DENISE KRETZMER, et al.,

Grievants,

v. DOCKET NO. 94-MBOD-751

BOARD OF DIRECTORS,

FAIRMONT STATE COLLEGE, et al,

Respondents.

D E C I S I O N

Grievants Denise Kretzmer, Harriet Bower, Arnette Loggins, Mary Lou Conaway, and Jacqueline Smith filed separate grievances challenging their classifications under the “Mercer” reclassification system. (See footnote 1) Grievants Kretzmer, Bower, Loggins, and Conaway were classified as Library Clerks, effective January 1, 1994, and allege they should have been classified as Library Technical Assistant Is (See footnote 2) . Grievant Smith was originally classified as a Library Technical Assistant I and seeks to be classified as a Library Associate. All of the Grievants herein request that they be placed into the higher classification alleged, effective January 1, 1994, with back pay at the corresponding higher pay grade to that date. Each has also challenged specific point factors used in the Mercer system.

After these grievances were filed at level four, they were consolidated for hearing due to similarities in underlying fact situations and relief requested. A level four hearing was conductedon September 22, 1995, December 12, 1995, and December 13, 1995. This matter became mature for decision upon receipt of the parties' written proposals on January 24, 1996. For administrative reasons, this grievance (including all tapes of the level four hearing and exhibits) was later reassigned to the undersigned Administrative Law Judge for decision on September 24, 1996.

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

Findings of Fact

1. Grievants Kretzmer, Bower, Loggins, and Conaway are all employed at Fairmont State College, and Grievant Smith is employed at Marshall University.

2. In 1991, all higher education classified employees, including Grievants, 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. All of the Grievants completed a PIQ in 1991.

3. When the Mercer reclassification was implemented on January 1, 1994, the Fairmont State Grievants were all classified as Library Clerks (hereinafter "Clerks") at a Pay Grade 6, and Grievant Smith was classified as a Library Technical Assistant I (hereinafter "LTA I") at a Pay Grade 10. 4. Generic job descriptions were developed for the various job titles within the higher education 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.

5. The generic job description for Library Clerk states that the general function of the job is to "[p]erform . . . basic clerical work and public service assignments in accordance with clearly defined library routines and procedures." The most common duties are providing assistance in processing materials, assisting patrons, charging materials in and out, and maintaining records (Resp. Ex. 2).

6. The generic job description for LTA I states the general function of the job is to "[p]rovide assistance to professional librarians by performing paraprofessional library duties that require application of library policies and procedures. May . . . hold responsibility for one or more of the day-to-day functions within a department." Common duties include providing circulation services, maintaining patron accounts, processing incoming materials, supervising student workers, keeping statistical records, and preparing reports (Resp. Ex. 3).

7. The primary duties of Grievants classified as Clerks, prior to January 1, 1994, included charging materials in and out, renewing checked out materials, assisting patrons in finding materials and operating library equipment, processing new materials, supervising student workers, maintaining statistical and other records, and keeping their particular department or section of the library

organized and in order. 8. Prior to January 1, 1994, Grievant Smith worked directly with the serials librarian at Marshall University. The majority of her time involved data entry on a computer pertaining to the number of periodicals, invoice information for claims, and computer codes for processing of all serials. (See footnote 3) She also trained and supervised student workers in processing incoming materials and routing serials to their proper destination. Non-computer work she regularly performed included processing of publishers' change of address forms, typing correspondence, preparing order forms for new materials, and compiling lists of serials holdings.

9. The Library Clerk job title received 1229 total points from the following degree levels in each of the thirteen point factors (See footnote 4) : 3.0 in Knowledge; 1.0 in Experience; 1.5 in Complexity and Problem Solving; 1.5 in Freedom of Action; 1.0 in Scope and Effect, Impact of Actions; 1.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 1.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level of Contact; 1.0 in External Contacts, Nature of Contact; 3.0 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; 1.0 in Working Conditions; and 2.0 in Physical Demands.

10. The Library Technical Assistant I job title received 1514 total points for each of the following degree levels in the point factors: 5.0 in Knowledge; 1.0 in Experience; 2.0 inComplexity and Problem Solving; 2.0 in Freedom of Action; 1.0 in Scope and Effect, Impact of Actions; 2.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 1.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level of Contact; 1.0 in External Contacts, Nature of Contact; 3.0 in External Contacts, Level of Contact; 2.0 in Direct Supervision Exercised, Number; 2.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 2.0 in Physical Coordination; 1.0 in Working Conditions; and 2.0 in Physical Demands.

11. Grievants classified as Clerks request reclassification to Library Technical Assistant I, Pay Grade 10, which has a point range from 1475 points to 1560 points.

12. Grievant Smith requests reclassification to Library Associate, Pay Grade 14, which has a point range from 1866 points to 1984 points.

Discussion

A. Burden of Proof

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that 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 Mercerclassification system does not use “whole job comparison.” It is largely a “quantitative” system, in which the components of each job are evaluated separately by applying the point factor methodology contained in the Job Evaluation Plan (hereinafter “Plan”). Therefore, the focus in Mercer grievances for this Board is upon the point factors the grievant is challenging. (See footnote 5) While some "best fit" analysis of the definitions of the degree levels is involved in determining which degree level of a point factor should be assigned, where the position fits in the higher education classified employee hierarchy must also be evaluated. During the job evaluation process, once a data line of particular degree levels for each point factor was developed for a job title, then each employee was “slotted” into the job title which most closely fit their duties. 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 factors and Generic Job Descriptions at 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 pointfactors 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 6)

In accordance with the foregoing discussion, a grievant must either show that she was slotted into the wrong job title or that the point factor degree levels assigned to her job title are incorrect. In order to determine if Grievants were misclassified, the point factors and degree levels they dispute must be discussed separately in detail.

B. Application of the Point Factor Methodology

Grievants' specific challenges to the degree levels they received in each point factor vary. Therefore, each challenged factor will be addressed individually and applied to each grievant who disputes the degree level given.

1. Knowledge

The Plan defines Knowledge as follows:

> This factor measures the minimum level of education equivalency and/or training typically required for an incumbent to reach acceptable occupational competence on the job. The factor considers the technical, theoretical, and/or mechanical skills required, and the complexity and diversity of the required skills.

Grievants classified as Clerks received a degree level of 3.0. Grievants Kretzmer and Loggins seek a 3.5, and Grievants Bower and Conaway request a 4.0.

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

> Job requires basic knowledge of grammar, spelling, punctuation, and simplemathematical functions like percentages, ratios, etc., as might normally be acquired through attainment of a high school diploma or GED.

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

> Job requires basic knowledge in a specific area typically obtained through a business, technical or vocational school as might normally be acquired through up to 18 months of education or training beyond high school.

The PIQs of these four grievants reflect that each of them has acquired library-related knowledge pertinent to their particular jobs during years of working in their positions. In addition, Grievants have all made arguments to the effect that some post-high school education, library work, or business education is desirable, but not necessarily required. As reflected in the level four testimony of

Charles Weston, Human Resources Director of the West Virginia School of Osteopathic Medicine and a JEC member, the point factors measure the minimum level of ability necessary to enter the job, taking into consideration that there is a “learning curve” for any individual entering a new position. Perkins v. Bd. of Trustees, Docket No. 94-MBOT-733 (Oct. 31, 1996). If, in spite of the learning curve and training period, a person seems unable to perform the job duties at a minimum level of competency, that is a performance issue regarding that employee, not a classification issue.

In the words of Ms. Conaway on her PIQ, “using common sense, basic knowledge and resourcefulness, I can and do perform these duties.” This is the essence of the Knowledge requirement for the Library Clerk job title and also reflects the consensus of the basic knowledge level of each of these grievants. Additionally, Grievants have asserted in support of their positions that each of them has some additional degree of training or education; however, the focus in Mercer grievances is upon the qualifications required of an individual entering the position, not that of the incumbent. Payne v. Bd. of Directors, Docket No. 94-MBOD-372 (Jan. 8, 1997). Accordingly,Grievants have not established that they or their job title are entitled to any higher degree level than 3.0 for Knowledge.

Grievant Smith did not contest the degree level she received in this point factor. However, her PIQ and testimony show that, aside from special training on the “VTLS” library computer system, her duties only require basic typing accuracy and knowledge of library practices and procedures. Thus, Ms. Smith's situation appears to be an example of how some employees actually benefitted from being slotted into an established data line for their job title, rather than having been evaluated individually. This is known as the “averaging process,” whereby the JEC compiled the qualification levels of all incumbents in a job title and used the average level as the degree level for the particular point factor in question, benefitting persons with a lower level of qualifications. Deavers v. Bd. of Trustees, Docket No. 94-MBOT-914 (Dec. 10, 1996).

2. 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.

Both the Library Clerk and LTA I job titles received a 1.0 degree level in this point factor, which is

defined as “[n]o experience or up to six months of experience.” The degree levels sought by the individual grievants varies from level 2.0 to level 4.0. 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 as “[o]ver one year and up to two years of experience;” and a degree level of 4.0 in this point factor is defined by the Plan as “[o]ver two years and up to three years of experience.”

Grievants Kretzmer and Loggins both believe their positions are entitled to a 2.0 forExperience. They assert that a minimum of six months of clerical or library experience is needed to be proficient. Ms. Loggins obtained her experience by working in a library performing the same duties for approximately six years. Ms. Kretzmer and Ms. Loggins both work at the front desk in the circulation department of the Fairmont State library, and their duties are basically interchangeable. Janet Salvati, the public services librarian for Fairmont State, testified that she also would set the minimum experience requirement for this job at six months, or even perhaps twelve months. She based this opinion upon her experience with the individual most recently hired as a Library Clerk, who, after four months on the job, had barely learned the basic rudiments of the position.

On her PIQ, Ms. Bower stated that “some type of college training or library work is desired but not required.” However, her appeal documents indicate that she desires a level 3.0 for Experience, although she provided little explanation for this. She merely stated that some training or experience beyond high school would be necessary to perform her duties.

Ms. Conaway, who works mainly in the government documents department, alleged that between two and three years of experience is appropriate, which is a level 4.0 for this point factor. Her original 1991 PIQ reflected no experience was required, but she later submitted an updated PIQ. Ms. Conaway testified that the additional experience requirement was added by her after she had improved her job performance by virtue of working in the government documents area for a few years. Grievant Smith, likewise, seeks a level 4.0 for Experience, consisting of at least a year or two of library work experience.

As mentioned above, Mr. Weston explained how the Plan and the JEC contemplated both the Knowledge and Experience point factors to measure only the minimum level of competence toperform the basic duties of a particular job, keeping in mind that an initial training and learning period is essential. All five of these grievants have provided detailed explanations of their everyday duties in their respective library departments. However, close analysis of these duties reveals that

they are all clerical in nature, including computer data entry, providing directions and assistance, processing and ordering, and assisting a librarian in the daily operation and organization of a particular department. There is nothing in the evidence offered by Grievants which proves that their job duties could not be learned after an initial training period by any reasonably intelligent, competent individual with a high school education. Even among the Clerk grievants, their everyday duties vary because of the specialized nature of the individual department or area of responsibility; the evidence, accordingly, does not indicate that any particular type of prior experience would be terribly useful to new employees in the job, other than that obtained through initial training in that department and performance of the required duties daily.

Thus, none of the grievants have established that the degree level allocated to their job titles for the Experience point factor was accomplished in an arbitrary or capricious manner.

3. Complexity and Problem Solving

The Plan defines Complexity and Problem Solving as follows:

> 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.

The JEC gave the Clerk job title a 1.5 degree level and the LTA I title a 2.0 for this point factor.

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

> Routine problems are encountered involving simple solutions. Simple, standardizedinstructions (usually oral) covering all important aspects of the assignment are provided to the employee. Very little judgment is required by the position. Tasks are clear-cut and procedures well defined.

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

> Problems encountered require the employee to make basic decisions regarding what needs to be done, but the employee can usually choose among a few easily recognizable solutions. Established procedures and specific instructions are available for doing most work assignments, with some judgment required to interpret instructions or perform basic computation work such as in the comparison of numbers or facts.

All five Grievants believe that they are entitled to a 3.0 degree level, 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.

The Clerk grievants listed similar problems that arise, mostly related to locating or replacing lost materials. However, Grievants' testimony consistently illustrated that, for each type of problem that does arise, there are well-established, specific procedures to be followed within the department. In fact, the evidence in this grievance shows that, not only are solutions to problems readily available, Grievants are quite competent at implementing the appropriate procedure and resolving the problem quickly. Logic would dictate that there would be a limited number of resources to go to for access to particular books, periodicals or other materials; if they cannot be obtained from those sources, there is nothing more to be done by the clerk.

Similarly, Ms. Smith alleges that she is entitled to a level 3.0, because she must often contact the publisher to obtain a needed periodical. Again, she is familiar with the procedure to follow when a periodical must be located or replaced, and she does so without having to ask permission or seekassistance. Ms. Smith's evidence proves that her duties fall squarely within the 2.0 level for Complexity and Problem Solving. She is required to some extent to perform basic computations and/or comparisons of numbers or facts when she compiles statistical information for reports her supervisor must prepare, as set forth in the level 2.0 definition.

Some of the grievants in this case have made arguments related to computer automation of previously manual library procedures, which occurred at both Fairmont State and Marshall between the years of 1991 and 1994; they allege that “going on-line” made their jobs more difficult and complex. Ms. Salvati, testifying on behalf of Grievants Kretzmer and Loggins, believed that the computer system has complicated the clerks' duties, mainly if it does not function as expected; however, she did admit that, if the system functions as it should, their duties are quite routine. Moreover, Ms. Loggins introduced as evidence an extensive guidebook for the “NOTIS” system that is used by the circulation department, which is a resource they can turn to when problems with the system arise. (Gr. Exhibits H and I.) In support of her argument, Grievant Smith mentioned several times that she was sent to Virginia Tech for special training when Marshall switched to the VTLS system.

As pointed out by Mr. Weston in his testimony on behalf of the JEC, changing to an online computer system may necessitate additional training, but it does not in and of itself make a job more complex. His testimony in this regard is persuasive; the purpose and goal of computerization is to make manual tasks easier and quicker. Mr. Weston also explained that “half levels” were assigned

when some members of the JEC felt very strongly that one level rather than another should be assigned and it appeared that the employees' duties fell partly within the next higher level. He believed firmly that all of the grievants were correctly classified with regard to Complexity andProblem Solving.

Grievants have not demonstrated that their duties fit the level 3.0 definition requiring "resourcefulness and originality," or the "exercise of judgment to locate . . the most appropriate guidelines." In actuality, their jobs are guided by set procedures and guidelines and are routine most of the time.

4. 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 previous point factor, Clerks received a 1.5 and LTA Is received a 2.0. The definitions in the Plan show that at a degree level of 1.0:

> Tasks are substantially structured with the employee receiving clear, detailed and specific instructions from the immediate supervisor or where tasks are so highly routine that they simply require following standardized instructions or procedures without ongoing, on-site supervision. The work is checked for accuracy, adequacy, and adherence to instructions and established procedures by the supervisor or through established monitoring systems. The employee consults with the supervisor on matters not covered in the original instructions or guidelines.

The definitions in the Plan show that at a degree level of 2.0:

> Tasks are structured to the extent that standard operating procedures serve as a gauge to guide the employee's work. The employee can occasionally function autonomously with the immediate supervisor available to answer questions. Questionable items are referred to the immediate supervisor.

Grievants Kretzmer, Loggins and Conaway believe they are entitled to a degree level of 3.0 for Freedom of Action, defined as:

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

Grievants Bower and Smith allege that their duties fall within the definition of the 4.0 degree level,

which the Plan describes as follows:

> 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.

Mr. Weston explained that this factor measures restrictions on an employee's decision- making ability, which may be in the form of manuals or set policies and procedures. Some grievants in this case have argued in support of a higher level for this factor that their immediate supervisor does not have to constantly “check up” on them, and they basically carry out their assignments independently. These arguments have little value with regard to the Freedom of Action issue; an employee whose tasks are extremely structured and routine may function virtually without supervision, because the position calls for very few or no decisions or choices to be made (as with the 1.0 degree level). Thus, the level of supervision exercised over the employee is not the key issue for measuring this point factor, rather it is whether the employee has the option to make decisions on her own if and when such situations arise. See Barber v. Bd. of Trustees, Docket No. 94-MBOT- 872 (Oct. 31, 1996).

It should be noted at this point that there are only five possible levels under Freedom of Action. In the library job family, only library managers and directors received above level 3.0. (“PIQ Summary by Job Family,” R. Ex. 5.) The evidence in this case does not show that Grievants are involved in setting goals or objectives. For example, Ms. Bower, who is assigned to the periodicals department, testified that it is the library director who sets policy and ultimately decides what materials the periodicals department will offer to its patrons. As the Clerk for her department, Ms. Bower's duties mostly involve assisting patrons in finding periodical materials and keeping the department in order; she does so in accordance with standard operating procedures set by supervisors above her.

Similar testimony was offered by Ms. Loggins, who stated that Ms. Salvati, the librarian, has final decision-making authority over all policies and procedures to be used and is responsible for preparing the annual report from records maintained by Ms. Loggins. This was confirmed by Ms. Kretzmer in her testimony. The evidence offered by all Grievants conclusively establishes that their jobs have been correctly evaluated in the Freedom of Action point factor. None of them are involved in making ultimate decisions regarding policies and procedures, and they do not set goals or

objectives for their departments. The vast majority of their daily work is governed by set operating procedures established by a higher authority.

5. 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 intoaccount 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 factor has two aspects, Impact of Actions and Nature of Actions. Both job titles in issue in this case received a 1.0 degree level for Impact of Actions. The Clerk job title also received a 1.0 for Nature of Actions, and the LTA I title received a 2.0 for Nature.

A degree level of 1.0 in Impact of Actions is defined in the Plan as “[w]ork is limited to immediate work function and short-term situations.” Only Grievants Kretzmer, Loggins and Smith have contested the degree level they were assigned for Impact, and each of them alleges she is entitled to a 2.0. A degree level of 2.0 in Impact of Actions is defined in the Plan as “[w]ork affects either an entire work unit or several major activities within a department.” The gist of Grievants' arguments relates to the problems which would be associated with locating reference materials that are misplaced or lost; Grievants believe that any errors in this regard affect the entire library and all those patrons who will not have access to needed materials, specifically students and professors.

Ms. Kretzmer and Ms. Loggins both allege that they are entitled to a 2.0 degree level for Nature of Action, and Grievants Bower and Conaway request a 3.0.

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

> Work provides limited or routine support-type services to others in a timely manner. Decisions are infrequent and errors could result in minor inconveniences and costs within the affected area.

A degree level of 2.0 in Nature is defined as:

> Work contributes to the accuracy, reliability, and acceptability of processes, services, or functions. Decisions are limited to the application of standardized or accepted practices and errors could result in some costs and inconveniences within the affected area.

A degree level of 3.0 is defined as:

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

It must be kept in mind that this point factor measures the employees' responsibilities as they relate to the overall mission of the institution. Likewise, we must assume that all employees are competent and are executing their duties in a diligent and responsible manner most of the time; as the Scope and Effect definition states, “errors are not due to sabotage, mischief or lack of reasonable attention and care.” Along with expressing concerns regarding the inconvenience of having library materials lost or misplaced, some of the grievants in this case have mentioned that such errors have a “PR” impact on the library's reputation with students and faculty. Nevertheless, if materials cannot be located due to an error by a grievant in her respective library department, it is likely that only a small number of people are going to be inconvenienced. While such errors “are of serious nature and concern to individual employees” (and may be embarassing for the library), if there is little to no effect on the institution as a whole, the higher degree levels are not warranted. Titus v. Bd. of Trustees/Bd. of Directors, Docket No. 94-MBOT-659 (Dec. 31, 1996). Grievants' errors may inconvenience a small number of individuals, but the institution--or even the library--will hardly be shut down.

Another point which is illustrative of why Grievants are not entitled to any higher degree levels for Scope and Effect is that, with the exception of Ms. Smith, all of the grievants haveemphasized that a major portion of their responsibilities is related to assisting library patrons in finding materials. Therefore, if materials are lost or misplaced due to some error, the inconvenience, if any, is quite minor; the Library Clerks would be called upon to assist the patron in finding the material--an important function of their job in any event. Finally, such a situation is most definitely “short-term,” and will be resolved one way or the other in very little time.

None of the grievants were inappropriately valued with regard to this point factor. Library Clerks

provide support services which affect only their immediate functions and short-term situations. Ms. Smith's position has a slightly higher level of Nature of Action due to her extensive input into computer records used in the operations of her department.

6. 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.]

All Grievants received a 1.0 degree level for this point factor, and all have challenged what they received.

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

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

Mr. Weston explained that Breadth is one of the most misunderstood point factors in the Plan. 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 library). An employeewho 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, Grievants were not misclassified with regard to Breadth of Responsibility.

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.

As with other point factors, External Contacts is divided into two aspects, Nature and Level. Library Clerks and LTA Is received a 1.0 in Nature of Contact and a 3.0 in Level of Contact. The only challenges to this factor were by Ms. Bower and Ms. Conaway. Ms. Bower believes she is entitled to a 2.0 for Nature. Ms. Conaway alleges she should be given a 2.0 for Nature and a 4.0 for Level.

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

> Routine information exchange and/or simple service activity; requires common courtesy (e.g., furnishing or obtaining factual information, ordering supplies, describing simple procedures).

A degree level of 2.0 in Nature 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.)

In her testimony, Ms. Bower provided little to no explanation for her argument that she deserves a higher degree level. On her PIQ, the external contacts she listed and the reasons for the communications were as follows: students, regarding serial holdings and the use of equipment;Xerox representatives, to advise that machines need repair or to secure information; the “Faxon” Subscription Agency, to make claims for missing issues and/or to order periodical subscriptions, discuss subscription problems, and obtain information; and the “Ruzicka” Bindery, regarding problems and/or information related to sending and receiving materials to be bound. Upon closer inspection, it is quite obvious that all of these communications are of the nature of a routine information exchange; nothing in the evidence indicates that Ms. Bower is called upon with any regularity to deal with situations requiring “moderate tact and cooperation.” When dealing with problems, it appears that she is merely informing the appropriate entity that a problem exists. She supplies and requests routine information in order to fulfill her job duties.

Ms. Conaway, whose area of the library is government documents, has listed contacts with students (assisting in locating material and operating equipment) and with the Government Printing Office to order special items. Likewise, she has not demonstrated that these situations are anything more than routine exchanges of information and has provided insufficient basis for a degree level of 2.0.

Ms. Conaway has also challenged the rating she received for Level. A degree level of 3.0 in Level of Contact is defined in the Plan as:

> Students, parents, alumni, faculty of institutions outside the systems, sales engineers, higher-level product representatives, recruiters and/or prospective students.

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

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

She claims that she is entitled to a 4.0 level for her work in government documents, based upon her communications with government agencies when she must order a specially requested item forfaculty or staff. However, she testified that this does not happen often. Furthermore, she did not identity with particularity any individual with whom she must speak or what their position in the agency might be. Even if such dealings were with “mid-level” agency representatives (and it is unlikely that such individuals would take or process orders), they do not seem to be “regular” or “recurring” as explained by Grievant.

8. 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.

For this point factor, the Library Clerk job title received a 1.0 level for both aspects, which are Level of Supervision and Number of Direct Subordinates. The LTA Is received a 2.0 for both, and Ms. Smith did not challenge this point factor.

A degree level of 1.0 for Level of Supervision is defined by the Plan as:

> Minimal or no responsibility for the work of others; however, may provide functional guidance to student workers or lower-level employees on a non-essential basis.

A level 2.0 is “[r]esponsible for directing and monitoring the work of student workers essential to the operations of the unit.” All Grievants classified as Library Clerks have challenged their ratings in this point factor based upon their “supervision” of student workers. Students work in virtually every library department and assist chiefly in shelving materials and keeping them in the appropriate order. Thus, they are normally required to work directly with the Clerk for the particular department on an everyday basis.

Regardless of what the specific everyday relationship is between a Clerk and a studentworker, the crucial characteristic for receiving credit in this point factor is that the students are “essential” to the operation of the work unit. Although each library department in which these grievants work requires different specific duties of their student workers, it appears that their basic functions are quite similar. That is, student library workers generally assist a library clerk in keeping the particular unit in order.

Accordingly, the clerk must train the student regarding the basic policies and procedures of the department, then supervise them in performing these everyday support functions.

The Grievance Board has previously recognized that, regarding the issue of whether students are essential, the appropriate test is "[i]f the goals and objectives would be met without the students, even if completion by regular employees required a longer period of time, the student workers are deemed non-essential." Deavers, supra, at page 27 (emphasis added). None of the grievants in this case have met their burden of proving that the students they supervise are essential. While they are helpful in keeping the library organized and running smoothly, they do not perform functions that could not be done by full-time library employees, especially the Library Clerks. Therefore, a degree level of 1.0 for Level of Supervision is appropriate for Grievants.

Since the student workers supervised by Grievants are non-essential, it is not possible for Grievants to receive any higher degree level than 1.0 for Number of Direct Subordinates. The only employees under the Clerks' supervision are student workers who are not essential and cannot be considered for giving credit for Direct Supervision Exercised, either for Number or Level. Thus, all the grievants are properly evaluated in this point factor.

9. Physical Coordination

Physical Coordination is defined in the Plan as:

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

The only grievant who has challenged her assignment for this point factor is Ms. Bower. Library Clerks were given a level 2.0, and she alleges entitlement to a 4.0.

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 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.

Ms. Bower's challenge to Physical Coordination seems to be related to her responsibilities in

connection with performing minor repairs and maintenance to copying machines, along with word processing and data entry. In her testimony, she stated that these minor repairs included fixing paper jams, fuses, and light bulbs. However, she implied that major repairs would be handled by service or manufacturers' representatives. Note that there are only five levels of Physical Coordination. It hardly seems to make sense that a clerk charged with maintaining order in a library periodicals department would be categorized at almost the highest level of psychomotor skill. This is hardly a technical or skilled position, and Grievant has provided insufficient evidence that her classification in this regard was arbitrary, capricious, or incorrect in any respect.

10. Working Conditions

This factor, which is defined in conjunction with Physical Demands, considers the following:

> [T]he quality of the physical working conditions in which the job is normallyperformed such as lighting adequacy, temperature extremes and variations, noise pollution, exposure to fumes, chemicals, radiation, contagious diseases, heights and/or other related hazardous conditions.

Both the Library Clerk and LTA I job titles received a level 1.0, defined as:

> No major sources of discomfort, i.e., standard work environment with possible minor inconveniences due to occasional noise, crowded working conditions and/or minor heating, cooling or ventilation problems.

Grievants Conaway and Smith allege their positions are entitled to a 2.0, which states as follows:

> Occasional minor discomforts from exposure to less-than-optimal temperature and air conditions. May involve dealing with modestly unpleasant situations, as with occasional exposure to dust, fumes, outside weather conditions, and/or near-continuous use of a video display terminal.

Ms. Conaway alleges that she is entitled to a higher degree level based upon the frequent interruptions she must deal with from patrons asking questions or needing assistance with equipment. It is quite obvious from the definition of Working Conditions and the level 2.0 definition that such “interruptions” do not constitute “physical” conditions of the work environment. Thus, she has not met her burden of proof on this point factor.

On the other hand, Mr. Weston testified that Ms. Smith's constant data entry work on the computer would probably entitle her to the 2.0 level, which considers near-continuous use of a

terminal. However, under the Plan, this would only increase the total points she would receive to 1514, which is still within the point range for a Pay Grade 10 (1475 to 1560 points). Therefore, since granting this relief would not change Grievant's pay grade, no change in her classification is appropriate.

C. Generic Job Descriptions

Grievants spent a great deal of time during the level four hearing discussing and comparingtheir duties to those listed on the generic job descriptions of LTA I, LTA II, and Library Associate in support of their allegations that they should have been classified in another job title. Generic job descriptions were compiled after implementation of the Mercer system by looking at the common duties and responsibilities of all incumbents in each job title as reflected on the PIQs. These descriptions were not used in the classification process and were not meant to serve as position descriptions. As Mr. Weston explained on behalf of Respondent, each employee's PIQ 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, Grievants' evidence in this regard is not relevant or probative and will not be discussed by the undersigned.

D. Summary

As the above discussion reflects, the Library Clerks have not met their burden of proof, because they have not shown that they or their job title were evaluated incorrectly with regard to any of the point factors they challenged. Accordingly, since they did not prove by a preponderance of the evidence that the JEC's determinations were arbitrary and capricious or clearly wrong, their grievances must be denied.

Ms. Smith has only met her burden of proof with regard to the Working Conditions point factor. The undisputed evidence is that she works nearly continuously on a video display terminal, which would entitle her to a level 2.0, rather than the 1.0 her job title received. As discussed above, the additional points allocated to Grievant in this point factor will not change her pay grade or entitle her to any change in classification.

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 and PIQs 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 challenged by Grievants Kretzmer, Loggins, Bower, and Conaway as applied to their positions and their job title was neither clearly wrong nor arbitrary and capricious.

6. The JEC's assignment of degree levels to the point factors Knowledge, Experience,Complexity and Problem Solving, Freedom of Action, Scope and Effect, and Breadth of Responsibility to Ms. Smith's position and to her job title were neither clearly wrong nor arbitrary and capricious.

7. The JEC's assignment of a 1.0 degree level to the LTA I job title for the Working Conditions point factor was not clearly wrong nor arbitrary and capricious.

8. Grievant Smith proved that she individually is entitled to a degree level of 2.0 for Working Conditions, but she did not prove that her duties and responsibilities warrant a different classification or compensation at any higher pay grade.

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: February 6, 1997 _____ **DENISE MANNING**

Administrative Law Judge

Footnote: 1

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

Footnote: 2

Mary Lou Conaway left her position on December 1, 1994, and only seeks back pay in a new classification from January 1, 1994, through November 30, 1994.

Footnote: 3

It is the undersigned's understanding that a periodical is one type of serial, a serial being any publication which is a continuing series of issues, volumes, etc., to be kept in a specific, continuing order.

Footnote: 4

The thirteen point factors are set forth in 128 C.S.R. 62 § 2.27 and 131 C.S.R. 62 § 2.27. Burke, supra.

Footnote: 5

A grievant may challenge any combination of point factor degree levels, so long as she clearly identifies the point factor degree levels she is challenging, and this challenge is consistent with the relief sought. See Jessen, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-1059 (Oct. 26, 1995); and Zara, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-817 (Dec. 12, 1995).

Footnote: 6

This discussion is not intended to address challenges to the way the Mercer system as a whole is set up, that is, challenges to the methodology.