THOMAS JESSUP, et al.,

Grievants,

v. **DOCKET NO. 03-HEPC-170**

HIGHER EDUCATION POLICY COMMISSION/

MARSHALL UNIVERSITY,

Respondent.

D E C I S I O N

Grievants (See footnote 1), 10 employees of the Higher Education Policy Commission at Marshall University ("Marshall"), classified as Trade Specialists, pay grade 13, filed this grievance asserting their jobs should be in a higher pay grade. They seek as relief to be placed in a pay grade 14, back pay, and any legal fees. (See footnote 2) They challenged the degree levels assigned to their Job Title in the point factors Knowledge, Complexity and Problem Solving, Scope and Effect/Nature of Actions and Impact of Actions, Intrasystems Contacts/Level of Contact and Nature of Contact, External Contacts/Level of Contact and Nature of Contact, and Working Conditions. (See footnote 3) The following Findings of Fact are properly made from the record developed at Levels III and IV.

Findings of Fact.

1. Grievants are employed at Marshall. Effective July 1, 2003, they were placed in the Trade Specialist Job Title, which is in a pay grade 13.

2. In connection with a review by the Job Evaluation Committee ("JEC") of the Physical Plant Job Family, Position Information Questionnaires ("PIQ") were completed for Grievants' jobs in the summer of 2001, describing their job duties and responsibilities and the job requirements.

3. Grievants' duties are to inspect various types of equipment, perform preventive maintenance on the equipment, and repair equipment. They also "help establish and maintain stock levels of job materials, spare parts, tools and equipment by requisitioning, receiving, storing and inventory of

replacement parts to meet the preventive maintenance requirements of the institution's mechanical HVAC equipment."

4. Grievants work on air handlers, condensing units, package heating and cooling units, pneumatic air systems, chillers, boilers, cooling towers and pumps, exhaust fans, emergency generators, and pneumatic and electronic control panels.

5. Two of the Grievants are responsible for maintenance of the swimming pool.

6. Grievants are required to have an EPA certification to perform their duties.

7. Grievants follow a procedure to test equipment, and refer to manuals and wiring diagrams. If they cannot find the source of the problem, they call service technicians with the manufacturer for assistance.

8. Grievants are not responsible for their department. They are responsible for carrying out their assigned tasks.

9. Grievants receive work orders when equipment needs to be repaired. At times they must contact the person who reported the problem to obtain more details on thenature of the problem. Sometimes the contact person is the Dean of the department. Grievants are also directed by their supervisors at times to contact the Dean of a department to advise him as to how long the repair will take. Likewise, at times the Dean of a department will contact Grievants to discuss how long the repair will take.

10. Grievants must call service technicians when they have been unable to determine why a piece of equipment is not working. This occurs about once a month. The service technician is sometimes the engineer who designed the equipment. Grievants do not ask to speak with the design engineer when they call; they ask for the engineering department and talk to whoever the manufacturer has available who is able to help them.

11. Most of the equipment Grievants work on is located on the roofs of buildings. Some of the equipment they work on is in boiler rooms, which can reach 150 degrees. Grievants work with freon, hydrochloric acid, and other caustic chemicals when they clean equipment and perform equipment maintenance. Two of the Grievants are responsible for adding chemicals to the swimming pool. They work in areas where they are exposed to asbestos, but did not identify how often. They are at risk of being stung by bees, burnt by torches and steam pipes, and electrocuted, and they use 40' ladders and man lifts that go above 70'. Some of the Grievants have been injured when lines have burst and

batteries have exploded, and they are often burnt.

12. The Trade Specialist Job Title received 1816 total points from the following degree levels in each of the thirteen point factors (See footnote 4) : 4.5 in Knowledge; 4.0 in Experience; 2.5 in Complexity and Problem Solving; 2.5 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; 2.0 in ExternalContacts, 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; 4.0 in Physical Coordination; 3.0 in Working Conditions; and 4.0 in Physical Demands. Level III Univ. Exhibit 1.

13. The point score range for a pay grade 13 is from 1756 points to 1865 points.

Discussion

A. Burden of Proof

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.19; W. Va. Code § 18-29-6. Burke, et al., v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). A higher education grievant is not likely to meet his burden of proof in a classification grievance merely by showing that the grievant's job duties better fit one job description than another, because the Mercer classification system does not use "whole job comparison". The Mercer classification system is largely a "quantitative" system, in which the components of each job are evaluated using the point factor methodology. Therefore, the focus is upon the point factors the grievant is challenging. (See footnote 5) While some "best fit" analysis of the definitions of the degree levels is involved in determining which degree level of a point factor should be assigned, where the position fits in the higher education classified employee hierarchy must also be evaluated. In addition, this system must by statute be uniform across all higher education institutions; therefore, the point factor degree levels are not assigned to the individual, but to the Job Title. W. Va. Code § 18B-9-4; Burke, supra. A higher education grievant may prevail by demonstrating theclassification decision was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehabilitation, Div. of Rehabilitation Services, Docket No. VR-88-006 (Mar. 28, 1989).

Finally, whether a grievant is properly classified is almost entirely a factual determination. As such, the JEC's interpretation and explanation of the point factors and Generic Job Descriptions or PIQ's at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 194 W. Va. 97, 459 S.E.2d 374 (1995); Burke, supra. However, no interpretation or construction of a term used in the Job Evaluation Plan (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. Watts v. Dep't of Health and Human Res., 195 W. Va. 430, 465 S.E.2d 887 (1995). The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. (See footnote 6)

As an initial matter, Grievants complained that their supervisors required the PIQ's for their employees to all be the same, and Grievant Vaughn testified that the PIQ sent to the JEC for him, and placed into evidence, was not the same as the document he signed. Grievants work for one of three different supervisors. Certainly, Marshall personnel should not be changing PIQ's after they are signed, and Marshall should look into this matter. As to Grievants' supervisors mandating that the PIQ's be the same, or supervisors preparing the PIQ's, 128 C.S.R. §62-10, entitled Classification Review Request, provides:

> 10.1. When significant changes occur in the principal duties and responsibilities of a classified position, it is the responsibility of the supervisor to recommend through established procedures that the position be reviewed. Requests for position reviews also may be initiated by an employee after discussion with the immediate supervisor. Within thirty (30) days from the date of request for review of a job, the department of human resources shall report to the requestor, in writing, whether the reclassification has beendenied or approved. The immediate supervisor must prepare a complete and accurate position description form of the duties of the position, but the description may be written by the employee at the supervisor's request.
>
> The responsibility for assigning tasks and duties to a position belongs to the supervisor. It is the supervisor's responsibility to document and submit the position description form for classification review when significant changes occur in the principal duties and responsibilities of a position. It is also the responsibility of a supervisor to ensure completion of required forms. The institutional president or the president's designee may also initiate action to review positions. The institutional president or the president's designee has authority on the campus to make classification determinations for institution-specific titles or the slotting of employees under existing systems-wide titles. The president may delegate authority to the human resource administrator for day to day management of the classification program. Management of the program requires adherence to written rules which ensure a uniform system of personnel classification. All classified positions shall be placed on any salary schedule which may be subsequently enacted by the Legislature or adopted by the governing boards.

> 10.2. A position description form shall exist for every classified position. It shall be reviewed by the supervisor and/or the president or the president's designee on a formal basis at least every three years as part of the position audit procedures established by each institution. The date of each review shall be recorded on the description.

Emphasis added. Although Grievants clearly did not like their supervisors requiring the PIQ's to be the same, it is the supervisor's job to assign duties to his subordinates, and to prepare their PIQ's. The supervisor may assign the task of preparing the PIQ to the employee, but he is not required to do so. It was obvious from the testimony presented by Grievants that their jobs are all substantially the same, so it would make sense that the PIQ's be the same.

B. Application of the Point Factor Methodology

The following table shows the differences between the degree levels assigned in the point factors challenged by Grievants for the Trade Specialist and the degree levels Grievants argued their jobs should have received.

	KN	CPS	S&E/N	S&E/I	IC/N	IC/L	EC/N	EC/L	WC (See footnote 7)
Trade Specialist	4.5	2.5	2	1	1	2	1	2	3
Grievants' Argument	5	3	4	2	3	3	3	3	4

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

1. Knowledge

The Job Evaluation Plan ("the Plan") defines Knowledge as:

> 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' Job Title received a degree level of 4.5 in Knowledge. 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.

Job Titles were assigned an additional half level if a license or certification was required to perform

the job.

Grievants argued they should have received a degree level of 5.0. A degree level of 5.0 is defined in the Plan as:

> Job requires broad trade knowledge or specific technical or business knowledge received from a formal registered apprentice or vocational training program or obtained through an associate's degree of over 18 months and up to 3 years beyond high school.

Grievants pointed out that their “job description” says 18 months of training is required, plus 2 years of experience, which they felt should be considered under Knowledge. Grievants received credit for the 2 years of experience, however, under thepoint factor Experience. This experience requirement cannot also be considered when assigning a degree level in Knowledge. Grievants also pointed out that they are required to have EPA certification, while other employees who do not have to have a certification or license are also classified as Trade Specialists.

Glenna Racer, Compensation Analyst at Marshall, and member of the JEC, noted that in order to receive a degree level of 5.0, an Associate's Degree must be needed to perform the job duties.

Grievants have succeeded in demonstrating that their Job Title received the appropriate degree level in Knowledge. The Job Title was assigned a degree level of 4.0 for the 18 months of training required to perform the job, and an additional half level for the EPA certification.

Grievants are dissatisfied that after the Physical Plant Job Family review, they now are in the same classification and pay grade as other employees who do not have to have a certification or license, whereas, prior to July 1, 2003, they were in a higher pay grade than employees working in various trades who did not have to have certification. Under the Mercer classification system, a license or certification requirement, in and of itself, does not automatically place the employee in a higher pay grade. The bottom line is whether the half level given for a certification or license adds enough points to push the employee into a higher pay grade. In this case it does not. With the half level added, the Trade Specialist Job Title received 1816 total points, which is in a pay grade 13. Removing the half level results in a reduction in total points to 1779, which is still a pay grade 13. Accordingly, the JEC was able to place employees in the Trade Specialist Job Title whether they had to have a certification or not.

2. Complexity and Problem Solving

The Plan defines Complexity and Problem Solving as:

> This factor measures the degree of problem-solving required, types of problems encountered, the difficulty involved in identifying problems anddetermining 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.

Grievants' Job Title received a degree level of 2.5 in this point factor. Grievants argued they should have received a degree level of 3.0.

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.

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

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

A half level was assigned by the JEC to Job Titles when some duties fell within one degree level, and some duties fell within the next highest degree level.

Grievants stated finding the source of a problem is technical and complex. They pointed out that they work on all kinds of equipment, and each piece is different, and they use many different tools. However, they follow a procedure to test equipment, and refer to manuals and wiring diagrams. If they cannot find the source of the problem, they call service technicians with the manufacturer for assistance.

Ms. Racer explained that in applying this point factor, the JEC looks to what extent there are guidelines, standards, precedents, and rules that guide the employee. She testified that Grievants have standard procedures they follow, and follow a rigorous testing program when they are troubleshooting. She noted that the JEC gave Grievants credit for some work within a degree level of 3.0, and she felt that a 2.5 was appropriate for Grievants' duties. It is clear Grievants rely upon their training, standard troubleshooting procedures, and manuals, regardless of which piece of equipment they are working on. There are a limited number of possible problem sources. Grievants have not proven their job duties are so frequently within a degree level of 3.0 that the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level which recognizes

some problem-solving is within a degree level of 3.0, but some duties are within a degree level of 2.0.

3. Scope and Effect

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

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

This point factor consists of two parts, Impact of Actions and Nature of Actions. Grievants challenged the degree level assigned in both parts. They argued they should have received a degree level of 4.0, rather than a 2.0 in Nature of Actions, and a degree level of 2.0 in Impact of Actions, rather than a 1.0. Grievants pointed to the fact that if they make a mistake, an entire building can be shut down, and they can be fined $27,500 per day, as can Marshall. 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." 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."

Ms. Racer testified that Scope and Effect/Impact of Actions measures the job against the mission of the institution. She noted that when the air conditioning is not working, that is an inconvenience, which does not have a direct impact on the mission of the institution. She also testified that the JEC looks to the impact of the job within the department, not the impact on specific buildings on campus.

The degree levels definitions under Impact of Actions are similarly worded and represent a subjective value judgement. Deference is given to the JEC interpretation. Jessen, et al., v. Bd. of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995). Grievants' scope of responsibility is limited to making repairs and servicing equipment. Their supervisor is ultimately responsible for their work. Grievants have not proven that their work affects an entire work unit, or even several major activities

within a department, and they clearly have responsibility only for completing their own work. Grievants have not demonstrated that their level of responsibility or the impact of their work rises to the level set forth in the definition of a degree level of 2.0. See Stephenson, et al., v. Bd. of Trustees, Docket No. 94-MBOT-825 (Dec. 30, 1996).

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

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

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

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

Ms. Racer explained that a degree level of 4.0 is assigned to employees with managerial responsibility, who are responsible for ensuring the effectiveness of operations. She opined that Grievants would not be entitled to a higher degree level, even if they did have some personal liability, which she did not agree that they did.

Grievants have not proven their duties fall within a degree level of 4.0 under Nature of Actions. They are not providing guidance to the department. Grievants are engaged in providing one of many services necessary to keep the campuses functioning. The decisions Grievants make on how to perform their duties are routine, and are based upon the application of accepted practices. See Browning v. Bd. of Directors, Docket No. 94- MBOD-985 (Aug. 15, 1996). See, also, Stephenson, supra, and Hardee v. Bd. of Directors, Docket No. 94-MBOT-373 (Jan. 10, 1997).

4. Intrasystems Contacts

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

> appraises the responsibility for working with or through other people within the [State College and University Systems of West Virginia] to get results. Consider the purpose

> and level of contact encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, explaining policies or discussing controversial issues. This factor considers only those contacts outside the job's immediate work area.

This point factor consists of two parts, Level of Contact and Nature of Contact. Grievants are challenging the degree level received in both parts. They argued they should have received a degree level of 3.0 in Level of Contact, rather than a 2.0, and a 3.0 rather that a 1.0 in Nature of Contact. A degree level of 2.0 in Level of Contact is defined in the Plan as "[s]taff and faculty outside the immediate work unit." A degree level of 3.0 in Level is defined in the Plan as:

> Supervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office.

Grievants stated they have contact with “everyone from the President on down.” In particular, Deans and professors want to know how long it is going to take to fix a problem, and when classes can be resumed. They stated that their supervisor sends them to speak with Deans and professors about these problems; however, they did not indicate how often this occurs. They also must go to the person who has reported an equipment failure to obtain more information, as the work order may just say it is too hot or too cold.

Ms. Racer noted that when Grievants speak with Deans about how long the repairs are going to take, this contact is not essential to the performance of Grievants' repair duties. When Grievants contact Deans to inquire as to the nature of the problem, they are not speaking with them in their role as a Dean.

Grievants received credit for speaking with faculty, and they have not requested a degree level of 4.0, which is the degree level dealing with contact with Deans. Grievants did not offer any testimony regarding discussions with managers, supervisors, or chairpersons. Nonetheless, were Grievants seeking a degree level of 4.0, their contact with Deans is not the type of contact that would place them within this degree level. While Grievants incidentally speak to Deans who are wanting information, this contact is not essential to the performance of their duties. Their job is to fix the broken equipment. See, Braniff v. Bd. of Trustees, Docket No. 94-MBOT-865 (Sept. 30, 1996). Further, they have not demonstrated that this contact occurs with sufficient frequency that it is “regular and recurring.” Finally, when they contact a Dean to ask what the problem is, his title is of no consequence, and Grievants are making an inquiry which could be directed to anyone who is in the building and has experienced the problem. See Gregg, et al., v. Bd. of Trustees,Docket No. 94-

MBOT-863 (Dec. 19, 1996). The same would be true of any similar contact with supervisors, managers, and chairpersons.

Grievants' Job Title received a degree level of 1.0 in Nature. Grievants argued they should have received a degree level of 3.0.

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 is defined in the Plan as:

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

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

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

Grievants pointed to the fact that have to speak with Deans, and they are sent to console people who get stuck in the elevator. They did not indicate how frequently this occurs. Occasionally consoling people stuck in an elevator has nothing to do with repairing equipment, and is not essential to the performance of their duties. See Braniff, supra. As Ms. Racer pointed out, when Grievants are discussing how long it is going to take to fix a problem, regardless of who they are speaking with, they are providing information, requiring common courtesy, which is a degree level of 1.0 in Nature of Contact. Gregg, supra. They are not resolving difficult problems with the people with whom they are speaking, or explaining policy.

5. 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 [State College and University Systems of West Virginia] to get results. Consider the purpose and level of contactencountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, influencing others or negotiation.

This point factor also consists of two parts, Level of Contact and Nature of Contact. Grievants challenged the degree level received in both parts, arguing they should have received a degree level

of 3.0, rather than a 2.0, in Level of Contact, and a degree level of 3.0 rather than a 1.0, in Nature of Contact.

A degree level of 2.0 in Level of Contact is defined in the Plan as "[g]eneral public, visitors, and/or service representatives and vendors." 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.

Grievants stated they must call service technicians when they have been unable to determine why a piece of equipment is not working, and that this occurs about once a month. The service technician is sometimes the engineer who designed the equipment. Grievants do not ask to speak with the design engineer when they call; they ask for the engineering department and talk to whoever the manufacturer has available. The JEC did not evaluate whether this person was a service representative or a sales engineer, because Grievants' PIQ's did not list this contact. Grievants' PIQ's list their external contacts as “vendors” and that they communicate with them about “periodic recommendations concerning skillful and accurate use of products and equipment.”

Ms. Racer testified that a high level product representative is someone like a consultant or owner of a company which has a contract with the institution. She did not address why the service technician would not be considered a sales engineer.

The undersigned concludes that Grievants have not demonstrated that the service technicians they speak with to obtain assistance in repairing equipment are salesengineers. These individuals would seem to be more accurately described as service representatives, as they are speaking with Grievants about servicing the equipment.

The definitions under External Contacts/Nature of Contact are nearly identical to those found under Intrasystems Contacts/Nature of Contact, and will not be repeated here.

Grievants pointed to their discussions with service technicians about what is wrong with the equipment, and noted that they express their opinion about what is wrong with the equipment. Grievants are calling to describe what a particular piece of equipment is or is not doing, and to obtain information on how to fix it. There is nothing controversial about this. This is routine information exchange. See Gregg, supra.

6. Working Conditions

Working Conditions is defined in the Plan in conjunction with Physical Demands as:

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

Grievants argued they should have received a degree level of 4.0, rather than a 3.0 in this point factor.

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

> 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 conditions such as radiation, chemicals, diseased laboratory animals, contagious diseases, heights, and moving parts.

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

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

Grievants testified that most of the equipment they work on is located on the roofs of buildings. Some of the equipment they work on is in boiler rooms, which can reach 150degrees. Grievants testified they are exposed to “very hazardous” chemicals. They work with freon, hydrochloric acid, and other caustic chemicals when they clean equipment and perform equipment maintenance. Two of the Grievants are responsible for adding chemicals to the swimming pool. Grievants feel they are also exposed to chemicals when they work on the roof of the science building near the exhaust fans, although they could not identify the chemicals to which they would be exposed, or the level of exposure, and they obviously do not always work on the roof of the science building. They stated they work in areas where they are exposed to asbestos, but did not identify how often. They noted they are constantly at risk of being stung by bees, burnt by torches and steam pipes, and electrocuted, and that they use 40' ladders and man lifts that go above 70'. Some of the Grievants have been injured when lines have burst and batteries have exploded.

Ms. Racer stated that the hazards faced by Grievants are recognized by a degree level of 3.0. She noted Grievants are not exposed to the working conditions listed in the definitions 100% of the

time. With regard to the chemicals to which Grievants are exposed, she noted they are used and stored in a safe manner, and are contained.

Nothing in the definitions of this point factor supports a finding that in order to receive a degree level of 4.0 an employee must be exposed to the extreme conditions listed 100% of the time. The definition of a degree level of 4.0 requires “frequent or prolonged exposure.”

> The JEC was clearly wrong in its application of this point factor to the extent it required that the employee be exposed to extreme temperatures all the time. This point factor, by definition, looks at the conditions under which the job is normally performed, and a degree level of 4.0 requires only frequent or prolonged exposure to extreme conditions.

Lovely, et al. v. Bd. of Trustees, Docket No. 94-MBOT-762 (Nov. 27, 1996); aff'd, Cir. Ct. of Kanawha County, Civil Action No. 97-AA-12 (Mar. 8, 2000). While Grievants' exposure to chemicals is better characterized by a degree level of 3.0, as routine exposure to light chemical substances, or occasional exposure to hazardous conditions such as chemicals,”Grievants have demonstrated that they usually, “frequently,” work outdoors on the roofs of buildings, regardless of the temperature. They have demonstrated that a degree level of 4.0 is a better fit for their duties.

C. Summary

Grievants proved their duties rate a degree level of 4.0 in Working Conditions, rather than a 3.0. This adds 14 points to the previous total of 1816 points, resulting in a total of 1830 points, which is still within a pay grade 13. Accordingly, Grievants have not demonstrated that the JEC was clearly wrong in assigning their Job Title or in assigning their Job Title to a pay grade 13. As employees in several different trades are assigned to the Trade Specialist Job Title, and the Working Conditions to which the various employees are exposed may vary, no changes need be made to the data line for the Job Title.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. The governing boards are required by W. Va. Code § 18B-9-4 to establish and maintain an equitable system of job classifications for all classified employees in higher education.

2. The burden of proof in a misclassification grievance is on the grievant to prove by a

preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.17.

3. The Job Evaluation Committee's interpretation and explanation of the Generic Job Description and point factors will be given great weight unless clearly wrong, where the proper classification of a grievant is almost entirely a factual determination. See Tennant v. Marion Health Care Found., 194 W. Va. 97, 459 S.E.2d 374 (1995); Burke, et al., v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). 4. The Job Evaluation Committee's decision that Grievants are Trade Specialists, pay grade 13, is not clearly wrong or arbitrary and capricious.

5. The Job Evaluation Committee's assignment of degree levels to the point factors for the Trade Specialist Job Title is neither clearly wrong nor arbitrary and capricious.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Cabell County. Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 29-6A-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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

BRENDA L. GOULD

Administrative Law Judge

Dated: October 22, 2003

Footnote: 1

The Grievants are Thomas Jessup, Virgil Crockett, Charles Devaney, Michael Justice, Woodrow Edmonds, Donald Vaughn, Darrell Griffith, Danny Holland, Phillip Haye, and Denver Cooper.

Footnote: 2

As Grievants were not represented by an attorney at any level of the grievance procedure, they have not incurred any legal fees. Moreover, the Grievance Board has no authority to award legal fees. Chafin v. Boone County Health Dep't, Docket No. 95-BCHD- 362 (June 21, 1996); Smarr v. Wood County Bd. of Educ., Docket No. 54-86-062 (June 16, 1986).

Footnote: 3

The grievance was filed on June 5, 2003, after Grievants were notified of their new classification to be effective July 1, 2003. Grievants' supervisor responded at Level I that he was unable to grant the relief sought, and the same response was given at Level II. Grievants appealed to Level III, where a hearing was held on June 13, 2003. A Level III decision was issued on June 20, 2003, denying the grievance. Grievants appealed to Level IV on or about June 25, 2003. A Level IV hearing was held on August 29, 2003. Grievants were represented by Grievant Jessup, and Respondent was represented by Jendonnae Houdyschell, Esquire. This matter became mature for decision on September 24, 2003, upon receipt of Respondent's post-hearing written argument. Grievants declined to submit post-hearing written argument.

Footnote: 4

The thirteen point factors are set forth in 128 C.S.R. 62 § 2.27, and 131 C.S.R. 62 § 2.27. Burke, et al., v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995).

Footnote: 5

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

Footnote: 6

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

Footnote: 7

These headings are shorthand for the following point factors: KN is Knowledge; CPS is Complexity and Problem Solving; S&E/N is Scope and Effect/Nature of Actions; S&E/I is Scope and Effect/Impact of Actions; IC/N is Intrasystems Contacts/Nature of Contact; IC/L is Intrasystems Contacts/Level of Contact; EC/N is External Contacts/Nature of Contact; EC/L is External Contacts/Level of Contact; and WC is Working Conditions.