KATHRYN LUDWICK, ET AL.,

v. DOCKET NO. 94-MBOT-655

BOARD OF TRUSTEES/DIRECTORS

D E C I S I O N

Grievants, Kathryn Ludwick, Joe Oravets, Steven Smith and Virginia Lint each alleges he or she was misclassified on January 1, 1994, in the "Mercer reclassification." (See footnote 1) Grievants Ludwick and Oravets each seek as relief classification as an Applications Systems Analyst Programmer, Pay Grade 16, and Grievants Smith and Lint seek as relief a Pay Grade 18 for their Job Title, all effective January 1, 1994, and backpay from January 1, 1994. Grievants challenged the degree levels received in various point factors. (See footnote 2)

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

Findings of Fact

1. In 1991, all higher education classified employees were asked to complete Position Information Questionnaires ("PIQ's"). Employees were to describe their job duties and responsibilities and the job requirements on the PIQ, by answering a series of questions designed to elicit this information.

2. Grievant Ludwick has been employed at Potomac State College ("PSC") since 1989, and completed a PIQ in 1991.

3. Grievant Oravets has been employed at West Virginia University ("WVU") since 1984, and completed a PIQ in 1991. In 1993 he completed a second PIQ.

4. Grievant Smith has been employed at WVU since 1984, and completed a PIQ in 1991.

5. Grievant Lint has been employed at WVU since 1973, and completed a PIQ in 1991.

6. Grievants Ludwick and Oravets were classified as Applications Programmers, Pay Grade 14 ("Programmer"), effective January 1, 1994. Grievants Smith and Lint were classified as Applications Systems Analyst Programmers, Pay Grade 16 ("Analyst"), effective January 1, 1994.

7. On January 1, 1994, Grievant Ludwick's primary job duties (with the percentage of time she spent performing each duty shown in parenthesis) were programming (50%); modifying software (15%); testing and evaluating programs (10%); training and assisting usersand diagnosing operational problems (10%); installing and testing equipment, including terminals, printers and telephones, and making connections on the telephone terminal block for telephone and data communications (5%); installing personal computers and training and assisting faculty and staff in their use, diagnosing operational problems, and performing repairs on personal computers and related equipment (5%); and, making computer cables and cable ends, installing data lines, muxes, terminals and printers, and other duties as assigned (5%).

8. Grievant Ludwick has a Bachelor's Degree in English, Associate's Degrees in Sociology, Economics, and Computer Science, and an Associate of Applied Science in Computer Programming Technology. Prior to entering upon her present duties, she had less than two years of computer related experience, in addition to some experience in telephone wiring.

9. Grievant Ludwick is not accountable or responsible for a budget.

10. On January 1, 1994, Grievant Oravets' primary job duties (with the percentage of time he spent performing each duty shown in parenthesis) were analyzing specifications provided by users, developing detailed logic, and designing and writing new computer systems to be used university wide (40%); maintaining university wide systems to meet users' changing needs and increase performance, such as designing and writing programs, providing greater capacity for growth, modifying security, and updating and creating documentation (30%); assessing user needs, and providingor obtaining information (10%); assisting senior staff in developing and implementing computer systems university wide, and developing solutions using microcomputer application packages (10%); developing production, program and user documentation with system reference materials, and training users (5%); and continuing education and researching and assisting in solving problems in system development (5%).

11. Grievant Oravets holds a Bachelor's Degree in Business Administration and Management, with a minor in Computer Science and Communications. He also has a technical degree in Data Processing. 12. Grievant Oravets' duties require him to have training or experience in Job Control Language, which is not taught in college.

13. Grievant Oravets receives project assignments from his supervisor, and is assigned

deadlines for completion of projects. He decides how to complete the assignment. If he cannot solve a problem encountered on a project on his own, he takes the problem to his supervisor, along with possible solutions.

14. On January 1, 1994, Grievant Smith's and Lint's primary job duties (with the percentage of time he or she spent performing each duty shown in parenthesis) were creating and testing computer programs (25%); producing specifications used by programmers to produce computer programs (20%); performing detailed analysis on new and existing systems (20%); providing technical support and guidance for programmers (10%); continuing education (10%); preparing documentation and training users (10%); and, performingadministrative tasks and other duties as assigned (5%). (See footnote 3)

15. Grievant Smith does not hold either a Bachelor's or Associate's Degree. He has taken about fifty hours of college level computer courses.

16. Grievants Smith and Lint receive project assignments from their supervisor. They decide how to complete the assignment, and solve problems encountered on a project on their own.

17. Grievants Smith and Lint work with the university billing system and regularly work with the manager or supervisor of accounts payable, talking to her two to four times a week.

18. The Programmer Job Title received 1882 total points from the following degree levels in each of the thirteen point factors (See footnote 4): 6.0 in Knowledge; 1.0 in Experience; 3.5 in Complexity and Problem Solving; 3.0 in Freedom of Action; 4.0 in Scope and Effect, Impact of Actions; 3.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 2.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level of Contact; 1.0 in External Contacts, Nature of Contact; 1.0 in External Contacts, Level of Contact; 1.0 in Direct Supervision Exercised, Number; 1.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level;2.0 in Physical Coordination; 2.0 in Working Conditions; and 1.0 in Physical Demands. Joint Exhibit 2.

19. The Analyst Job Title received 2173 total points from the following degree levels in each of the thirteen point factors (See footnote 5): 6.0 in Knowledge; 4.0 in Experience; 4.0 in Complexity and Problem Solving; 3.5 in Freedom of Action; 5.0 in Scope and Effect, Impact of Actions; 3.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 2.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level of Contact; 1.0 in External Contacts, Nature of

Contact; 1.0 in External Contacts, Level of Contact; 1.0 in Direct Supervision Exercised, Number; 1.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 2.0 in Physical Coordination; 2.0 in Working Conditions; and 1.0 in Physical Demands. Joint Exhibit 2.

20. The point score range for a Pay Grade 14 is from 1866 through 1984 total points. The point score range for a Pay Grade 16 is from 2114 through 2254 total points. Joint Exhibit 1.

Discussion

A. Burden of Proof

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.19; W. Va. Code § 18-29-6. Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

A grievant is not likely to meet his burden of proof in a Mercer grievance merely by showing that the grievant's job duties better fit one job description than another, because the Mercer classification system does not use "whole job comparison". The Mercer classification system is largely a "quantitative" system, in which the components of each job are evaluated using the point factor methodology. Therefore, the focus in Mercer Decisions issued by this Grievance Board is upon the point factors the grievant is challenging. (See footnote 6) 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 Mercergrievant 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 7)

C. Application of the Point Factor Methodology

The following table shows the differences between the degree levels assigned Grievants' Job Titles in the point factors each challenged, and the degree levels Grievants argued each should have received. Where "NC" is used, the Grievant did not challenge that point factor.

	EX	SE CPS	SE FA	IA	NA	BR	IC LVL	EC LVL	PC (See footnote 8)
Programmer	1	3.5	3	4	3	1	2	1	2
Analyst	4	4	3.5	5	3	1	2	1	2
Ludwick Argument	3	4	NC	NC	4	5	NC	NC	4
Oravets Argument	4	4	3.5	5	NC	NC	NC	NC	NC
Smith and Lint Argument (See footnote 9)	6	5	4	6	NC	NC	3	2	NC

Joint Exhibit 2.

Each of the point factors challenged by Grievants will be addressed separately below.

1. Experience

The Job Evaluation Plan ("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.

All the Grievants challenged the degree levels received in this point factor. The Programmer Job Title received a degreelevel of 1.0, and the Analyst Job Title received a degree level of 4.0 in this point factor. Grievant Ludwick argued she should have received a degree level of 3.0, Grievant Oravets argued he should have received a degree level of 4.0, and Grievants Smith and Lint argued they should have received a degree level of 6.0.

A degree level of 1.0 is defined in the Plan "[n]o experience or up to six months of experience." A degree level of 2.0 is defined in the Plan as "[o]ver six and up to twelve months of experience." A degree level of 3.0 is defined in the Plan as "[o]ver one year and up to two years of experience." A degree level of 4.0 is defined by the Plan as "[o]ver two years and up to three years of experience." A degree level of 5.0 is defined in the Plan as "[o]ver three years and up to four years of experience." A degree level of 6.0 is defined in the Plan as "[o]ver four years and up to six years of experience."

Grievant Ludwick stated some experience is needed. She had one to two years of experience in the PSC computer center prior to entering into her present duties. She also had wiring experience from working for the telephone company. While she marked a 3.0 on her PIQ, she also indicated under Knowledge that only an Associate's Degree was needed. Her supervisors acknowledged on the PIQ their agreement with this assessment. Both the Programmer and Analyst Job Titles received credit under Knowledge for a Bachelor's Degree (in a relevant field). Neither Grievant nor her supervisors addressed the necessary level of experience for someone with a Bachelor's Degree. Grievant Oravets pointed out that when he was hired, his position was a senior level position and several years of experience was a prerequisite. He noted he must have a command of the mainframe languages, such as COBOL, PL-1, and MARK IV, and one does not achieve this through education. Although he stated he learned applications, Job Control Language, and COBOL programming techniques in his first job, he does not hold a Bachelor's Degree in a relevant field; and while he stated that Job Control Language would not be learned in college, he did not testify that the other languages would not be learned in college. He further stated standards and procedures for getting programs ready vary from one company to another. He stated it would be hard for someone without some experience to pick up the WVU system, because there is no training program.

Grievant Oravets' PIQ states under Knowledge that a Bachelor's Degree

> and/or experience providing necessary skills is essential to give programmers the broad background of different programming languages needed to enable them to learn and program in other languages quickly and easily. Experience using analysis and

> design techniques to create a wide range of system types is needed to work efficiently and productively on the various types of university wide systems with very limited supervision.

The PIQ supports Grievant's statement that he must be able to program in several mainframe programming languages. Under Experience, a degree level of 5.0 is marked on the PIQ, however, the narrative first essentially repeats the narrative from Knowledge, and then continues:

> Ability to manipulate various peripheral devices usingIBM JCL is essential to control flow and interaction of data. two years

> Working ability to utilize analysis, logic and design techniques is needed to convert specifications provided by users into programs. Oral and written communications skills are essential for interaction with users throughout the university and creating vital documentation. two years

Grievant Smith believed he and Grievant Lint need more than four years of experience, because of the number of programming languages they must use, and experience with Job Control Language and the mainframe is needed. He stated when he was hired the experience requirement was four to six years, but he does not hold either a Bachelor's or Associate's Degree. He stated he learned all but one of the languages he uses in college level computer courses. However, he believed most of the languages now taught in college courses are "PC" (personal computer) oriented, not mainframe oriented. His supervisors agreed that four to six years of experience was needed, but they did not believe a Bachelor's Degree was needed.

Luann Moore, Director of Human Resources for West Virginia Network for Educational Telecomputing and an alternate member of the JEC, testified on behalf of Respondent. She stated the Information Systems Technology Job Family is structured so there is a progressive hierarchy beginning at the Programmer, Pay Grade 14, and ending with the Assistant Director, Pay Grade 22. She stated all the Job Titles require a Bachelor's Degree, except the Assistant Director, which requires a Master's Degree. She stated the Experience levels likewise start at the lowest level andproceed upward as the Pay Grade increases. She stated the Programmer is the entry level position in the Job Family, and the JEC determined that zero to six months experience was appropriate for the entry level position. She stated the JEC referred to the Occupational Outlook Handbook in deciding the Knowledge and Experience levels.

Grievant Ludwick provided no facts from which the undersigned can make a finding that

experience is required to be able to perform her duties at an entry level if the person holds a Bachelor's Degree in a relevant field. Accordingly, she failed to prove that the JEC was clearly wrong, or acted in an arbitrary and capricious manner.

Looking to the types of experience listed on Grievant Oravets' PIQ, the PIQ itself indicates that a Bachelor's Degree would provide the necessary skills to be able to learn languages other than Job Control Language. Grievant presented no evidence of the level of oral and communication skills needed, and without this information, the undersigned cannot make a finding that the necessary level could not likewise be acquired in college. Grievant Oravets proved that some experience in Job Control Language is necessary to performance of his job duties, as this is not learned in college; thus, the JEC decision that a degree level of 1.0 is sufficient for the Programmer Job Title is clearly wrong when applied to his duties. Grievant Oravets' supervisors believed that two years of experience was required, which falls within a degree level of 3.0, while Grievant opined that more than two yearsof experience was needed. The evidence does not support Grievant's opinion. Absent rebuttal from Respondent, the experience level supported by Grievant's supervisors will be accepted. Grievant Oravets has proven his duties fall within a degree level of 3.0 in this point factor.

While Grievant Smith's supervisors agreed on his 1992 PIQ that four to six years of experience was needed, this was for someone with an Associate's Degree. Although the experience requirement when Grievant Smith was hired was four to six years, he did not hold a Bachelor's Degree, and he presented no evidence on the previous experience requirement for someone with a Bachelor's Degree. Grievants Smith and Lint did not challenge the degree level received in Knowledge. Grievants Smith and Lint have merely shown that their opinion is 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 Marshall Univ., 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.

All Grievants challenged this point factor. The Programmer Job Title received a degree level of 3.5, and the Analyst Job Title received a degree level of 4.0. Grievants Ludwick and Oravets argued

they should have received a degree level of 4.0, andGrievants Smith and Lint argued they should have received a degree level of 5.0. The JEC assigned a half-level (0.5) in this point factor and in Freedom of Action, "where the position was performing significant portions of duties and responsibilities in both levels, i.e.: part in 2 and part in 3, hence a 2.5." Respondents' Exhibit 1.

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

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

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

> Problems encountered are complex and varied due to incomplete and/or conflicting data. General policies, procedures, principles, and theories of specific professional disciplines are available as guidelines; however, these guides may have gaps in specificity or lack complete applicability to work assignments. Employee must utilize analytical skills in order to interpret policies and procedures, research relevant information, and compare alternative solutions.

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

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

Grievant Ludwick described programming as a creative process. She indicated that if the Grievants were told to write a program,all would arrive at the same output, but the approaches would vary. She admitted there are general guidelines, but the specifics within a program vary widely. She stated certain rules must be followed in programming, but approaches to solving a problem may vary. She described the problems as very complex. She also referred to her troubleshooting duties, and provided an example which indicated that, as with troubleshooting electrical or mechanical problems, she follows certain steps to determine the source of the problem, and there are a limited number of solutions.

Grievant Oravets stated he receives requests from users and gets in touch with them to determine what they want. Thus, he follows particular steps before beginning to create a program. He stated that sometimes there are guides for him to look at and sometimes there are not. He stated he

is given freedom to work on a project based on his knowledge and experience, and if he cannot solve a problem, he tries to find feasible solutions and presents them to his supervisor. His PIQ states the main function of his position as "to solve complex problems using logic and convert detailed logic into source code."

Grievant Smith stated he and Grievant Lint must make sure a change in a program will not affect the system in other unwanted ways prior to implementing a change, and sometimes what someone wants cannot be done, and they have to find out what the user really needs. He admitted his job involves unusual circumstances only about three or four times a year. While he stated he develops "procedures or methods" on a fairly regular basis, it was clear hewas talking about programming changes. He stated he uses manuals when writing programs. He stated if he does not understand why someone wants a particular program written when a different type of program would be better, he brings this to his supervisor's attention. Finally, Grievant Lint stated on her PIQ under Freedom of Action that "[a]ll tasks are constrained by Assistant Director. In addition, state, Board of Trustees and University policies will be followed."

Ms. Moore pointed to the hierarchy in the Job Family. She further stated there are only six levels in this point factor, and most professional level positions received a 4.0.

None of the Grievants explained how they go about performing their duties. It is clear that at least some of both Grievant Ludwick's and Oravets' duties involve applying standard procedures or guidelines. There is no evidence that all the problems these two Grievants face are complex and varied, or that even most are. They do not interpret policies and procedures. Grievants Ludwick and Oravets have not proven a degree level of 4.0 is a better fit for their duties than a degree level of 3.5, which recognizes that their duties fall somewhat within a degree level of 4.0, but they also fall somewhat within a degree level of 3.5.

Grievant Smith admitted that he encounters what he characterized as unusual circumstances only a few times a year. He presented no evidence that the development of new programs, procedures or methods is a typical end result of his and Grievant Lint's problem-solving, or that they determine the effectiveness ofpolicies or practices. When Grievant Smith sees a better solution than the user has requested and brings this to his supervisor's attention, he is not "determining" the effectiveness of a practice. The person who makes the decision about whether to accept Grievant's recommendation is making the determination. Grievants Smith and Lint have not proven their duties fall within a degree

level of 5.0.

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.

Grievants Oravets, Smith and Lint challenged the degree level received in this point factor. The Programmer Job Title received a degree level of 3.0, and the Analyst Job Title received a degree level of 3.5. Grievant Oravets argued he should have received a degree level of 3.5, and Grievants Smith and Lint argued they should have received a degree level of 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. The definitions in the Plan show that at a degree level of 4.0:
>
> Tasks are minimally structured with incumbent working from broad goals set by the supervisor and established institutional policies. The employee and supervisor work together to establish objectives, deadlines and projects. The employee, having developed expertise in the line of work, is responsible for planning and carrying out the assignment; resolving most of the conflicts which arise; and coordinating the work with others. The employee keeps the supervisor informed of progress and potentially controversial matters. Completed work is checked only to determine feasibility, compatibility with other work, or effectiveness in meeting the objectives of the unit.

Grievant Oravets stated that sometimes he is given a deadline for completion of a project, and other times he provides an estimate of how long the project will take, which is generally accepted. He stated when his work is checked, it is checked for validity, but he also runs validity checks of his work. His PIQ states that the "Assistant director assigns projects and checks periodically to verify project is proceeding on schedule. He will be informed of completion of project."

Grievant Smith stated his supervisor generally hands him and Grievant Lint an assignment and tells them to do it, without telling them how he wants it done or what language it should be in. He stated they resolve problems on their own without involving their supervisor, and that their work is not checked unless it's on a new system, and most of their work is on the existing system. He stated they do not coordinate the work of other employees. He opined that they set most of the objectives, not

their supervisor. He agreed, however, that both degree level 3.0 and 4.0 applied to their jobs. Ms. Moore again pointed to the hierarchy in the Job Family. Grievant Oravets' position is very structured by the way he receives assignments, and the deadlines imposed. He does not decide what to do each day. He is assigned projects which must be completed by a particular time. Even when he is asked for a project completion time estimate, he is still assigned a deadline. He does not work from broad goals, rather he works on assigned projects, and carries out most of the work assignments in accordance with standard practices or previous training. Sometimes he cannot solve a problem encountered in his efforts to complete a project and goes to his supervisor for assistance. He has not proven a degree level of 3.5 is a better fit for his duties than a 3.0.

Like Grievant Oravets, Grievants Smith and Lint receive assignments, which provides structure to their jobs. The testimony does not support that Grievant Smith and Grievant Lint carry out their duties in such a fashion that a 4.0 is a better fit than a 3.5.

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 ofwhat 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 consists of two parts, Impact of Actions and Nature of Actions. Grievants Oravets, Smith and Lint are challenging the degree level received in Impact. The Programmer Job Title received a degree level of 4.0 in Impact, and the Analyst Job Title received a degree level of 5.0. Grievant Oravets argued he should have received a degree level of 5.0, and Grievants Smith and Lint argued they should have received a degree level of 6.0.

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 graduate or 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.

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

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

Grievant Oravets argued his work affects several departments within a doctoral-level institution, rather than a major department within a doctoral-level institution. He stated the projects he works on could have a minor or major impact on the entire university system. He gave as an example of a major impact, a payroll project, which would affect all employees. He stated many of the projects he works on have university-wide significance, such as dealing with accounts payable and receivable, purchasing, admissions and records, and payroll. He stated if he programmed the wrong payroll formula it would affect everyone's paycheck at WVU, but noted there are checks on his work.

Grievant Smith stated he and Grievant Lint work with the university billing system, and they have worked with admissions and records, and inventory management.

Ms. Moore explained that Impact of Actions

> is a buildup of the impact possible for a position and looks at the primary purpose of the position's work product: 1=impact at the function level, 2=impact at the unit level, 3=impact at the department level, etc. until you get to 8. At 8, the primary purpose of the position's work product affects the entire operations of West Virginia University or several institutions within the West Virginia higher education systems.Respondents' Exhibit Number 1. She noted that "units, programs and departments at institutions may vary." Id. She stated the degree levels were properly assigned to the Job Titles based on the hierarchy in the Job Family. She did not address the impact of each Grievant. She stated that no one in the Job Family received a degree level of 8.0, because the JEC did not believe this Job Family had the same level of impact as the Health Sciences Center at WVU. She stated that the Lead position in the Job Family is supposed to be responsible for leading on major projects, and therefore, received a degree level of 7.0.

Grievant Oravets' "scope of responsibility . . . with regard to the overall mission of the institution" is low. He is responsible for completing his assignments. His supervisor is responsible for seeing that the assignments are completed in a timely manner. It is unclear how Grievant's Job Title received as high a degree level as it did. The undersigned can only speculate that the JEC placed a high value on Grievant's department, and determined that his work affects the entire department. While the programs Grievant writes would necessarily affect other departments, he is not responsible for his assignments; his supervisor is. Grievant has not proven he should have received a higher degree level in this point factor.

The JEC determined that work of Analysts, such as Grievants Smith and Grievant Lint affect several departments within WVU, whereas Grievants believe their work with the university billing system affects "a school or division" of WVU. Grievants did notclearly explain why they believe the university billing system equates to effect on a school or division. Perhaps it is because every department utilizes the billing system. If so, it would seem that this would be covered by degree level 5.0. Grievants' opinions differ from that of the JEC, but they have not proven the JEC was clearly wrong, or acted in an arbitrary and capricious manner in assigning this degree level.

Grievant Ludwick argued she should have received a degree level of 4.0 in Nature of Actions, rather than a 3.0. A degree level of 3.0 in Nature 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 made involve non-routine situations within established protocol, guidelines, and/or policies. Errors could easily result in moderate costs and inconveniences within the affected area.

A degree level of 4.0 in Nature is defined in the Plan 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 Ludwick argued her job affects the entire operations of PSC, because the programs she writes are used by virtually every office on campus, and most of the staff. She stated if a small error gets past her and her supervisor, it can cause a lot of trouble, but she and her supervisor both check the crucial programs she writes.

Ms. Moore stated, "[t]he JEC focused on the relationship of the position's work product to the work unit, the institution andto the State College and University Systems." She noted that degree

level 4.0 begins the management levels. Respondents' Exhibit Number 1.

"As noted in previous decisions interpreting the Plan, interpretation of these similarly-worded provisions involves a subjective value judgment, which is an inherent element of the function of position classification. Hastings [v. Bd. of Trustees, Docket No. 94-MBOT-943 (May 28, 1996)]; Jessen [v. Bd. of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995)]." Miller v. Bd. of Directors, Shepherd College, Docket No. 94-MBOD-495 (Oct. 29, 1996). The distinctions between the degree levels involve the scope of responsibility of the employee. Grievant Ludwick is not responsible for department. She is responsible for completing her assignments, and her supervisor is responsible for making sure she completes her assignments properly and in a timely fashion. Further, she admitted that "[e]rrors or failure to complete her duties would be identified prior to the point where the entire unit would be adversely affected." Perkins v. Bd. of Trustees, W. Va. Univ. - Parkersburg, Docket No. 94-MBOT-733 (Oct. 30, 1996). Grievant has not proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning this degree level.

5. Breadth of Responsibility

Grievant Ludwick argued she should have received a degree level of 5.0, rather than a 1.0 in Breadth of Responsibility. Because Grievant is not responsible for the budget, nor is she formally accountable for a functional area, her duties fall withina degree level of 1.0. See Burke, supra; and Floyd v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-932 (June 14, 1996).

6. 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 also consists of two parts, Nature of Contact and Level of Regular, Recurring and Essential Contact. Grievants Smith and Lint are challenging the degree level received in Level of Contact only. They argued they should have received a degree level of 3.0, rather than a 2.0.

A degree level of 2.0 in Level is defined in the Plan as, "[s]taff and faculty outside the immediate work unit." A degree level of 3.0 is defined in the Plan as:

> Supervisors, managers and/or chairpersons, other than own, within an institution, or

coordinators within the Systems' Central Office.

Grievant Smith stated he and Grievant Lint regularly work with the manager or supervisor of accounts payable, talking to her two to four times a week. He stated they also worked with the inventory manager for a couple of months. He stated Grievant Lint regularly meets with Information Systems Specialists and provides them with data.

Ms. Moore stated the Lead Job Title in the Job Family received credit for contacts with supervisors and managers, but she did notexplain how this fact applied to the duties of the individuals in this case except to say that the data line for the Job Title represents an average of the contacts of all persons in the Job Title.

Grievants Smith and Lint have proven they have regular, recurring and essential contact with a manager or supervisor, and accordingly, that their individual positions would be rated at a degree level of 3.0 in Level.

7. 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.

Like the previous point factor, External Contacts is comprised of Nature of Contact and Level of Regular, Recurring and Essential Contact. Grievants Smith and Lint are challenging the degree levels received in Level of Contact only, arguing they should have received a degree level of 2.0, rather than a 1.0.

A degree level of 1.0 in Level is defined in the Plan as:

> Extremely infrequent; virtually no contact beyond immediate work unit/area; or occasional contacts are incidental to the purpose of the job.

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

> General public, visitors, and/or service representatives and vendors.

Grievant Smith stated he, and apparently Grievant Lint, deal mainly with people in Charleston regarding transmittals. He didnot state who these people are, the frequency of this contact, or the purpose of this contact. His PIQ does not address these contacts. Grievant Lint's PIQ lists her

contacts as American Management System, Inc., about software information, when needed. The undersigned cannot make a finding from this that either Grievant Smith or Lint has regular, recurring and essential contacts at a degree level of 2.0.

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.

Grievant Ludwick argued she should have received a degree level of 4.0, rather than a 2.0. A degree level of 2.0 is defined in the Plan as:

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

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

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

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

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

Grievant Ludwick explained that because programming consistslargely of creating and entering program code into a computer, keyboarding skills are essential, which is rapid and precise movement. She stated speed is helpful because she can do her job more quickly, but accuracy is critical. She stated she has to use hand tools, such as pliers, wire cutters and screwdrivers, when installing equipment.

Ms. Moore explained

> The JEC is looking at the fine motor skills necessary to perform the duties and responsibilities of the position. For example: the staff writer received a 2 because we pay this position not for the skill of rapid movement (i.e.: typing or data entry) but for the skill necessary to write and create. On the other hand, the data entry operator is being paid for the fine motor skills exhibited in rapid and accurate data entry, the skill for which the individual was hired. This factor was created as a way to recognize the special skills of labor- intensive positions. . . . the more precise the movements necessary to perform the job, the higher the rating, which is why the Dental Assistant I and II, Nurse, Medical Transcriptionist and most craft positions (Electrician, Glazier,

Locksmith, etc.) received a 4.

Respondents' Exhibit Number 1.

Although keyboarding speed may be helpful, it is not required of Grievant to perform her duties; nor is it a skill for which she was hired. Grievant has not proven any skill or speed is required to perform her duties, rather her keyboarding seems well described as "simple hand/eye operations and some accuracy and regularity of motions." See Barber, et al., v. Bd. of Trustees, W. Va. Univ., et al., Docket No. 94-MBOT-872 (Oct. 31, 1996). Her testimony does not support a finding that her use of hand tools involves a "high degree of manual skill and exactness in the use of hand instruments or equipment." Grievant has not proven she should have received ahigher degree level in this point factor.

C. Summary

Grievant Ludwick failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning the degree levels in the point factors to her duties or her Job Title, and a comparison of Grievant's duties to those of the Job Title sought is therefore not necessary. Riggs, supra.

Grievant Oravets proved that if his position were rated individually, he should have received a degree level of 3.0 in Experience, rather than a 1.0. This change adds 112 points to the point score total for a Programmer of 1882 points, making the total points for Grievant Oravets 1994, which is a Pay Grade 15.

Grievants Smith and Lint proved that if their positions were rated individually, they should have received a degree level of 3.0 in Intrasystems Contacts/Level of Contact, rather than a 2.0. This change adds 18 points to the point score total for an Analyst of 2173 total points, making the total points for Grievants 2191, which is still a Pay Grade 16. Grievants Smith and Lint have not proven the Pay Grade assigned their Job Title is improper.

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 ison 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 Ludwick is an Applications Programmer, Pay Grade 14, is not clearly wrong or arbitrary and capricious.

5. The Job Evaluation Committee's decision that Grievants Smith and Lint are Applications Systems Analyst Programmers, Pay Grade 16, is not clearly wrong or arbitrary and capricious.

6. The Job Evaluation Committee's assignment of degree levels to the point factors for the Job Titles Applications Programmer, Pay Grade 14, and Applications Systems Analyst Programmer, Pay Grade 16, is neither clearly wrong nor arbitrary and capricious.

7. The Job Evaluation Committee's decision that Grievant Oravets is an Applications Programmer, Pay Grade 14, is clearlywrong. Grievant Oravets' duties entitle him to a degree level of 3.0 in Experience, which places him in a Pay Grade 15.

Accordingly, the grievances of Kathryn Ludwick, Steven Smith and Virginia Lint are **DENIED**. The grievance of Joe Oravets is **GRANTED IN PART, AND DENIED IN PART**. Respondent is ordered to place Grievant Oravets in a Job Title in Pay Grade 15, effective January 1, 1994, and to pay him backpay in the amount of the difference between the salary he would have received had he been placed in a Pay Grade 15 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: June 18, 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

A Level IV hearing was held on January 6, 1997. This matter became mature for decision on March 3, 1997, upon receipt of Respondents' post-hearing written submission, and was subsequently reassigned to the undersigned for administrative reasons.

Footnote: 3

Grievant Smith stated that the 1992 PIQ which was a part of his grievance was not the PIQ he prepared, and was not accurate. However, his 1991 PIQ was not placed into evidence, and he did not identify the inaccuracies. A 1991 PIQ for Virginia Lint was a part of her grievance, and is nearly identical to the 1992 PIQ for Grievant Smith.

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

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: 6

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: 7

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: 8

These headings are shorthand for the following point factors: EX is Experience; CPS is Complexity and Problem Solving; FA is Freedom of Action; SE/IA is Scope and Effect/Impact of Actions; SE/NA is Scope and Effect/Nature of Actions; BR is Breadth of Responsibility; IC/LVL is Intrasystems Contacts/Level of Contact; EC/LVL is External Contact/Level of Contact; and PC is Physical Coordination.

Footnote: 9

Grievant Lint did not appear at the hearing. Grievant Smith stated that he was speaking for Grievant Lint, as well as himself.