HOWARD T. LISTON, et al.,

Grievants,

v. DOCKET NO. 94-MBOT-845

BOARD OF TRUSTEES
WEST VIRGINIA UNIVERSITY,

Respondent.

D E C I S I O N

Grievants, Howard T. Liston, Bradley W. Corob, George A. Renner, and David A. Johnson, (See footnote 1) challenge their classification, effective January 1, 1994, as PRT Technician IIs, Pay Grade 12, by the Board of Trustees, West Virginia University (Respondent), under the Job Evaluation Plan (JEP) for the State College and University Systems of West Virginia developed by William M. Mercer, Inc. (See footnote 2) A Level IV evidentiary hearing was conducted at the Grievance Board's office in Morgantown, West Virginia, on January 24, 25, 31, and March 11, 1996. This matter became mature for decision uponreceipt of video tape exhibits from Grievants' counsel on November 14, 1996. The transcript of the Level IV hearing was received by the undersigned on January 29, 1997.

Grievants seek to be classified as PRT Technician IIIs\Leads, Pay Grade 14, effective January 1, 1994. Grievants also assert they were not correctly evaluated on eight of thirteen factors in the JEP's "Point Factor Methodology."

The process under which Grievants were reclassified began with completion of a Position Information Questionnaire (PIQ). PIQs are highly-structured documents, seventeen pages in length, on which individual employees describe the duties of their position, as well as certain minimum qualifications required to carry out their duties. PIQs are essentially position descriptions that were primarily developed to facilitate the job evaluation process. Employees were asked to rate various aspects of their position, under a scale set forth in the JEP. The mechanics of the JEP are generally referred to as the "Point Factor Methodology." PIQs were reviewed by the immediate supervisor and

one level of management above the immediate supervisor, before being considered by the JobEvaluation Committee (JEC). The JEC consists of representatives from human resources and classified staff and is responsible for "review of classification decisions across the system." § 11.5, 128 C.S.R. 62 (1994).

Once all PIQs were completed, the JEC met as a committee and determined the application and interpretation of the various point factors contained in the JEP (See footnote 3) while conducting the process of reviewing the PIQs and assigning values to each factor. After reviewing all PIQs submitted by personnel classified as PRT Technicians, the JEC assigned degree levels for each factor as shown in the table below.

FACTOR	JEC ASSIGNED DEGREE LEVEL
Knowledge	4.0
Experience	3.0
Complexity and Problem Solving	2.5
Freedom of Action	2.5
Scope and Effect - Impact	1.0
Scope and Effect - Nature	2.0
Breadth of Responsibility	1.0
Intrasystems Contact - Nature	1.0
Intrasystems Contact - Level	2.0
External Contacts - Nature	1.0
External Contacts - Level	2.0
Direct Supervision - Number	1.0
Direct Supervision - Level	1.0
Indirect Supervision - Number	1.0
Indirect Supervision - Level	1.0
Physical Coordination	4.0
Working Conditions	3.0
Physical Demands	4.0

Using a mathematical equation which is not at issue, the foregoing levels were calculated to

award this position a total of 1,715 total points, equating to a Pay Grade 12 position. The Point Score Range for Pay Grade 12 is 1,655 to 1,755. The Point Score Range for Pay Grade 14, which Grievants seek, is 1,866 to 1,984.

Teresa Crawford, a Senior Compensation Analyst in the Department of Human Resources at WVU, testified for Respondent. Ms. Crawford has handled classification and compensation matters at WVU since 1984. In that capacity, she is responsible for classification and compensation matters pertaining to employees in the Physical Plant, as well as the maintenance engineering unit in the Health Sciences Center. In addition to holding a B.S. in Psychology, a B.S. in Business Administration, and a M.B.A. degree, Ms. Crawford is certified as a compensation professional by the American Compensation Association.

Ms. Crawford explained that the basis of the Mercer classification system was to insure equity in classifications at all colleges and universities in the state system. PIQs are intended to assess The duties assigned to the position, not the qualifications of the individuals occupying the position.

The following Findings of Fact are made from the record developed at Level IV.

FINDINGS OF FACT

1. 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. Each Grievant completed a PIQ in 1991.

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

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

4. Under the JEP, positions are evaluated under a "point factor methodology" wherein point

values are assigned to the thirteen "job evaluation factors."

5. Grievants, employees of West Virginia University, were classified in the Mercer reclassification as PRT Technician IIs, Pay Grade 12, effective January 1, 1994. 6. Grievants Liston and Corob perform mechanical maintenance tasks. Their duties include, but are not limited to, repairing and maintaining the four wheel mirror image steering linkage with reversible bias modes, the electronic hydraulic mechanical redundant feedback braking system, the pneumatic suspension system with electrical mechanical overload protection, the electrical mechanical door control mechanisms with pneumatic pulse wave closure device safeguards, and the hydraulic, pneumatic and mechanical checkout and calibration support equipment.

7. Grievants Johnson and Renner mainly perform tasks associated with the PRT's guideway and heating systems. Their duties include, but are not limited to, repairing and maintaining refractory and fire box materials for 17 gas fired boilers, natural gas feed lines with redundant motorized vented gas valves, Boiler Plant pumps, motors, fans, tanks, plumbing, fixtures, tools, etc., guideway heating system grid flow rate control valves, Boiler Plant isolation and flow distribution valve system, approximately 50,000 feet of guideway heating fluid distribution pipe, 100,000 gallons of glycol/water heat transfer fluid insulation and protective structure (including suspended hangers and buried valve boxes), and air fuel ratio equipment to maintain the proper combustion mixture.

8. Grievants are over pre-Mercer Technician IIs, and can assign these individuals to work with them when needed. Gr. Exh. C. 9. Grievant assists the shift supervisor, as assigned, by monitoring radio communications and acting on the supervisor's behalf during the supervisor's absence.

10. Grievant Liston began working at the PRT as a Maintenance Mechanic I in 1977. In 1978, he was promoted to Maintenance Mechanic II, and to Maintenance Mechanic III in 1979. Although it took Grievant Liston only two years to become a Mechanic III, he had extensive relevant prior job experience, including approximately eight years working with aircraft engines, and four years as a mechanic and operator of heavy equipment, such as bulldozers. (See footnote 4) GR. Exh. Q.

11. Grievant Corob began working at the PRT as a Utility Worker, functioning as a PRT Mechanic helper, in 1977. He was promoted to Maintenance Mechanic I in 1978, to Maintenance Mechanic II in 1980, and to Maintenance Mechanic III in 1983. It took six years of learning about the PRT before he became a Mechanic III. He had approximately five years of machinist and mechanic experience before coming to the PRT. GR. Exh. R.

12. Grievant Renner became a PRT Utility Worker in 1975. Three months later he became a Mechanic Technician I. Nine months later, he was promoted to Mechanic Technician II. In 1979, he was promoted to Mechanic Technician III. In 1987, he made a lateral move to Guideway Heating System Technician III. It took Grievant Renner four to five years to progress from a I to a III. Prior toworking at the PRT, he had experience as an automobile mechanic, electrician, carpenter, plumber, and pipe fitter. Grievant Renner is also certified in boiler operations. GR. Exh. O, and Jan. 24, 1996, Tr. 90-1, and Jan. 25, 1996, Tr. 64.

13. Grievant Johnson became a PRT Mechanic I in 1980. In 1982, he was promoted to PRT Mechanic II. In 1984, Grievant Johnson laterally moved to become a Guideway Heating System Technician II. In 1987, he became a Guideway Heating System Technician III. It took Grievant Johnson seven years to progress from a I to a III. Prior to coming to the PRT, he had ten years experience working as an automobile mechanic. GR. Exh. P, and Jan. 25, 1996, Tr.

14. Grievants work in the following areas: pipe fitting, plumbing, cement, masonry, electricity, gas and electric welding, lagger, and carpentry. They also have to be able to read blueprints, schematics, and maintenance manuals.

15. Grievants Renner and Johnson also perform duties associated with the PRT boilers.

16. Grievants Liston and Corob also perform duties associated with hydraulics, pneumatics, and mechanical operations.

17. Working on the PRT is becoming increasingly difficult as the system ages. Replacement parts that need replaced are often difficult or impossible to obtain. Occasionally, Grievants have to develop an alternative plan to correct the problem. 18. Grievants function as MOCU (Manual Override Control Unit) operators and make on-the-spot evaluations of anomalous vehicle and guideway conditions as required.

19. Each Grievant performs in-depth troubleshooting, and makes recommendations for hardware and procedural changes which become necessary during performance of the PRT maintenance effort, makes estimates of manpower and materials required to perform scheduled and unscheduled maintenance functions, accounts for all man-hours and materials used in performance of the maintenance effort, and assists in establishing equal or equivalent replacement mechanical/electrical components through direct communications with equipment manufacturers and suppliers. These functions occur on a regular, recurring and essential basis.

20. Grievants routinely establish their own daily project schedules.

DISCUSSION

Because grievances challenging pay or classification are not disciplinary in nature, a grievant has the burden of proving by a preponderance of the evidence that he has been misclassified. 156 C.S.R. 1 § 4.17 (1989). See, W. Va. Code § 18-29-6 ¶ 5; Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). A grievant challenging his designated Mercer Classification may prevail by demonstrating his reclassification was made in an arbitrary and capricious manner. See, Kyle v. W. Va. State Bd. of Rehabilitation, Div. of Rehabilitation Services and W. Va. Civil Serv. Comm'n., Docket No. VR-88-006 (Mar. 28, 1989). The highereducation employee challenging his classification thus will have to overcome a substantial obstacle in attempting to establish that he is misclassified. (See footnote 5)

Whether Grievants are properly classified is substantially a factual determination that must be made on a case-by-case basis. Burke, supra. See, Snider v. W. Va. Bureau of Environment, Docket No. 95-DEP-306 (Sept. 29, 1995). Determinations of the JEC regarding application of the JEP's point factor methodology are essentially questions of fact. As such, the JEC's interpretation and explanation of the point factors and Generic Job Description 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 JEP (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. Watts v. Dept. Of Health and Human Resources, 465 S.E.2d 887 (W.Va. 1995).

Subjective determinations of the JEC regarding application of the JEP'S point factor methodology to an employee or group of employees are entitled to deference when being reviewed by this Grievance Board. However, such subjective determinations may nonetheless be found to be arbitrary and capricious if not supported by a rational basis. Furthermore, such subjective determinations may be clearly wrong if there is no substantialevidence in the record supporting the finding, or if review of the evidence of record makes it clear that a mistake has been made. Jessen v. Bd. of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995). See Frymier-Halloran v. Paige, 458 S.E.2d 780, 788 (W. Va. 1995); Bd. of Educ. v. Wirt, 192 W. Va. 568, 453 S.E.2d 402 (1994); Kyle, supra. These standards must now be applied in reviewing the decision challenged here.

Grievants proved, by a preponderance of the evidence, that while the job titles, Maintenance Mechanic III (Gr. Exh. H-2) or Guideway Heating System Technician III (Gr. Exh. H-1), they held before the Mercer reclassification were eliminated, they have continued to perform the same duties, and have they same responsibilities since the Mercer reclassification. Respondent did not provide sufficient evidence to outweigh Grievants' proof that their skills are used differently than other members in their current classification, and that PRT Supervisors rely on them, the more experienced, senior, “old IIIs” to perform certain tasks and to lead employees previously classified as PRT Utility, and Technician I and IIs. Grievants' also proved, by a preponderance of the evidence, that the nature of their duties have not changed for at least several years before the Mercer reclassification.

Prior to the Mercer reclassification project, there was a three-tier system for both PRT Mechanic Technicians and PRT Guideway Heating System Technicians. Management endorsed the appeals of these Grievants during the preliminary in-house appealson or about March 1993. Supervisor John E. Feather stated in support of Mr. Corob's preliminary appeal:

> The Tech III position at the PRT is a necessity that we cannot do without. They provide a supervisory function unique only to the PRT. To eliminate these lead positions and group employees together would prove to be catastrophic.

Gr. Exh. T.

Mr. Terry Hoskins, PRT Systems Maintenance Manager, and Mr. Feather's Supervisor, also attached a form statement explaining the importance of retaining the Technician III classification:

> The Morgantown Personal Rapid Transit System (PRT) is a unique (one of a kind) totally automated transit system that has unique requirements, especially in regard to the requirement that maintenance personnel constantly be prepared to respond immediately to the real time events of the transit system and its thousands of daily passengers. I strongly support that this unique situation creates unique demands that support and justify different levels of specialized technicians. These unique requirement are defined in the PIQ's and I feel requires a careful review to address these requirements before any changes are implemented.
>
> Further, these are specialized positions with unique demands that have been carefully established to effectively and efficiently support this very unique and world renowned transit system.

> It is my opinion that the changes presently proposed by the Mercer Study, without further review and modification, would be counter productive to the WVU/PRT unit, the PRT passengers and ultimately the state of West Virginia. Thank you.

Gr. Exh. T and U.

Later, in the appeal form of Mr. Renner dated February 14, 1994, Mr. Feather and Mr. Hoskins signed-off on the following statement:

> As has been established for many years, this position, for the PRT routinely performs at a level ofresponsibility above that of the average technician position. This position regularly works at remote sites, establishes its own daily project schedule from priorities set by the supervisor, and provides spare parts and maintenance to engineering interface as it relates to the PRT Guideway Heating System. Occasionally this position functions as a group leader for other technicians of various trades and skill levels. During the winter months this position regularly provides real time responses to operate the PRT guideway Heating System for snow removal during times when the PRT is normally unmanned. I recommend a review of this position title and pay grade.

Gr. Exh. G-1.

The statement of Mr. Bates, Director of the PRT, concurred:

> I agree that this position performs at a level of responsibility above the average PRT Tech II (mechanic). This position (with the other GW Heating position) has the basic responsibility for the total PRT Guideway Heating System, consisting of boilers at four (4) heating plants and over eight (8) miles of heated concrete vehicle running surface. As such this position operated independently at remote locations, established schedules and priorities and on occasions may lead other trade technicians needed for a major repair. Whether this position qualifies as a lead I am not sure, but it does perform at a higher level of responsibility and performs in many diversified trade areas, thus I recommend further review.

Gr. Exh. G-1. (Emphasis added).

Likewise, in supporting the appeals of Grievants Liston and Corob, Mr. Feather and Mr. Hoskins wrote:

> Many years ago, because of multiple trades personnel, multiple work shifts [and] occasional supervisor absence, the PRT established a technician classification arrangement (Tech I - Tech II - Tech III) that expressed what has been accepted as including Lead Technicians (Tech III). ... My present position regarding these appeals is that the conditions listed above remain and that at least at times it is necessary that senior qualified technicians be called upon to perform above the average technician position. Not being familiar with the details of the classification [and] compensation review process[,] I do not feel qualified to determine the appropriate title [and] pay

grade ... .

Gr. Exh. G-2. (Emphasis added).

Although management might not be as clear as they could have been, or knowledgeable in Mercer terminology, (See footnote 6) it is well established that the chain-of-command above Grievants believed that there was a significant difference in duties and responsibilities between Technician IIs and IIIs, and that a separate position existed because of the additional, lead, supervisory, and more complex duties assigned to the Technician III position. (See footnote 7)

Ms. Crawford opined, during Respondent's case-in-chief, that she did not think Grievants' positions were lead positions, but that Grievants were merely “colleagues working together, and one may be specializing a little more in one area than another.” Level IV, March 11, 1996, Tr. 100. However, this conclusion is clearly contrary to the statements of a PRT supervisor, the PRT Systems Maintenance Manager, and the Director of the PRT. Grievants' duties, responsibilities, and the chain-of-command between the Technician IIIs and the Technician Is and IIs was addressed in a memo from Mr. Hoskins to Mr. Feather:

> Regarding your comment relating to lead Technicians (Technician III's) not feeling that they are responsible for the performance and actions at [the] Mini [substation, located at the Engineering platform], please let me remind you that they clearly are as is spelled out in their job description and has long been established. The purpose for the Technician III's responsibility tolead other Technicians, when assigned, is clearly established in the chain of command and their responsibility. The chain of command in this instance is clear that the lead technician assigned to Mini is to be responsible for carrying out their work assignments and leadership responsibilities at Mini, and regularly report the status of the overall efforts and events directly to the maintenance supervisor.

Gr. Exh. C.

Moreover, Respondent failed to discredit the following statement made by Grievant Liston:

> Over the years certain duties were taught only to lead workers [“old” IIIs]. Only the lead men were taught how to run the shop, (See footnote 8) complete paperwork and other administrative tasks. The lead men were taught ... more extensive trouble shooting and problem solving [skills]. The lead men are also the priority worker for performing a MOCU (Manual Override Control Unit) operation, which manually controls the vehicle during an on-board computer shutdown.

Gr. Exh. Q.

Therefore, based on Grievants' credible testimony and certain exhibits entered in the Level IV record, it is clear that Grievants' duties are significantly different from other persons classified as PRT Technician IIs, and that management uses Grievants' skills in a manner that is different from other Technician IIs.

Grievants also contend that their positions were undervalued when the JEC rated certain factors using the Point Factor Methodology, and allowed their lead (PRT Technician III) positionsto be absorbed into the PRT Technician II classification. In particular, they challenge the degree levels assigned to the following factors: Experience, Complexity and Problem Solving, Freedom of Action, Scope and Effect - Impact and Nature of Actions, External Contacts - Nature and Level of Contacts, Direct Supervision - Number of Direct Subordinates and Level of Supervision, Working Conditions, and

Physical Demands. Each factor will be discussed separately.

Factor 2, Experience

In regard to Factor 2, Experience, the JEP is attempting to measure "the amount of prior directly related experience required before entering the job." Ms. Crawford testified:

> Experience was interpreted as the minimum amount of experience an applicant would need prior to coming into a position, to be able to successfully perform the duties and responsibilities after going through the normal period of on-the-job training that any new incumbent would go through in a new position, the typical amount of on-the-job training, understanding that on-the-job training may -- the length of that training may vary depending on the type of position it is. ... this was not to measure the amount of the on-the-job training though; this was to measure -- prior to actually coming into the position.

Level IV, March 11, 1996, Tr. 36-7.

Degree levels in the JEP are described as follows:

C or 3 = Over one year and up to two years of experience.

D or 4 = Over two years and up to three years of experience.

E or 5 = Over three years and up to four years of experience.

F or 6 = Over four years and up to six years of experience.

The JEC evaluated the experience requirement for Grievants' positions at Level "C" or 3. On their

PIQ, Grievants marked an "F" or 6. Although Grievants' immediate supervisor and second levelsupervisor (management) had authority to mark any degree level they felt was appropriate under all factors, they reviewed Grievants' PIQs without noting exceptions to the degree levels marked by Grievants Liston and Corob. However, management (See footnote 9) did indicate on the PIQs of Grievants Renner and Johnson that a “D” or a 4 was the appropriate degree level under experience.

It took Grievants three to seven years to attain Technician III status, under the pre-Mercer classification system, even with several years of prior experience. The JEC's determination of a C or 3, over one year and up to two years of experience, is closer to being accurate for a Technician II, but not for Grievants' positions.

Grievant Renner opined that “it takes at least 18 months of prior training, at least 4-6 years of prior experience and 2-3 years of on the job training to gather all the[] skills” required to perform his job. Gr. Exh. O. (See footnote 10) Under Experience, Respondent only addressed the information that Grievant Renner placed on his PIQ. On his PIQ, under “Type of Experience Needed” and “Amount of Experience Needed” Grievant Renner listed one year of experience for the following areas: pipe fitting, plumbing, cement, mason,electrician, gas and electric welding, lagging, and carpentry. He also listed boiler specialist, requiring two years of experience. During the Level IV hearing, the following colloquy occurred:

> Respondent's counsel: You see the experience that he [Grievant Renner] has listed there [on his PIQ], if you totaled them all up, how much would that come out to?

Ms. Crawford: Nine.

> Q. Nine years of experience. Now, is that how a Human Resource person would do it, is add up the amount of experience under that category?

A. No.

Q. How would you normally determine that?

> A. We would look at the types of experiences and skills; you could acquire these various skills concurrently, I guess is the word I want. In other words, he's listed pipe fitting and plumbing. As you're a plumber, you can be doing plumbing and pipe fitting at the same time and gaining those skills simultaneously.

> Electrician, maintenance, (See footnote 11) masonry, he's got [boiler] (See footnote 12) operator, some welding, lagging, which also is typically found or can be found within the plumbing area. Carpentry. And he's got one to two years on each of these areas, and so the way we would look at it is it would be one to two years of prior experience which includes these various areas.
>
> Q. Okay. So then the 3 that the Job Evaluation Committee awarded that position would have been appropriate?
>
> A. Based on the information that he provided there, yes. And based on consistently how they applied with other titles.

March 11, 1996, Tr. 37-38.

If the JEC concluded that a degree level of “C” or 3 was appropriate for Grievants using this method, and the undersigned has no reason to think otherwise, then its conclusion is merely an assumption, at best. Ms. Crawford's explanation assumes that all of these skills can be learned concurrently. While her assumption may be correct, Ms. Crawford failed to provide the basis for her assumption in this case for Grievants' positions. Moreover, Respondent's use of a “strawman argument” fails. Mr. Renner previously tried to explain twice to Respondent's counsel that not all of the experience he listed on his PIQ was concurrent or consecutive. Jan. 24, 1996, Tr. 90-1, and Jan. 25, 1996, Tr. 64.

Moreover, Respondent did not gain any advantage in Grievant Corob's cross-examination when he testified that only on the job experience was required for his position. LIV, Jan. 25, 1996, Tr. 210. It might be possible for an employee to begin at the PRT as a helper, Utility Worker, and progress through the ranks, and attain a III position with only prior PRT experience.

The JEC, apparently consistent with its conceptualization of these jobs as being a typical craft job, concluded without further explanation that only 1-2 years was required. The problem with this approach is that it ignores even the statements from management as to the depth, breadth of skills required, and the responsibilities of Grievant's positions. (See footnote 13) Grievant Listontestified that four years of hydraulic experience, two separate years of pneumatics, and one additional year of electric experience, was required to perform the duties of his position. Gr. Exh. Q. (See footnote 14)

Respondent failed to present sufficient evidence to rebut Grievants' evidence, or to explain

adequately the JEC's determination under the Experience Factor. Therefore, based on all of the evidence Grievants produced, it is found that the JEC's degree rating of a 3 was clearly wrong, and arbitrary and capricious. The proper rating should be at least a 5 or “E”, “over three years and up to four years of experience.” Based on R. Exh. 2, that would give Grievants' 338 points under Experience, or an additional 114 points.

Factor 3, Complexity and Problem Solving

The JEP describes 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.

Ms. Crawford testified that this:

> [f]actor is measuring the types of problems faced and the process that you would need to go through in coming upwith solutions to problems. What kind of -- the level of judgment that was required to solve a problem situation. . . . If there's specific, you know, if there's specific standards that you must follow and you're not permitted to deviate from those standards, then you would have a lower level of Complexity and Problem Solving because it's already established for you versus if you're at the very top where you're actually developing the strategies themselves and to come through and solve the problem.

March 11, 1996, Tr. 39.

On this factor Grievant Johnson and management marked an “E” or 5, while Grievant Renner marked an "F" or 6 on his PIQ under Complexity and Problem Solving.

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

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

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

> Problems encountered are extremely complicated and require considerable resourcefulness and originality. Various strategies are examined to determine most

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

A degree level of “E” or 5 is not appropriate because “developing new programs, procedures or methods” is not the “typicalend result[] of the[ir] problem-solving process.” Therefore, a degree level of “F” or 6 is also inappropriate.

The JEC rated the basic PRT Technician II job title a degree level of 2.5 in this point factor. A degree level of 2.5 is not specifically defined, but, as explained by Ms. Crawford, means the job duties and responsibilities fell between a 2.0 and a 3.0. A degree level of 2.0 is defined in the JEP 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.

A degree level of 3.0 is defined in the JEP 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.

Grievants Liston and Corob marked a “C” or 3 on their PIQs. Grievants' counsel asserted, in his post-hearing submission, that the evidence proved that a “D” or 4 was appropriate for complexity and problem solving.

A degree level of 4.0 is defined in the JEP 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 tointerpret policies and procedures, research relevant information, and compare alternative solutions.

Grievants failed to prove by a preponderance of the evidence that a majority of their problems are "complex and varied due to incomplete and/or conflicting data." Moreover, Grievants problems do not involve "specific professional disciplines."

Grievants' proved that a degree level of a "C" or 3 is appropriate under Complexity and Problem Solving. Since the PRT is a unique transportation system, "problems encountered can be somewhat complex and finding solutions to problems may require some resourcefulness and originality".

When locating a leak, Grievants are required to read blueprints and schematics (See footnote 15) which may be incorrect. (See footnote 16) Valves which are also thought to be working, may be allowing fluid to pass through the lines. Incorrect diagrams and bad valves increase the difficulty involved locating a leak.

PRT vehicles are a complex blend of airplane and automobile parts, powered by a 575 volt system. Grievants have devised tools to aid them in resolving problems at the PRT. Many times replacement parts for the PRT are no longer available, so Grievantscreate replacements, or devise creative solutions using parts that are available. Gr. Exh. Q and R. (See footnote 17)

Grievants proved, by a preponderance of the evidence, that their positions should received a degree level of a "C" or 3, and that the JEC was clearly wrong, and arbitrary and capricious in failing to give this rating to their positions. A degree level of 2.5 for Complexity and Problem Solving equated to 251 points. A degree level of 3.0 equates to 294 points. Correcting this error would add 43 points to Grievants' score.

Factor 4, Freedom of Action

The JEP defines Freedom of Action as:

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

Grievant Johnson marked an "E" or 5 on his PIQ. A degree level of 5 is defined as:

> Virtually all tasks are unstructured; assignments are in terms of setting objectives within strategic planning goals. At this level, the employee has responsibility for planning, designing and carrying out programs, projects and studies; employee sets goals and objectives for a major unit, program, or department. Approval from higher supervision may be necessary only in terms of financial impact and availability of

> funds, but little reference to detail is discussed with the next levelsupervisor. Work review concerns matters such as fulfillment of goals and objectives.

A degree level of “E” or 5 is too high for Grievants' positions. None of the Grievants plan or design any programs, projects and studies; nor do they set goals and objectives for a major unit, program, or department.

The JEC rated Grievants' position a degree level of 2.5 under Freedom of Action. A degree level of 2.0 is defined by the JEP as:

> 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.

A degree level of 3.0 is defined by the JEP 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.

At the Level IV hearing, Ms. Crawford testified that the JEC rated Grievants' positions a degree level of 2.5 for Freedom of Action because while the JEC believed that Grievants “organize[] and carr[y] out most of their work assignments in accordance with standard practices, policies, and previous training,” the JEC did not believe that Grievants worked “from objectives set by the supervisor.” March 11, 1996, Tr. 44. Ms. Crawford made a distinction between Grievants working through a work order and by objectives set by a supervisor. However, she failed to define the distinction. Although Grievants receive specific assignments through work orders, they routinely establish their own daily project schedules, spend a majority of of their time on non-scheduled maintenance, and can assign people to work with them. Gr. Exh. G-1, and Grievants' testimony. Moreover, the PRT has four supervisors, who specialize in a particular discipline, Ronald Winarski (mechanics), Robert DeWitt (electronics), Sanders (electronics), and John Feather (quality assurance). Each supervisor works a different shift. Usually Supervisor Winarski works the midnight shift. Therefore, he is not usually around to provide direction should Grievants Liston or Corob have a question. Grievants Renner and Johnson meet with Mr. Hoskins only three times a year to establish

priorities.

While a degree level of 3 is appropriate for Grievants, they come close to a degree level of 4, and this degree level will be discussed since three Grievants and Mr. Hoskins thought it was the appropriate degree level. Grievants Liston, Corob, and Renner, Grievants' counsel in his post-hearing submission, and Mr. Hoskins (See footnote 18) marked a "D" or 4 on their PIQs for Freedom of Action which is described as:

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

Grievants' duties and responsibilities encompass most items defined in degree level 4 for Freedom of Action. Grievants' tasks are minimally structured. As noted above, Grievants work from broad goals. However, Grievants failed to prove that their goals are established by “institutional policies.”

From the record, and management's statements, it is clear that Grievants “hav[e] developed expertise in the[ir] line of work, and are responsible for planning and carrying out the assignment; resolving most of the conflicts which arise; and coordinating the work with others (PRT Utility workers, PRT Technician Is, and IIs). While performing their tasks, often Grievants are at remote sites, and they “keep[] the[ir] supervisor informed of progress and potentially controversial matters.” Once their work is completed it is often not checked. The supervisor at the desk merely signs off on the work order indicating that the task has been completed. This is because often the desk supervisor does not have the skills or knowledge required to inspect Grievants' work intelligently. This again goes back to the strategic manner in which PRT management has structured its shifts to allow for efficient use of personnel assigned to the PRT.

Although Grievants do not fully satisfy all of the requirements defined within degree level 4, they meet or exceed those listed in degree level 3. Grievants exceed degree level 3, in that their tasks are not moderately structured, but are minimally structured. Therefore, the JEC was clearly wrong, and arbitrary and capricious in not assigning at least a degree level of 3 to Grievants' positions.

A degree level of 2.5 for Freedom of Action equated to 262 points. A degree level of 3.0 equates to 312 points. Correcting this error would add 50 points to Grievants' score.

Factor 5, Scope and Effect

Factor 5, Scope and Effect, is comprised of two parts, Nature of Actions and Impact of Actions, which form a matrix. Scope and Effect is defined in the JEP as:

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

During the Level IV hearing, Ms. Crawford testified:

> Scope and Effect is to measure the Nature of [A]ction, Impact of [A]ction, that your daily work assignments have on the overall Institution.
>
> The Nature of Action is kind of a description -- it's basically a description of the type of work you perform.
>
> Then across the top is the Impact, you know, based on your daily work assignments as you -- what impact that particular function task has on the Institution as a whole.

March 11, 1996, Tr. 45.

Under Impact of Actions classified employees were asked to "[d]escribe the types of problems which could result from an error made by someone in this job who did not have good job knowledge and use sound judgment." Grievants Liston and Corob responded that:

> Due to the following factors: Contact wi[th] the public, and the presence of High Voltage (575 A.C.), should improper procedure or poor judgement be used, the potential of serious injury or fatalities is always present. Due to the sophistication of

> the P.R.T., poor judgement or improper procedure could also result in substantial costs for the replacement or repair of its parts and equipment.

Grievants Renner and Johnson responded similarly. They noted that they could cause death or dismemberment to themselves, co- workers, passengers, or contractor, and that misjudgment on their part could also cause thousands of dollars worth of damage to the structure and/or equipment.

The JEC rated Grievants' positions a degree level of 1.0 under Impact of Actions, and a degree level of 2.0 under Nature of Action. A degree level of 1.0 under Impact of Actions, is defined in the JEP as "[w]ork is limited to immediate work function and short-term situations."

Ms. Crawford testified that she thought a degree level of 1.0 under Impact of Actions was inappropriate for Grievants'positions. (See footnote 19) She was unable to testify why the JEC assigned this degree level. Id. 46. She recommended to the JEC that they at least consider a degree level of 2.0 under Impact. Ms. Crawford testified:

> When you go back to look at the entire work unit or several major activities, I just feel like the kind of work they do -- I feel like that the type of work they do is more than just limited to their immediate work function because of the fact that there are -- there's some interrelationships there with some of the other departments within -- other units or other areas within the PRT, and also because of -- because it is a service kind of function that it -- they could impact the people who are utilizing that service.
>
> ***
>
> I think if you were looking at the PRT, the whole unit of the PRT, you would consider that a moderate size department. What we were looking at then is the subunits. Is the maintenance subunit impacting the whole department of PRT[?]
>
> ***
>
> The PRT -- if the PRT were to stop -- being nonfunctioning for several hours, I don't see that as impacting the entire institution. I mean, there are other -- either student just skips class which is probably the most -- thing that they do, or you start the bus systems running or -- there are other ways to handle that problem.
>
> I don't see that -- because the PRT is not running the entire institution's going to crumble, no. There's a lot of instructional areas that the PRT doesn't reach. There's a lot of administrative areas that the PRT does not reach. Class would continue whether or not the PRT was running or not.

March 11, 1996, Tr. 90-2.

Respondent failed to produce any witnesses or evidence which explained the JEC's determination for Impact of Actions. Based on the evidence contained in the record, Grievants proved, by a preponderance of the evidence, a degree level of 2 is appropriate. The JEC's assignment of a degree level of 1 for Impact of Actions is clearly wrong, arbitrary and capricious. To correct Grievants' score on Scope and Effect, Impact of Action, from a 1 to a 2, increases Grievants' score 10 points.

The JEC rated Grievants' positions a 2.0 in Scope and Effect, Nature of Actions. A degree level of 2.0 is defined in the JEP 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.

On the PIQ under Nature of Actions, classified employees were asked to select the best response, from five choices, which best described their job, to the following question:

> This question measures the position's scope of responsibility with regard to the overall mission of the institution or the West Virginia Higher Education Systems, as well as the magnitude of any potential error. Decisions regarding the potential magnitude of an error should consider the level within the systems that could be affected as well as the size of the area and its impact on overall operations. In making these judgments, consider how far-reaching is the impact and of what importance to the institution and/or the higher education systems is the work product, service or assignment. Also, assume the one would have the normal education, training or experience to do the job and that errors are not due to sabotage, mischief or lack of reasonable attention and care. Check the one response which best describes this job.

Grievants marked "D" (See footnote 20) which states:

> Work contributes to or ensures the effectiveness of operations or services having significant impact with the institution or the systems 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.

A degree level of “D” or 4 is inappropriate because the PRT does not have a “significant impact”

on the institution. According to Ms. Crawford, the JEC interpreted this factor to measure things that occur in a normal work day, not errors that might occur in a worst-case scenario. The JEC determined that measuring the results from possible errors, as stated in the JEP, was not as meaningful as measuring the results of proper job accomplishment. Unfortunately, the wording of the PIQ questions regarding this factor led Grievants to believe that the impact of errors and safety-related concerns was of greater importance than the JEC intended or determined was warranted. The JEC's determination that emphasis should be placed on measuring proper job performance, rather than errors, was not so inconsistent with the general language of the JEP as to constitute an abuse of discretion.

Therefore, the undersigned is not persuaded that the JEC's decision was either arbitrary and capricious or clearly wrong for Scope and Effect, Nature of Actions.

Factor 8, External Contacts

External Contacts is defined in the JEP as:

> This factor appraises the responsibility for working with or through other people **outside** 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, influencing others or negotiation.

This point factor is a matrix, and also consists of two parts, Level of Contact and Nature of Contact. Grievants challenge both parts. On Level of Contact, the JEC assigned Grievants' positions an “A” or 1, which provides:

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

The JEC's rating of a degree level 1 for Level seems to be a mistake, or typographical error according to Ms. Crawford. She stated that Grievants' contact with vendors qualifies their positions for a degree level of 2, and that the listing of a 1 “possibly could be a typographical error or an oversight.” Respondent, in its post-hearing submission, asserted that “[t]he JEC disagreed [with Ms. Crawford] and awarded the title a 1 due to the frequency of their external contacts.” If the recordation of a 1 was a typographical error, the there is no disagreement between Ms. Crawford and the JEC, and therefore, no evidence that the JEC awarded Grievants' positions a 1. However, if a 1 was an

"oversight" by the JEC, then this is at least the second instance in this case where Ms. Crawford disagreed with the JEC. Respondent's evidence for assignment of a degree level of 1 is not persuasive.

Grievants' counsel in his post-hearing submission, and Grievants Corob, Renner, and Johnson, marked "C" or 3 for Level of Contact, which provides:

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

Grievants failed to prove, by a preponderance of the evidence, that their contact with students is essential to their positions. While it is true that Grievants have regular, recurring, and essential contact with persons who happen to be students, for the purpose of repairing the PRT, the identity of the user (of the PRT) is meaningless. Therefore, a degree level of 3 for External Contact, Level of Regular, Recurring, and Essential Contact, is inappropriate. Gregg v. Bd. of Trustees v. W. Va. Network For Educational Telecomputing, Docket No. 94-MBOT-863 (Dec. 18, 1996).

A degree level of 2 for External Contacts, Level of Contacts, is appropriate in this case. Management and Grievant Liston marked "B" or 2, which provides "[g]eneral public, visitors, and/or service representatives and vendors". Ms. Crawford testified "contact with vendors to get supplies and materials would be essential to completing their work assignments." Level IV, March 11, 1996, Tr. 55-6. It appears that Grievants have the most contact with the general public since they are first to be assigned and perform the MOCU operations. Grievants proved, by a preponderance of the evidence that their contacts with the general public, and withvendors, is regular, recurring, and essential to completing their work assignments.

Therefore, the JEC was clearly wrong, arbitrary, and capricious in failing to assign a degree level of 2 for External Contacts, Level. To correct Grievants' score on Level, from a 1 to a 2, increases Grievants' score eight (8) points.

On External Contacts, Nature of Contacts, Respondent failed to offer any evidence supporting the JEC's assignment. The JEC rated Grievants' positions a 1. Grievants marked a 2 on their PIQ.

A degree level of 1 in Nature is defined in the JEP 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 in Nature is defined in the JEP as:

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

A degree level of 3 in Nature is defined in the JEP as:

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

Grievants' contact with the general public is primarily before and after sporting events, or with persons stranded on the PRT because of some type of PRT failure. However, Grievants' role in talking to these groups of persons is to provide general information, regardless of who they are or how frustrated or angry they are. Lovely v. Bd. of Trustees, Marshall University, DocketNo. 94-MBOT-762 (Nov. 27, 1996). Therefore, Grievants failed to prove, by a preponderance of the evidence, that the JEC was clearly wrong, or arbitrary and capricious in its determination for Factor 8, External Contacts, Nature of Contacts.

Factor 9, Direct Supervision Exercised

Under the JEP, Direct Supervision comprises a matrix with two separate parts, Level of Supervision and Number of Direct Subordinates. According to the JEP:

> This factor measures the job's degree of direct supervision exercises 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. (Emphasis in original)

Under Level of Supervision, the JEC rated Grievants an “A” or 1, which is defined 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.

Grievants do not work with students, and do not qualify under degree level 2, which reads: "Responsible for directing and monitoring the work of student workers essential to the operations of the unit." Grievants contend they function at the 3 degree level which states:

> Lead control over a group of non-exempt employees performing the same work as this job. Lead responsibility includes training, assigning tasks,checking the work of others, and insuring supplies and tools are provided at the work site.

Joint Exhibits 1-4.

Under part two of Direct Supervision Exercised, Number of Direct Subordinates, Grievants were asked to:

> Indicate the number of direct employees that are supervised for the category checked above. The number of subordinates should be reported in full-time equivalency (FTE) and not head count. Check only one response.

While management did not disagree with Grievants' responses under Level of Supervision, it consistently marked a degree level of 1, meaning zero, under Number of Direct Subordinates. Grievants marked a 3, indicating 2-3 direct subordinates.

Ms. Crawford testified:

> The Job Evaluation Committee determined that for someone to be assigned as a lead worker they had to be leading other journey-level positions, since most of the lead worker type positions are in the crafts. In other words, you know, to be a carpenter lead, you have to be leading other carpenters or other journey level trades workers.
>
> To be a plumber lead, you'd have to be leading other plumbers; electrician leads would lead other electricians.
>
> You did not get credit for being lead if you had one -- a laborer or a general maintenance helper or someone like that assigned to you occasionally because, you know, whatever work assignment you were on, for safety reasons you had to have two people there, that was not considered lead work.
>
> ***
>
> I mean, to be the crew leader ... would be a daily function. You would have a crew assigned to you at all times, and you would work with that -- be the lead to that crew all the time.

March 11, 1996, Tr 56-7.

Grievants failed to prove, by a preponderance of the evidence, that they supervise anyone on a full-time basis, even though they frequently lead, persons who were classified before as, utility workers, and PRT Technician Is and IIs. Therefore, Grievants failed to prove, by a preponderance of the evidence, that the JEC was clearly wrong, or arbitrary and capricious in its determination for Factor 9, Direct Supervision Exercised.

Factor 12, Working Conditions

This factor and Factor 13, Physical Demands, combined to form a matrix. Each factor will be discussed separately. The JEP defines the combination of Working Conditions and Physical Demands as:

> This factor considers the physical demands of the job as measured by the exertion placed on the skeletal, muscular and cardiovascular systems of the incumbent. It also takes into account the quality of the physical working conditions in which the job is normally performed such as lighting adequacy, temperature extremes and variations, noise pollution, exposure to fumes, chemicals, radiation, contagious diseases, heights and\or other related hazardous conditions.

Under Working Conditions, employees were asked to respond to the following question:

> This question considers the quality of working conditions as measured by lighting adequacy, temperature extremes and variations, noise pollution, exposure to fumes, chemicals, radiation, contagious diseases, heights and\or other related hazardous conditions. Check only one response.

Grievants Liston and Corob marked 4, which provides:

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

The JEC, Management, and Grievants Renner and Johnson assessed this factor at a degree level of 3, which provides:

> Routine discomforts from exposure to moderate levels of heat, cold, moisture/wetness, noise and air pollution. May involve routine exposure to light chemical substances such as cleaning solutions or occasional exposure to hazardous condition such as radiation, chemicals, diseased laboratory animals, contagious diseases, heights, and moving parts.

A degree level of 4 is too high for this factor, because Grievants failed to prove, by a preponderance of the evidence, that their exposure to the items listed is “frequent or prolonged.” To receive a degree level of 4, the exposure needs to be near continuous. Grievants usually work on the guideway, 25-40 feet off the ground, only during the summer months. A degree level of 3, is a closer match to Grievants' duties. Therefore, Grievants failed to prove, by a preponderance of the evidence, that the JEC was clearly wrong, or arbitrary and capricious in its determination for Factor 12, Working Conditions.

Factor 13, Physical Demands

The JEP definition for this factor is the same as Factor 12, Working Conditions, since these two factors comprised a matrix. Under Physical Demands, employees were asked to respond to the following question:

> This question considers the amount of physical effort required to perform the job as determined by the stress placed on the skeleton and muscles. Consider both how much effort is required and how often it occurs. Check the one response which best describes the job.

Grievants marked, and the JEC rated them, a degree level of “D” or 4, which provides:

> Considerable physical exertion required involving bending, stooping, climbing, lifting or carrying of heavy items (over 50 and up to 75 pounds) and periodically working in difficult or awkward positions.

At the Level IV hearing, Grievants argued after reflection they believe that a degree level of an “E” or 5 is more appropriate for their positions. A degree level of “E” provides:

> Extremely strenuous, with frequent physical exertion such as the lifting of very heavy items (more than 75 pounds), deep bending, climbing and/or working in difficult or cramped positions for long periods of time.

Grievants failed to prove, by a preponderance of the evidence, that they frequently lift heavy items. Sometimes Grievants handle heavy barrels, but usually Grievants have help while rolling the barrels. The boiler work, performed by Grievants Renner and Johnson, does not compel a higher degree level in this instance because it does not extend over a long period of time. Therefore, Grievants failed to prove, by a preponderance of the evidence, that the JEC was clearly wrong, or

arbitrary and capricious in its determination for Factor 13, Physical Demands.

In addition to the foregoing narrative and findings of fact, the following conclusions of law are appropriate in this matter.

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. Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). 2. The burden of proof in a misclassification grievance is on Grievants to prove by a preponderance of the evidence that they are not properly classified. 156 C.S.R. 1 § 4.17; Burke, supra.

3. “A preponderance of the evidence is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black's Law Dictionary, 5th E., p. 1064.

4. Determinations of the Job Evaluation Committee regarding application of the JEP'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, supra. See generally, Tennant v. Marion Health Care Foundation, 459 S.E.2d 374 (W. Va. 1995). Likewise, subjective determinations of the JEC regarding application of the JEP's point factor methodology to an employee or group of employees are entitled to deference when being reviewed by this Grievance Board. However, such subjective determinations may nonetheless be found to be arbitrary and capricious if not supported by a rational basis, or to be clearly wrong if there is no substantial evidence in the record supporting the finding or, review of the evidence of record makes it clear that a mistake has been made. Jessen v. Bd. of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995). See Frymier-Halloran v. Paige, 458 S.E.2d 780, 788 (W. Va. 1995); Bd. of Educ. v. Wirt, 192 W. Va.568, 453 S.E.2d 402 (1994); Kyle v. W. Va. State Bd. of Rehabilitation, Docket No. VR-88-006 (Mar. 28, 1989).

5. Grievants proved by a preponderance of the evidence that the JEC was clearly wrong and acted in an arbitrary or capricious manner in assigning their positions a 5 for Experience; a 3 for Complexity and Problems Solving; a 3 for Freedom of Action; a 2 for Scope and Effect, Impact of Actions; and a 3 for External Contacts, Level of Regular, Recurring and Essential Contact.

6. Under Experience, Grievants' positions should be rated a degree level of "E" or 5, indicating

"[O]ver three years and up to four years of experience. According to R. Ex. 2, under Pay Grade data, this would add 114 points to Grievants' total.

7. Under Complexity and Problem Solving, Grievants' positions should be rated a degree level of "C" or 3, indicating:

> 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.

According to R. Ex. 2, under Pay Grade data, this would add 43 points to Grievants' total.

8. Under Freedom of Action, Grievants' positions should be rated a degree level "C" or 3, indicating:

> 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. Theemployee deals with some unusual situations independently.

According to R. Ex. 2, under Pay Grade data, this would add 50 points to Grievants' total.

9. Under Scope and Effect, Impact of Actions, Grievants' positions should be rated a degree level of 2, indicating "work affects either an entire work unit or several major activities within a department." According to R. Ex. 2, under Pay Grade data, this would add 10 points to Grievants' total.

10. Under External Contact, Level, Grievants' positions should be rated a degree level "B" or 2, indicating "general public, visitors, and/or service representatives and vendors." According to R. Ex. 2, under Pay Grade data, this would add 8 points to Grievants' total.

11. Grievants did not demonstrate that the JEC was clearly wrong or acted in an arbitrary or capricious manner in rating Scope and Effect, Nature of Actions; External Contacts, Nature of Contact; Working Conditions; and Physical Demands.

12. Grievants proved, by a preponderance of the evidence, that their positions should have been classified at a Pay Grade 14, because the Point Score Range for Pay Grade 14 is 1,866 to 1984, and Grievants' corrected score is 1940.

Accordingly, this grievance is **GRANTED**. The Respondent Board of Trustees is hereby

ORDERED to allocate Grievants to Pay Grade 14, retroactive to January 1, 1994, and to pay them back pay in theform of the difference between the salary they would have received had their positions been properly allocated to Pay Grade 14, and the salary which they received while their positions were improperly allocated to Pay Grade 12, if any, plus interest.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia County, 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.

Dated: 3/31/97 _____

JEFFREY N. WEATHERHOLT

ADMINISTRATIVE LAW JUDGE

Footnote: 1

The grievances of Mr. Corob (Docket No. 94-MBOT-1033), Mr. Renner (Docket No. 94-MBOT-843), and Mr. Johnson (Docket No. 94- MBOT-1034), were consolidated with Mr. Liston's grievance by order dated May 30, 1995, by Administrative Law Judge Lewis Brewer. This matter was transferred to the undersigned Administrative Law Judge in January, 1996.

Footnote: 2

This grievance was among over 540 grievances waived to Level IV at the same time by the Respondent and the Board of Directors for the State College System of West Virginia. See Burke v. Bd. of Directors, 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: 3

According to the definitions set forth in Respondent's regulations, a "factor" is: "One of thirteen elements used to evaluate jobs." 128 C.S.R. 62 § 2.27 (1994). The thirteen factors are listed as Knowledge, Experience, Complexity and Problem Solving, Freedom of Action, Breadth of Responsibility, Scope and Effect, Intrasystems Contacts, External Contacts, Direct Supervision Exercised, Indirect Supervision Exercised, Working Conditions, Physical Coordination and Physical Demands. 128 C.S.R. 62 § 2.27 (1994). The JEP submitted into evidence by Respondent lists only twelve factors, with physical coordination and physical demands combined as Factor Twelve. Some factors, such as scope and effect, were further

broken down into two or more elements so that each position was ultimately assigned point values in eighteen categories.

Footnote: 4

Although it is the position, and not the individual, which is rated, Grievants progressions through the system lends credence to their assertions under Experience.

Footnote: 5

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: 6

Terms and criteria changed throughout the Mercer evaluation process.

Footnote: 7

Approximately six months prior to the commencement of the Mercer reclassification, management agree with Grievants that the classification of Technician II position should be increased to reflect a higher pay scale.

Footnote: 8

Grievant often fill-in for the supervisor during lunch, or other times when a supervisor is unavailable. Grievant Liston testified that during times when he was filling-in for a supervisor he has called-in off duty workers, granted "comp" time and leave requests, signed work orders, etc.

Footnote: 9

It is not clear from the record which supervisor made the notation.

Footnote: 10

Gr. Exh. O is the "Prepared Testimony of George Renner." In most, if not all, of the Mercer hearings held by the Grievance Board, prepared or "canned" testimony was suggested and allowed by the Administrative Law Judges in an effort to reduce the number of days consumed by these cases.

The other GHS Grievant, Johnson, adopted Grievant Renner's statement in Gr. Exh. O, since they perform the same type of job duties.

Footnote: 11

Grievant Renner did not list "maintenance" on his PIQ under Experience.

Footnote: 12

The transcriptionist incorrectly placed the word "boom" where the word "boiler" belongs in the transcript. Ms. Crawford said "boiler operator" not "boom operator."

Footnote: 13

It is noted that there are certain factual distinctions between the duties performed among Grievants. However, "[p]ostions classifications are based on the basis that a range of difficulty and responsibility exists . . . within a particular class . . . ." Steven W. Hays and T. Zane Reeves, Personnel Management in the Public Sector, p. 101-120 (1984). Moreover, "[n]uances among jobs do not deserve separate classification." Id., at 110. See, Jones, v. Bd. of Trustees, Docket No. 94-MBOT-978. The undersigned does not find that any of these distinctions are significant.

Footnote: 14

Grievant Corob adopted Grievant Liston's statement in Gr. Exh. Q, since they perform the same type of job duties.

Footnote: 15

Even though reading blueprints and schematics are learned skills and Grievants may have received credit for them under Knowledge or Experience, the complexity of the duties increases when these diagrams are wrong.

Footnote: 16

Many of these remain from when the system was first built, and are now in error because some contractors did not change the blueprints or manuals after changing the system.

Footnote: 17

The undersigned has only illustrated a few examples of duties Grievants perform which demonstrate that the JEC was clearly wrong, and arbitrary and capricious in assigning a degree level of 2.5 to their positions. The exhibits cited above, as well as the rest of the record, contain more examples which could have been listed.

Footnote: 18

March 11, 1996, Tr. 110.

Footnote: 19

The JEC assigned degree levels based on a simple majority of its twelve members. The JEC purposely failed to record how members voted, or the results of the vote. Ms. Crawford was outvoted on this factor. Level IV Tr. 49.

Footnote: 20

Management failed to make any notations under this factor on any of Grievants' PIQs.