

**GWENDOLYN SAULTON,**

**Grievant,**

**v. DOCKET NUMBER 94-MBOD-800**

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

**Respondent.**

### **DECISION**

Gwendolyn Saulton submitted a grievance challenging her classification as a Bookstore Clerk in Pay Grade 5. She seeks the title Bookstore Assistant and Pay Grade 10. She also challenges the point factor degree level ratings used to evaluate her position. The point factors challenged are: Experience; Complexity and Problem Solving; Freedom of Action; Scope and Effect; Working Conditions and Physical Demands.

Grievant was classified by the Respondent Board of Directors ("BOD") under the Job Evaluation Plan for State College and University Systems of West Virginia ("Plan"). The Plan was developed by the Respondent's Job Evaluation Committee ("JEC") with assistance from a private consultant, William M. Mercer, Inc. and is sometimes referred to as the "Mercer system." [\(See footnote 1\)](#)

A Level IV hearing was conducted in this Board's office in Charleston, West Virginia, on September 6, 1996. This matter became mature for decision on October 11, 1996, following the introduction of written rebuttal evidence and receipt of timely post-hearing submissions from the parties.

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 individual position descriptions developed to facilitate the job evaluation process. PIQs are detailed, 17 page documents on which individual employees described

the duties of their position, as well as certain minimum qualifications required to carry out their duties. Employees were also asked to rate various aspects of their position by comparison with definitions nearly identical to those set forth in the Plan. The PIQ was reviewed, commented upon, 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 ("WVSC") as a Bookstore Clerk, and has been so employed since 1990.

3 3. Grievant's supervisor is and was Mary Luikart, Manager Bookstore II.

4 4. Grievant's job duties (with approximate percentages of hertime in parentheses) include preparing and checking book orders (15%); receiving, unpacking, checking and verifying shipments of books, supplies, clothing or other items (15%); returning books and other items including preparation of paperwork and packing and shipping (15%); providing customer service, such as totalling purchases on a cash register, assisting with locating items, answering questions, and answering the telephone (25%); stocking items on shelves or otherwise arranging displays, including pricing merchandise for retail sale (10%); cleaning the bookstore shelves, organizing the stock room, preparing daily reports and ensuring proper operation of the bookstore in her supervisor's absence, typing, and performing other tasks as needed (9%); preparing and balancing third party billings, including listing books and supplies furnished, adding prices, calculating tax, and totalling the bill(6%); and checking inventory (5%).

5 5. Grievant verifies and corrects approximately 500 book orders per semester, including checking information supplied by faculty against the order form (for completeness) and against manuals (for accuracy of ordering information). Approximately 75% of these orders contain incomplete information. Grievant locates and provides this information by looking in three or four reference manuals. Occasionally, Grievant or her supervisor must contact the publishing company to obtain the information.

6 6. The majority of Grievant's problems are caused by incomplete or inaccurate information provided by faculty on book orders. She must also address problems caused when faculty order the wrong book and want to return it, or when they fail to order a text at all and then need special service when the semester begins.

7 7. Grievant's work is generally performed independently without close supervision, as she knows what needs to be done and can do the work without instruction. After Grievant prepares book orders,

her supervisor types the book orders. If her supervisor sees a questionable item on a book order, she will ask Grievant to double check it. Other than this, Grievant's work is generally not checked.

8 8. Unusual situations and irate or demanding customers are referred to Grievant's supervisor.

9 9. Grievant's work is governed by standard policies and procedures, such as book order procedures and requirements, book return policy and procedure, and other precedent. Accuracy in ordering is important.

10 10. Errors in ordering books can result in a class having no text or the wrong text; and may result in costs of postage if the book is returned or costs of the entire book order, if the book cannot be returned.

11 11. Prior to remodelling in 1994, the bookstore had poor ventilation and lighting, and faulty ceiling tiles for several years. There is occasionally a lot of noise in the bookstore, or from across the hall, and the bookstore can get crowded at times.

12 12. Long periods of standing, and a lot of walking, bending and stooping are required for performing bookstore duties. Grievant lifts boxes weighing approximately 25 pounds, although her supervisor has told her not to do this. Few of Grievant's job duties can be performed while sitting. Grievant has some discretion about sitting and moving at most times.

## **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 must identify the job he or she feels is being done. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

The grievant must identify which point factor degree levels are challenged. This is because the Mercer reclassification system is not based upon "whole job comparisons." Rather, the Mercer system is largely a "quantitative" system in which the components of each job are analyzed separately. The components are then evaluated using the point factor methodology contained in the Plan. Burke, supra, p. 20. Therefore, challenges to specific point factor ratings must be made to determine proper application of the Plan, unless a grievant challenges the Plan methodology itself. 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).

Some "best fit" analysis is involved in determining which degree level of a point factor should be assigned. However, this system must by statute be uniform across all higher education institutions. Therefore, the point factors are not assigned to the individual, but to the job. Burke, supra. In order to maintain the integrity of the overall classification scheme, the "best fit" must be determined in relation to other similar positions. The individual grievant's case must be analyzed with reference to where the position fits in the higher education classified employee hierarchy.

In this case, whether Grievant is properly classified is almost entirely a factual determination. As such, the JEC's interpretation and explanation of the point factors 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. Of course, no interpretation or construction of a term is necessary where the language is clear and unambiguous. See Watts v. Dept. of Health & Human Res., 465 S.E.2d 887 (W. Va. 1995). A grievant may prevail by demonstrating that his or her reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehab., 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.

Grievant stated that her duties were best described by the generic job description for Bookstore Assistant, rather than Bookstore Clerk. However, no generic job description was provided for either job title, and no verbal description or comparison was provided. Therefore, no comparison of generic job descriptions is possible on this record. Grievant also challenged her ratings in several of the point factors analyzed in assigning her title and pay grade. Each point factor which is subject to dispute in this grievance will be addressed separately.

#### **A. 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.

(Jt. Ex. D. All definitions herein are quoted from the same exhibit, unless otherwise noted.)

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 claims that experience is needed with retail sales, office procedures, and working with the public. One must be able to verify receipt of correct merchandise, properly price it, prepare it for return shipment, and display it. One must also be able to operate equipment such as a cash register, adding machine and typewriter. Grievant herself had prior experience as well as having taken accounting courses. Respondent's witnesses were Mary Luikart, Manager of the Bookstore, and Margaret Robinson Buttrick, Human Resource Director of the Central Office of the State College and University System and JEC chairperson. Ms. Buttrick testified that, in the overall hierarchy of jobs reviewed by the JEC, Grievant's position was a basic, entry level, clerical skill job which could be performed by a person just out of high school. Both witnesses noted that unusual or difficult problems could be referred to Grievant's supervisor.

Grievant's job duties are relatively straightforward clerical tasks, governed by clear procedures and precedents. She performs the same duties repeatedly, although details of each task may be different. While her expertise is apparent, and helps her to work efficiently with a heavy work load, there was no convincing evidence that a novice employee could not perform with minimal competency after a normal orientation period.

Judgments on the amount of experience needed to enter a position are somewhat subjective, and reasonable minds might differ. Zara, supra. A grievant's unsubstantiated difference of opinion does not provide a sufficient basis for finding the JEC's judgment clearly wrong. Jessen, supra. Where the JEC's judgment has some factual basis, and is not clearly wrong or arbitrary and capricious, it must be upheld. See Mitchell v. Bd. of Directors, 94-MBOD-348 (May 21, 1996); Hastings v. Bd. of Trustees, 94-MBOT- 943 (May 28, 1996). Here, Grievant showed only that her opinion differed from that of the JEC. The JEC was not shown to be clearly wrong, arbitrary or capricious.

## **B. COMPLEXITY AND PROBLEM SOLVING:**

The Plan defines Complexity and Problem Solving as:

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

Grievant was assigned level 1.5, which is between the defined levels of 1 and 2. Level 1 is defined 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 notes the large volume of work, due to the size of the institution served by her bookstore. Approximately 375 bookorders each semester are incomplete when submitted by faculty. Finding of Fact number 5. In addition, faculty supply erroneous information. Grievant must correct these orders by finding the necessary and correct information in her source books. Occasionally, the publisher must be called, usually by Ms. Luikart. Ms. Buttrick characterized Grievant's book order work as involving basic decisions when comparing faculty information with the three or four reference manuals available. Simple, standard instructions and well-defined procedures govern this work, as well as the other work performed by Grievant, she said.

Where a grievant is given an assignment each day by the supervisor and repeats the same tasks, freedom to make decisions is limited, and the job duties fall within the level 1 definition. Payne v. Bd. of Directors, Docket No. 94-MBOT-787 (Sept. 19, 1996). On the other hand, duties which are not routine fall within level 2. Payne, supra. Understanding procedures which must be followed to process various types of accounting documents, performing basic computation work in completing forms, and understanding which procedure applies are within the level 2 definition. Barber v. Bd. of Trustees, Docket No. 94-MBOT-872 (Oct. 31, 1996). Similarly, in Kilgallon v. Bd. of Trustees, Docket

No. 94-MBOT-489 (Oct. 16, 1996), a ROTC supply clerk's job duties met the definition of level 2 in Complexity and Problem Solving. In Kilgallon, various procedures, specifications, policies and regulations governed most aspects of the work, leaving little need for problem solving. Grievant was found to make basic decisions in procuring uniforms and accessories, maintaining inventory, disbursing goods and maintaining financial records.

Here, Grievant must understand the procedures to apply, and which to apply to different tasks. A large portion of Grievant's work is governed by established procedures, and requires comparison of numbers, codes or other data. Examples of work in this category are her book order work, checking deliveries to ensure receipt of correct items, and her inventory work. These job duties are more akin to those of the Accounting Clerk grievants in Barber or the Supply Clerk grievant in Kilgallon, rather than the Grounds Worker grievants in Payne.

However, there was no evidence that Grievant's documents are as complex as those handled by accounting clerks, nor that she works as autonomously as the ROTC supply clerk. While Grievant often encounters inaccurate or incomplete book order information, it appears that the problems created are not necessarily solved by Grievant. She compares information in the order forms to that in manuals, and, where there is a difference, she notes this. She may then simply correct or fill in information. If differences are not typographical or otherwise easily resolved, she apparently defers to another person's judgment, as when she asks the instructor which edition of a text should be ordered or asks for a substitute text choice if the first is not available. There was no evidence that Grievant herself must regularly make substantive decisions to solve the problems encountered.

Grievant has not shown that her job duties meet the definition of level 3. Grievant has not even shown that her job duties consist mainly of level 2 problem solving. The JEC still gave her some credit for functioning at the level 2 rating, as she was assigned an intermediate rating above level 1. Grievant has not shown that the JEC assignment of level 1.5 was clearly wrong or arbitrary and capricious.

### **C. 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 was assigned level 1 in this factor, which is defined as:

Tasks are substantially structured with the employee receiving clear, detailed and specific instructions from the immediate supervisor or where tasks are so highly routine that they simply require following standardized instructions or procedures without ongoing, on-site supervision. The work is checked for accuracy, adequacy, and adherence to instructions and established procedures by the supervisor or through established monitoring systems. The employee consults with the supervisor on matters not covered in the original instructions or guidelines.

The definitions show that at level 2:

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. Grievant seeks level 3, which is defined as:

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

Grievant testified that she generally works unsupervised, as she knows what to do and how to do it. Her work is seldom checked by her supervisor. Respondent noted that Grievant's tasks are routine, clerk-like, and very structured. Respondent also noted that unusual situations are referred to the supervisor.

This issue turns, in large part, on the independence allowed Grievant by her supervisor and the restrictions imposed upon Grievant's actions by standardized policy or procedures. The amount and detail of supervision alone is not determinative. The amount of discretion and judgment required of one in Grievant's position must also be analyzed. Reference to prior cases is helpful here.

In Barber, supra, it was found that assignment of both level 1.5 and level 2 was appropriate even where the Accounting Clerk grievants worked with limited or no supervision, as their duties were set, the work priorities were set, grievants followed established procedure and policy in performing the work, and they had performed the duties long and well enough that they did not require supervision.

Similarly, level 2 was found appropriate for Financial Aid Assistants, despite working without constant supervision in Perkins v. Bd. of Trustees, Docket No. 94-MBOT-733(Oct. 31, 1996). Perkins found that Freedom of Action is minimal where duties are established and repetitive, highly structured and controlled by procedures, practices, precedents, regulations and time schedules.



Based on these prior holdings, a level 2 rating might be applied to some of Grievant's work. She works essentially without supervision most of the time and her work is essentially unchecked and unmonitored. However, she does not perform a wide variety of tasks. She performs a few tasks, all of which are to be performed in accordance with set procedures. Also, while Grievant works independently, she does not exercise a great deal of discretion, and her work appears to be of the sort that has limited options. Grievant's tasks are routine enough that standardized procedures take the place of close supervision. When the standardized procedures are varied, it appears to be at Ms. Luikart's discretion rather than Grievant's. Indeed, Grievant expressed displeasure at the fact that standardized procedures are sometimes varied. Grievant refers unusual or difficult situations to her supervisor. Much of Grievant's work thus falls within the level 1 definition.

While reasonable minds may differ as to the most accurate rating of Grievant's job duties in this factor, such differences do not show that the JEC's decision was implausible. Rather, there are value judgments inherent in the application of these definitions. Grievant did not prove that the majority of her work falls clearly within the level 2 definition. Thus, the JEC's decision that a level 1 rating is correct must be given due deference.

#### **D. SCOPE AND EFFECT:**

According to the 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 analyzed in two parts, Impact of Actions ("Impact") and Nature of Action ("Nature"). Grievant challenged her rating in both parts.

## 1. SCOPE AND EFFECT/IMPACT:

Grievant was assigned level 1 of Impact, which is defined as "[w]ork is limited to immediate work function and short-term situations." Grievant seeks level 2, which is defined in the Plan as "[w]ork affects either an entire work unit or several major activities within a department." Grievant testified that ordering the wrong text would affect students, the class and the department involved. She also stated that errors in sales, ordering or inventory would result in loss of profits affecting the Business Office.

Ms. Buttrick testified that Grievant's work is limited to the bookstore, and would have no direct impact on the Business Office. She testified that a class being without a book would not be Grievant's problem. Ms. Luikart is accountable for what goes on in the bookstore, not Grievant.

While a mistake in ordering textbooks may impact on a class, Grievant acknowledged that such a mistake would be a rarity, and could be corrected by a little further work and perhaps the cost of postage. While it would not be desirable for Grievant's work to be full of errors, errors on Grievant's part would have little effect on WVSC as a whole. Under these circumstances, clerical types of positions have been assigned level 1 in Scope and Effect/Impact. See, Kilgallon, supra; Reedy v. Bd. of Directors, Docket No. 94- MBOD-721 (Nov. 4, 1996). Grievant has failed to prove that the JEC was clearly wrong in assigning level 1 in this part of the factor.

## 2. SCOPE AND EFFECT/NATURE:

Grievant was assigned level 1, which is defined 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.

Grievant seeks level 2, which 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.

Grievant testified that the bookstore provides a service to every student and department at WVSC, and that errors would result in some costs and inconvenience, as noted in the preceding section.

Ms. Buttrick testified that the work is a limited, routine and support type service, provided to the bookstore. She also stated that level 1 in Impact goes hand-in-hand with level 1 in Nature in this factor.

Application of the ratings in this factor involves a subjective determination. Miller v. Bd. of Directors, Docket No. 94-MBOD-495 (Oct. 29, 1996). As in Kilgallon, supra, and Reedy, supra, Grievant's mistakes can be rectified within a relatively short period of time and would not affect the functioning of the entire Business Office. Grievant has provided insufficient information to show that the JEC's evaluation of this factor was clearly wrong.

## **E. WORKING CONDITIONS AND PHYSICAL DEMANDS:**

According to the 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 analyzed in two parts, Working Conditions and Physical Demands. Grievant challenged her rating in both parts. 1. WORKING CONDITIONS:

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.

Grievant seeks level 2, which 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 testified that the bookstore was in bad condition prior to the reclassification. See Finding of Fact number 11. She also testified that she is exposed to asbestos when she is on the loading

dock.

Ms. Buttrick stated that this factor measures one's standard environment, not rare or unusual occurrences. There is no requirement for Grievant to use the loading dock entrance, as opposed to the other entrance to the bookstore, she said. The conditions regarding ceiling tiles, ventilation, lighting, noise and crowding are normal conditions for any bookstore, and thus do not justify a higher rating. Grievant's supervisor confirmed that someone must be on the loading dock daily to receive deliveries.

The vast majority of Grievant's work time is spent in an office environment. Although she occasionally goes outdoors to the loading dock, this was not shown to occur often enough or for along enough period of time in relation to her other duties to move her into a higher level. See Reedy, supra. The deficiencies in the heating, lighting and ceiling were not shown to be the standard conditions for a bookstore. Nor were they clearly so egregious as to qualify Grievant and her coworkers for a higher rating. The JEC was not clearly wrong in rating Grievant's Working Conditions as level 1.

## 2. PHYSICAL DEMANDS:

Grievant was assigned level 2 in Physical Demands, 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 seeks level 3, which is defined as:

Moderate physical effort required involving long periods of standing, walking on rough surfaces, bending and/or stooping; periodic lifting of moderately heavy items (over 25 and up to 50 pounds.)

Grievant testified that little work can be performed while sitting. Her work requires walking, bending, stooping and long periods of standing when she is taking inventory, running the cash register, setting up displays or stocking merchandise. She lifts and moves boxes of books weighing 25 pounds or more.

Ms. Buttrick testified that Grievant has at least some discretion about the movements and activities of her work day. Most bookstore clerks do not routinely lift heavy boxes, and all bookstore

clerks were given the rating justified by the majority of work done by all the clerks. Therefore, she stated, Grievant was only entitled to level 2 in this factor. Both Ms. Buttrick and Ms. Luikart testified that Grievant was not required to lift heavy boxes, but could get help with them. Ms. Luikart testified that she had told Grievant on several occasions not to perform such heavy lifting.

Although Grievant chooses to lift and carry whole boxes of textbooks, she is clearly not required to do so, and has been instructed not to do this. Thus, her lifting of boxes weighing more than 25 pounds, even if it were a significant part of her work in terms of frequency and duration, cannot justify a higher rating. Grievant does not have unfettered discretion about walking, standing, stooping and bending. However, she does have some ability to choose tasks which will vary the physical demands. Moreover, she did not prove that she must stoop or bend continuously for long periods. Rather, she must stoop or bend numerous times in a day of stocking shelves or packing return merchandise. This does not necessarily equate to "moderate" physical effort, as opposed to "light" effort. Indeed, very similar circumstances were found to constitute a level 2 rating in Barber, supra. On this record, the JEC cannot be said to be clearly wrong, arbitrary or capricious in assigning a level 2 rating.

### **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 or she is not properly classified. 156 C.S.R. 1 § 4.19.

3. The grievant asserting misclassification must identify the job being performed. 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).

4. Determinations of the Job Evaluation Committee regarding application of the Plan's point factor methodology are essentially questions of fact. In that regard, the JEC's interpretation and explanation of the point factors 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).

5. Subjective determinations of the JEC regarding application of the 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). 6. The JEC's assignment of degree levels to the point factors Experience, Freedom of Action, Complexity and Problem Solving, Scope and Effect, Working Conditions and Physical Demands for Grievant's position is neither clearly wrong nor arbitrary and capricious.

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: December 5, 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 this mass reclassification project, the procedural history of the grievances arising from the reclassification, and the definitions of some terms of art specific to the reclassification.*