the power is off fifteen minutes. He takes the computers down for power outages two or three times a year. When doing so, to avoid damage to the machines, he must carefully follow the proper steps in order. Grievant Pierce makes other decisions that CO I's and II's do not make, such as, if output does not look right, he makes the decision to print it or not print it.

19. Dennis Robinson, Operations Manager, has budget responsibility for Grievants' department.

20. When Grievants answer the telephone, they receive information from callers about a problem the caller is having using the system from his computer terminal, and provide information to the caller on what steps to take to correct the problem, or relay other information such as the system is down. The caller could be anyone accessing WVNET, from a child to the President of West Virginia University, and might be frustrated or angry.

21. Grievants Long, Gregg and Pierce have weekly contact with vendors regarding hardware problems, and vendors ask them to run reports for them. Grievant Pugh, as a CO I, does not usually contact vendors.

22. Grievant Pierce prepares the work schedules for CO I's and II's, and approves and signs their sick leave, overtime, comp time and personal leave. Grievant Pierce does not hire or fire employees; however, his supervisor asks for his input on hiring and firing decisions. He completes employee evaluations, he and his supervisor go over the evaluations prior to finalizing them, and his supervisor signs them. Grievant Pierce writes and signs disciplinary letters, and holds employee counseling sessions with CO I's and II's to discuss performance and interpersonal issues. Grievant Pierce sometimes checks the work of the after hours CO I's and II's to make sure they took the proper action.

23. The CO I Job Title received 1505 total points from the following degree levels in each of the thirteen point factors [\(See footnote 6\)](#): 4.0 in Knowledge; 2.0 in Experience; 2.0 in Complexity and Problem Solving; 2.0 in Freedom of Action; 2.0 in Scope and Effect, Impact of Actions; 2.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 1.0 in Intrasystems Contacts, Nature

of Contact; 2.0 in Intrasystems Contacts, Level of Contact; 1.0 in External Contacts, Nature of Contact; 1.0 in External Contacts, Level of Contact; 1.0 in Direct Supervision Exercised, Number; 1.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 2.0 in Physical Coordination; 3.0 in Working Conditions; and 3.0 in Physical Demands. Respondent's Ex. 2.

24. The CO II Job Title received 1667 total points from the following degree levels in each of the thirteen point factors: 4.0 in Knowledge; 4.0 in Experience; 2.0 in Complexity and Problem Solving; 2.5 in Freedom of Action; 2.0 in Scope and Effect, Impact of Actions; 2.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 1.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level of Contact; 1.0 in External Contacts, Nature of Contact; 1.0 in External Contacts, Level of Contact; 1.0 in Direct Supervision Exercised, Number; 1.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 2.0 in Physical Coordination; 3.0 in Working Conditions; and 3.0 in Physical Demands. Respondent's Ex. 2.

25. The CO Lead Job Title received 1977 total points from the following degree levels in each of the thirteen point factors: 4.0 in Knowledge; 6.0 in Experience; 2.0 in Complexity and Problem Solving; 2.5 in Freedom of Action; 2.0 in Scope and Effect, Impact of Actions; 3.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 2.0 in Intrasystems Contacts, Nature of Contact; 3.0 in Intrasystems Contacts, Level of Contact; 2.0 in External Contacts, Nature of Contact; 3.0 in External Contacts, Level of Contact; 5.0 in Direct Supervision Exercised, Number; 3.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 2.0 in Physical Coordination; 3.0 in Working Conditions; and 3.0 in Physical Demands. Respondent's Ex. 2.

26. The point score range for a Pay Grade 10 is from 1475 to 1560 total points. The point score range for a Pay Grade 12 is from 1655 to 1755 total points. The point score range for a Pay Grade 14 is from 1866 to 1984 total points. Respondent's Ex. 5.

Discussion

A. Burden of Proof

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; W. Va. Code § 18-29-6. *Burke, et al., v. Bd. of Directors, Fairmont State College*, Docket No. 94-MBOD-349 (Aug. 8, 1995). A grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

A grievant is not likely to meet his burden of proof in a Mercer grievance merely by showing that the grievant's job duties better fit one job description than another, because the Mercer classification system does not use "whole job comparison". The Mercer classification system is largely a "quantitative" system, in which the components of each job are evaluated using the point factor methodology. Therefore, the focus in Mercer Decisions issued by this Grievance Board is upon the point factors the grievant is challenging. [\(See footnote 7\)](#) While some "best fit" analysis of the definitions of the point factors is involved in determining which degree level of a point factor should be assigned, where the position fits in the higher education classified employee hierarchy must also be evaluated. In addition, this system must by statute be uniform across all higher education institutions; therefore, the point factor degree levels are not assigned to the individual, but to the Job Title. W. Va. Code § 18B-9-4; *Burke, supra*. A Mercer grievant may prevail by demonstrating his reclassification was made in an arbitrary and capricious manner. See *Kyle v. W. Va. State Bd. of Rehabilitation, Div. of Rehabilitation Services*, Docket No. VR-88-006 (Mar. 28, 1989).

Finally, whether a grievant is properly classified is almost entirely a factual determination. As such, the Job Evaluation Committee's ("JEC") interpretation and explanation of the point factors and Generic Job Descriptions or PIQ's at issue will be given great weight unless clearly erroneous. See *Tennant v. Marion Health Care Found.*, 459 S.E.2d 374 (W. Va. 1995); *Burke, supra*. However, no interpretation or construction of a term used in the Job Evaluation Plan (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. *Watts v. Dept. of Health and Human Res.*, 465 S.E.2d 887 (W. Va. 1995). The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. [\(See footnote 8\)](#)

B. Grievants' Challenges to the JEC Decision-Making Process

Grievants made several challenges to the way the JEC made decisions, in an effort to discount the deference given the JEC. [\(See footnote 9\)](#) The first challenge made by Grievants Long and Pierce,

and to some extent Pugh, can be summarized as an assertion that the JEC did not gather sufficient factual information via the PIQ. Grievants presented expert witness testimony in an attempt to discredit the PIQ generally, and concluded that by relying on PIQ's the JEC did not receive accurate information on job duties. [\(See footnote 10\)](#) Deference is given to the JEC because of the fact specific analysis applied by the JEC. Despite Grievants' expert witness, in order to overcome this deference the burden on Grievants is the same in this case as in any other: to show that the information used by the JEC to classify these Grievants was erroneous. Even a successful showing that PIQ's in general are not the best source of information does not meet that burden. What is important is whether the JEC's decision is based upon a mistaken belief as to the particular employee's job duties and responsibilities. As in all Mercer grievances, where the Grievants show the JEC decision on a particular challenged point factor was based upon a mistake of fact, the JEC decision may be found to be clearly wrong.

In this case, the PIQ of Grievants Long and Gregg correctly listed their duties and responsibilities. The 1991 PIQ's of Grievants Pugh and Pierce were not placed into evidence by the parties, so no evaluation can be made of these PIQ's. The PIQ's they completed in 1993 listed their duties and responsibilities, and provided some detail about how they completed their duties. Grievants provided more detail in their Level IV testimony, which helped the undersigned in understanding Grievants' jobs, but did not affect the outcome on the point factor analysis.

Grievants Long and Pierce further argued, based upon the general testimony of an expert witness, that the JEC did not objectively apply the Plan, because it would not assign more than a 2.0 in Scope and Effect, Impact of Actions to a "blue collar" position; would not typically assign more than a 2.0 in Freedom of Action to a "blue collar" position; would not assign more than a 2.5 in Complexity and Problem Solving to a "blue collar" position; and, would normally place an employee two pay grades below his supervisor. The undersigned need not address whether Grievants' characterizations are accurate. Grievants applied this general testimony to their own situations only in Complexity and Problem Solving, arguing that computer operators did not receive a degree level of 3.0 because they were not professionals. As will be addressed below in the discussion of that point factor, regardless of how much or how little deference is given the JEC, Grievants' duties and responsibilities simply do not fit within the degree level 3.0 definition.

Grievants' third challenge was that Grievants did not know half-levels were available when they

filled out their PIQ's and this affected their ability to include language to support a half- level. The purpose of the PIQ was to collect information on the duties and responsibilities of the employee. The employee's role was to describe his duties and responsibilities, and to answer the questions asked on the PIQ truthfully. Whether a half-level was available should have no impact on the employee's ability to provide this information. [\(See footnote 11\)](#) Finally, Grievant Pugh argued the Plan should have given credit for shift work, because he believes it has an impact on family relationships, has physical and emotional effects, prevents employees from enjoying weekend activities, and creates child-care problems. He also argued employees called to work unexpectedly miss scheduled events. Both Grievant Pierce's supervisor and Lu Ann Moore, Senior Compensation Analyst at West Virginia University ("WVU") and former JEC member, stated that other higher education employees work shifts; for example, persons employed in the WVU hospital and health sciences center, as campus police officers, in residence halls and in food services, in the athletic department, and in maintenance, all work shifts. Ms. Moore explained that the Project Oversight Committee looked at whether to consider shift differentials in the Plan, and decided not to do so. She opined that this is not a classification issue, but is a compensation issue. Audra Lumm, Human Resources Director at WVNET, opined that Grievants' shift work is highly desired by many employees because they work three days and are frequently off four days in a row. Grievant Pugh has merely demonstrated that his opinion about what aspects of a position should be evaluated is different from that of the Human Resource professionals who developed the Plan. Obviously, the value of shift work is in the eyes of the beholder. C. Application of the Point Factor Methodology

Following are the differences between the degree levels assigned in the point factors challenged for the CO I, II and Lead, and the degree levels Grievants argued they should have received: [\(See footnote 12\)](#)

				SE	SE	IC	IC	EC	EC	DSE	DSE	EX	CPS
FA	IA	NA	NC	LVL	NC	LVL	NUM	LVL	(See footnote 13)				
CO I		2	2	2	2	2	1	2	1	1	1	1	
CO II	4	2	2.5	2	2	1	2	1	1	1	1	1	
CO Lead	6	2	2.5	2	3	2	3	2	3	5	3		

Pugh

Argument 4 2.5 2.5 8 NC 2 NC 2 2 NC NC

Long

Argument NC 3 3 8 4 2.5 3 2.5 3 2 3

Gregg

Argument NC 3 4 8 4 2.5 3 2.5 3 2 3

Pierce

Argument NC 3.5 4 8 4 2.5 NC 2.5 NC NC 4

Each of the point factors challenged by Grievants will be addressed separately below.

1. Experience

The Plan defines Experience as follows:

This factor measures the amount of prior directly related experience required before entering the job. Previous experience or training should not be credited under this factor if credited under Knowledge.

Grievant Pugh argued there is no longer any distinction between a CO I and a CO II at WVNET, and he should have received the CO II Experience rating of 4.0, rather than a 2.0. [\(See footnote 14\)](#) He did not argue that as a CO I he should have received a 4.0. He conceded that his duties when he began his employment at WVNET in the position now titled CO I were different from those of a CO II. No evidence was presented that additional experience was necessary to enter into the duties of a CO I.

A degree level of 2.0 is defined in the Plan as "[o]ver six and up to twelve months of experience." A degree level of 3.0 is defined in the Plan as "[o]ver one year and up to two years of experience." A degree level of 4.0 is defined in the Plan as "[o]ver two years and up to three years of experience."

Whether Grievant Pugh should have received a 2.0 or a 4.0 depends upon whether he was performing duties at the CO I level or the CO II level. Dennis Robinson testified that because of workload and convenience, CO I's have assumed CO II duties. He further stated that CO I's have been encouraged by management to learn CO II duties so they could move into a vacant CO II position. He stated that CO I's have been told they did not have to perform CO II duties, but they have not been directed not to perform CO II duties. This testimony is critical to the decision on Grievant Pugh's grievance based upon this Grievance Board's prior Decisions that:

(e)mloyees who, with full understanding that they have no guarantee of higher compensation voluntarily fill in at a higher classification level cannot later claim that they should have been reclassified for that period. Freeman v. W.Va. Dept. of Health and Human Resources, Docket No. 90-H-237 (Dec. 26, 1990).

Spencer v. W. Va. Dept. of Health and Human Res., Docket No. 93- HHR-523 (Oct. 28, 1994). See also, Wilds v. Div. of Highways, Docket No. 94-DOH-290 (Dec. 30, 1994).

Grievant Pugh has not been assigned CO II duties, but has voluntarily taken them on, knowing that he would still be a CO I and would be evaluated as a CO I. He has been told that the only way he can move into a CO II position is if one becomes vacant. The fact that he is capable of performing at a higher level, and chooses to do so when not required does not render him misclassified, and the undersigned must evaluate Grievant Pugh's assigned CO I duties. Accordingly, Grievant Pugh's argument that he should have received a CO II Experience rating fails.

Likewise, Grievant Pugh's argument that the CO I and CO II Job Titles should be collapsed into one position titled a Network Computer Operator is not supported by the evidence. No one disputes that it takes experience to become familiar with the languages and procedures at WVNET, which is what occurs at the CO I level.

2. Complexity and Problem Solving

The Plan defines Complexity and Problem Solving as follows:

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 Pugh argued he should have received a degree level of 2.5, rather than a 2.0. Grievants Long and Gregg argued they should have received a degree level of 3.0 in this point factor, rather than a 2.0. Grievant Pierce argued he should have received a degree level of 3.5, rather than a 2.0. A degree level of 2.5 or 3.5 is not defined in the Plan, but Ms. Moore explained the JEC assigned a "half-level" in both Complexity and Problem Solving and in Freedom of Action when the duties and responsibilities fell partially within the lower degree level and partially within the next higher degree level.

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

Problems encountered require the employee to make basic decisions regarding what needs to be done, but the employee can usually choose among a few easily recognizable solutions. Established procedures and specific instructions are available for doing most work assignments, with some judgment required to interpret

instructions or perform basic computation work such as in the comparison of numbers or facts.

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

Problems encountered can be somewhat complex and finding solutions to problems may require some resourcefulness and originality, but guides, methods and precedents are usually available. Diversified guidelines and procedures must be applied to some work assignments. Employee must exercise judgment to locate and select the most appropriate guidelines, references, and procedures for application, and adapt standard methods to fit variations in existing conditions.

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

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

Grievants admitted reference manuals are available as guides, but argued translation of computer languages and analyzing data to determine whether a problem exists, and if so, what the problem is, requires analysis and judgment. They argued that a number of steps must be taken to test and find the source of an error message. [\(See footnote 15\)](#) Grievant Pugh argued his duties when on day shift fell within a 2.0, because he could direct problems to others who were working, but were within a 3.0 when on night shift, because he had to make sure he knew the source of the problem so he did not call the wrong person out of bed.

Ms. Moore stated that one probably had to be a member of the JEC to understand how the Plan is interpreted. She further stated that the interpretation became standardized after being applied repeatedly, and the JEC decided that a 2.0 was the appropriate level for the CO I position. This testimony is not helpful to the undersigned in understanding how the JEC applied this point factor, or in deciding whether Grievants have met their burden of proof; nor does it rebut Grievant's presentation.

When Grievants are diagnosing error messages, which is one of the primary purposes of their job, they must analyze the message and may have to go through a series of steps to determine the source of the message. At times this may be easy, and at times it may well be very complicated. However, in applying this point factor to this duty, the evidence is that, although the problems may be somewhat complex to others, Grievants learn how to perform this duty with training and experience [\(See footnote 16\)](#), and there is a documented procedure to be followed with each message. CO I's start

at the bottom and learn gradually what the messages mean and what steps to take to diagnose problems. CO II's take on the more difficult messages, and the Lead takes on the messages the CO II's have not learned to diagnose. Programmers train Grievants in procedures so Grievants can diagnose messages the next time. There are set procedures to be applied in every situation, and when Grievants have run through those procedures without results, they do not use resourcefulness and originality to locate the source of the message; their job is to then refer the message to someone else. The evidence does not support a finding that this process is any different on the night shift.

Grievants received credit in Knowledge and Experience for the complexity involved in learning languages and the procedures to follow in diagnosing messages. Grievants Pugh, Long and Gregg have not proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning their Job Titles a 2.0.

Grievant Pierce's duties do not fall within the definition of a degree level of 4.0. To the extent he performs the same duties as the other Grievants, using the same steps, his duties fall within a degree level of 2.0. When he is preparing work schedules, his duties fall within a degree level of 2.0. He did not present any evidence that he encounters anything complex when approving leave. When deciding whether to power down the computers during a power outage there are only two choices, and he has to power down within 15 minutes. He must carefully follow standard procedures in powering down the computers. While this may be stressful to him, it is still within a degree level of 2.0. When deciding whether to update the in-house manual, he did not indicate this was more than a basic decision; and when writing updates, it is a matter of putting the standard procedures on paper, and sometimes, merely taking the standard procedures from some other manual and copying them to the in-house manual. The undersigned is not convinced this falls within a degree level of 3.0. Grievant Pierce's duties in writing disciplinary letters when needed and employee evaluations once a year, and counseling employees may fall within a degree level of 3.0. However, these duties make up such a small portion of Grievant Pierce's duties that the undersigned cannot find the JEC decision to assign his Job Title a 2.0 clearly wrong or arbitrary and capricious.

3. Freedom of Action

The Plan defines Freedom of Action as:

This factor measures the degree to which the position is structured as is determined by the types of control placed on work assignments. Controls are exercised in the way assignments are made, how instructions are given to the employee, how work

assignments are checked, and how priorities, deadlines and objectives are set. Controls are exercised through established precedents, policies, procedures, laws and regulations which tend to limit the employee's freedom of action.

Grievant Pugh argued his duties are the same as those of a CO II, and he should have received the same degree level - a 2.5, rather than a 2.0. This argument is rejected based upon the undersigned's previous ruling that the duties required of his position are not the same as a CO II's duties. He also argued that working after 5:00 p.m. and on weekends, without all the staff and supervisors present, increased the Freedom of Action of the position. Grievant Long argued he should have received a degree level of 3.0, rather than a 2.5. Grievants Gregg and Pierce argued they should have received a degree level of 4.0, rather than a 2.5.

The definitions in the Plan show that at a degree level of 2.0:

Tasks are structured to the extent that standard operating procedures serve as a gauge to guide the employee's work. The employee can occasionally function autonomously with the immediate supervisor available to answer questions. Questionable items are referred to the immediate supervisor. The definitions in the Plan show that at a degree level of 3.0:

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

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

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

Ms. Moore testified that the manuals used by Grievants to diagnose problems are a type of control on their work assignments. She stated the manuals represent standardized policies and procedures which are to be followed. She explained that if Grievants were regularly interpreting the manuals or making substantive changes to them, that would fall within a higher degree level. She further stated, however, that accountability is a consideration in the application of this point factor. She pointed out there are only five degree levels for this point factor. She stated this point factor does not turn on whether the supervisor stands over the employee. She concluded Grievants perform routine assignments and tasks, over and over, which limits the Freedom of Action.

The evidence does not support Grievant Pugh's assertion that Grievants' tasks are structured differently in the evening. Regardless of when Grievants are working, their tasks each shift are dependent upon the messages on the consoles and the jobs to be printed. Grievant Pugh, as a CO I, is not required to resolve all problem messages. Grievant Pugh's duties fall squarely within a degree level of 2.0, as do many if not all, of the duties of Grievants Long and Gregg, and many of the duties of Grievant Pierce. See Flenniken, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-1020 (July 19, 1996). Grievants have failed in meeting their burden of proof on this point factor.

4. Scope and Effect

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

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

This point factor consists of two parts, Impact of Actions and Nature of Actions. Grievants are challenging the degree level received in both parts. Grievants received a degree level of 2.0 in Impact, and argued they should have received an 8.0.

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

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

A degree level of 8.0 in Impact is defined in the Plan as:

Work affects the entire operations of a doctoral-level institution with an operating budget of more than \$200M; or several institutions within the West Virginia higher education systems.

Grievants Long, Gregg and Pierce argued their duties have an impact on several institutions within higher education, because if WVNET is not operational, all institutions which operate through WVNET are affected. Grievant Pugh argued Grievants' work impacts directly on the WVU missions of

instructional support, administration, and financial and asset control, because Grievants print class schedules, grade reports, financial aid reports, telephone bills, and salary and leave reports, for example, and run backup for CUFS (College and University Financial Systems); and printing mistakes can cause disruptions and inconveniences.

Ms. Moore stated that WVNET is defined as an institution. She stated that the Manager of WVNET received an 8.0, because he is the person who is accountable/responsible for the operations of WVNET. She described Grievants' work as having an impact on a process. She testified that consequence of error was not the driving force in application of this point factor. She stated the JEC discussed this and determined that it hoped employees were not making a lot of errors, and if they were, that would be a performance issue.

Each Grievant's duties represent one cog of many in the wheel which makes WVNET run. See Henry, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-1024 (July 31, 1996). They are not responsible for WVNET, they are responsible for carrying out their respective duties. When measuring "the scope of responsibility of the position with regard to the overall mission of" WVNET (emphasis added), Grievants have not proven the JEC was in error or acted in an arbitrary and capricious manner in assigning their Job Titles a degree level of 2.0 in Impact of Actions.

Grievants Long, Gregg and Pierce argued they should have received a 4.0 in Nature. The CO II Job Title received a degree level of 2.0, and the Lead received a degree level of 3.0.

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

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

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

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

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

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

Grievant Gregg argued they have to make sure they do their jobs correctly, they have to make sure all communication lines are up and working, and if something is down, they have to find out why. He stated if they print a 500,000 line job which is wrong, it will result in substantial costs.

Ms. Moore stated that a degree level of 3.0 would be assigned to professional level positions providing some kind of professional guidance to an operation, program or function; high level management positions received a degree level of 4.0; and the Assistant Director level would be within a degree level of 5.0.

"As noted in previous decisions interpreting the Plan, interpretation of these similarly-worded provisions involves a subjective value judgment, which is an inherent element of the function of position classification. Hastings [v. Bd. of Trustees], Docket No. 94-MBOT-943 (May 28, 1996)]; Jessen [v. Bd. of Trustees], Docket No. 94-MBOT-1059 (Oct. 26, 1995)]." Miller v. Bd. of Directors, Shepherd College, Docket No. 94-MBOD-495 (Oct. 29, 1996). It is not inconsistent with the language used, and taking into account the hierarchy in Grievants' department, to say that the work performed by Grievants Long and Gregg is better described as contributing "to the accuracy, reliability, and acceptability of" the service provided by WVNET, than contributing "to . . . the effectiveness of operations or services." See Henry, supra. It is likewise not inconsistent to describe Grievant Pierce's duties at a higher level as providing guidance to the operation. Grievants have failed to prove an abuse of discretion by the JEC. See, Hastings, supra, and Miller, supra.

5. Intrasytems Contacts

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

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

This point factor also consists of two parts, Level of Contact and Nature of Contact. Grievants have made challenges to both parts. Grievants Long and Gregg argued they should have received a degree level of 3.0, rather than a 2.0 in Level of Contact.

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

Staff and faculty outside the immediate work unit.

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

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

Grievants Long and Gregg argued when they answer the telephone they talk to users, who frequently are supervisors, managers and chairpersons, and these persons usually place the call themselves, rather than having an assistant call. Grievant Gregg stated that most of his contacts, however, are with staff and faculty. When Grievants answer telephone calls, the identity of the caller is meaningless in the application of this point factor. Grievants are talking to users of the system. If the President of an institution encounters a problem in using the system, it is not essential that he call Grievants himself to describe the problem and obtain help in solving the problem. Further, if the President places the call, he is calling in his capacity as a user, not in his capacity as the President of an institution. Grievants have failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a 2.0 in Level.

Grievant Pugh argued he should have received a degree level of 2.0 in Nature of Contact, rather than a 1.0. Grievants Long and Pierce argued they should have received a degree level of 2.5 in Nature, rather than a 1.0 and 2.0, respectively. Grievant Gregg argued a 2.0 or a 2.5 was a better fit. The JEC decided not to assign half-levels in this point factor. Grievants Long and Pierce bear a greater burden in this challenge, because not only are they challenging the JEC's application of the Plan to their own job duties, they are challenging the JEC's decision that half-levels are not available for any Grievant in this point factor.

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

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

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

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

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

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

Grievant Pugh argued that when the Computing Services Unit of WVU is running a "busy load" Grievants must use moderate tact and cooperation to work with the Unit to get jobs run in a timely manner. He stated the Computing Services Unit uses the WVNET operating systems and networking to provide services to WVU, which means they route and run many jobs through WVNET's computers. He also argued that tact is required to explain to callers that they will be able to get back to work when the system comes back on- line, even though he often does not know when that will be.

Grievants Long and Pierce argued they deal with frustrated and angry callers, whom they must handle. Grievant Pierce stated that if a caller is yelling at him, it takes more than moderate tact to keep from telling the caller what he thinks of him. He also argued that as supervisor he deals with the most sensitive and controversial problems. Grievant Gregg stated they have to cooperate with people, in that they cannot hang up on callers simply because they do not like their tone, or because they are busy. He admitted they are not dealing with controversial issues. These arguments fail to state a reason why the JEC was clearly wrong or acted in an arbitrary and capricious manner in deciding that half-levels would not be assigned in this point factor, and accordingly, Grievants have failed in their burden.

As addressed by this Grievance Board in Lovely v. Bd. of Trustees, Marshall University, Docket No. 94-MBOT-762 (Nov. 27, 1996), Grievants' role in talking to persons who have computer problems, regardless of who they are or how angry they are, is not to address their mental state, but to gather information from them and to provide them with information on what steps to take to correct their problem, in a courteous manner. It may be difficult to get information from someone who is angry or frustrated, but this does not change the purpose of the contact on Grievants' part, which is to obtain and provide information. Grievants are also not required to make sure the user does what Grievants tell them to do to correct the problem. Grievants' contacts fall within a degree level of 1.0. [\(See footnote 17\)](#)

Although Grievant Pierce deals with personnel matters, which may be controversial at times, all of his supervisory duties, which includes preparing work schedules, take up only a little less than one-third (30%) of his time. On the whole, his communications are largely of a non-controversial nature handled in accordance with standard practices and procedures, rather than frequently controversial.

6. External Contacts External Contacts is defined in the Plan as:

This factor appraises the responsibility for working with or through other people outside the SCUSWV [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, influencing others or negotiation.

This point factor also consists of two parts, Level of Contact and Nature of Contact. Grievants have made challenges to both parts. Grievant Pugh argued he should have received a degree level of 2.0 rather than a 1.0 in Level. Grievants Long and Gregg argued they should have received a degree level of 3.0 in Level, rather than a 1.0.

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

Extremely infrequent; virtually no contact beyond immediate work unit/area; or occasional contacts are incidental to the purpose of the job.

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

General public, visitors, and/or service representatives and vendors.

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

Students, parents, alumni, faculty of institutions outside the systems, sales engineers, higher-level product representatives, recruiters and/or prospective students.

Part of Grievant Long's and Grievant Pugh's argument here was the same as Grievant Long's argument under Intrasytems Contacts/Level; and the undersigned's ruling is the same: the identity of the user is meaningless. Grievants Long, Gregg and Pugh also pointed to their vendor contact. Grievant Gregg stated he has daily contacts with students, but admitted it was not essential that he talk to students.

Grievants Long and Gregg have proven their contacts with vendors are regular, recurring and essential. If rated individually, each should have received a degree level of 2.0. Grievant Pugh failed to meet his burden on this point factor.

Grievant Pugh argued he should have received a degree level of 2.0 in Nature, rather than a 1.0. Grievants Long, Gregg and Pierce argued they should have received a degree level of 2.5 in Nature, rather than a 1.0, 1.0, and 2.0 respectively, but again advanced no reason to support a finding that the JEC was clearly wrong or acted in an arbitrary and capricious manner in declining to award half-levels in this point factor.

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

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

simple procedures).

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

Moderate tact and cooperation required; communication is largely of a 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.)

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

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

Grievant Pugh argued when relaying hardware problems to vendors, and when talking to users, it can be difficult to communicate the precise terminology. Most of Grievant Pierce's contacts were with students and the University of Maryland, which were daily contacts. He argued students are difficult to deal with because they often are unable to provide him with the information on the work they are doing which allows him to answer their questions.

The Nature of Grievants' contacts with outside users is the same as the Intrasystems Contacts, and the undersigned's decision is the same. The contacts with vendors are also information exchange.

7. Direct Supervision Exercised

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

This point factor consists of two parts, Level of Supervision and Number of Direct Subordinates. Grievants have made challenges to both parts.

Grievants Long and Gregg argued they should have received a degree level of 2.0 under Number, rather than a 1.0. A degree level of 1.0 under Number is defined in the Plan as zero direct subordinates, and a 2.0 is defined as one direct subordinate. Grievants argued they train new operators, and are the responsible operators on their shifts.

Grievant Pierce argued he should have received a degree level of 4.0 under Level, rather than a 3.0. Grievants Long and Gregg argued they should have received a degree level of 3.0, rather than a

1.0.

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

Minimal or no responsibility for the work of others; however, may provide functional guidance to student workers or lower-level employees on a non-essential basis.

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

Responsible for directing and monitoring the work of student workers essential to the operations of the unit.

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

Lead control over non-exempt employees performing the same work as this job. Lead responsibility includes training, assigning tasks, checking the work of others, and insuring supplies and tools are provided at the work site.

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

Direct supervision over a unit of non-exempt employees or lead responsibility over a group of exempt employees. Most of the time is spent assigning, reviewing, and checking work or eliminating normal difficulties involving standard policies, procedures, or work practices. Input would be significant in subordinate employees' performance appraisal, hire or fire decisions.

Grievant Gregg stated that on night shift, he is the lead worker. Grievant Pierce argued he is a supervisor of CO I's and II's, not a lead worker, because, even though he performs the same functions as CO I's and II's, it is "only at the highest and most responsible level," and he "is required to have the greatest expertise and problem solving skills."

Ms. Moore stated a lead worker would perform the same duties and responsibilities as the persons they are leading more than 50% of the time. She believed that if Grievants Long and Gregg were lead workers, it would be a strange structure to have one employee lead only one other employee. She stated that two people cannot receive credit for leading the same individual. She pointed out Grievants Long and Gregg received credit for providing "functional guidance to . . . lower-level employees."

Grievants Long and Gregg have no responsibility for the work of CO I's. Their role may be characterized as providing functional guidance to CO I's, which falls within a degree level of 1.0 under both Number and Level.

Grievant Pierce's duties do not fit neatly within any of the definitions. He performs some of the same work as CO I's and II's, is responsible for seeing that CO I's are trained, and makes sure CO I's

and II's are doing their jobs properly. He has proven that his input is significant in performance appraisals and hire or fire decisions, but he does not spend most of his time performing supervisory duties. He has not proven that a degree level of 4.0 is any better fit than a degree level of 3.0.

D. Summary

Grievants Long and Gregg proved that their job duties, if rated independently, would entitle each of them to a degree level of 2.0 in External Contacts, Level of Contact. This change would add 8 points to the CO II total points, making the total 1675, which is still a Pay Grade 12. Because degree levels are assigned to Job Titles and not individuals, and the pay grade is unaffected, no change will be made in the CO II data line, and Grievants Long and Gregg are properly classified. See Riggs v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-711 (Apr. 29, 1996); Barber, et al., v. Bd. of Trustees, W. Va. Univ., et al., Docket No. 94-MBOT- 872 (Oct. 31, 1996).

Grievants Pugh and Pierce failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning their Job Titles, or in assigning the degree levels in the point factors to their Job Titles.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. The governing boards are required by W. Va. Code § 18B-9- 4 to establish and maintain an equitable system of job 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. The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

3. The Job Evaluation Committee's interpretation and explanation of 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 factual determination. See Tennant v. Marion Health Care Foundation, 459 S.E.2d 374 (W. Va. 1995); Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995).

4. "Employees who, with full understanding that they have no guarantee of higher compensation voluntarily fill in at a higher classification level cannot later claim that they should have been reclassified for that period. Freeman v. W.Va. Dept. of Health and Human Resources, Docket No. 90-H-237 (Dec. 26, 1990)." Spencer v. W. Va. Dept. of Health and Human Res., Docket No. 93-HHR-523 (Oct. 28, 1994). See also, Wilds v. Div. of Highways, Docket No. 94-DOH- 290 (Dec. 30, 1994).

5. The Job Evaluation Committee's decisions that Grievant Pugh is a Computer Operator I, Pay Grade 10, that Grievants Long and Gregg are Computer Operator II's, Pay Grade 12, and that Grievant Pierce is a Computer Operator Lead, Pay Grade 14, are not clearly wrong or arbitrary and capricious.

6. The Job Evaluation Committee's assignment of degree levels to the point factors for the Computer Operator I, Computer Operator II and Computer Operator Lead Job Titles is neither clearly wrong nor arbitrary and capricious.

Accordingly, the grievances of Larry Pugh, Randall Long, Barry Gregg and Larry Pierce are **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Monongalia 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: December 18, 1996

[Footnote: 1](#)

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

grievances, and the definitions of various terms of art specific to the Mercer reclassification.

[Footnote: 2](#)

After the first hearing, this matter was reassigned to the undersigned for administrative reasons.

[Footnote: 3](#)

Messages are continually appearing on the consoles. For example, a message appears each time someone logs on or off the network and each time a batch job starts; and some messages relate to telecommunications links. Each message is repeated on the rolling screen for fifteen minutes.

[Footnote: 4](#)

Grievant Pierce testified that he spent 30% of his time performing supervisory duties, which is 15% higher than the percentage shown on his PIQ, and that he spent 5 to 10% of his time filling in for his supervisor in his absence. He did not indicate how this difference in the percentage of time spent in supervisory duties affected the other percentages shown on his PIQ. The undersigned reduced the percentage of time spent performing the other job duties listed on the PIQ proportionately to arrive at a total of 100%.

[Footnote: 5](#)

Examples of system operating languages are MVS and VM. System operating languages are not the same as programming languages, such as COBOL and FORTRAN. Grievants are not programmers.

[Footnote: 6](#)

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

[Footnote: 7](#)

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

[Footnote: 8](#)

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: 9](#)

The brief submitted on behalf of Grievants Long and Pierce is phrased as an attack on the way the JEC applied the Plan to all higher education employees. Grievants, however, never indicated prior to briefing that they were bringing a class action attacking the methodology; rather their counsel's opening statement indicated only that Grievants were challenging the degree levels they received in particular point factors. This Grievance Board has determined it would be unfair to allow

a party to raise new arguments in briefing, because the other party was not given notice of the argument and an opportunity to respond. Accordingly, to the extent Grievants are attempting to challenge the way the Plan was applied to all employees, this argument cannot be addressed. See Beckley v. Lincoln County Bd. of Educ., Docket No. 95-22-107 (Feb. 29, 1996).

[Footnote: 10](#)

Respondent presented testimony that the PIQ was not the only information utilized by the JEC in making classification decisions. The JEC (or some members) also met with WVNET management, looked at reporting relationships, the Job Family, how all employees in each Job Title and their supervisors rated the position in each point factor, and compared the degree levels assigned to various Job Titles in each degree level.

[Footnote: 11](#)

Grievant Pierce also argued for the first time in the post-hearing written argument that he was taken by surprise at the hearing to discover that a half-level was not available in one of the point factors. As noted before, consistent with this Grievance Board's practice, this new argument cannot be addressed, because Respondent was not placed on notice that this would be an issue. However, the undersigned will note that Grievants were allowed extensive discovery (see Grievants' Rebuttal Exhibits 4 and 5, for example). A second new argument raised by Grievants Long and Pierce in their post-hearing written argument which will not be addressed, was that the JEC failed to prepare Generic Job Descriptions; although they did not indicate how this impacted their individual grievances. It may be noted that the focus in Mercer grievances is upon the application of the point factors to grievants' duties and responsibilities, not upon Generic Job Descriptions.

Yet another new argument raised by Grievants Long and Pierce in their post-hearing written argument, was that less weight and deference should be accorded the JEC decisions because words such as costs are not defined; however, they did not cite to any law which requires that every word be defined. Words not defined are given their plain meaning. Watts supra.

[Footnote: 12](#)

Where "NC" is used, it means this point factor was not challenged by the Grievant.

[Footnote: 13](#)

These headings are shorthand for the following point factors: EX is Experience; CPS is Complexity and Problem Solving; FA is Freedom of Action; SE, IA is Scope and Effect/Impact of Actions; SE, NA is Scope and Effect/Nature of Actions; IC, NC is Intrasytems Contacts/Nature of Contact; IC, LVL is Intrasytems Contacts/Level of Contact; EC, NC is External Contacts/Nature of Contact; EC, LVL is External Contacts/Level of Contact; DSE, NUM is Direct Supervision Exercised/Number of Subordinates; and DSE, LVL is Direct Supervision Exercised/Level of Supervision.

[Footnote: 14](#)

He also argued that he now has over two years of experience. This argument is of no merit. The definition of this point

factor makes it clear that the employee's actual experience is not evaluated. It evaluates the minimum level of experience required to be able to learn to perform the duties.

[Footnote: 15](#)

Grievant Long also argued that compiling an in-house manual requires judgment, originality and resourcefulness. Whether this is true need not be addressed because Grievant Long is not required to contribute to the manual.

[Footnote: 16](#)

Grievant Pierce perceived this when he filled out his 1993 PIQ, stating when addressing the common types of problems faced and the course of action taken to solve them: "[t]his of course means you must have the knowledge and experience to know which command, or in most cases, which multiple commands to enter."

[Footnote: 17](#)

There was conflicting testimony on the types of questions Grievants received prior to January 1, 1994. However, regardless of whether the question was simply "is the system down," or "how do I log onto the Internet," the conversation was still information exchange.