BARBARA AGUIRRE

v. DOCKET NO. 94-MBOD-509

BOARD OF DIRECTORS,

SOUTHERN WEST VIRGINIA COMMUNITY COLLEGE

D E C I S I O N

Grievant Barbara Aguirre alleges she was misclassified effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) , as a Manager/Library Services ("Manager"), Pay Grade 18. Grievant seeks as relief classification as a Director Library Services I ("Director"), Pay Grade 19, effective January 1, 1994, and backpay from January 1, 1994. Grievant challenged the degree levels received in the point factors Experience, Complexity and Problem Solving, Freedom of Action, Intrasystems Contact/Level of Contact and Nature of Contact, External Contacts/Level of Contact, DirectSupervision Exercised/Level of Supervision, Physical Coordination and Physical Demands. (See footnote 2)

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

Findings of Fact

1. In 1991, all higher education classified employees were asked to complete Position Information Questionnaires ("PIQ's"). 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.

2. Southern West Virginia Community College ("SWVCC") has four campuses: Williamson, Logan, Boone County and Wyoming County. SWVCC has a main Library on the Williamson campus, and a Library on the Logan campus. Grievant has been employed as the Librarian on the Logan campus of SWVCC since 1974, and completed a PIQ in 1991.

3. Grievant was classified as a Manager/Library Services, Pay Grade 18, effective January 1, 1994.

4. On January 1, 1994, Grievant's primary job duties (with the percentage of time she spent performing each duty shown in parenthesis) were supervising and coordinating all Library functions at the Logan campus (23%); planning, assigning and reviewing the work of Logan campus Library staff (18%); answering reference questions, preparing bibliographies, and providing library instruction (15%); selecting, assembling, and organizing materials and resources as needed by faculty, staff and students (11%); maintaining Library goals and objectives and developing goals for the Logan campus Library not encompassed by the college wide goals set by the Library Director (10%); maintaining circulation statistics and developing and implementing circulation procedures for the Logan campus Library (10%); formulating and recommending annual budget and controlling expenditures for the Logan campus Library (9%); and, serving on committees and performing related work (4%).

5. The Library Director, Carol Carlton, is located at the main Library at Williamson, and sets college-wide Library policies. 6. Grievant has daily contact with a Dean, but the Dean is her supervisor.

7. Grievant supervises three full-time and one part-time employees, and numerous student assistants. The employees are classified as Library Technical Assistant I's and II's. There are no Staff Librarians at the Logan campus Library. None of these employees is exempt.

8. The Manager Job Title received 2441 total points from the following degree levels in each of the thirteen point factors (See footnote 3): 7.0 in Knowledge; 5.0 in Experience; 3.5 in Complexity and Problem Solving; 4.0 in Freedom of Action; 3.0 in Scope and Effect, Impact of Actions; 4.0 in Scope and Effect, Nature of Actions; 2.0 in Breadth of Responsibility; 2.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level of Contact; 2.0 in External Contacts, Nature of Contact; 3.0 in External Contacts, Level of Contact; 4.0 in Direct Supervision Exercised, Number; 4.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 1.0 in Physical Coordination; 1.0 in Working Conditions; and 1.0 in Physical Demands. Joint Exhibit 3.

Discussion

A. Burden of Proof

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.19; W. Va. Code § 18-29-6. Burke,

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

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

Finally, whether a grievant is properly classified is almost entirely a factual determination. As such, the Job Evaluation Committee's ("JEC") interpretation and explanation of the point factors and Generic Job Descriptions or PIQ's at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 194 W. Va. 97, 459 S.E.2d 374 (1995); Burke, supra. However, no interpretation or construction of a term used in the Job Evaluation Plan (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. Watts v. Dept. of Health and Human Res., 195 W. Va. 430, 465 S.E.2d 887 (1995). The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. (See footnote 5)

C. Application of the Point Factor Methodology

The following table shows the differences between the degree levels assigned Grievant's Job Title in the point factors she challenged, the degree levels assigned the Manager and Director Job Titles, and the degree levels Grievant argued she should have received.

	EX	CPS	IC FA	IC NC	EC LVL	DSE LVL	LVL	PC	PD (See footnote 6)
Manager	5	3.5	4	2	2	3	4	1	1
Director	6	4	5	2	4	3	5	1	1
Grievant's Argument	6	5	5	3	4	5	5	4	3

Joint Exhibit 3. Each of the point factors challenged by Grievant 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 argued she should have received a degree level of 6.0 in this point factor, rather than a 5.0. A degree level of 5.0 is defined in the Plan as "[o]ver three years and up to four years of experience." A degree level of 6.0 is defined in the Plan as "[o]ver four years and up to six years of experience."

Grievant marked a degree level of 5.0 on her PIQ, and her supervisor agreed with this assessment on the PIQ. The PIQ listed the type of experience needed as:

> Academic/School Library - must have a knowledge of the principles and practices of Library Science including; cataloging, acquisitions, public service, reference, etc.
>
> Supervisory/Management
>
> Skills necessary in order to plan, organize, staffing (scheduling) directing and evaluating the unit.

Grievant stated the degree level marked on her PIQ was based upon the amount of experience she had at SWVCC prior to entering her current position, but she had forgotten she had two years of experience in the Library at Bluefield State College. When she added this additional experience, it resulted in a change in the amount of experience she believed was needed. She felt her actual experience was representative of the least amount of experience necessary to be able to perform her

duties. Grievant, however, does not hold a Master's Degree, and this Job Title received credit under Knowledge for that degree level. She seemed to indicate that someone with a Master's Degree would also need over four years of experience, but later stated that a Library Director could probably better evaluate that. She noted she has an undergraduate degree in Library Science, whereas some people with a Master's Degree in Library Science have other undergraduate training.

Bruce Arrowood, Library Director I at West Virginia University - Parkersburg, testified he could go along with the four to six years of experience without any problem, for Ms. Aguirre's duties, as he thought it would take this much time to learn the procedures.

Patricia Hank, Director of Human Resources at SWVCC and a member of the JEC, testified the JEC determined the minimum level of experience needed for this Job Title by considering the PIQ's for the persons in this Job Title, input from Library Directors, and the knowledge of Human Resources professionals regarding employment, recruitment, and minimum qualifications.

Mr. Arrowood's testimony that he could go along with four to six years of experience is not convincing. It appears to the undersigned that Grievant does not believe a Master's Degree in Library Science is necessary, but believes experience is more important. If this Job Title were assigned a degree level of 6.0 in Knowledge rather than a 7.0, and a degree level of 6.0 in Experience rather than a 5.0, the total number of points assigned the Job Title would decrease by 83 and increase by 58, for a net reduction of 25 points. Obviously, Grievant is not asking for a point reduction. Accordingly, the undersigned will not address her argument on this point factor any further.

2. 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 argued she should have received a degree level of 5.0 in this point factor, rather than a 3.5. Ms. Hank explained that a half-level is assigned when the duties do not fit well within either the lower level, in this case a 3.0, or the next higher level, in this case a 4.0.

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.

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

> Problems encountered involve unusual circumstances, variations in approach, and incomplete or conflicting data. Employees exercise considerable analytical, valuative and reasoning skill in researching information and developing new methods to perform work assignments or optimum solutions to problems. The development of new programs, procedures or methods are typical end results of the problem-solving process. Determination of the effectiveness of a policy or practice may be involved at this level.

Grievant stated the Library can be very complex. For example, when assisting patrons with research, she has to ask enough questions to determine what the patron is looking for, and she has to have "the knowledge of where to go, what to look for, and what you're doing" so she can do the research. She stated she teaches patrons research skills and then helps them find what they are looking for. She further stated research requires resourcefulness. She admitted this aspect of her job takes up 15% of her time at the most.

She stated that most policies have been in place for a number of years, and the Library Director makes the final determination on Library policy. The Library Director testified she supervises the system-wide functions for all library services. Grievant stated she changes procedures as needed, which is not frequently. She gave as an example of a new method, the introduction of computers and CD-roms. However, Grievant's role in this is unclear, as it is the Library Director who plans technology changes. She also noted that personnel issues are at times complex, and stated she encounters complex personnel matters about once a year.

Ms. Hank stated a degree level of 3.5 is typically given to entry-level professionals, and this Job Title is assigned to entry- level Library management professionals. She stated the Library Director Job Title was assigned a 4.0, and would typically have a broader scope of responsibility, including another layer of supervisory responsibility.

Grievant's research seems to fall partly within the definition of a degree level of 3.0 and partly

within a 4.0. She is not developing new methods, procedures or programs, she is utilizing standard research procedures. The development of new programs, procedures or methods is not a typical end result of her problem- solving. Grievant has not proven she should have received a degree level of 5.0. Much of Grievant's work on a day to day basis appears to be governed by standard library procedures developed by the Library Director, which would fall within a degree level of 3.0, while some of her tasks fall within a degree level of 4.0. The JEC assignment recognizes that some of her duties fall within a 4.0. Grievant has not proven she should have received a higher degree level.

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 argued she should have received a degree level of 5.0 in this point factor, rather than a 4.0. 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.

The definitions in the Plan show that at a degree level of 5.0:

> Virtually all tasks are unstructured; assignments are in terms of setting objectives within strategic planning goals. At this level, the employee has responsibility for planning, designing and carrying out programs, projects and studies; employee sets goals and objectives for a major unit, program, or department. Approval from higher supervision may be necessary only in terms of financial impact and availability of funds, but little reference to detail is discussed with the next level supervisor. Work review concerns matters such as fulfillment of goals and objectives.

Grievant stated she works under administrative direction. She noted her supervisor was not a Librarian. She stated she sets the goals and objectives for the Logan campus Library and makes sure everything is done to meet the learning and teaching needs of the campus Library. She stated the Library Director on the Williamson campus does the long-range planning and sets goals for the Library. She gave as an example of a campus goal, the goal to equip each classroom with audio-

visual equipment so the Library does not have to deliver equipment to classrooms. Grievant also testified, however, that all employees have to develop goals in connection with budget requests. All Logan campus Library employees submit their goals to her, and she combines them into one document with her own goals, and submits it as the budget request.

Ms. Hank pointed out there are only five degree levels in this point factor. She stated, in the hierarchy at the institution, the employee receiving the highest degree level would be someone at the highest level, such as an Assistant Vice President or a Director; that is, those persons with the highest level of authority. She stated Grievant has ultimate say-so about her department, but not for the Library overall.

Much of degree level 5.0 simply is not applicable to Grievant. While she supervises the Logan campus Library, she is not the one setting policy. She is the person implementing policy. While Grievant sets some goals and objectives for the campus Library, she does not set the major goals and objectives for the campus Library. Grievant has a supervisor, but Grievant is responsible for carrying out the assignment of managing the campus Library. The degree level 4.0 definition fits Grievant's duties. Grievant has not proven a degree level of 5.0 is a better fit.

4. Intrasystems Contacts

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

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

This point factor consists of two parts, Level of Regular, Recurring and Essential Contact, and Nature of Contact. Grievant challenged the degree levels received in both parts. She argued she should have received a degree level of 4.0 in Level of Contact, rather than a 2.0. 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 is defined in the Plan as:

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

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

> Deans or Directors in an institution or Assistant Directors in the Systems' Central

Office.

Grievant stated the Dean she has daily contact with is her supervisor. On her PIQ, Grievant listed her contacts as faculty daily, regarding "[o]rientations, selecting materials, research for students, etc.", managers daily, regarding "[a]cquisitions process, funds available, work-orders," and the Dean daily (her supervisor), regarding "Library, Campus Communications." She also listed student contact, but this contact is, by definition, External Contact.

Ms. Hank pointed out that the definition of this point factor makes it clear that in evaluating the employee's contact, contact with the supervisor, regardless of her title, is within a degree level of 1.0. (See footnote 7) She stated this factor looks at the type of contact employees must have in order to accomplish their jobs.

Grievant presented no evidence that her contacts fall within a degree level of 4.0. Her contact with the Dean is contact with her supervisor, and is within a degree level of 1.0. Grievant did not discuss her contact with managers. While this contact is regular and recurring, the undersigned cannot determine from the description on Grievant's PIQ whether this contact is essential. Grievant has not proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a 2.0.

Grievant argued she should have received a degree level of 3.0 in Nature, rather than a 2.0. 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 stated her contacts are not really confrontational, but they do require sensitivity when working with personnel matters, such as explaining new directives while trying to maintain morale. She stated the budget is always controversial.

Ms. Hank stated it is important to look at the duties and responsibilities of a position when evaluating the point factors. Respondent did not explain how this applies to Grievant.

Grievant may occasionally have to deal with some unpleasant personnel matter, and her budget contact may become controversial. However, a degree level of 2.0 allows for some controversial

contacts. Grievant has not proven her contacts are so frequently controversial that she should have received a degree level of 3.0.

5. External Contacts

External Contacts is defined in the Plan as:

> This factor appraises the responsibility for working with or through other people outside the SCUSWV to get results. Consider the purpose and level of contact encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, influencing others or negotiation.

This point factor also consists of Level and Nature of Contact. Grievant challenged the degree level received in Level only. She argued she should have received a degree level of 5.0 in Level, rather than a 3.0. 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.

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

> Mid-level representatives of government agencies, professional contacts with other colleges and universities outside the systems.

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

> Substantially prominent persons (e.g., community leaders, business and industry leaders) and officials of government agencies, financial agencies, and other important constituents.

Grievant stated the Library serves not only SWVCC, but also serves as a Logan Public Library, as there is no Public Library in Logan. She stated she must try to serve the needs of various people in the community. She stated she works with community leaders, and other members of the community who need assistance. She stated she works with the public schools to set up and provide library instruction to students, and she speaks with patrons to assist them in their research.

She listed as her prominent community leader contacts Lou Cappelini, who works with the state and had been a bank president, Ervin Queen, Director of PRIDE, school principals and teachers. She stated her contact with Mr. Cappelini is almost daily in his capacity as a user of Library services, but she also worked with him on a drug-free project with which the Library was involved. She stated her contact with Mr. Queen occurs monthly regarding their work on the Literacy Council. She stated she has monthly contact with the Community College Association.

On her PIQ Grievant listed her External Contacts as product representatives daily, patrons daily regarding research, and business community leaders daily, regarding "Literacy, library services, speaking appointments." She listed daily contact with students under Intrasystems Contacts.

Ms. Hank stated that contacts regarding literacy, library services and speaking appointments would be the type of contact one would have with any member of the general public, indicating that Grievant would be talking to community leaders as she would to any other patron, rather than in their capacity as a community leader. She stated the key is whether contact with a community leader is essential for Grievant to manage the Library, and concluded that it is not. She stated it might be nice public relations, but it is not the focus of the job.

Many of the contacts Grievant described with community leaders, both in her testimony and on her PIQ, are not in their capacity as community leaders. A good example is when she is helping Mr. Cappelini use the Library's services, just as she would any other patron. When she is helping a patron, it may be a child or the Governor, but the user's identity has no bearing on the services she is providing, and the person being served is not acting in an official capacity, but is acting as a user of Library services. Regardless of the user's identity, he or she is a member of the general public. See Gregg, et al., v. Bd. of Trustees, W. Va. Network for Educational Telecomputing, Docket No. 94-MBOT-863 (Dec. 18, 1996). Grievant presented no evidence of the frequency of her contact with persons such as Mr. Cappelini in their capacity as a community leader, such as, to persuade them to take some action to benefit the Library. Grievant also presented no evidence that it is her job to obtain community support for the Library, or that she is otherwise required to mingle with particular groups. As Ms. Hank stated, it is nice that she does so, but it is not essential. See Hameed v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-928 (Jan. 15, 1997); and Braniff v. Bd. of Trustees, W. Va. Univ. - Parkersburg, Docket No. 94-MBOT-865 (Sept. 30, 1996). Finally, Grievant presented no evidence that her contact with professionals at other colleges is necessary to the performance of her duties. Grievant has not proven she should have received a higher degree level in this point factor.

6. 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 Number of Direct Subordinates, and Level of Supervision. Grievant is challenging the degree level received in Level only, arguing she should have received a 5.0, rather than a 4.0. 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.

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

> Direct supervision over exempt employees (and non-exempt employees, if applicable). Responsible for results in terms of costs, methods, and personnel. In a position to hire/fire or strongly recommend such personnel actions.

Ms. Hank pointed out that persons who supervise exempt employees qualified for a degree level of 5.0. The language "(and non-exempt employees, if applicable)" is included to indicate that a person need not supervise only exempt employees to fall within this degree level. The employee supervising exempt employees may also supervise some non-exempt employees.

Ms. Hank's explanation is consistent with the language used in the definition. The parenthetical reference is joined with an "and," which allows the position to also supervise non-exempt employees in addition to supervising exempt employees. (See footnote 8) Grievant does not supervise any exempt employees; therefore, she cannot receive a degree level of 5.0. See Luikart v. Bd. of Directors, W. Va. State College, Docket No. 94-MBOD-766 (April 18, 1997).

7. Physical Coordination

Physical Coordination is defined in the Plan as:

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

Grievant argued she should have received a degree level of 4.0, rather than a 1.0 in this point factor. A degree level of 1.0 is defined in the Plan as:

> Work requires normal level of ability common in almost every job, such as writing, sorting, filing/reviewing text materials, and/or occasional use of office equipment without any demand for speed.

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

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

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

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

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

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

Grievant pointed to the fact that she must be able to operate computers and various types of audio-visual equipment, such as 16 millimeter projectors. She stated she has to be very quick or she would never get her work done. She stated her work must be accurate.

Ms. Hank stated persons who work in an office as Managers typically do not need a high degree of hand-eye coordination in order to accomplish their jobs. She stated craft jobs which use dangerous tools, medical jobs using intricate equipment, and data entry jobs, for example, would fall within the higher degree levels in this point factor.

Grievant's use of computers falls within a degree level of 1.0 as "normal level of ability common in almost every job," and "occasional use of office equipment without any demand for speed." Certainly, anyone using office equipment must be able perform her duties quickly and accurately enough to get her job done. This does not mean she must work with speed. As to her operation of audio-visual equipment, nothing in Grievant's duties and responsibilities indicates that this is a required part of her job. Further, her testimony did not indicate any hand/eye coordination, accuracy and regularity of motions, speed, or skill was required in operating this equipment. Grievant has not proven she should have received a higher degree level in this point factor.

8. Physical Demands

Physical Demands is defined in the Plan in conjunction with Working Conditions as:

> This factor considers the physical demands of the job as measured by the exertion placed on the skeletal, muscular and cardiovascular systems of the incumbent. It also takes into account the quality of the physical working conditions in which the job is normally performed such as lighting adequacy, temperature extremes and variations, noise pollution, exposure to fumes, chemicals, radiation, contagious diseases, heights and/or other related hazardous conditions.

Grievant argued she should have received a degree level of 3.0, rather than a 1.0. A degree level of 1.0 is defined in the Plan as:

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

A degree level of 2.0 is defined in the Plan 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).

A degree level of 3.0 is defined in the Plan 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 stated 16 millimeter projectors and boxes of books are heavy, and projectors must be placed on carts daily to take them to classrooms where they are needed. She stated the other Library staff are supposed to perform this duty, but some of them are not allowed to lift. She initially admitted she could call upon custodial staff to move these heavy items, but she chooses not to do so because she would have to wait until they can fit her in. Later in her testimony she stated the custodial staff are not required to move equipment. She finally stated that the Library staff no longer has to lift and move equipment because, beginning sometime in 1993, SWVCC equipped each classroom with the needed equipment. She stated she moves boxes occasionally.

Ms. Hank stated that one does not need to be able to do moderately heavy lifting to be a Manager of a Library department. It might occasionally happen, but a building service worker should be doing the heavy lifting. She stated this point factor measures any unusual effort required by the job, and is important to the manual labor jobs. She compared the physical effort required in a Manager job to using a jackhammer to break up cement, or carrying shingles to a roof, and concluded they are not comparable.

The undersigned concludes that moving heavy items is not one of Grievant's duties, and if it were, that duty was removed prior to the implementation of the Mercer classification system. Grievant also stated when she is working circulation she must stand for long periods of time, however, she had indicated earlier in her testimony that she works circulation only to fill in. Likewise, this is not one of her regular job duties. Grievant failed to prove she should have received a higher degree level in this

point factor.

C. Summary

Grievant failed to prove she should have received a higher degree level in any of the challenged point factors. Because the point factor analysis does not result in a change in Pay Grade, Grievant has not proven she was misclassified, and a comparison of Grievant's duties to those of the Job Title sought is not necessary. See Riggs v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-711 (Apr. 29, 1996).

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. The governing boards are required by W. Va. Code § 18B-9- 4 to establish and maintain an equitable system of job classifi cations for all classified employees in higher education.

2. The burden of proof in a misclassification grievance is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.17. The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

3. The Job Evaluation Committee's interpretation and explanation of point factors will be given great weight unless clearly wrong, where the proper classification of a grievant is almost entirely a factual determination. See Tennant v. Marion Health Care Found., 194 W. Va. 97, 459 S.E.2d 374 (1995); Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94- MBOD-349 (Aug. 8, 1995).

4. The Job Evaluation Committee's decision that Grievant is a Manager/Library Services, Pay Grade 18, is not clearly wrong or arbitrary and capricious.

5. The Job Evaluation Committee's assignment of degree levels to the point factors for the Job Title Manager/Library Services is neither clearly wrong nor arbitrary and capricious.

Accordingly, the grievance of Barbara Aguirre is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County, or the circuit court of

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

BRENDA L. GOULD

Administrative Law Judge

Dated: May 29, 1997

Footnote: 1

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

Footnote: 2 Level IV hearings were held on January 29 and April 11, 1996. This matter became mature for decision on September 23, 1996, upon receipt of Respondent's post-hearing written submission. Grievant declined to submit post-hearing written argument. This matter was subsequently transferred to the undersigned for decision for administrative reasons.

Respondent stated in its post-hearing written submission that Grievant challenged the degree levels received in Scope and Effect/Nature of Actions and Impact of Actions, however, the record does not reflect that she challenged this point factor. Respondent also omitted Grievant's challenge to Intrasystems Contacts/Nature of Contact.

Footnote: 3 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: 4 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: 5 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: 6 These headings are shorthand for the following point factors: EX is Experience; CPS is Complexity and Problem Solving; FA is Freedom of Action; IC/NC is Intrasystems Contacts/Nature of Contact; IC/LVL is Intrasystems Contacts/Level of Contact; EC/LVL is External Contact/Level of Contact; DSE/LVL is Direct Supervision Exercised/Level of Supervision; PC is Physical Coordination; and PD is Physical Demands.

Footnote: 7 A degree level of 1.0 is defined in the Plan as "[l]imited to immediate associates and own supervisor within immediate office, unit, or related units."

Footnote: 8 In Blake, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-475 (Oct. 16, 1996), the Administrative Law Judge stated that the degree level 5.0 definition did not require the supervision of exempt employees, finding Respondent's explanation inadequate. Respondent's explanation in this case is quite clear and consistent with the plain words used in the definition, and may be distinguished from Blake for that reason. To the extent the statement in Blake is not distinguishable, it is overruled.