JEFFREY JESSEN, et al., .

.

Grievants, .

.

v. . Docket No. 94-MBOT-1059

.

BOARD OF TRUSTEES, WEST VIRGINIA .

UNIVERSITY, .

.

Respondent. .

D E C I S I O N

Jeffrey Jessen, Gene Brookover and Richard Koval (Grievants) each submitted a grievance challenging his classification as a PRT Systems Operator in Pay Grade 12 by the Respondent Board of Trustees (BOT) under the Job Evaluation Plan for State College and University Systems of West Virginia developed by William M. Mercer, Inc. (Mercer Plan). Their grievances were initiated in July 1994 in accordance with specific procedures established in § 18 of the Legislative Rule for Personnel Administration promulgated by the University System of West Virginia Board of Trustees on May 5, 1994. 128 C.S.R. 62. In October 1994, BOT waived these grievances to Level IV. (See footnote 1) In accordance with W. Va. Code § 18-29-5(b), thethree grievances at issue here were consolidated on January 25, 1995. A Level IV hearing was conducted in this Board's office in Elkins, West Virginia, on June 28, 1995. This matter became mature for decision on July 24, 1995, following receipt of timely post-hearing submissions from the parties.

Because grievances challenging pay and classification are not disciplinary in nature, Grievants have the burden of proving by a preponderance of the evidence that they have 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). Whether Grievants are properly classified is substantially a factual determination that must be made on a case-by-case basis. See Snider v. W. Va. Bureau of Environment, Docket No. 95-DEP-306 (Sept. 29, 1995); Burke, supra.

PRELIMINARY ISSUE

Before reviewing the evidence presented by the parties, one significant issue raised by the Respondent needs to be addressed. Respondent contended at the Level IV hearing, and renewed the contention in its post-hearing brief, that this Grievance Board has no authority to conduct a de novo review of Grievants' classifica-tion, and that Grievants are limited to arguing the same theories and evidence which they presented to the Respondent's Job Evaluation Committee (JEC). In the instant matter, Respondent argues that because Grievants' appeal to the JEC contended thatthey should have been classified at a Pay Grade 14, they are estopped from contending at Level IV that they should be classified instead at Pay Grade 13. Likewise, Respondent objected to admission of any evidence relating to the nature of Grievants' duties which was not submitted for consideration to the JEC. A similar contention has previously been rejected by this Grievance Board in the context of denying Respondent's Motion to Dismiss another Mercer Plan grievance because the grievants elected to seek different relief at Level IV from what they sought before the JEC. Burke v. Bd. of Trustees, Docket No. 94-MBOD-349 (Aug. 8, 1995). Likewise, the present objections are not supported by any persuasive authority.

The Legislative Rule authorizing the instant grievances contains the following pertinent guidance:

> An employee may seek a review of his/her initial classification under the new program implemented pursuant to this rule [Mercer Plan] and may appeal such initial classification through the procedures of W.Va. Code §18-29 after completing such review. Such review or appeal shall be governed by the provisions of this rule and to the extent these provisions are inconsistent with W.Va. Code §18B-9-7 or W.Va. Code §18B-9-4, those code provisions are deemed null and void pursuant to the authorization contained in W.Va (sic) Code §18B-9-4(c). If an employee does not first seek a review of his/her initial classification through the internal procedures set out herein, they shall be prohibited from grieving that classification under W.Va (sic) Code §18-29.

128 C.S.R. 62 § 18.1 (1994).

> If an employee is dissatisfied with the determination of the job evaluation committee the employee may grieve his/her initial classification under this program, including the job or position description and assignment to pay grade or salary schedule, within thirty (30) work days from receipt of the notification set out in Section 18.5 of this rule, by filing a grievance pursuant to theprocedures of W.Va. Code §18-29. Any employee

> not filing a grievance under the provisions of this rule within those thirty (30) work days, or not seeking a review timely pursuant to this rule, shall be deemed to be equitably and uniformly compensated for the purposes of Article 9, Chapter 18B of the state code and shall also be deemed to have expressly waived his/her right to grieve such initial classification, absent intervening and countervailing circumstances that effect that initial classification.

128 C.S.R. 62 § 18.7 (1994) (emphasis added).

Respondent's regulations governing these grievances are fairly detailed, and specify those employee rights or privileges which are being excluded by this limited grievance procedure. However, Respondent has not pointed to, nor has the undersigned been able to find, any specific provision or language in the Rule which supports its position. Certainly, § 18.1 does not support Respondent's argument. On the contrary, the Rule specifically limits application of certain provisions in W. Va. Code §§ 18B-9-7 and 18B-9-4 without limiting the rights of grievants under W. Va. Code §§ 18-29-1, et seq. According to the Rule, the only employees deemed to be equitably and uniformly compensated are those who do not submit a timely appeal to the JEC, followed by a timely grievance under §§ 18-29-1, et seq. Thus, employees who timely exercise their appeal and grievance rights may assert at Level IV that they are not equitably and uniformly compensated.

The "review" by the JEC did not involve an evidentiary hearing. Neither Grievants nor a designated representative were present when their "appeal" was considered. Moreover, there is no transcript of the matters considered in this process. The only record of the JEC review is a document which shows the persons whowere present when the review was conducted and voted upon, and the changes made in the numerical values assigned to various aspects of the position, if any. (See footnote 2) However, neither this document or any other record indicates how any member of the JEC voted, nor is there a statement of reasons for rejecting the appeal. Precluding Grievants from supplementing this record at Level IV would deny them any meaningful opportunity to develop a record to demonstrate that the BOT's action in classifying them as it did was in error. See Frymier-Halloran v. Paige, 458 S.E.2d 780 (W. Va. 1995).

Accordingly, this Grievance Board has the same authority to review the facts and circumstances of Grievants' duties, in order to verify that they are being equitably and uniformly compensated in accordance with W. Va. Code § 18B-9-4, as it does to determine whether state employees have been properly classified by the West Virginia Division of Personnel under W. Va. Code § 29-6-10,

and whether school service personnel have been correctly categorized in accordance with W. Va. Code § 18A-4-8.

EVIDENCE

Grievants' duties generally involve controlling the current operations of West Virginia University's Personal Rapid Transit System (PRT), built by Boeing Aerospace at an original cost of $126 million. The PRT carries over two million passengers annually. G Ex A. Grievants observe 32 separate television monitors for possible safety violations. They are specifically responsible forcontrolling and monitoring a sophisticated computer system that operates up to 71 vehicles moving 15 seconds apart on 8.7 miles of single lane "guideway," the dedicated surface on which the PRT vehicles run.

The process under which Grievants were reclassified, effective January 1, 1994, began with completion of a Position Information Questionnaire (PIQ). These PIQs are highly-structured documents, 17 pages in length, on which individual employees are to describe the duties of their position, as well as certain minimum qualifications required to carry out these duties. Employees were further tasked with rating varying aspects of their position, in accordance with a scale established in the Mercer Plan. These ratings were reviewed by their immediate supervisor and by one level of management above the immediate supervisor.

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 Mercer Plan (See footnote 3) (R Ex 1) while conducting the process of reviewing the PIQs and assigning values to eachfactor. After reviewing all PIQs submitted by PRT Systems Operators, the JEC assigned points for each factor as shown (R Ex 2):

Knowledge	4.0
Experience	2.0
Complexity and Problem Solving	3.0
Freedom of Action	3.0

Scope and Effect - Impact of Actions 2.0

Scope and Effect - Nature of Actions 2.0

Breadth of Responsibility 1.0

Intrasystems Contact - Nature of Contact 1.0

Intrasystems Contact - Level of Contact 2.0

External Contacts - Nature of Contact 2.0

External Contacts - Level of Contact 3.0

Direct Supervision - Number of Direct 1.0

Subordinates

Direct Supervision - Level of Supervision 1.0

Indirect Supervision - Number of Indirect 1.0

Subordinates

Indirect Supervision - Level of Supervision	1.0
Physical Coordination	3.0
Working Conditions	2.0
Physical Demands	2.0

Using a mathematical equation which is not at issue, the foregoing levels were calculated to award these positions a total of 1,745 total points, equating to a Pay Grade 12 position. At the time Grievants were reclassified, the starting pay for Pay Grade 12 was $16,596 per year.

Grievants limited their Level IV appeal to contesting their assigned values in two of these twelve factors, Factor 2, Experience, and the Nature of Action element of Factor 5, Scope and Effect.

In regard to "Experience," the Job Evaluation Plan provides:

> This factor measures the amount of prior directly related experience required before entering the job. Previous experience or training should not be credited under this factor if credited under Knowledge.

R Ex 1.

In regard to "Scope and Effect," the Job Evaluation Plan offers the following guidance:

> 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 the 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.

In assessing Grievants' earlier appeal to the JEC, their immediate supervisor, Nicholas Zara, stated on January 31, 1994:

> I agree with this appeal. The jobs within PRT Operations are unique in knowledge required, type of system, etc. Decisions made in Operations effect not only system operations but the safety of passengers and staff. These jobs are unique and should be reviewed from that standpoint.

With the concurrence of Robert Hendershot, Manager of PRT System Engineering, Mr. Zara further noted:

> This position is indeed unique within the State College and University Systems of West Virginia. As such, any classification of this position must consider the specific knowledge, training and responsibilitiesinherent to this position and compare those to similar positions within the industry. There are only a limited number of similar positions throughout the country and contact with comparable Transportation Systems shows a large discrepancy between pay scales for similar positions at those systems and that proposed for the WVU-PRT System. I therefore agree that the pay grade for this position should be re-evaluated and a more appropriate pay grade be implemented.

Brookover grievance file (emphasis in original).

In support of Grievants' earlier appeal to the JEC, Robert Bates, Director of Transportation, stated:

> This position has no similar counterpart within the University System. The closest outside State Government and Education would be Air Traffic Controllers at an airport at least the size of Charleston or Control Room Operators of medium to large size power plants. It may be that another review of this position is in order.

At the time Grievant Brookover completed his PIQ in November 1991, he responded to the question, "Please describe the type and least amount of experience required, if any, for a person coming into this position and justify how the experience is essential to the performance of the duties

and responsibilities" by stating: "Dispatching experience, 6 mo - 1 yr; computer operations, 6 mo - 1 yr; electronic or electro-mechanical, 6 mo - 1 yr." He then checked level "C" (See footnote 4) indicating that "over one year and up to two years of experience" was the minimum amount of experience required for a new hire in the position. (Brookover grievance file.) Grievant Brookover explained that in completing the PIQ he contemplated that the minimum experience in each activity listedwould be added to reflect a minimum of 18 months of experience, consistent with the one to two year experience level which he checked.

Grievant Koval checked level "A" on his PIQ in October 1991, indicating that the position required a minimum of "no experience or up to six months of experience." Grievant Koval stated that he received no training or instruction on completing his PIQ. However, his PIQ was reviewed and endorsed by his immediate supervisor, Alfred Yoppi, and by his second level supervisor, Robert Hendershot, Manager PRT System Engineering. Grievant Brookover's PIQ was similarly reviewed by his immediate supervisor, Danny Sinclair, as well as by Mr. Hendershot. Curiously, although these reviewers noted their exceptions to other levels checked by both Grievants, none of the reviewers noted any disagreement on the PIQ to the inconsistent levels checked under "experience" by Grievants Koval and Brookover. In any event, Grievant Koval testified at Level IV that he now believes that a minimum of one to two years' experience is necessary for someone starting as a PRT Systems Operator. At the time he was hired into the position, Grievant Koval had six years of experience in the Navy with satellite communications and computers.

Grievant Jessen's PIQ was not part of his appeal file and was not introduced at the Level IV hearing. He testified that he completed a PIQ sometime in November-December 1991 but it was apparently "lost" after he turned it in. His testimony generally concurred with Grievants Brookover and Koval.

Grievants also presented a Position Description (PD) submitted for posting a vacant PRT System Operator position, approved by Robert Bates, Director of Transportation, and Robert Hendershot, Manager of PRT System Engineering, on May 19, 1995. The "Experience" portion of the PD states:

> This position requires a minimum of two (2) years work experience in the following areas:
>
> * transit system operations

* computer system applications / programming /

operations

* electronics systems design / testing /

operations

* radio communications

* mechanical / electro-mechanical system operations

(Candidates should possess experience in more than one area.)

G Ex B.

On the Scope and Effect portion of his PIQ, Grievant Brookover checked Level "D" as best describing his job. This level states:

> Work contributes to or ensures the effectiveness of operations or services having significant impact within 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.

Grievant Brookover stated that he believed level D was appropriate because the PRT's ability to remain in operation was a significant factor considered by WVU in deciding whether to cancel classes during adverse weather conditions.

The PD for the vacant PRT System Operator position previously discussed contains the following

narrative under "Scope and Effect:"

> The PRT System provides the transportation services necessary for the efficient operation of the university. An average of over 16,000 students, faculty and staff rely on PRT service on a daily basis. The PRT System Operator is the primary interface between the PRT System and the customer, and therefore all errors in judgement and less than adequate knowledge of duties and responsibilities of this position can have significant impacts on class schedules and attendance and consequently the overall operations of the university.
>
> The PRT System Operator has the primary safety responsibilities within the system. This position is responsible for controlling all access to system facilities and equipment. This includes passengers, PRT maintenance personnel, contractors and other university service personnel. Errors or the lack of sound judgement in this area may have potentially devastating effect including possible injury or death.
>
> The large number of tours, orientation, recruitment visitation etc. provided by the PRT, require that the communication abilities of the operator and their ability to effectively operate the system for these specialize (sic) events can greatly enhance the image of the university and errors in judgement or job knowledge can have negative effects on enrollment both present and future.

G Ex B.

This narrative is consistent with other evidence presented by Grievants reciting various safety hazards associated with a system that operates on 575 volts of electricity. Likewise, this statement supports their claim that it is very important that they perform their duties in an error-free manner.

Grievants presented evidence that the annual starting salary for an "Airport Train Assistant Controller" at the Dallas-Fort Worth Airport, a position with duties generally comparable to Grievants, is $25,965. Similarly, in accordance with a collective bargaining agreement covering employees of the Metropolitan Dade County transit system, "Train Operators" there enjoy an annualstarting salary of $22,256. This evidence regarding the salaries paid persons performing similar duties in Dallas and Miami does not appear probative in regard to the issue of Grievants' proper classification under the Mercer Plan, as that plan was explained by Respondent's witness.

Respondent further noted that the areas represented by Grievants' evidence and Morgantown, West Virginia, are signif-icantly different in terms of the cost of living. In addition, Grievants' documentary evidence does not account for such benefits as retirement, medical insurance and paid

holidays, thereby precluding a meaningful comparison of salaries. Most importantly, there was no persuasive evidence that W. Va. Code § 18B-9-4 requires the Mercer Plan to create a salary schedule that mirrors any particular segment of the working population. As observed by the West Virginia Supreme Court of Appeals in West Virginia University v. Decker, 191 W. Va. 567, 569, 447 S.E.2d 259 (1994), "[i]nstitutions of higher education in West Virginia are dependent upon the legislature for the funding of employee salaries." Had the legislature exercised its discretion more generously, Pay Grade 12 might have been set closer to the figures presented by Grievants. In any event, Grievants failed to show how their evidence relating to comparative salaries should be given any probative value in determining their proper classification under the Mercer Plan's classification scheme.

Teresa Crawford, a Senior Compensation Analyst in the Department of Human Resources at West Virginia University,testified for the Respondent. In that position, Ms. Crawford has handled classification matters for the past ten years, including responsibility for that segment of the University where Grievants are employed. All Compensation Analysts at WVU are certified as Compensation Professionals by the American Compensation Association which requires successful completion of a series of courses and tests.

Ms. Crawford indicated that the primary purpose of the Mercer Plan was to insure that employees performing similar duties and responsibilities anywhere in the state college and university system were classified at the same title and pay grade. In the course of her work with the JEC in implementing the Mercer Plan, she had numerous and extensive conversations with Robert Bates, Director of Transportation, during the evaluation process which led to Grievants' classification in Pay Grade 12. She noted that Grievants were initially slotted at Pay Grade 10 but moved to Pay Grade 12, based upon Mr. Bates' opinion that Pay Grade 12 was more consistent with comparable duties being performed by other personnel at the PRT.

Ms. Crawford stated that there are six PRT System Operator positions and five PIQs were submitted by employees occupying those positions. (See footnote 5) Two of those PIQs were submitted by Grievants Brookover and Koval as discussed earlier. The three remaining employees, none of whom filed a grievance regarding hisclassification, marked Level B (2 points) under Factor 2 as representing the minimum amount of experience required for the position. However, Ms. Crawford also testified that the two-hour training programs she conducted on how to fill out the PIQs were

limited to first level supervisors and above. These supervisors, in turn, were to assist their subordinates in completing the PIQs. Grievants testified without contradiction that they personally received no guidance or assistance in completing their PIQs.

Ms. Crawford explained that Factor 2 was evaluated by the JEC based upon the minimum amount of experience that would be required prior to coming into the position in order to perform the essential duties of the position, with the understanding that some period of on the job training would be necessary to become fully proficient in the position. She also noted that some positions requiring more experience may require less knowledge prior to entering the position. In Ms. Crawford's opinion, Level B or two, "over six and up to twelve months of experience" represented a fair assessment of the minimum experience needed for Grievants' positions. She did not explain her basis for this opinion.

Ms. Crawford explained that the values marked on the PIQs by the employees and their supervisors were re-evaluated by the JEC as a group, based upon a majority view of the membership on how each factor should be fairly and uniformly applied. She noted that certain values she checked on her own PIQ were revised by the JEC, based upon a differing interpretation of the language contained in the Mercer Plan's "point factor methodology." Additionally, anyevaluation level had to be substantiated by the duties and responsibilities stated in the PIQ, as well as the supporting narrative information supplied for any given factor. The PIQs were reviewed numerous times during the classification process.

Ms. Crawford testified that Factor 5, Scope and Effect, was the most complex factor in the Mercer Plan. This factor includes two separate but related elements, Nature of Action and Impact of Actions. Level D under Nature of Action, the rating sought by Grievants here, was consistently awarded only to higher level management positions where a manager is responsible for an entire unit or department. In such positions, the manager is responsible for insuring that the objectives of that department are accomplished. Despite the language set forth in the Point Factor Methodology, the JEC looked at the positive impact of the position on the institution, not the effects of a possible mistake or error by an employee in the position. In other words, all positions were evaluated on the assumption that employees were competently performing the duties of their job. Consistent with Ms. Crawford's testimony, the Manager/PRT System Maintenance and the Manager/PRT System Engineering were evaluated by the JEC at Level D (4 points). R Ex 2 at 21.

The JEC recognized that the PRT is unique by creating a series of job titles (PRT Technician I & II, PRT Systems Operator, Supervisor/PRT Stores, Supervisor/PRT Maintenance, Manager/PRT System Maintenance and Manager/PRT System engineering) which exist only at West Virginia University. Ms. Crawford observed that,while Grievants may occasionally fill in for their supervisor when the supervisor is on annual or sick leave, absent evidence that this is done on a regular and frequent basis, and that Grievants perform the full range of duties associated with the position, such activities would not comprise such a substantial portion of their duties as to alter the classification of their position.

DISCUSSION

As previously noted, whether Grievants are properly classified is largely a factual determination. 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 Found., 459 S.E.2d 374 (W. Va. 1995). Accordingly, subjective determinations of the JEC regarding application of the Mercer Plan's point factor methodology to an employee or group of employees are entitled to deference when being reviewed by this Grievance Board. See Burke, supra. See also Sui v. Johnson, 784 F.2d 238 (4th Cir. 1984). Such 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, a review of the evidence of record makes it clear that a mistake has been made. See Frymier-Halloran v. Paige, 458 S.E.2d 780, 788 (W. Va. 1995); Board of Education v. Wirt, 192 W. Va. 568, 453 S.E.2d 402 (1994); Kyle v. W. Va. State Board of Rehabilitation, Docket No. VR-88-006 (Mar. 28, 1989).

These standards must now be applied in reviewing the twoparticular decisions challenged here, the JEC's selection of point levels assigned to Grievants' positions in Factor 2, Experience, and Factor 5, Scope and Effect. The latter factor will be considered first.

As explained by Ms. Crawford, the Nature of Action element of Factor 5, Scope and Effect, represents an attempt to subjectively measure the value of a particular job to the institution, not to objectively measure the impact of an error by an employee performing the job, as suggested by the language in the Mercer Plan. Such value judgments are an inherent element of the function of position classification. See generally, Steven W. Hays & T. Zane Reeves, Personnel Management in the Public Sector 101-120 (1984). Ms. Crawford testified credibly that the JEC consistently elected to

assign a Level D value under the element at issue to supervisors over departments and units with broad responsibility for meeting the objectives set for their particular unit. Grievants presented no evidence that this interpretation was not consistently applied or that such an interpretation was precluded by W. Va. Code § 18B-9-4.

PRT employees, like virtually all classified staff, perform a support service which facilitates accomplishment of the ultimate educational mission of their university. While the JEC's interpretation of this element of the Mercer Plan fails to recognize the PRT's contribution to the successful accomplishment of the educational mission to the same extent as the point values proposed by Mr. Bates, Mr. Hendershot and Grievants, this isnonetheless a highly subjective judgment on which reasonable minds may differ. Where, as here, the Respondent has articulated a rational basis for the interpretation developed in the course of applying the Mercer Plan, the undersigned is not persuaded that the JEC's decision on this issue was either arbitrary and capricious or clearly wrong.

Turning to Factor 2, Experience, the record indicates that although some subjectivity must necessarily be associated with selecting the level of experience required for entry into the Grievants' position, this factor is more amenable to objective measurement. In assessing the available evidence, the undersigned finds that the testimony by Respondent's witness, Teresa Crawford, that the levels selected by individual employees on their PIQs may be largely discounted, unless supported by narrative comments in the PIQ, or other factors, including the opinions of knowledgeable supervisors, represents an acceptable basis for the JEC to assign a different point level to a given factor.

In this particular matter, the record indicates that none of the Grievants received any training or assistance in completing their PIQs. There is no evidence in the record that three non-grieving PRT System Operators who marked Level B for Factor 2 of their PIQs received any more training or guidance than Grievants. Nonetheless, Ms. Crawford cited this fact as support for the JEC's action in assigning point level B to these positions.

Grievant Brookover testified credibly regarding the specific reasons why he checked Level C on his PIQ as representing theproper amount of minimum experience. Grievant Koval likewise credibly explained why he checked Level A at the time he completed his PIQ and why he now believes that assessment was in error and Level C more appropriately describes the minimum experience required for their positions. Unlike Scope and Effect, there was no indication that Grievants misunderstood the

Mercer Plan's meaning and intent in regard to this factor, nor that the JEC redefined the factor to require something other than the minimum amount of experience required to perform the essential duties of the position, as explained by Ms. Crawford.

Accordingly, Respondent's evidence tended to place doubt upon the reliability of the point values selected by the non-grieving PRT System Operators, while Grievants' assessment was supported by both the narrative in their PIQs and their overall presentation regarding the nature of the work which they perform on a daily basis. However, simply establishing by a preponderance of the evidence that their assessments regarding the minimum experience level required for these positions is more reliable than their non-grieving peers does not equate to a sufficient basis for finding the JEC's decision on this issue was clearly wrong.

As noted previously, the PIQs for Grievants Brookover and Koval contain an unresolved ambiguity as to the assessment of their supervisors in regard to the appropriate level of experience to be assigned under Factor 2. This ambiguity must be resolved inGrievants' favor based upon Grievants' Exhibit B. (See footnote 6) That document contains the same definition for "experience" as adopted by the JEC under the Mercer Plan, as indicated by Ms. Crawford's testimony. Most importantly, this document indicates that a minimum of two years work experience in certain related areas is essential for a new hire entering these positions. Both Mr. Bates and Mr. Hendershot signed the document endorsing its contents. As a business record, and not simply a document prepared for use in this dispute, this document is more persuasive than the testimony of the individual Grievants in this matter. Grievants' supervisors are clearly on record that more than six to twelve months of experience is a prerequisite to entry into Grievants' positions. (See footnote 7)

Curiously, Ms. Crawford was not asked by Respondent to directly address this document in her testimony. Instead, she testified generally that Mr. Bates had indicated his general agreement with the pay grade assigned to these Grievants in comparison to the other positions in Transportation and the PRT System, once their pay grade had been adjusted by the JEC from PayGrade 10 to Pay Grade 12. Additionally, Ms. Crawford testified that, in her opinion, six to twelve months' experience (Level B) represented a fair assessment of the minimum experience required for the position as defined under the Mercer Plan.

While Ms. Crawford's opinion as a classification specialist may carry greater weight in such matters than the opinion of an individual employee or group of employees, this dispute centers upon

the amount of experience an employee needs to begin performing in Grievants' positions. Ordinarily, that question can best be answered by the supervisor or supervisors responsible for seeing that the work is performed, in this case Mr. Bates and Mr. Hender-son. Ms. Crawford never explained why her opinion differed from theirs on this important particular. Thus, despite the deference extended to the opinion of Ms. Crawford and the decisions of the JEC, as required under the standards of review previously discussed in this opinion, the undersigned finds that the JEC's decision to credit Grievants' position with no more than six to twelve months' experience, as the minimum entry level requirement under Factor 2, is not supported by substantial evidence of record. Instead, this decision was based upon a clear mistake of fact as to the true experience requirements for a new hire. See Bd. of Educ. v. Wirt, 192 W. Va. 568, 453 S.E.2d 402 (1994).

Having reached this conclusion, consideration must be given to the appropriate remedy to rectify this matter. According to the Mercer Plan, the correct Level C or "3" rating under Factor 2 equates to 224 points, 56 points more than the Level B or "2"rating previously assigned by the JEC. These additional 56 points raise the total points assigned to these positions from 1745 to 1801. Grievants need only a minimum of 1756 points to be assigned to Pay Grade 13. Accordingly, while Grievants are properly classified as PRT Systems Operators, the Respondent will be required to assign these positions to Pay Grade 13 and to pay backpay to Grievants, retroactive to January 1, 1994, based upon the difference, if any, between each Grievant's actual salary and the salary each would have received had he been assigned to Pay Grade 13 at that time.

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

FINDINGS OF FACT

1. Grievants are employed by West Virginia University in the operation of the Personal Rapid Transit System (PRT), and were initially classified under the Mercer Plan as PRT Systems Operators in Pay Grade 12.

2. Grievants timely appealed their classification to the Respondent's Job Evaluation Committee (JEC) seeking a higher pay grade.

3. Under the Mercer Plan positions are evaluated under a "point factor methodology" wherein point values are assigned to twelve "job evaluation factors:" (1) knowledge; (2) experience; (3)

complexity and problem solving; (4) freedom of action; (5) scope and effect; (6) breadth of responsibility; (7) intrasystemcontacts; (8) external contacts; (9) direct supervision exercised; (10) indirect supervision exercised; (11) physical coordination; and (12) working conditions and physical demands. R Ex 1.

4. Grievants limited their appeal to challenging the point values they were assigned in two factors, Factor Two, experience, and Factor Five, scope and effect.

5. The PRT transports over two million passengers annually using 71 automated vehicles over a dedicated "guideway" covering 8.7 miles, connecting various West Virginia University campuses and downtown Morgantown, West Virginia.

6. PRT Systems Operators operate the PRT from a Central Control Room through a dedicated computer network employing custom operational software. Grievants are responsible for maintaining system safety by monitoring a closed circuit television system and various communication devices.

7. Grievant's supervisors, including Robert Bates, Director of Transportation, and Robert Hendershot, Manager of PRT System Engineering, are on record that a minimum of two years work experience is required for a candidate seeking employment in Grievants' positions. G Ex B.

8. The JEC determined that only six to twelve months of prior work experience is necessary for entry into Grievants' positions. As a result, Grievants' positions were evaluated at Level B for Factor Two, experience, under the Mercer Plan's "Point Factor Methodology."

9. The JEC evaluated Grievants' positions under the Nature ofAction element of Factor Five, scope and effect, at Level B, in accordance with the Point Factor Methodology.

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 classifica-tions 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 the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.17; Burke, supra.

3. Determinations of the Job Evaluation Committee regarding application of the Mercer Plan's point factor methodology are essentially questions of fact. In that regard, the JEC's interpretation and

explanation of the point factors and PIQs at issue will be given great weight unless clearly erroneous. Burke, supra. See generally, Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W. Va. 1995). Subjective determinations of the JEC regarding application of the Mercer Plan's point factor methodology to an employee or group of employees are entitled to deference when being reviewed by this Grievance Board. Such determinations may nonetheless be found to be arbitrary and capricious if not supported by a rational basis, 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. Burke, supra. See Frymier-Halloran v. Paige, 458S.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 Rehabil-itation, Docket No. VR-88-006 (Mar. 28, 1989).

4. The Job Evaluation Committee's determination that Grievants should be rated at Level D under the Nature of Action prong of Factor 5, Scope and Effect, in accordance with the Mercer Plan's Point Factor Methodology, is not clearly wrong.

5. Grievants demonstrated by a preponderance of the evidence that the work they perform requires a minimum of over one year of experience prior to entering the job.

6. The Job Evaluation Committee's determination that Grievants should be rated at Level B under Factor 2, Experience, representing only six to twelve months of relevant experience prior to entering the job, is not supported by substantial evidence of record, is based upon a clear mistake of fact and is, therefore, clearly wrong.

7. Grievants demonstrated by a preponderance of the evidence that by assigning the point value to which they are properly entitled under the Mercer Plan (Level C or three) to Factor Two, experience, their properly classified position of PRT Systems Operator should be assigned to Pay Grade 13.

Accordingly, this Grievance is **GRANTED** . The Respondent Board of Trustees is hereby **ORDERED** to allocate the properly classified PRT Systems Operator positions occupied by Grievants Jeffrey Jessen, Gene Brookover, and Richard Koval to Pay Grade 13,retroactive to January 1, 1994, and to pay each of them damages in the form of the difference between the salaries they would have received had their positions been properly allocated to Pay Grade 13 and the salaries which each of them received while their positions were improperly allocated to Pay Grade 12.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the circuit court of the county in which the grievance occurred and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

LEWIS G. BREWER

Administrative Law Judge

Dated: October 26, 1995

Footnote: 1These grievances were among over 540 grievances waived to Level IV at the same time by the BOT and the Board of Directors for the State College System of West Virginia. For a more detailed recitation of the procedural history involving these grievances,see the "background" section of this Board's decision in Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995).

Footnote: 2These numerical scores are referred to as the "data line" for a particular classification.

Footnote: 3According 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 super-vision exercised, indirect supervision exercised, working condi-tions, physical coordination and physical demands. 128 C.S.R. 62 § 2.27 (1994). The Mercer Plan submitted into evidence by Respondent lists only twelve factors, with physical coordination and physical demands combined as Factor Twelve. R Ex 1. 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. See R Ex 2.

Footnote: 4These scores correlate to various degrees which may apply to each factor with level "A" equating a "1," level "B" a "2," and so on.

Footnote: 5As noted previously, Grievant Jessen's PIQ was never received by the JEC.

Footnote: 6Grievants also included several documents with their post-hearing submission dated July 20, 1995. However, these documents were not presented at the hearing, and Respondent did not have an opportunity to cross-examine Grievants with regard to their contents, nor to present evidence in rebuttal. Accordingly, none of those documents have

been considered in rendering this decision. See Woo v. Putnam County Bd. of Educ., Docket No. 93-40-420 (June 2, 1994).

Footnote: 7Obviously, Respondent cannot claim that a position requires a minimal amount of experience at the time the position is classified, and then require a substantial amount of experience when the same position is posted for filling. See generally, McDonald v. Long, 100 W. Va. 551, 131 S.E. 252 (1926).