CAROL CARLTON

v. DOCKET NO. 94-MBOD-430

BOARD OF DIRECTORS,

SOUTHERN WEST VIRGINIA COMMUNITY COLLEGE

D E C I S I O N

Grievant Carol Carlton alleges she was misclassified effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) , as a Director/Library I("Director I"), Pay Grade 19. Grievant seeks as relief classification as a Director/Library II ("Director II"), Pay Grade 20; or creation of an institution specific title for her position: Director/Library III, Pay Grade 21 (See footnote 2) ; 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, Scope and Effect/Impact of Actions, Breadth ofResponsibility, Intrasystems Contact/Level of Contact and Nature of Contact, External Contacts/Level of Contact and Nature of Contact, Direct Supervision Exercised/Level of Supervision, Indirect Supervision Exercised/Number of Subordinates and Level of Supervision, Physical Coordination, Working Conditions and Physical Demands. (See footnote 3)

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. Grievant completed a PIQ in 1991.

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. Library services are provided to the Boone and Wyoming campuses, but there is no library on either site.

3. Grievant has been employed by SWVCC at the Williamsoncampus Library since 1980. She is responsible for library services at all four campuses.

4. Grievant was classified as a Director/Library I, Pay Grade 19, effective January 1, 1994.

5. On January 1, 1994, Grievant acted as the Professional Librarian on the Williamson campus, in addition to her duties as Library Director for the four SWVCC campuses. Her primary job duties (with the percentage of time she spent performing each duty shown in parenthesis) were developing and administering the budget for the libraries (25%); formulating and administering the goals, objectives, policies, rules, and procedures in the operation of the libraries (15%); evaluating library collections, planning and implementing collection development policies, and selecting new library materials (15%); supervising (15%); serving as library representative on committees, and preparing statistical reports and informational presentations (10%); directing the allocation of financial, personnel, bibliographic, equipment, space, and maintenance resources (10%); and, investigating computer applications and technology for libraries (10%).

6. Merle Dempsey was Vice President for Instruction and Student Services prior to 1994. Mr. Dempsey is what is referred to by SWVCC as Grievant's functional supervisor. He did not complete performance appraisals for Grievant, or approve her leave, or supervise any aspect of her work as the professional librarian on the Williamson campus. Grievant reported to him in her role as Library Director, and presented the proposed Library budget to himfor approval.

7. Grievant contacts the Vice President for Finance and Administration monthly regarding budgeting, the Vice President for External Affairs about news releases, advertisements and articles for newsletters, and campus Deans regarding the campus libraries, such as keeping overdues up to date, planning curriculum, community events, and registration. The Vice President for Administration calls Grievant with questions about the Library budget.

8. Grievant supervises one part-time and three full-time employees, and some part-time non-essential student assistants. The employees are classified as non-exempt Library Associates. There are no Staff Librarians at the Williamson campus Library. None of the employees supervises other employees.

9. Barbara Aguirre is the Manager of the Logan campus Library. Grievant did not become Ms. Aguirre's supervisor until mid-1994.

10. Grievant uses a video display terminal to search data bases. She spends about two hours

per week on average using the video display terminal. This is not near-continuous use.

11. The Director I Job Title received 2744 total points from the following degree levels in each of the thirteen point factors (See footnote 4) : 7.0 in Knowledge; 6.0 in Experience; 4.0 in Complexity and Problem Solving; 5.0 in Freedom of Action; 3.0 in Scope and Effect, Impact of Actions; 5.0 in Scope and Effect, Nature of Actions; 2.0 inBreadth of Responsibility; 2.0 in Intrasystems Contacts, Nature of Contact; 4.0 in Intrasystems Contacts, Level of Contact; 2.0 in External Contacts, Nature of Contact; 3.0 in External Contacts, Level of Contact; 5.0 in Direct Supervision Exercised, Number; 5.0 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 B.

12. The point score range for a Pay Grade 19 is from 2574 through 2755 total points. The point score range for a Pay Grade 20 is from 2756 through 2953 total 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 § 4.19; 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". TheMercer 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 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. 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 6)

B. 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 Director II Job Title, and the degree levels Grievant argued she should have received.

	EX	CPS	SE IA	IC BR	IC NC	EC LVL	EC NC	DSE LVL	ISE LVL	ISE NUM	LVL	PC	WC	PD
Director I	6	4	3	2	2	4	2	3	5	1	1	1	1	1
Director II	7	4	4	2	2	4	2	3	6	3	2	1	1	1
Grievant's Argument	7	6	5	5	3	6	3	5	8	3	4	3	2	2

(See footnote 7)

Joint Exhibit B. Each of the point factors challenged by Grievantwill 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 7.0 in this point factor, rather than a 6.0. A degree level of 6.0 is defined in the Plan as "[o]ver four years and up to six years of experience." A degree level of 7.0 is defined in the Plan as "[o]ver six years and up to eight years of experience."

Grievant argued she needed experience as a staff librarian and managerial experience. Mr. Dempsey testified he believed six to eight years experience would be needed for Grievant's position, which would include some library experience and some type of managerial/supervisory experience. He did not believe the library and management experience should be acquired concurrently, and questioned the management ability of a person who had acquired both types of experience concurrently.

Mr. Dempsey did not sign Grievant's PIQ, on which a degree level of 4.0 was marked and agreed to by Gail Hall, the campus Dean who is Grievant's supervisor. Grievant's PIQ also notes under Knowledge as other knowledge, skills or abilities required, "[t]hree years' experience in a college library and/or supervisory experience." Grievant did not indicate what had caused her to change her mind about how much experience is needed.

Patricia Hank, Director of Human Resources at SWVCC and JECmember, pointed out this point factor measures the minimum prior relevant experience necessary to perform the job at an entry level. She noted there is a training period necessary before anyone is proficient in her position, and that the Knowledge level credited the Job Title must also be taken into account. Respondent's Exhibit 2. The Knowledge level credited the Director I Job Title is a Master's Degree.

Neither Grievant or Mr. Dempsey explained how they arrived at their opinions on the number of years of experience they believed necessary, and no facts were presented which show how long it takes someone with a Master's Degree to acquire the requisite skills. Grievant plans for expansion, improvement and maintenance of all library services, which would require her to have some management training or experience. However, she supervises only three employees, which would seem on its face to require little supervisory experience; and with a Master's Degree, it would seem she should not need much, if any, library experience, as Mr. Dempsey opined would be necessary.

The minimum amount of experience required to perform the essential duties of a position represents a subjective determination upon which reasonable minds may differ. Zara v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-817 (Dec. 12, 1995). Grievant has merely shown that

her opinion and Mr. Dempsey's opinion are different from that of the JEC, which is insufficient to prove the JEC clearly wrong, or that it acted in an arbitrary and capricious manner. See Riggs v. Bd. of Trustees MarshallUniv., Docket No. 94-MBOT-711 (Apr. 29, 1996).

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 6.0 in this point factor, rather than a 4.0. The JEC assigned half- levels in this point factor and in Freedom of Action when "the position was performing significant portions of duties in both levels, i.e.: part in 2 and part in 3, hence a 2.5." Respondent's Exhibit 2.

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.

A degree level of 6.0 is defined in the Plan as:

> Problems encountered are extremely complicated and require considerable resourcefulness and originality. Various strategies are examined to determine most feasible approach to resolution of problems. Long-range planning to resolve extraordinary problems is almost always required of positions at this level to attain desired goals. Advanced analysis which requires the employee to solve unusual and complex problems taking information from many different sources is required. Employee will often use initiative and resourcefulness in deviating from traditional methods, proposing new policies, and researching trends.

Grievant prepared a five year plan for libraries one time using American Library Association standards, and has updated it. She argued this represented long-range planning. She stated staffing

problems, lack of funding and resources, and changes in the administration call for problem-solving techniques. She explained when an employee leaves, the position must be advertised or part-time people are used, which creates a problem in providing services and maintaining hours. She stated she has also relied on volunteers. She prepared a grant application to try to solve some of the funding problems she encountered when attempting to automate the libraries, and received the grant. She described problems encountered in overseeing libraries at four campuses as unique and complex.

In discussing Breadth of Responsibility, Grievant stated she must be aware of and apply cataloging rules and practices, classification procedures, subject classification, machine readable cataloging input standards, right to privacy laws, interlibrary loan protocol, copyright laws, ASTM (See footnote 8) standards, ADA guidelines forthe disabled, library design requirements, American Library Association standards, and state and institutional guidelines regarding libraries. Grievant's Exhibit 7.

Mr. Dempsey stated he felt one of the major responsibilities of Grievant's position in her role as Director of Library Services is to look at policies established by the institution, or practices in effect, and be able to make recommendations as to the effectiveness of those policies and procedures and changes that might be needed. He stated he also thought parts of degree level 6.0 were applicable to Grievant's position, such as "[l]ong-range planning to resolve extraordinary problems is almost always required," and "[e]mployee will often use initiative and resourcefulness in deviating from traditional methods, proposing new policies." He stated Grievant's position is not responsible for making policy. He explained it is his job to recommend a policy to the President, who would make the final decision on what the policy would be. He stated Grievant's role is to formulate what she believes is needed and recommend it to him, and they discuss it. He reviews the information necessary to evaluate the recommendation and then takes the recommendation to the President. He stated Grievant would not interact with the Dean about policy, but about Library procedures, such as operating hours. He stated Grievant is the one who evaluates requests of Library users, and if she believes an acquisition should be made, she would include it in the budget. He stated he does not evaluate the decision she makes to place certain items in the budget, but looks at the bottom lineto see whether the money requested is available, and sends it back to Grievant if she needs to make cuts.

Ms. Hank pointed out that a degree level of 6.0 is the highest degree level in this point factor. She

noted this point factor does not measure the difficulty of the tasks performed by the employee. She stated:

> Some questions the JEC asked themselves were: How routine are the problems? How complex? Are there routine or standard guidelines or procedures that exist and are normally followed to solve these problems or are these complex problems without readily obtainable solutions? Do complex problems occur frequently or are they a rare occurrence? Are these problems consistent with the duties and responsibilities of the position?

Respondent's Exhibit 2. She stated guidelines, procedures, rules, regulations, and methods which an employee must follow provide structure, and libraries are very structured. She stated everyone has personnel problems and budget problems, but these problems are not extremely complicated.

Grievant deals with some complex problems. She plans for Library development for the four campuses, plans the budget, deals with personnel problems, and evaluates policies, practices and procedures and makes recommendations for changes. However, she does not make the final decision on policy changes. She does not generally develop new programs, procedures or methods, but relies upon her library training and upon standard library practices developed by others in the profession. She does not typically do long-range planning, and when she does, she relies upon library standards and makes recommendations to Mr. Dempsey. In solving some, but not all, of the problems she encounters, she has generalpolicies, procedures, principles, and theories of her professional discipline available as a guideline. She exercises some resourcefulness and originality at times in solving some of the problems encountered.

Grievant has not proven the problems encountered fall within a degree level of 6.0. She has proven that her duties involve a significant amount of planning and management which go beyond simply applying theories and practices of her professional discipline, and fall within a degree level of 5.0. However, a degree level of 4.0 is applicable to some situations, and even lower degree levels seem applicable at times. For example, absent some further explanation, the personnel problems noted by Grievant would seem to have a few easily recognizable solutions, which is within a degree level of 2.0. Grievant has proven that a degree level of 4.5 is a better fit for her duties than a 4.0.

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 shouldbe given for the possibility that a unit, program or department within a large institution may be equivalent in size to multiple units, programs or departments within a smaller institution. In making these interpretations, assume that the incumbent would have normal knowledge, experience and judgment, and that errors are not due to sabotage, mischief or lack of reasonable attention and care.

This point factor consists of two parts, Impact of Actions and Nature of Actions. Grievant is challenging the degree level received in Impact only, arguing she should have received a 5.0, rather than a 3.0.

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

> Work affects the operations of more than one school or division of a specialized school, branch campus, community college or baccalaureate-level Institution with an operating budget of less than $13M; a school or division of a graduate or baccalaureate-level Institution with an operating budget of $13-$18M; several departments within a graduate or baccalaureate-level Institution with an operating budget of $19-$25M; a major department within a graduate-level Institution with an operating budget of more than $50M; or a moderate-size department within a doctoral-level Institution with an operating budget of more than $200M.

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

> Work affects the entire operations of a specialized school, branch campus, community college or baccalaureate-level Institution with an operating budget of [less than] $13M; more than one school of division of a graduate or baccalaureate-level Institution with an operating budget of $13-$18M; a school or division of a graduate or baccalaureate-level Institution with an operating budget of $19-$25M; several departments within a graduate-level Institution with an operating budget of more than $50M; or a major department within a doctoral- level Institution with an operating budget of more than $200M.

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

> Work affects the entire operations of a graduate or baccalaureate-institution with an operating budget of $13-$18M; more than one school or division of a graduateor baccalaureate-level institution with an operating budget of $19-$25M; a school or division of a graduate- level institution with an operating budget of more than $50M; or several departments within a doctoral-level institution with an operating budget of more than $200M.

Grievant opined that the budget has nothing to do with the amount of responsibility, and asserted that the JEC undervalued the importance of the Library to higher education.

Ms. Hank stated this is the only factor which is affected by the size of the institution. She stated an

impact of 4.0 is the highest possible for a community college. She stated the vast majority of the effect of this position is on the Library itself, and the provision of Library services. She admitted there is an impact on students and on academics, but stated there is not an effect on the entire organization. She further stated "different institutions have varying impact on West Virginia higher education depending on their size and budget. One goal of the classification program was to give credit for this difference between institutions, yet maintain an equitable classification structure." Respondent's Exhibit 2.

In applying this point factor the JEC placed a value upon all the different services provided at the various institutions of higher education. The JEC determined that the Library does not affect the entire operations of an institution, when compared to other services provided at the institution. The Library certainly has a significant impact upon students and academics. Grievant pointed out that her actions could result in the library not meeting accreditation standards, and the institution could then"lose North Central accreditation, thus losing enrollment and funding," and the "level of instruction can be affected if library materials are not purchased, processed, or made available, resulting in students going to other colleges and faculty becoming discouraged and leaving." Grievant's Exhibit 7.

Grievant's argument is speculative, and assumes she is not properly doing her job, which is not the way this factor is applied. The definition includes the direction, "[i]n 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." It is what positive effect Grievant's work product has on the institution and on higher education that is measured, not the negative impact if Grievant fails to properly perform her duties. If Grievant does what she is supposed to do, does that increase student enrollment, assure accreditation and additional funding, and reduce faculty turnover?

Accepting Grievant's statements regarding the results in terms of loss of enrollment and faculty turnover, while this would certainly have an affect on the institution, the institution would still be able to operate. Certainly the JEC could have decided that the Library affects the entire operations of SWVCC because of its impact on students, but Grievant has not shown the JEC was clearly wrong or acted in an arbitrary and capricious manner in its decision.

As to Grievant's opinion regarding the relationship betweenbudget and responsibility, obviously

the JEC held the opinion that the larger the budget and degree offering of an institution, the greater the scope of responsibility with regard to the overall mission of higher education. This is not an unreasonable concept. A difference of opinion is insufficient to prove this point factor should be disregarded, which is what would have to be done if Grievant's opinion were accepted. Moreover, Grievant did not argue this point factor should be thrown out entirely; she argued she should have received a **higher** degree level. Curiously, she did not argue she should have received the highest degree level available. Grievant's rationale is hard to discern.

SWVCC is a community college. Rating Grievant's position individually, by definition, she could not receive a degree level of 5.0, because community colleges are not included within the definition of this degree level. Grievant has not proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level of 3.0.

4. Breadth of Responsibility

The factor Breadth of Responsibility is defined in the Plan as:

> This factor describes the variety of specific functional areas in which the job may have formal and ongoing accountability. In reviewing this factor, consider the level of in-depth knowledge required as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations. [Examples of some functional areas within the following divisions would include: (1) Student Services--Housing, Admissions, Financial Aid, Counseling; (2) Business and Finance--Purchasing, Auditing, Grants and Contracts, Bursar.] Grievant argued she should have received a degree level of 5.0, rather than a 2.0. A degree level of 2.0 is defined in the Plan as:
>
> In-depth knowledge of and accountability for one functional area as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations.

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

> In-depth knowledge of and accountability for four or more functional areas as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations.

Grievant argued each library service is a separate functional area, and that each campus is a functional area. Grievant also argued she was responsible for an $85,000.00 grant, which represents a separate budget. Mr. Dempsey believed that providing services to four campuses, with the distances covered, broadens the responsibility.

Ms. Hank stated a functional area typically is a budgetary spending unit. She continued that it is an area with a manager over it, it typically encompasses a particular function for the organization, and

the Library is one functional area. She stated that in order to receive credit for more than one functional area, the employee has to be responsible for unrelated functional areas, such as food services and building services, which would have two separate budgets.

Ms. Hank's interpretation is consistent with the language used and examples given in the definition, and with many previous Decisions. See Floyd v. Bd. of Trustees, W. Va. Univ., Docket No.94-MBOT-932 (June 14, 1996). The definition of this point factor makes it clear that each position or job duty does not constitute a functional area, but rather the Library would be one functional area, as was decided in Burke supra. See also, Jordan, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOD-983 (Nov. 25, 1996). The definition states, "consider the level of in-depth knowledge required as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations." Although there may be different physical locations with varying problems, Grievant is formally accountable for only one budget for one functional area, the Library, and the same policies, procedures, laws and regulations which she is responsible to oversee, apply to all campus libraries. The fact that part of the money the Library received was in the form of grant money (for which Grievant reports to the granting agency, not the institution) does not change the Library into two areas, such as Purchasing and Auditing. Accordingly, her duties fall within a degree level of 2.0.

5. 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 6.0 in Level of Contact, rather than a 4.0.

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.

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

> Associate/Assistant Vice Presidents or Systems' Central Office Directors that report to the Senior Administrator.

A degree level of 6.0 in Level is defined in the Plan as:

Vice Presidents or Systems' Central Office Senior Administrator.

Grievant stated the Vice President for Administration calls and asks her questions about the Library budget, but she did not indicate the frequency of this contact. Mr. Dempsey stated Grievant works with all Vice Presidents on a regular, recurring and essential basis, including the Vice President for Human Resources, Communications and Marketing to do advertising and promote various activities, and at least monthly with the Vice President for Financial Affairs regarding the budget. He stated she needs to have direct contact with the Vice Presidents, not their secretaries. Grievant's PIQ, however, does not list contact with any Vice Presidents, except Mr. Dempsey; although a degree level of 6.0 is checked. It does list the Assistant to the President at SWVCC once a month regarding public relations, grants, and press releases. Ms. Hank explained that the Assistant to the President is staff. She stated because most of Grievant's contacts are with faculty and staff, as her PIQ notes, Grievant received the benefit of averaging. That is, the data line for her Job Title reflects a higher degree level than Grievant's position would have received had it been rated independently. She also stated, however, that this point factor measures "the highest level of contact that the position is normally required to have in order to perform the essential functions of the job." (Respondent's Exhibit 2.)

Ms. Hank's explanation that the degree level is assigned to the group with whom the employee has the most contact is not supported by the definition. The definition states that regular, recurring and essential contacts are measured, not the most frequent contact. See Watts, supra. While daily contact is more frequent than weekly contact, weekly contact may be regular, recurring and essential.

Grievant obviously has regular, recurring and essential contact with Mr. Dempsey. It is appropriate to determine first, whether her contact with Mr. Dempsey is contact with a Vice President within the definitions of this point factor. The definition provides that this point factor "considers only those contacts outside the job's immediate work area." Work area is not specifically defined, however, it is implied in the degree level 1.0 definition that contacts within the work area are "immediate associates and own supervisor within immediate office, unit, or related units." Thus, it is not determinative in applying thispoint factor that Mr. Dempsey would not be credited with supervising Grievant under Direct Supervision Exercised. Mr. Dempsey, as Grievant's functional supervisor, is an

immediate associate within a related unit, and therefore, Grievant's contact with him falls within a degree level of 1.0, not 6.0. See Black v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-423 (Jan. 1, 1997).

The testimony presented was that Grievant has contact with one Vice President at least monthly, and in addition to that, has contacts with all the Vice Presidents at SWVCC, which Mr. Dempsey described as regular, recurring and essential. This testimony was not rebutted. Grievant has met her burden of proving her contacts are at a degree level of 6.0.

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.)

Mr. Dempsey stated Grievant's interaction with Vice Presidents falls within a degree level of 3.0, because her discussions with the Vice President for Financial Affairs would involve budgetingand allocation of funds. He explained these are sensitive and controversial matters, because of the college-wide impact, and need to be handled sensitively and diplomatically, with some degree of discretion in how and with whom these matters are discussed. He stated that each of the Vice Presidents calls upon Grievant for information for reports, among other things.

Ms. Hank stated that most of Grievant's contact is informational, not controversial, such as coordinating scheduling. The undersigned agrees. A degree level of 2.0 allows for some controversial contacts. Grievant has not proven her contacts are so often at a degree level of 3.0 that it is a better fit for her duties.

6. External Contacts

External Contacts is defined in the Plan as:

> This factor appraises the responsibility for working with or through other people outside the SCUSWV 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 levels received in both parts. 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 argued she has contact with substantially prominent persons at the Pittsburgh Regional Library Center ("PRLC"), such as Dr. H.E. Broadbent, III, formerly Executive Director of PRLC. Dr. Broadbent testified that when he assisted Grievant with a project, they might speak daily initially; then the contact would taper off until the next project or the approaching deadline on a project. Grievant listed her contacts with Dr. Broadbent on her PIQ as six times a year. Grievant listed contact with three other persons at PRLC on her PIQ, and stated the frequency of these contacts is quarterly and twice a year.

Grievant stated she has contact with the U.S. Department of Education regarding grants, but did not state with whom she speaks or the frequency of the contact. She noted her contact with the Director of the West Virginia Library Commission, but did not indicate the frequency of this contact. Her PIQ lists her contacts with the West Virginia Library Commission as the reference department once a week, Technical Services once a month, Gift and Exchanges once a month and Outreach Services once a month. Her contact with the Department of Education is listed on the PIQ as Neal Kaske once a month. Grievant did not identify Mr. Kaske's position. Her contact with other librarians is listed as once amonth regarding answering questions about the grant application she prepared. This last contact is not essential to the performance of her duties, but seems to be helping others to perform their duties.

Grievant referred to her speaking engagements at civic functions, but did not indicate the

frequency of this contact. She stated she holds two author/artist series each year and contacts authors and artists of regional interest to ask them to speak. Finally, she stated the Friends of the Library group has members who are influential community people, but provided no information on how often she has personal contact with this group, and in particular with those members who are influential in the community. Grievant's PIQ lists her other contacts as community patrons at 600 per month as they use the Library, with students at 3,200 per month, and vendors at 3.5 per day.

Mr. Dempsey thought Grievant's regular contacts were at a degree level 3.0. He was not sure her contact with community leaders would be regular, recurring and essential, and thought her contact with them would be in their capacity as Library users.

Ms. Hank stated when Grievant is contacting speakers for the Coal Festival, she is not doing that on behalf of SWVCC and it is not part of her regular, recurring and essential duties. She stated her contacts with the West Virginia Library Commission are colleagues. She stated the majority of Grievant's contacts are with students and vendors.

Grievant's sporadic contact with Dr. Broadbent is not regular, and therefore, regardless of whether he is a substantiallyprominent person, this contact is not counted in applying this point factor. See Bee v. Bd. of Trustees, W. Va. Univ. - Parkersburg, Docket No. 94-MBOT-946 (June 30, 1997). Her contact with artists twice annually likewise is not regular, even when added to her contact with Dr. Broadbent. Id. She provided no information about the frequency of her contact as a speaker, or with influential community members in the Friends of the Library group. She provided no information about her contacts with the West Virginia Library Commission and the Department of Education from which the undersigned can conclude that these contacts fall within degree level 4.0 or 5.0. While Grievant clearly has contacts at a degree level of 5.0, she has not proven these contacts are regular, recurring and essential.

Grievant argued she should have received a degree level of 3.0 in Nature, rather than a 2.0. The degree level definitions are nearly identical to those for Intrasystems Contacts/Nature of Contact and will not be repeated here.

Ms. Hank stated most of Grievant's contacts, particularly those with students, are receiving and providing information, which is within a degree level of 1.0, and her discussions are not controversial.

There is no indication that Grievant's discussions with persons categorized as External Contacts are frequently controversial, or that they involve project interactions, interpretation of complex

policies, or resolution of somewhat difficult problems. Discussing a project with Dr. Broadbent forthe purpose of receiving consulting advice is not a project interaction. Asking someone to speak at an event and arranging the time they can appear likewise is not a project interaction. Grievant has not proven she should have received a higher degree level in Nature.

7. Direct Supervision Exercised

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

This point factor consists of Number of Direct Subordinates, and Level of Supervision. Grievant is challenging the degree level received in Level only, arguing she should have received a 8.0, rather than a 5.0. 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.

A degree level of 6.0 in Level is defined in the Plan as:

> Manages the operation of a unit, including general supervision over first-line supervisors (and non- supervisors, if applicable).

A degree level of 7.0 is defined in the Plan as:

> Directs and coordinates the work of at least two or more units performing different functions within the same department. The work of these units is coordinated through subordinate managers who exercise full supervision over each unit. This position reports to thehead of the department.

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

> Directs and coordinates the work of all units within the same department. Total responsibility for the operations of the department. This position reports to the head of the division and all managers typically report to this position for operational coordination.

Grievant argued each campus Library is a unit. Mr. Dempsey testified that he considered library services a unit, and there are two libraries within the unit providing services to four campuses. Grievant also argued she supervised the Manager of the Logan campus Library, Barbara Aguirre, because she supervised her management of Library operations. She admitted she did not have

formal supervisory authority over Ms. Aguirre, that is, she did not sign her leave records, or prepare or contribute to her performance appraisals.

Ms. Hank stated Grievant's duties fall within a degree level of 4.0, because she does not supervise any exempt employees. 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.

Ms. Hank speculated that the JEC may have assigned a degree level of 3.0, and noted that Grievant does not spend most of her time supervising.

This point factor by definition considers only the formal assignment of supervisory responsibility. Grievant sets theLibrary goals for all campus libraries, but she was not formally assigned supervisory authority over anyone at the Logan campus Library (Ms. Aguirre) until after January 1, 1994. Grievant had no role in determining how the work of the Logan campus Library was accomplished. Grievant's goal setting role is not considered in applying this point factor. Thus, although Grievant makes a good point, prior to January 1, 1994, her only formal supervisory authority was with regard to two full-time and one part-time non- exempt employees at the Williamson campus Library. Grievant has not proven she should have received a higher degree level in this point factor.

6. Indirect Supervision Exercised

Indirect Supervision Exercised is defined in the Plan as:

> This factor measures the job's responsibility for the indirect supervision of subordinates. Only the formal assignment of such responsibility to a job should be considered; informal work relationships should not be considered. Indirect supervision takes into account the number of subordinates under the position's line of authority but who do not directly report to it. The number of subordinates should be reported in full-time equivalents (FTEs).

This point factor consists of Number of Indirect Subordinates and Level of Indirect Supervision. Grievant challenged the degree level received in both parts. Grievant received a degree level of 1.0 in Number, and argued she should have received a degree level of 3.0. A degree level of 1.0 in Number is defined in the Plan as no indirect subordinates. A degree level in Number of 3.0 is defined in the Plan as 4 to 8 indirect subordinates.

Grievant argued she should have received a degree level of4.0, rather than a 1.0 in Level. A degree level of 1.0 in Level is defined in the Plan as:

> No indirect supervisory responsibility; has formal authority over lead and/or non-supervisory personnel only.

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

> Directs and coordinates the work of a unit or department, including direct supervision over personnel above the manager level, and indirect supervision over manager- level personnel, first-line supervisors, and non- supervisors who are under the position's line of authority.

Like the previous point factor, this point factor considers only the formal assignment of supervisory responsibilities. As of January 1, 1994, no employee supervised by Grievant supervised other employees. Grievant therefore had no indirect supervisory authority, and accordingly, the JEC assignment of a degree level 1.0 in Number and in Level is correct.

9. 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 3.0, 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.

Grievant argued that in order to operate cost-effectively, she needs speed and accuracy when searching data bases on the computer, which she does two to three hours per week on average. Mr. Dempsey stated he believed some speed and accuracy on the computer is necessary, and therefore, he thought a degree level of 3.0 fit the position.

Ms. Hank explained that Physical Coordination, Working Conditions and Physical Demands typically give credit to labor- intensive positions, which would have lower levels of Knowledge, Complexity and Freedom. She stated Grievant's duties do not support that she needs to work with speed and accuracy. She stated other employees should be working on data bases, and while Grievant may do computerized research, this is not what her job was established to do. She stated Grievant demonstrates use of the computer, but there is no production requirement imposed upon her.

Grievant's testimony does not support a finding that her duties require her to work with speed, or any particular degree of accuracy. Both are required to fit within a degree level of 3.0. The undersigned cannot find any information in Grievant's duties and responsibilities (as set forth in Finding of Fact Number 5)which indicates that she ever searches databases. This may be included in "informational presentations." Further, the undersigned is not convinced that speed and accuracy of hand/eye coordination is as important in accessing information on a database as knowledge of how to most effectively research information on the database. Grievant has not proven she should have received a higher degree level in this point factor.

9. Working Conditions

Working Conditions is defined in the Plan in conjunction with Physical Demands 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 2.0, rather than a 1.0 in this point factor, although she indicated at one point that a 4.0 fit. A degree level of 1.0 is defined in the Plan 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.

A degree level of 2.0 is defined in the Plan 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. A degree level of 4.0 is defined in the Plan as:

> Frequent or prolonged exposure to extreme levels of temperature, air pollution, noise, radiation, chemicals, contagious diseases, gases and substances, heights, and moving parts.

Grievant pointed to her use of a video display terminal, the dusty nature of libraries, fumes from copiers and microfilm reader- printers, glues, dies and inks, and heating and cooling problems in the building housing the Library. Mr. Dempsey agreed with degree level 2.0, based upon Grievant's use of a video display terminal.

Ms. Hank stated Grievant is inside and not exposed to extreme levels of heat and cold, noise or chemicals. She stated this point factor was created to give credit to positions which work in these conditions daily. She stated occasional breakdowns of air conditioners are not considered, and if it gets extremely hot or cold in the building the employee would be moved elsewhere to work. It's not part of Grievant's job duties to work in these types of conditions. She also noted that a degree level of 2.0 would be assigned where the employee worked at a video display terminal daily performing data entry.

There is no evidence that when Grievant uses a video display terminal her use is near-continuous. Even if it were, Grievant's two hour per week use of the computer does not fit within a degree level of 2.0 or higher.

The evidence simply does not support Grievant's assertion that she is exposed to modestly unpleasant levels of fumes from machines, glues, inks or dyes in the Library. Perhaps someone whose job it is to stand at a copier all day may be exposed to alevel of unhealthy fumes, but no evidence was presented to support this. Persons performing book repairs may be exposed to modestly unpleasant levels of glues, inks or dyes. Grievant does not make copies or perform book repairs, nor is there any indication that she is present when this is being done.

While Grievant's exposure to dust in the Library is typical of a position which handles books, the definition of a degree level of 2.0 requires exposure to both less-than-optimal air conditions and temperatures. Grievant is not exposed to less-than-optimal temperatures. Building heating and cooling problems are within a 1.0, not a 2.0 or a 4.0. "Grievant's job duties could be performed in a normal office environment. The undersigned is of the opinion that this point factor is designed to measure the conditions under which the duties must be performed, not the conditions under which the duties happen to be performed because of the location of one individual's office." Hameed v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-928 (Jan. 15, 1997). See also, Luikart v. Bd. of

Directors, W. Va. State College, Docket No. 94-MBOD-766 (Apr. 18, 1997); and Saulton v. Bd. of Directors, W. Va. State College, Docket No. 94-MBOD-800 (Dec. 5, 1996). Grievant has not proven she should have received a higher degree level in this point factor.

10. Physical Demands

Grievant argued she should have received a degree level of 3.0, rather than a 1.0 in this point factor. 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 she moves projectors and boxes of paper weighing up to 50 pounds when no one else is around. She 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. Mr. Dempsey believed a degree level of 2.0 was appropriate.

Ms. Hank stated Grievant's job is physically comfortable, as she is seated, she can stand and move around as she pleases, and she may lift lightweight objects, which is within a degree level of 1.0. She stated this point factor measures the regular, recurring and essential physical demands that are placed upon the body. She stated it is not required of the Director of the Library that she move equipment, and she would not be rated on this in a performance appraisal. She stated the Library Technical Assistants deliver equipment to classrooms and set up the equipment, not the Director.

The undersigned concludes that moving heavy items is not one of Grievant's duties. If it were, it would have a negative impact on other point factors, such as Complexity and Problem Solving andFreedom of Action. Grievant failed to prove she should have received a higher degree level in this point factor. See Aguirre v. Bd. of Directors, Southern W. Va. Community College, Docket No. 94-MBOD-509 (May 29, 1997).

C. Summary

Grievant proved that if her position were rated individually, she should have received a higher degree level in Complexity and Problem Solving (a 4.5 rather than a 4.0), and in Intrasystems Contacts/Level of Contact (a 6.0 rather than a 4.0). These changes add 43 and 36 points, respectively, to the total points assigned the Director I Job Title.

Respondent argued Grievant's position individually would have received a degree level of 3.0 in Direct Supervision Exercised/Number, rather than a 5.0. Grievant admitted her position should have received a degree level of 4.0. Grievant supervises two to three employees, which is within a degree level of 3.0. While she supervises some part-time student workers, there is no evidence of the number of hours they work over the course of the year, so the full-time equivalent cannot be determined. Further, student workers are considered non-essential and are not considered in applying this point factor. Perkins v. Bd. of Trustees, W. Va. Univ. - Parkersburg, Docket No. 94-MBOT-733 (Oct. 31, 1996). There is no evidence in the record that the student workers are essential. Accordingly, Grievant's position is properly rated at a degree level of 3.0.

Respondent also argued Grievant's position would have receiveda degree level of 4.0 in Direct Supervision Exercised/Level, rather than a 5.0. In order to receive a degree level of 5.0, an employee must supervise exempt employees. Aguirre, supra. Grievant supervises no exempt employees, and therefore, her position is properly rated at a degree level of 4.0. These changes in the degree levels in Direct Supervision reduce the total points for the position by 48 points. The net result is an increase of 31 points. When added to the total points for the Director Job Title of 2744, this results in 2775 total points, which is within a Pay Grade 20. Accordingly, Grievant has proven she should have been classified as a Director II, Pay Grade 20. (See footnote 9)

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 Director/Library I, Pay Grade 19, is clearly wrong. Grievant's duties entitle her position to a degree level of 4.5 in Complexity and Problem Solving and a 6.0 in Intrasystems Contacts/Level of Contact. While her duties only support a degree level of 3.0 in Direct Supervision Exercised/Number of Subordinates, and a 4.0 in Level of Supervision, the net change in points increases the total points to 2775, which is a Pay Grade 20.

Accordingly, the grievance of Carol Carlton is **GRANTED**. Respondent is ordered to place Grievant in the Director/Library II Job Title, Pay Grade 20, effective January 1, 1994, and to pay her backpay in the amount of the difference between the salary she would have received had she been placed in a Pay Grade 20 on January 1, 1994, and the amount actually received, if any.

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: July 15, 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

An institution-specific title is a Job Title created for a position which exists only at one institution.

Footnote: 3

Level IV hearings were held on February 22, July 30 and 31, 1996. This matter was then placed in abeyance so Grievant could prepare a new Position Information Questionnaire, and the parties could discuss the possibility of settlement. When the parties were unable to reach a settlement, an additional day of hearing was held on March 11, 1997. This matter became mature for decision on June 16, 1997, with receipt of Respondent's post-hearing written argument.

Footnote: 4

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: 5

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: 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.

Footnote: 7

These headings are shorthand for the following point factors: EX is Experience; CPS is Complexity and Problem Solving; SE/IA is Scope and Effect/Impact of Actions; BR is Breadth of Responsibility; IC/NC is Intrasystems Contacts/Nature of Contact; IC/LVL is Intrasystems Contacts/Level of Contact; EC/NC is External Contacts/Nature of Contact; EC/LVL is External Contact/Level of Contact; DSE/LVL is Direct Supervision Exercised/Level of Supervision; ISE/NUM is Indirect Supervision Exercised/Number of Subordinates; ISE/LVL is Indirect Supervision Exercised/Level of Supervision; PC is Physical Coordination; WC is Working Conditions; and PD is Physical Demands.

Footnote: 8

This acronym was not identified.

Footnote: 9

Grievant argued she had been discriminated against because of her age. This argument need not be addressed as

Grievant has proven application of the Plan to her duties places her position in a Pay Grade 20.