TIMOTHY WEIGHT,

Grievant,

v. **DOCKET NO. 94-MBOT-791**

BOARD OF TRUSTEES/
WEST VIRGINIA UNIVERSITY,

Respondent.

DECISION

Grievant, Timothy Weight, alleges he was improperly classified during the "Mercer" reclassification of higher education employees. (See footnote 1) Effective January 1, 1994, he was classified as a Photolithographer I at Pay Grade 10. He seeks to be classified as a Photolithographer II, and requests that the job title be placed in Pay Grade 15. (See footnote 2) In addition to challenging his job title, Grievant has also challenged specific point factors used in the Mercer system. (See footnote 3) If this grievance is granted, Grievant seeks back pay and benefits in the new classification to January 1, 1994.

A level four hearing was held in the offices of this Grievance Board in Morgantown, West Virginia, on October 10, 1996, and December 3, 1996. This matter then became mature for decision upon receipt of the parties' proposed findings of fact and conclusions of law on February 11, 1997.

The following factual findings are made from the record developed at level four.

Findings of Fact

1. Grievant has been employed by West Virginia University ("WVU") since approximately 1988 as a photolithographer in the Printing Services department. Effective January 1, 1994, he was classified as a Photolithographer I at Pay Grade 10.

2. In 1991, all higher education classified employees, including Grievant, were asked to complete a Position Information Questionnaire (PIQ) prior to the Mercer reclassification. Employees

were to describe their job duties and responsibilities, along with the minimum qualifications for their positions, on the PIQ by answering a series of questions designed to elicit this information. Grievant completed a PIQ in 1991.

3. During the job evaluation process, whereby the Mercer classification system was applied to each individual higher education employee, “data lines” of particular degree levels for each point factor were developed for each job title in the system. Employees with similar duties were grouped together in a job title for purposes of developing this data line. The final step of the classification process was the “slotting” of each employee into the job title which most closely fit his or her duties.

4. The degree levels for each point factor in a job title were used to arrive at a numerical total, which determined each job's Pay Grade.

5. Grievant's work as a photolithographer involves taking photographic negatives, stripping them, and assembling them on “press plates” which are sent on to a press room for printing, such as for brochures, flyers, and booklets. (See footnote 4) These jobs become more complex depending upon theprinting requirements of the job and the number of colors which must be reproduced.

6. In October of 1993, prior to implementation of the Mercer system, Gary Wood, a Photolithographer II, resigned his position. Grievant took over Mr. Wood's duties in full at that time, performing all the responsibilities of a Photolithographer II. Grievant's supervisor, Jeanie Richardson, requested at that time that Grievant's position be reviewed. Grievant also included this information regarding the change in his duties in the internal appeal of his Mercer classification, dated January 28, 1994. He submitted a revised PIQ, also dated January 28, 1994, reflecting his new duties and responsibilities, which did not change after January 1, 1994.

7. On April 1, 1995, Grievant was reclassified as a Photolithographer II at Pay Grade 12, due to a determination by the WVU Department of Human Resources that there had been a change in his responsibilities warranting a higher classification.

8. It is unclear from the record why Grievant's reclassification did not become effective until April 1, 1995. The change in Grievant's job duties warranting the reclassification occurred in October of 1993.

9. Grievant has challenged the degree levels given to particular point factors in the data line for Photolithographer II, arguing that the job title should be in Pay Grade 15, instead of Pay Grade 12.

10. The Photolithographer II job title received 1730 points under the Mercer system,placing it in

Pay Grade 12. The point range for Pay Grade 12 is from 1655 to 1755 points.

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 § 4.17; W.Va. Code § 18-29-6. Burke 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.” It is largely a “quantitative” system, in which the components of each job are evaluated separately by applying the point factor methodology contained in the Job Evaluation Plan (hereinafter “Plan”). Therefore, the focus in Mercer grievances for this Board is upon the point factors the grievant is challenging. (See footnote 5) 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. The 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 jobtitle. 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 and W. Va. Civil Serv. Comm'n., Docket No. VR-88-006 (Mar. 28, 1989).

Finally, whether grievants are properly classified is almost entirely a factual determination. As such, the Job Evaluation Committee's ("JEC") 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. However, no interpretation or construction of a term used in the 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 Resources, 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 6)

In accordance with the foregoing discussion, a grievant must show that he was slotted into the wrong job title, that the point factor degree levels assigned to his job title are incorrect, or that he is entitled to an individual data line because of the unique nature of his position. In order to determine if Grievant was misclassified, the point factors and degree levels disputed must be discussed separately in detail.

B. Grievant's Mercer Classification

As set forth in the Findings of Fact above, Grievant was reclassified as of April 1, 1995, in the Photolithographer II job title. He and his supervisor, Ms. Richardson, both testified at level fourthat Grievant began performing the duties of that job in October of 1993, prior to the implementation of the Mercer system. However, Respondent contends that Grievant's job duties did not change until April 1, 1995. Grievant maintains that, since he was performing the duties of a Photolithographer II prior to January 1, 1994, that should have been his Mercer classification. He brought this matter to the attention of Human Resources when his internal appeal was filed, but no action to appropriately classify him was taken until 1995.

In support of its position, Respondent relies upon two statements obtained from Paul Stevenson, Director of Printing Services. The first is a memorandum from Mr. Stevenson to Deborah Fusco of the Department of Human Resources, dated February 14, **1994**, which reads, in pertinent part:

> Tim Weight . . . has been performing the duties of a Photolithographer II since the resignation of Gary Wood (Photolithographer II) in the latter part of **1994**. . . . Printing Services requests a review of Mr. Weight's position. He is fulfilling the duties of a Photolithographer II to our satisfaction, and he would seem to be deserving of the upgrade.

Obviously, some error was made in this memorandum, either in the date of the document or in the date which Mr. Stevenson stated that Gary Wood had resigned. Since no witness was called to explain the memo, it cannot be used as a reliable basis for Respondent's contentions. Respondent made no effort to explain the discrepancy, such as by calling Mr. Stevenson as a witness, nor did it produce records which could have revealed the exact date Mr. Wood resigned. Nevertheless, the other evidence of record indicates that Mr. Stevenson was simply mistaken regarding Mr. Wood's resignation date, which occurred in late 1993, not 1994.

The second document upon which Respondent relies is the “Management Assessment of the Appeal Request” portion of Grievant's internal appeal document dated January 28, 1994. Mr.Stevenson stated that he believed Mr. Weight was appropriately classified as Photolithographer I, stating that Grievant's contention of misclassification at that time was “. . . outside the scope of this inquiry. The Director does not believe that the Mercer Study has either the authority or intent to transfer employees from one position to another.”

Mr. Stevenson's opinion regarding the purpose of the initial Mercer appeals is completely irrelevant. Obviously, there had been a change in Mr. Weight's duties at the end of 1993, which was mentioned in his initial appeal and was testified to by him and his supervisor without dispute. The only witness presented by Respondent at level four, Luann Moore, a Senior Compensation Analyst at WVU and a JEC member, had no personal knowledge of when the change in Grievant's duties occurred. She merely pointed to Mr. Stevenson's statements, ignoring Grievant and Ms. Richardson's testimony, as evidence that Grievant was still performing the duties of a Photolithographer I on January 1, 1994. She did not know how much, if any, time Mr. Stevenson spends with Grievant or how familiar he is with Mr. Weight's daily work.

Ms. Richardson explained that doing “four-color” printing work is what separates the Photolithographer I title from Photolithographer II, that Grievant was doing some of this type of work before Mr. Wood's resignation, and then daily after that time. Respondent provided no evidence to refute her statements.

Grievant has proven by a preponderance of the evidence that the change in his job duties which led to his reclassification as a Photolithographer II dates back to October of 1993. Accordingly, he should have been placed in that classification when the Mercer system was implemented on January 1, 1994. He is entitled to back pay as a Photolithographer II from January 1, 1994, to April 1, 1995.C. Application of the Point Factor Methodology

Grievant has contested several of the degree levels allocated to the Photolithographer II job title, contending that the entire job title should have been placed within Pay Grade 15. Because Respondent insisted that Grievant was not performing as a Photolithographer II on January 1, 1994, it only addressed the Photolithographer I data line. Respondent's witness only discussed the degree levels allocated to the Photolithographer I job title; however, her testimony on the point factors in which both job titles received the same level is somewhat helpful and will be discussed.

1. 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's job title of Photolithographer II received a 3.0 degree level for this factor, and he argues that a 4.0 should have been granted. 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.

___Ms. Richardson testified that a level 4.0 is more appropriate, because of the many variablesat work in putting together each job. Decisions must be made which depend upon printing limitations, the colors used, and how film works. In his updated Position Description, dated September 19, 1994, Grievant stated in the Complexity and Problem Solving section as follows:

> It is not unusual for art work or negatives to reach the photolithography department in inadequate form that would not produce an acceptable level of finished quality. At such times the photolithographer must take such [items] and then hand-cut masks, mechanically separate, dupe and trap images, or touch-up with pens and/or scribes to make the piece reproducible as envisioned by the customer. Although the guidelines governing good printing practices are well established, thoughtful creativity is often required from the photolithographer in taking the raw material and formatting the individual components into mechanically reproducible metal plates. Deciding what is an acceptable level of quality requires making a subjective judgment that can only come from experience and familiarity with shop standards. . . .

___Obviously, Grievant's everyday duties require that he use some “resourcefulness and originality,”

but, as he acknowledged, there are well-established guidelines for printing which must be followed. The situations he has described easily fit within the level 3.0 definition. In addition, the “decisions” which Grievant must make in order to produce an acceptable product would be governed largely by his knowledge and experience in doing photolithographic work, and he did not contest the degree levels allocated to his job title under the Experience and Knowledge point factors. The JEC's decision on this point factor has not been proven to have been erroneous.

2. 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's job title of Photolithographer II received a 2.0 degree level, and he argues that itshould have received a 3.0. 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 3.0 degree level 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's most recent PIQ describes his daily interactions with his supervisor, who prioritizes projects, directs the work flow in order to meet deadlines, and assists with solutions to project-related problems. Ms. Richardson testified that, although she sets the priorities, each employee carries out his or her work without her assistance. According to Luann Moore, all the photolithographers were appropriately evaluated at level 2.0, because their work is very structured, allowing them to function somewhat autonomously.

At the level four hearing, Grievant provided a demonstration of how his work is accomplished. He

appeared to know exactly what to do and how to do it, because of his extensive experience doing photolithographic work. However, an employee's lack of need of supervision does not necessarily mean that he or she is functioning at a high level of Freedom of Action. “[A]n employee whose tasks are extremely structured and routine may function virtually without supervision, because the position calls for very few or no decisions or choices to be made . . . . Thus, the level of supervision exercised over the employee is not the key issue for measuring this point factor, rather it is whether the employee has the option to make decisions on her own if and when such situations arise. See Barber v. Bd. of Trustees, Docket No. 94-MBOT-872 (Oct. 31, 1996).” Kretzmer v. Bd. of Directors, Docket No. 94-MBOD-751 (Feb. 6, 1997).

“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.” Miller v. Bd. of Directors, Docket No. 94-MBOD-495 (Oct. 29, 1996) (citing Mercer cases). There is only a slight difference between the level 2.0 and level 3.0 definitions, and different individuals could easily come to different conclusions as to which one clearly applies to Grievant. Under these circumstances, the JEC cannot be determined to have been clearly wrong or to have arbitrarily and capriciously assigned Grievant a level 2.0 for this point factor.

3. 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 has two aspects which form a matrix, Impact of Actions and Nature of Actions, and Grievant challenges both. He received a 1.0 for Impact and a 2.0 for Nature, and arguesentitlement to a 2.0 and a 3.0, respectively. A 1.0 in Impact of Actions is defined as “[w]ork is

limited to immediate work function and short-term situations." A degree level of 2.0 is "[w]ork affects either an entire work unit or several major activities within a department."

On his January 28, 1994, PIQ, Grievant stated in the Scope and Effect section:

> Pages being stripped using wrong format or pagination as well as color breaks not registering or being different from customer specifications, could lead to major problems such as reprinting the job resulting in additional costs and lost production time; therefore, potentially missing committed deadlines.

Ms. Richardson testified that the work of photolithographers affects the entire printing department; if their work is done incorrectly, it can affect the next step in the printing process. Also, there can be increased costs for the department if an entire job must be reprinted.

Insufficient evidence has been provided to determine that Grievant's job title was incorrectly evaluated in this aspect of Scope and Effect. "The degree level definitions under Impact of Actions are not self-explanatory, and the definition of Scope and Effect lends little guidance in interpreting degree levels 1.0 and 2.0." Browning v. Bd. of Directors, Docket No. 94-MBOD-985 (Aug. 15, 1996). Respondent's witness did not address this factor in her testimony at level four, but in her written direct testimony (R. Ex. 1), it is stated that Impact of Actions considers "the primary purpose of the position's work product," whether it be at a function, unit, or department level. Although Grievant and his supervisor have testified that errors on his part can affect the entire printing department, there has been no explanation of how often this becomes a problem or concern. As stated in the last line of the Scope and Effect definition, it is to be assumed that "errors are not due to sabotage, mischief or lack of reasonable attention and care." If such errors are never made, Grievant does not have impact upon the entire department. He has not proven by a preponderance of the evidence that the Photolithographer II job title should have received a higher degree level. A degree level of 2.0 in Nature of Actions 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 is defined as:

> Work provides guidance to an operation, program, function or service that affects

> many employees, students or individuals. Decisions and recommendations made involve non-routine situations within established protocol, guidelines, and/or policies. Errors could easily result in moderate costs and inconveniences within the affected area.

___Ms. Richardson's testimony did not really address what this point factor measures; she testified that a higher level was appropriate, because the photolithographers' work affects the department's ability to meet deadlines, and customers will be dissatisfied if projects are late or done incorrectly. Ms. Moore's written testimony states that Nature focuses on the type of work performed and that level 3.0 "guidance to an operation, function or service . . . is the beginning of the professional level positions." R. Ex 1 at 24.

"It is not inconsistent with the language used to say that the work performed by Grievant . . . is better described as contributing 'to the accuracy, reliability, and acceptability of' processes or services, rather than 'providing guidance to an operation, program, function or service that affects many employees, students or individuals,' or contributing 'to . . . the effectiveness of operations or services.'" Morasco v. Bd. of Trustees, Docket No. 94-MBOT-777 (May 13, 1997) (citing Mercer cases). Grievant has not proven that he would be more appropriately evaluated at level 3.0 as a photolithographer.

___4. Intrasystems Contacts

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

> [A]ppraises 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 has a two-aspect matrix, made up of Nature of Contact and Level of Contact, and Grievant has again contested both. Both of the photolithographer job titles received level 1.0 ratings for both Nature and Level, and Grievant argues that level 2.0 is appropriate.

A degree level of 1.0 in Nature of Contact 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.)

Grievant and his supervisor both testified that moderate tact is necessary when a photolithographer must inform a customer (another department of WVU) that the project cannot be carried out as they have requested, due to various limitations of the printing process or other technical factors. In such situations, Grievant may offer suggestions as to what changes should be made.

It does not appear that such situations could not be handled appropriately with common courtesy. Explaining the limitations of the technical process is merely an exchange of information, which requires Grievant to provide information regarding the problem and describe how the process works. He has not met his burden of proof regarding Nature of Contact. A degree level of 1.0 in Level of Contact is defined in the Plan as

> "[l]imited to immediate associates and own supervisor within immediate office, unit, or related units." A 2.0 in Level is defined as "[s]taff and faculty outside the immediate work unit." Grievant's updated PIQ states that, in addition to his daily contact with his supervisor, he has frequent contact with supervisors of other departments regarding press and bindery requirements and with customers regarding various format issues. Ms. Richardson explained that the "customer" for their projects is usually another department or unit of WVU, and it is the responsibility of the photolithographer assigned to the job to deal directly with such individuals, which will be necessary several times per week. Grievant also testified that he speaks with supervisors in other departments on a daily basis about ongoing projects. He stated that he personally calls a customer when problems or errors are discovered and offers them alternatives. He also must communicate with employees of other units within the Printing Services department on a daily basis.

Ms. Moore's testimony in this area was nonsensical. She stated that it is the responsibility of other persons, such as the printing services specialist, to deal directly with customers. When confronted with Grievant and Ms. Richardson's testimony to the contrary, Ms. Moore simply stated that they were "mistaken" regarding Grievant's contacts.

Ms. Moore's statement is absurd. Grievant knows who he communicates with to accomplish his work, and he clearly testified that he must deal with the customers on projects on a daily basis. His supervisor has testified that it is Grievant's assigned responsibility to do so. Accordingly, he has regular, recurring and essential contact at least at the 2.0 level. Grievant has proven that he is entitled to the higher degree level for Intrasystems Contacts, Level. Raising Grievant's degree level to

a 2.0 in this factor increases the total points allocated to his position by six points, for a total of1736 points.

5. 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.

The Photolithographer II job title was evaluated at level 4.0 for this factor, which only has five possible degree levels. Grievant alleges that he is entitled to the highest level, a level 5.0.

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.

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

> Work requires extraordinary skill and precision with complicated and/or difficult manual skill involving coordinated physical motions and exactness in the use of hand instruments or tools requiring delicate timing and placement of movements.

Grievant testified that, in order to prevent overlapping of colors and blurred images, he must often use “surgical precision” with a razor and magnifier while he is setting up a project for printing. In his updated PIQ, Grievant only requested a level 4.0, stating that “extreme manual dexterity . . . is needed when using . . . a magnifier and razor blade when assembling film mechanicals with image accuracy normally within thousands of an inch.” Ms. Richardson testified similarly, concluding that she believed level 4.0 was appropriate, although he has requested a 5.0.

There is no doubt that Grievant's duties require great skill and accuracy. However, once again, the above definitions are substantially similar and involve a subjective value judgment. The evidence does not prove that Grievant's work rises to the level of the 5.0 definition.D. Summary

Grievant was performing the duties of a Photolithographer II prior to January 1, 1994, so his initial Mercer classification should have been in that job title. Accordingly, he is entitled to back pay from January 1, 1994, to April 1, 1995, when he was classified as a Photolithographer II.

The only factor challenged in which Grievant met his burden of proof was Intrasystems Contacts, Level. However, this only raises his total points to 1736, which is still within Pay Grade 12.

Accordingly, no change in the data line is warranted. Riggs v. Bd. of Trustees, Docket No. 94-MBOT-711 (Apr. 29, 1996).

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 classification for all classified employees in the higher education system.

2. The burden of proof in a misclassification grievance is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.19.

3. Determinations of the Job Evaluation Committee ("JEC") regarding application of the Mercer Plan's point factor methodology are essentially questions of fact. In that regard, the JEC's interpretation and explanation of the point factors at issue will be given great weight unless clearly erroneous. Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). See generally, Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W.Va. 1995).

4. Subjective determinations of the JEC regarding application of the Mercer Plan's point factor methodology to an employee or group of employees are entitled to deference when being reviewed by this Grievance Board. Such determinations may nonetheless be found to be arbitraryand capricious if not supported by a rational basis; they may also be clearly wrong if there is no substantial evidence in the record supporting the finding or if review of the evidence reveals that a mistake has been made. Burke, supra. See Frymier-Halloran v. Page, 458 S.E.2d 780, 788 (W.Va. 1995).

5. Grievant was performing the duties of a Photolithographer II prior to January 1, 1994. Accordingly, he should have been classified in that title on January 1, 1994, when the Mercer system was implemented.

6. Grievant did not prove by a preponderance of the evidence that the JEC's decisions were clearly wrong or arbitrary and capricious in the allocation of degree levels to his position for the point factors Complexity and Problem Solving, Freedom of Action, Scope and Effect--Impact and Nature, Intrasystems Contacts--Nature, or Physical Coordination.

7. Grievant proved that the JEC was clearly wrong in assigning a level 1.0 to Grievant's position for Intrasystems Contacts--Level. Grievant is entitled to a level 2.0 for this point factor if individually evaluated, which does not warrant any change in his pay grade or classification.

Accordingly, this grievance is **GRANTED IN PART** and **DENIED IN PART**. Respondent is **ORDERED** to classify Grievant as a Photolithographer II, effective January 1, 1994, and grant him back pay from that date to April 1, 1995.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the circuit court of the county in which the grievance occurred, 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 andState 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.

DATE: May 15, 1997 _____ **V.**

DENISE MANNING

Administrative Law Judge

Footnote: 1

The reader is referred to Burke 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

The Photolithographer II job title was placed in Pay Grade 12 when the Mercer system was implemented.

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

Both the grievant and his supervisor provided exquisitely detailed testimony of how photolithography works. Their explanations were so highly technical that, frankly, it is not possible or practical to attempt to reproduce them within this Decision. For example, Grievant introduceda glossary of terms used in the process, in which the definition of "lithography" reads as follows:

> *A printing process having an image carrier whose image areas are receptive to grease and whose nonimage areas are receptive to water. The printing surface is first dampened and then inked. The greasy ink is accepted by the image areas but not by the dampened nonimage areas.*

Footnote: 5

A grievant may challenge any combination of point factor degree levels, so long as she clearly identifies the point factor degree levels she 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: 6

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.