**FONDA PERKINS,**

**Grievant,**

**v.** **Docket No. 94-MBOT-474**

**BOARD OF TRUSTEES/**
**WEST VIRGINIA UNIVERSITY,**

**Respondent.**

## DECISION

Grievant, Fonda Perkins, filed this level four grievance challenging her classification under the "Mercer" reclassification system. (See footnote 1) Effective January 1, 1994, she was classified as an Academic Lab Manager I at Pay Grade 15, and she alleges that she should have been classified as an Academic Lab Manager II at Pay Grade 16. In addition to contesting the job title she was given, Grievant has also challenged specific point factors (See footnote 2) used in the Mercer system. Grievant requests that she be placed into the job title requested, effective January 1, 1994, with back pay.

A level four hearing was conducted in the Morgantown, West Virginia, office of this Grievance Board on November 20, 1996. This matter became mature for decision on January 10, 1997, upon receipt of the parties' proposed findings of fact and conclusions of law.

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

## Findings of Fact

1. Grievant has been employed by West Virginia University since approximately 1989. Her title both prior to and after implementation of the Mercer system was Academic Lab Manager I.

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. Generic job descriptions were developed for the various job titles within the highereducation system in 1994 after the implementation of the reclassification system. These descriptions were compiled by looking at the common duties and responsibilities of all incumbents in each job title as reflected on the PIQs. Generic job descriptions were not used in the classification process; they were not meant to serve as position descriptions and are merely a compilation of the common duties performed by persons in the particular job title.

6. All of Grievant's job duties are directed toward ensuring that biology labs can be conducted by graduate teaching assistants. She must make sure that all necessary equipment and supplies for the labs are available and usable. She also must deal with scheduling conflicts or materials problems which could potentially prevent labs from occurring. Otherwise, Grievant assists the graduate students generally, which consists of training them regarding laboratory policies and procedures, being available while labs are conducted in case problems arise, and computing and recording grades on the computer.

7. The Academic Lab Manager I job title received 2013 points under the reclassification system for a Pay Grade of 15. The point range for Pay Grade 15 is 1985 to 2113.

8. The Academic Lab Manager II job title received 2180 points for a Pay Grade of 16. The point range for Pay Grade 16 is 2114 to 2254.

## 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 she 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 she feels she 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 her 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 3) 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 job title. W. Va. Code §18B-9-4; Burke, supra. A Mercer grievant may prevail by demonstrating her 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 factorsat issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Foundation, 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 her classification thus will have to overcome a substantial obstacle to establish that she is misclassified. (See footnote 4)

In accordance with the foregoing discussion, a grievant must show that she was slotted into the wrong job title, that the point factor degree levels assigned to her job title are incorrect, or that she is entitled to an individual data line because of the unique nature of her position. In order to determine if

Grievant was misclassified, the point factors and degree levels disputed must be discussed separately in detail.

B. Application of the Point Factor Methodology

In support of the argument that she is misclassified, Grievant has articulated challenges to specific point factors. The degree level her job title received and the level to which she believes she is entitled will be discussed and compared.

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's job title was given a 2.0 for Experience, and she argues entitlement to a level 3.0. A degree level of 2.0 is defined in the Plan as "[o]ver six and up to twelve months of experience," and a level 3.0 is defined as "[o]ver one year and up to two years of experience."

On her PIQ, Grievant stated that six to twelve months of experience would be adequate to perform her job, which experience would specifically pertain to the operation of laboratory equipment, including microscopes, spectrophotometer, water baths, and "ph" meters. However, at the level four hearing, she testified that she had been too conservative on the PIQ. Grievant testified that one could perform her job with only one year of experience, but that it would be much more difficult to prepare the teaching assistants and set up the lab equipment.

In support of her position, Grievant presented the testimony of Dr. Joseph Marshall, Associate Professor of Biology and her immediate supervisor. He believed that at least one year of experience would be necessary because of the wide scope of Grievant's duties. As the professor in charge of the biology labs, Dr. Marshall has delegated all of the everyday operations of the labs to Ms. Perkins. These everyday operations involve training of the teaching assistants, including those with absolutely no experience, and Grievant must also teach on the laboratory staff section. It was Dr. Marshall's opinion that an individual with under one year of experience would require constant supervision once hired for Grievant's job; however, he did not state that such an individual could not perform the job at all.

Respondent argues that Grievant's evidence supports the 2.0 degree level she was given for the Experience factor. LuAnn Moore, Senior Compensation Analyst for WVU and JEC member, testified

that, since Grievant and her witness agreed that one year of experience would be minimally sufficient to perform the job, the JEC's evaluation was correct. According to Ms. Moore, the portionof the level 2.0 definition which includes “up to twelve months of experience” encompasses a one- year experience level. Ms. Moore also testified that, when evaluating the Experience factor, the JEC considered what would be the minimum experience level to recruit a newcomer to the position, keeping in mind that there is a “learning curve” period once any employee is placed in a new position.

Witnesses for both parties have testified that a one-year level of experience is sufficient to minimally perform Grievant's job duties. Accordingly, Grievant has not met her burden of proof that she was evaluated incorrectly in this point factor.

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's job title received a 3.0 for this factor, and the Academic Lab Manager II job title received a 3.5 (See footnote 5) ; however, Grievant is seeking a 4.0.

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

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

Level 4.0 is defined 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.

Grievant gave two categories of problems which she regularly encounters in the course of her duties. The first relates to the plant/animal specimens and equipment used in the laboratory. Ms. Perkins testified that she is held responsible for ordering the appropriate specimens at the correct time for lab use, and she must make sure that equipment is in working order at all times. She alleged

that there are no written guidelines for most of the problems confronting her, such as what types of algae to order and when to order them in relationship to when they are needed. However, Grievant admitted under cross examination that only basic decisions are involved when ordering such materials. If equipment malfunctions, she must request the repairs.

The second area of problems confronting Grievant involve the students, both those teaching and those enrolled in the laboratory courses. If a student is accused of cheating, Grievant asserts that she alone must decide if there is a well-founded case against them; however, she did not provide details regarding how this process works. In addition, she has handled situations involving sexual harassment allegations against a teaching assistant; however, further testimony revealed that such incidents had occurred less than once per year over a period of several years. Finally, Grievant alleged that she must engage in some problem-solving in order to assist the teaching assistants in calculating students' grades, but she admitted that a large portion of the calculation is done by a computer program.

With regard to Grievant's problem-solving responsibilities, Dr. Marshall testified that there are written guidelines regarding most of the operation of the labs, which are revised on a yearlybasis. As to equipment difficulties, he stated that Grievant finds out what options are available to solve the problem, presents him with recommendations, and he makes the final decision. When specimens arrive damaged or unusable, he has given her the authority to make decisions about substitutions and rescheduling. Although Grievant is expected to deal with most daily problems, it is Dr. Marshall who must answer to the department chair regarding the decisions made by her.

There is little in Grievant's evidence which demonstrates that she must often deal with complex and varied problems. She has discussed a limited set of situations which commonly occur, including the equipment problems, specimen problems, and dealings with the teaching assistants. From Grievant's and Dr. Marshall's testimony, it appears that Grievant is well-equipped to handle each type of situation and does so efficiently. This would indicate that guides, methods and precedents are usually available to her, as set forth in the level 3.0 definition. “Complexity does not measure the degree of difficulty of a task or tasks . . . the JEC considers the . . . extent to which guidelines, rules and procedures limit or assist in the solution of the problems encountered . . . .” Resp. Ex. 1 (LuAnn Moore Direct Testimony). Grievant's duties fit appropriately within the level 3.0 definition and do not rise to the level of complexity set forth in level 4.0; accordingly, Grievant was correctly evaluated in

Complexity and Problem Solving.

3. Freedom of Action

The Plan defines Freedom of Action as:

> This factor measures the degree to which the position is structured as is determined by the types of control placed on work assignments. Controls are exercised in the way assignments are made, how instructions are given to the employee, how work assignments are checked, and how priorities, deadlines and objectives are set. Controls are exercised through established precedents, policies, procedures, laws and regulations which tend to limit the employee's freedom of action.

As with the last factor discussed, Grievant's job received a level 3.0; Academic Lab ManagerII received 3.5; and she requests a 4.0.

The definitions in the Plan show that at a degree level of 3.0:

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

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

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

Both Grievant and Dr. Marshall testified about how independently Grievant performs her duties in accordance with established policies and laboratory manuals. Grievant stated that she discusses goals for conducting the labs with her supervisor, then keeps him informed of her progress. Any problems with which she cannot deal are taken to Dr. Marshall. Also, Dr. Marshall stated that he sets many policies and procedures himself, such as grading and attendance policies.

Grievant's testimony on this factor is somewhat ambiguous. Although she stated that she “discusses” the goals and objectives for running the labs with Dr. Marshall, she did not clearly state whether she has input into developing those goals and objectives. Accordingly, Respondent argues that she has not established entitlement to level 4.0, which, according to Ms. Moore's testimony, would require Grievant to show that she is directly involved in formulating broad objectives, not

merely being informed as to what those objectives are. The undersigned cannot find that Grievanthas met her burden of proof on this point factor. Her description of her job duties clearly falls within the level 3.0 definition, because she is working from broad objectives which appear to be set by her supervisor. The components of the level 4.0 definition involve more authoritative and policy- making roles than Grievant's job entails. Therefore, the level 3.0 assigned to her is not clearly wrong, nor arbitrary and capricious.

4. Scope and Effect

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

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

This point factor has two components, Impact of Actions and Nature of Actions. Grievant has only challenged the rating she received for Nature of Actions, a level 3.0. Although the Academic Lab Manager II job title also received a level 3.0, Grievant argues entitlement to a level 4.0.

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

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

Level 4.0 for Nature of Actions is defined as:

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

Grievant testified that all of her responsibilities directly impact the students who are enrolled in the biology labs she runs. If specimens are not handled correctly and a lab consequently does not take place, Grievant must make sure that those students enrolled in the lab will receive credit and/or be given another opportunity to make up the class. She also mentioned the cost to her department if she exceeds the set budget or money is wasted on specimens for a missed lab.

When it was brought to Grievant's attention that the level 3.0 definition encompasses functions or services that affect many students, she admitted this was true, but argued that level 4.0 is more appropriate because of the large number of students who could be affected by her actions. Dr. Marshall testified that level 4.0 was correct, because, if a lab is not held, grading would have to be conducted by hand, causing a disruption of services.

As pointed out by Ms. Moore, Grievant's evidence demonstrates that her duties directly impact students, but not the effectiveness of an entire operation. Although laboratory courses are undoubtedly important to the biology department, it would be more appropriate to characterize them as an “operation” that “affects many . . . students,” rather than “operations . . . having significant impact within the institution.” If Grievant does make errors, this would more likely result in some moderate inconvenience, especially to the students, rather than substantial cost, inconvenience or disruption. Therefore, Grievant was properly evaluated at level 3.0 for Nature of Actions.

5. 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 received a level 1.0 and requests level 5.0. A degree level of 1.0 is defined in the Plan as:

> Accountable for only immediate work assignments but not for a functional area.

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.

Like many other higher education employees, Grievant appears to misunderstand the meaning of "functional area," arguing that she should receive credit for having responsibility for biology technical materials, grading policies and procedures, purchasing, and chemicals. However, the key term in the level definitions for this factor is "accountability." Credit for the responsibility of a "functional area" was only given to managers and directors having full responsibility for an entire department or area (such as the whole biology department). An employee who has no budgetary responsibility and is not formally accountable for a functional area is entitled only to a level 1.0. See Floyd v. Bd. of Trustees, Docket No. 94-MBOT-932 (June 14, 1996). Thus, Grievant was not misclassified with regard to Breadth of Responsibility.

6. Intrasystems Contacts and External Contacts While these are two separate point factors, Grievant has only contested the Nature of Contact aspect of each (each type of contacts is measured with respect to Nature of Contact and Level of Contact). Additionally, the degree level definitions under Nature are identical for each of the two factors, so they will be discussed together.

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

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

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.

For each of these factors, Grievant received a level 2.0 for Nature and argues entitlement to a level 3.0. For both factors, the definitions for these degree levels are set forth below.

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

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

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

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

Grievant's arguments for the level 3.0 for Nature are based upon her interactions withstudents, teaching assistants, and product representatives. However, it should be stated at the outset that all of the entities which Grievant has discussed are considered External Contacts for purposes of the Plan, even students. Therefore, Grievant has presented no evidence that she is entitled to a higher degree level for Nature of Intrasystems Contacts and she can, accordingly, not be given the level she has requested.

As to External Contacts, Grievant contends that her dealings with students and teaching assistants can be sensitive and confidential because of the issues which she must discuss with them, including cheating, grading, and sexual harassment. However, she admitted that, if a student is accused of cheating, he or she is confronted by Dr. Marshall, not Ms. Perkins. As to product representatives, Grievant claims that her communications require substantial sensitivity in order to maintain good public relations with them, also noting that they can be irritating and persistent in trying to sell their products. She and Dr. Marshall both mentioned Grievant's dealings with “angry” parents, but they did not give specifics.

It does not seem that Grievant is dealing with areas that require “substantial sensitivity” on any regular, recurring, and essential basis. While she must exercise discretion and be aware of confidentiality concerns regarding matters related to students, these are more appropriately described as situations necessitating “moderate tact.” Also, Grievant's dealings with students and with those from whom she orders supplies and equipment should be “largely . . . non-controversial,” because they relate to standard policies, procedures and practices. This conclusion is supported by Respondent's JEC witness, who testified that, while a sexual harassment situation may require a higher degree of sensitivity, it is the Grievant's typical and regular contact that is considered, not unusual and infrequent situations. 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 is another point factor which has two components, i.e. Number of Direct Subordinates and Level of Supervision. Grievant was given credit for supervising seven to ten direct subordinates, a level 5.0, which she does not contest. However, she has challenged the rating she was given for Level of Supervision, a degree level of 2.0, and she believes she should have been given a 4.0

A degree level of 2.0 is defined by the Plan as "[r]esponsible for directing and monitoring the work of student workers essential to the operations of the unit." Thus, Grievant was clearly given credit for supervising the graduate teaching assistants, who are considered students. The level 4.0 which Grievant seeks is defined as follows:

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

Grievant's argument hinges on her interpretation of what exempt or non-exempt employees are; she believes that the teaching assistants under her supervision are considered "exempt employees." Because she does participate in the decision to hire or fire them, checks their work and helps them deal with difficulties in understanding policies and procedures, she feels that level 4.0 applies to her duties.

Ms. Moore explained that teaching assistants are only included within the degree levelswhich give credit for student workers. All other employees being supervised by a classified employee (which are the only people the Mercer system affected) are classified staff themselves. Her interpretation is supported by the regulatory definitions which govern personnel administration for the higher education system. "Student employee" is defined as follows:

> An employee enrolled at the institution as a student and whose primary purpose for being at the institution is to obtain an education. A student employee is not eligible for benefits and is not covered by the classification program.

128 C.S.R. 62 § 2.1.5. An "exempt employee" is one "not covered by the Fair Labor Standards Act for overtime purposes." 128 C.S.R. 62 § 2.25. Clearly, Ms. Perkins has been given the highest level of credit possible for supervising student workers, in this case teaching assistants, a level 2.0. She supervises no other employees for which any higher degree level can be given.

8. 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.

Both job titles, Academic Lab Manager I and II, received a level 2.0 rating for this factor, which 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.

Grievant argues she is entitled to a level 5.0 for her work in preparing chemical solutions and slides used in the laboratory. Level 5.0 for Physical Coordination is defined 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.

According to Grievant, “extraordinary skill” is a necessity when mixing solutions, along with exact precision and timing. Also, some of the equipment she works with is highly technical, such as complicated microscopes and expensive slides. Dr. Marshall agreed with Grievant that precision and coordination are required of Ms. Perkins in operating the lab equipment.

While it is unquestionable that Grievant must be extremely careful and exact when dealing with the instruments and chemicals used in the lab, the purpose of Ms. Perkins' job is not to utilize fine motor skills. Rather, she is in her position because of the level of knowledge and management ability that is required to operate the labs efficiently. As the JEC witness testimony reflects, the highest level of Physical Coordination is meant to be applied to employees who are paid to utilize extremely high levels of skill and precision of movement, such as dental assistants, nurses, electronics engineers and glass blowers. Also, this point factor's purpose is “to recognize the special skills of labor-intensive positions.” Resp. Ex. 1.

Grievant must be accurate when setting up equipment and mixing solutions, but she is not in a labor-intensive, very highly technical position as contemplated by level 5.0 in Physical Coordination. She did not produce evidence that she spends a great deal of her time performing technical duties. Her duties are a mixture of knowledge, management and organizational skills, and some technical

ability. Grievant's duties are not incorrectly evaluated at level 2.0.

C. Generic Job Descriptions

Grievant presented evidence at level four comparing the generic job descriptions of Academic Lab Manager I and II in support of her allegations that she was incorrectly classified. Generic job descriptions were compiled after implementation of the Mercer system and were not used in the classification process. Each employee's PIQ, not a generic description, is the specific measure and description of that individual's job duties. Moreover, to compare generic job descriptions “would be to resort to the less quantitative, less objective classification method of 'whole job comparison,' abandoning the point factor methodology which the JEC adopted.” Payne v. Bd. of Directors, 94-MBOD-372, at page 17 (Jan. 8, 1997). Therefore, Grievant's evidence in this regard is not relevant or probative and will not be discussed by the undersigned.

D. Summary

Grievant has not met her burden of proof in any of the challenged point factors. The evidence does not establish that she or her job title were incorrectly evaluated in any point factor, and she has not proven that she was misclassified on January 1, 1994.

## 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 she 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 arbitrary and 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. Paige, 458 S.E.2d 780, 788 (W.Va. 1995).

5. The JEC's assignment of degree levels to the point factors Experience, Complexity and Problem Solving, Freedom of Action, Scope and Effect--Nature, Breadth of Responsibility, Intrasystems Contacts--Nature, External Contacts--Nature, Direct Supervision Exercised, and Physical Coordination for Grievant's job title were not clearly wrong or arbitrary and capricious.

Accordingly, this grievance is **DENIED.**

Any party may appeal this Decision to the Circuit Court of Kanawha County or the circuit court of the county in which the grievance 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 and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

**DATE: March 12, 1997** _____ **V.**

**DENISE MANNING**

**Administrative Law Judge**

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*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.*

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*Footnote: 2*

*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.*

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*Footnote: 3*

*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).*

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*Footnote: 4*

*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.*

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*Footnote: 5*

*The JEC gave credit at half levels for positions performing significant portions of duties and responsibilities in two degree levels (See Moore testimony at p. 21).*