NICKOLAS ZARA, et al., .

.

Grievants, .

v. . DOCKET NO. 94-MBOT-817

.

BOARD OF TRUSTEES, .

WEST VIRGINIA UNIVERSITY, .

.

Respondent. .

D E C I S I O N

This is a grievance by Nickolas Zara, Danny Sinclair and Alfred Yoppi (Grievants) challenging their classification as Supervisor/PRT Systems Operators in Pay Grade 15 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 and August of 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) Inaccordance with W. Va. Code § 18-29-5(b), the three grievances at issue here were consolidated by Order of Consolidation dated December 28, 1994. A Level IV evidentiary hearing was conducted in this Board's office in Elkins, West Virginia, on July 14, 1995. This matter became mature for decision on July 31, 1995.

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. Burke, supra. See Snider v. W. Va.

Bureau of Environment, Docket No. 95-DEP-306 (Sept. 29, 1995).

Grievants contend that although their position title of Supervisor/PRT Systems Operator is correct, their jobs are under-valued, and they should be assigned to Pay Grade 16 or 17, rather than Pay Grade 15, as determined by Respondent's Job Evaluation Committee (JEC). The JEC, consisting of representatives from human resources and classified staff, is responsible for "review of classification decisions across the system." § 11.5, 128 C.S.R. 62 (1994). Grievants assert they were not correctly evaluated on three of twelve factors in the Mercer Plan's "Point Factor Methodology."

Grievants are directly responsible for operating the Personal Rapid Transit System (PRT) at West Virginia University (WVU). ThePRT is more fully described in this Board's previous decision in Jessen v. Board of Trustees, Docket No. 94-MBOT-1059, (Oct. 26, 1995). Indeed, Grievants supervise the three employees whose grievances were decided in Jessen.

The process under which Grievants were reclassified, effective January 1, 1994, began with completion of a Position Information Questionnaire (PIQ). PIQs are highly-structured documents, 17 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. Employees were also asked to rate various aspects of their position, under a scale set forth in the Mercer Plan. PIQs were reviewed by the immediate supervisor and one level of management above the immediate supervisor, before being considered by the JEC.

Once all PIQs were completed, the JEC met to review the PIQs, assign employees to the appropriate classification, and evaluate each classification factor by factor. In the course of this process, the JEC applied the Point Factor Methodology (R Ex 1), interpreting the various factors as required to assign scores for all factors to each classification. After reviewing all PIQs submitted by those employees classified as Supervisor/PRT Systems Operator, the JEC assigned points for each listed category as shown (R Ex 2):

Knowledge	4.0
Experience	4.0
Complexity and Problem Solving	3.5

Freedom of Action	3.5
Scope and Effect - Impact of Actions	2.0
Scope and Effect - Nature of Actions	3.0
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 Subordinates	3.0
Direct Supervision - Level of Supervision	4.0
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 formula not at issue, the foregoing levels were calculated to award these positions 2,066 total points, equating to Pay Grade 15. At the time Grievants were reclassified, the starting pay for Pay Grade 15 was $20,004 per year.

In their January 1994 request for review by the JEC, Grievants submitted the following statement setting forth the reasons for contesting their classification:

> Operations Shift Supervisors at WVU/PRT are in a unique job. There are only 3 persons in the world currently qualified for this job, they are the 3 Operations Supervisors employed by the PRT. We are charged with the responsibility of running the most sophisticated, complicated transit system in existance [sic]. In addition we are responsibly [sic] for the safety of the students and passengers (16000/day average). We are responsible for all operations decisions other than days and hours of operation. We are often required to direct maintanence [sic] activities during downtime events and coordinate with maint. supervisors during other periods.
>
> This job is, at times, extreamly [sic] stressful due to the pressures (both real and imagined) placed upon us to keep the system running.
>
> Without the PRT, we at WVU do not have the ability to move our students between campuses in the numbers required.

> 2. During the meeting we attended, on how to fill out the PIQ, we were told that due to the uniqueness of our positions, we should be very spacific [sic] and detailed. We attempted to do this so that the person reviewing thePIQ would have some idea of the requirements of the job. We apparently failer [sic] in our effort or so confused the reviewers that they had no idea what we were talking about.
>
> 3. There are no jobs in WVU or the WV State system that compare to this job, or should be used for comparison. The only fair comparison would be jobs such as "Air Traffic Controller" or Operations Shift Supervisor at other, similar transit systems such as Dallas/ Ft Worth Air Trans or the "Miami Metromover".
>
> 4. The PIQ discriminates against "control room" type jobs. It places extra emphasis on the number of people supervised, intrasystem and external contacts for deter-mining pay grade. No consideration is given to the complexity of the jobs that the supervised persons do.
>
> 5. This position has more responsibility than most non-working supervisors. We not only have to direct the operators, respond to problems, direct maintenance personnel to the problem, assist in or direct trouble-shooting of the problem, coordinate power removal and restoration and subsequent restoration of full service, but in times of personnel shortage we have to run one of the consoles while doing all the above.
>
> We know of nowhere in WVU where there is a situation even remotely similar to ours.

Grievants' immediate supervisor, Robert B. Hendershot, Manager of PRT System Engineering, endorsed their appeal, providing the following written comments:

> This position is indeed unique within the State College and University System of West Virginia. In this position, the Supervisor of PRT Operations is responsible for all normal operating functions of the PRT System in addition to the normal supervisory responsibilities inherent in this classification. These supervisors are also responsible for directing the response to all abnormal operating conditions that may occur within the PRT System. In order to accomplish these tasks effectively, years of training and experience are necessary.
>
> Comparisons with similar positions within the transportation industry and other similar "Control Room" type situations indicate a significant discrepancy between the typical salaries and those recommended by this program.

> I agree with the overall basis for this appeal, that the system utilized for evaluating other supervisory posi-tion[s] within the State College and University System cannot adequately be applied to these unique positions and therefore recommend that the pay grade for this position should be re-evaluated.

In addition, the next level of management above Grievants, Robert J. Bates, Director of Transportation, indicated agreement with their appeal as follows:

> I agree with the Supervisors Assessment on the uniqueness of this position. The closest comparison would be supervisors at Air Traffic Control Centers of airports at least the size of Charleston or medium to large size Power Plant Control Rooms. I recommend another review of this position with a close evaluation of the work status of the position.

Teresa Crawford, a Senior Compensation Analyst in the Department of Human Resources at WVU, testified for the Respondent. Ms. Crawford has handled classification and compensation matters at WVU for ten years. She has been recognized as a "certified compensation professional" through the American Compensation Association, which requires class attendance and successful completion of a series of seven examinations on various aspects of compensation and classification. Shortly before the Mercer reclassification process got underway, she spent one full day touring the PRT, to become more familiar with the job duties and responsibilities of all employees in that area.

Ms. Crawford described the Mercer classification process, explaining how the point factor methodology evaluates the duties and responsibilities assigned to each position. After employees performing similar duties were grouped into a particular title or classification, each factor in the evaluation plan was applied tothose positions and the most appropriate rating level was selected. A certain quantity of points attach to each level and the total number of points resulting from evaluating all factors determines the pay grade into which the position falls. Ms. Crawford was in attendance at the JEC meeting in which Grievants' requests for review of their initial classification was considered, sometime between April and May of 1994. At that time, the JEC concluded that Grievants were "properly classified."

Grievants' presentation at Level IV primarily focused on the values assigned by the JEC to three factors in the Job Evaluation Plan: Factor 1, Knowledge; Factor 2, Experience; and the Impact of Actions element of Factor 5, Scope and Effect. The evidence presented in regard to each contested factor will be reviewed in order.

Factor 1, Knowledge.

The Respondent's Job Evaluation Plan sets forth the following explanation regarding Factor 1, Knowledge:

> 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.

R Ex 1.

Grievants completed their PIQs in November 1991. They responded to the first question under Factor 1, Knowledge, "List specifically the degrees, vocational or technical training, or post-high school coursework required to qualify for this position and justify how the level of education or training is essential tothe performance of the duties and responsibilities," by stating: "Operations shift supervisor should have experience in the use of audio and periphial [sic] communications. Computer network operation is a must. He should have a working knowledge of electronic, electrical and mechanical systems. Computer/keyboard operations is an absolute." Each Grievant further indicated that no particular license or certification was required for these positions, and responded to the final question, "What other knowledge, skills, or abilities are required in order to carry out the duties of this position," by stating:

> Must have excellent communication skills. Individual in this position must have the ability and knowledge to work independently without supervision. Must also have the ability to make accurate decisions during stressful situations based on applicable data. Individual must possess the capability to apply logic wherein no policy or procedure exists.

The PIQ form required each employee to "indicate the lowest level of education and/or training usually required to understand and perform the work. Tell us what is required, not the incumbent's

own educational level. Do not include job-related experience because that is covered in the next question." Each Grievant proceeded to rate the knowledge requirement for his position at Level "F" or 6, indicating:

> Job requires a thorough knowledge of a professional discipline or technical specialty as would normally be acquired through a relevant baccalaureate education program. Knowledge of principles, concepts, and methodology of a highly technical, professional, or administrative occupation is indicative of this level.

Grievants' PIQs were reviewed, in turn, by their supervisors, Mr. Hendershot and Mr. Bates. One of these individuals decreasedthe rating under Knowledge to Level "E" or 5, which states:

> 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.

Because neither party called Mr. Bates or Mr. Hendershot to testify, it is unclear which of them disagreed with Grievants' assessment of the knowledge requirement for these positions. (See footnote 2)

In the course of their Level IV testimony, Grievants indicated their understanding of this factor as permitting them to claim on-the-job training and informal training which would be equivalent to the amount of knowledge obtained through a formal degree program. As of the time they were hired into these positions, none of the Grievants had either a bachelor's or associate's degree, and none claimed to have completed a formal apprenticeship or vocational training program.

Factor 2, Experience.

The Job Evaluation Plan provides that Factor 2, Experience:

> 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 Factor 2, each Grievant responded to thequestion, "Please describe the type and

least amount of work 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: "Audio/Periphial [sic] Communications, 2 years; Computer Networks/Keyboard Operations, 2 years; Electronic, Electrical and Mechanical systems, 1 year; System/Communication Operator I & II, 4 years." Each grievant also checked level "F" or 6, indicating that "over four years and up to six years of experience" was the minimum amount of experience required for a new hire in the position. There was no indication that Mr. Bates or Mr. Hendershot took exception to this rating.

Ms. Crawford explained the JEC applied Factor 1, Knowledge, and Factor 2, Experience, to indicate the absolute minimum amount of knowledge and experience required for an applicant applying for a position to come into the position. Applicants should have the basic skills necessary to perform the duties of the position, with the understanding that all new employees go through a period of on-the-job training before becoming fully proficient. Thus, the JEC assigned points based upon the minimum qualifications required, not the qualifications of employees currently holding these jobs.

In particular, "Knowledge" refers to a certain level of education or training obtained prior to entering the position. Thus, a bachelor's degree would be the minimum credential required to compete for a vacant position, provided that "knowledge of principles, concepts, and methodology of a highly technical,professional or administrative occupation" as reflected by such a degree was needed to understand and perform the work.

Ms. Crawford was aware that PRT employees, including Grievants, were trained and supervised by Boeing Aerospace for seven years before the PRT was turned over to WVU by the contractor. She also acknowledged that employees spent seven months in Seattle, Washington, being trained on PRT operations. As noted previously, the JEC determined that a 4.0 rating ("D") properly states the knowledge requirement for Grievants' position. This level reads: "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." Likewise, the JEC concluded that a 4.0 rating correctly states the amount of experience required for the position. That level requires "over two years and up to three years of experience."

Factor 5, Scope and Effect

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 orassignment. 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.

R Ex 1.

Under Factor 5, Scope and Effect, Grievants responded to the question on their PIQs, "Describe 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," by stating:

> The performance of the work assignment ensure[s] an efficient and safe system operation. Without constant monitoring of passenger flow and vehicle movement, passengers or maintenance technicians could experience serious injury or death and passenger service to the WVU community and Morgantown populace would be interrupted. The supervisor's performance is the one element that determines the short and long performance of the PRT. His decision process is the only thing that directly influences the duration of most downtimes."

Factor 5 involves a matrix approach containing two complimentary elements, "Impact of Actions" and "Nature of Action." Each Grievant checked level "D" under Nature of Action as best describing his job. That level reads:

> 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.

Likewise, each Grievant checked Level 4 under Impact ofActions. (See footnote 3) That level

reads:

> Work affects the entire operations of a specialized school, branch campus, community college or bacca-laureate-level institution with an operating budget of <$13M; more than one school of [sic] division of a graduate or baccalaureate-level institution with an operating budget of $13-$18M; a school or division of a graduate or baccalaureate-level institution with an operating budget of $19-$25M; several departments within a graduate-level institution with an operating budget of more than $50M; or a major department within a doctoral-level institution with an operating budget of more than $200M.

There was no indication on the PIQ that either Mr. Hendershot or Mr. Bates disagreed with these assessments.

Grievants also noted that the JEC evaluated the Impact of Actions element of positions classified as Supervisor/PRT Maintenance at Level 3. That level reads:

> Work affects the operations of more than one school or division of a specialized school, branch campus, community college or baccalaureate-level institution with an operating budget of <$13M; a school or division of a graduate or baccalaureate-level institution with an operating budget of $13-$18M; several departments within a graduate or baccalaureate-level institution with an operating budget of $19-$25M; a major department within a graduate level institution with an operating budget of more than $50M; or a moderate-size department within a doctoral-level institution with an operating budget of more than $200M.

Grievants testified that these positions functioned at an equivalent level to their jobs in terms of ensuring that the PRT remained in operation and "downtime events" were minimized or quickly rectified.

Ms. Crawford explained the JEC's application of Factor 5,Scope and Effect, noting that this factor was the most complex in the Job Evaluation Plan. In general, Scope and Effect relates to "depth" in terms of where an employee, and the work that employee performs, fit into the employer's organizational structure. Likewise, Factor 6, Breadth of Responsibility, strives to measure the "width" of a position. Measuring Scope and Effect involves looking at both the nature of an employee's function and the impact of that function or activity, using a matrix approach.

Ms. Crawford further explained that the Scope and Effect factor was designed to allow for differences in the size of an employee's institution, while measuring the impact and scope of his work, as there are substantial differences among the 16 institu-tions covered by the Mercer Plan.

However, she did not specify how this was applied to Grievants' classification, as PRT positions are limited exclusively to WVU.

With regard to the JEC's evaluation of the Scope and Effect of Grievants' positions, Ms. Crawford was questioned by Respondent's counsel as follows:

> Q [Ms. Brandt] Do you believe that these individuals were given the correct level for their Scope and Effect?
>
> A [Ms. Crawford] I believe that the process was fair and that this was a group decision of the entire Job Evaluation Committee. This position was discussed, and I can't recall that discussion, but it was looked at and this was the rating that the majority of the Evaluation Committee felt comfortable with.

Ms. Crawford later explained that the JEC discussed the Impact of Actions prong of the Scope and Effect factor in regard to Grievants. A vote was taken and the 2.0 rating was not changed. Upon further questioning by the undersigned, the following explanation was elicited:

> Q [ALJ] And what was the score or the level given to the PRT Maintenance Supervisor in Scope and Effect?
>
> A [Ms. Crawford] We have a three on Impact and a three on Nature.
>
> * * *
>
> Q As far as the impact on the university of the PRT, it wouldn't be any different from the perspective of the Maintenance Supervisor than it would be from the perspective of the Grievants. Is that a fair statement?
>
> A Yes, I suppose that would be.
>
> Q In other words, the PRT, if you consider the impact of the PRT on the overall operation of the university, it can't be any greater for a Maintenance Supervisor than it is for an Operations Supervisor?

> A There's nothing that's coming to mind on that point that would say yes or no and why.

Grievants also complained that, prior to the Mercer reclassification, their positions were in the same pay grade as Supervisor/PRT Maintenance. Under the Mercer process, those positions were allocated to Pay Grade 16, one grade above Grievants. Ms. Crawford explained that this primarily resulted from the fact that Grievants are "working supervisors" who fill in and perform the same duties as their subordinates, while the supervisors in maintenance have greater administrative responsibilities. This flows from the nature of the work performed by PRT System Operators, because a qualified operator must be in control at all times the system is in operation. PRT Maintenance Supervisors are non-working supervisors, exempt from overtime pay requirements. Ms. Crawford also noted that Maintenance Supervisorssupervise employees in three classifications: PRT Technician I, PRT Technician II and Electrician. Ms. Crawford also stated that although Grievants' positions on the PRT are unique to WVU, the Mercer Plan was specifically designed to classify all positions at all institutions through application of a uniform methodology.

Brian Warmuth, Human Resource Administrator at West Liberty State College (WLSC), was also called as a witness by Respondent. Mr. Warmuth was appointed to the JEC and participated in the appeals process, including the review of Grievants' appeal. Prior to working at WLSC, he had classification responsibilities and duties in private industry, including working with point factor classification systems since 1981.

Mr. Warmuth testified that changing any one specific score on a factor level would change the total points assigned to that position. However, such a revision would not necessarily change the pay grade assigned to the position. He explained that under the matrix chart contained in the Plan under Factor 5, Scope and Effect, evaluations of level 2 for Impact of Actions and level 3 for Nature of Action, for example, would equate to an overall score of 6 for Factor 5. Under another conversion chart adopted as part of the Plan, a score of 6 equates to 153 points for Factor 5. See R Ex 3. This is the current number of points assigned to Grievants' position under Factor 5 by the JEC. See R Ex 2 at 21.

Accordingly, had Grievants been evaluated at Level 3 for Impact of Actions, this would equate to an overall score of 9 on the matrix for Factor 5, and a total of 183 points for that factor,or 30 additional points. Thus, with an overall total of 2096 points, Grievants would still have fewer than the minimum 2114 points needed to be assigned to pay grade 16.

DISCUSSION

A governmental agency's determination of matters within its expertise is entitled to substantial weight. Princeton Community Hosp. v. State Health Planning & Dev. Agency, 328 S.E.2d 164 (W. Va. 1985). 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. 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. 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 Rehabil-itation, Docket No. VR-88-006 (Mar. 28, 1989).

These standards must now be applied in reviewing the decisions challenged here, the JEC's selection of point levels assigned to Grievants' positions in Factor 1, Knowledge; Factor 2, Experience; and Factor 5, Scope and Effect. Factor 1 will be addressed first.

Factor 1, Knowledge.

Grievants submit that the level of knowledge regardingcomputers, electronics, mechanics and communications required to perform their job generally equates to the amount of knowledge someone would acquire in obtaining a bachelor's degree. Thus, the knowledge requirement for their position should be rated at the same level as a job which requires such a degree. As the undersigned understands Ms. Crawford's testimony, Factor 1 of the Mercer Plan does not contemplate substitution of informal education for formal education in the manner proposed by Grievants. Rather, a bachelor's degree may be required as a minimum credential for a position, provided that knowledge normally obtained at that level is essential to "reach acceptable occupational competence on the job." This explanation does not appear inconsistent with the Respondent's Job Evaluation Plan nor does such an interpretation of the Plan appear arbitrary and unreasonable. Likewise, it was not shown that a

new employee, possessing only the knowledge required by a Level 4 rating, would be incapable of attaining an acceptable level of performance in Grievants' positions.

It appears that Grievants have been performing their assigned duties in a highly capable manner, without either a bachelor's degree, required by a Level 6 rating, or an associate's degree or comparable credential, required by a Level 5 rating. It is not clear from this record whether Grievants' supervisors shared Grievants' mistaken interpretation of Factor 1, or if they intended to establish a higher knowledge requirement for the Supervisor/PRT Systems Operator position than Grievants currently meet. In any event, Grievants did not demonstrate that the JEC's decision torate the knowledge requirement for their positions at Level 4 was clearly wrong.

Factor 2, Experience.

Factor 2 contains eight levels ranging from "no experience and up to six months of experience" (Level 1) to "more than eight years of experience" (Level 8). Grievants rated their positions at Level 6 ("over four years and up to six years of experience"). However, according to Ms. Crawford's testimony, a majority of the JEC determined that this rating was unduly inflated and that Level 4 ("over two years and up to three years of experience") more accurately stated the minimum experience required for these positions. (See footnote 4)

"Job experience" is a factor that may be objectively measured. Nonetheless, the minimum amount of such experience required to perform the essential duties of a position represents a subjective determination regarding which reasonable people may reach different conclusions. Although Grievants' evidence tended to substantiate that at least two to three years of experience would be required to perform the complex duties which they are assigned, it was not clearly established that someone who had served as a PRT Systems Operator with a total of three years' experience could not perform the essential duties of Grievants' positions at a minimum level ofcompetence, following a relatively brief opportunity for on-the-job training. Moreover, Grievants' evidence that employees in certain other job classifications received a Level 5 rating for experience was not probative because there was no specific documentation or testimony concerning the duties and responsibilities of these other employees to provide a meaningful basis for comparison of the ratings assigned. Consequently, Grievants did not establish that the JEC's decision to rate the experience requirement for their positions at Level 4 was clearly wrong.

Factor 5, Scope and Effect.

Factor 5, as explained by Ms. Crawford, represents an effort to subjectively measure the value of a particular job function to the institution. Although Grievants demonstrated that the PRT provides essential transportation to WVU students, and their positions are critical to effective operation of the PRT on a daily basis, such evidence fails to override the JEC's discretion under the Job Evaluation Plan to rate these positions at some point below the levels proposed by Grievants and their supervisors. See Jessen, supra, at 18. See generally, Steven W. Hays & T. Zane Reeves, Personnel Management in the Public Sector, 101-120 (1984).

However, Grievants further contend that the JEC acted inconsistently in concluding that Maintenance Supervisors should be given a higher score under Factor 5 although these employees perform a substantially similar function in regard to operation of the PRT. Respondent's principal witness, Ms. Crawford, despite being generally familiar with the different functions performed byeach classification assigned to the PRT, was unable to offer any viable explanation for this anomaly. She could only explain that the JEC duly considered this issue and Grievants were rated lower than their counterparts who supervise PRT maintenance in accordance with the "majority rule" voting procedure adopted by the JEC.

Grievants established by a preponderance of the evidence that their job duties are at least as critical to the effective operation of the PRT as their peers who supervise PRT maintenance personnel at an equivalent functional level. Whatever impact the PRT may subjectively be perceived to have on the overall operation of the institution, that impact should be the same for similarly situated employees within the PRT hierarchy. Despite the deference afforded to JEC determinations, as described above, a majority ruling of a committee, without any articulated rationale for the disparate treatment resulting from that ruling, does not provide a proper basis for rejecting Grievants' position. Accordingly, the JEC's determination that Grievants' positions should be rated a 2.0 on the Impact of Actions element of Factor 5 was clearly wrong.

As indicated by Mr. Warmuth's testimony, the foregoing conclusion was anticipated by the Respondent. Consequently, the Respondent demonstrated that correcting the score Grievants received under Factor 5 to the same score awarded the PRT Maintenance Supervisors would add only 30 points to their total score under the Plan. Thus, with a corrected total of 2096 points, Grievants are not entitled to any relief since 2114 points are required to be assigned to the next higher pay grade under thePlan. (See footnote 5) R Ex 3.

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 (WVU) to supervise current operation of the Personal Rapid Transit System (PRT), and each was initially classified under the Mercer Plan as a Supervisor/PRT Systems Operator in Pay Grade 15.

2. Grievants timely submitted a request for review of their classification by 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) intrasystem contacts; (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 focused their appeal on the point values they were assigned on three factors, Factor One, Knowledge, Factor Two, Experience, and Factor Five, Scope and Effect.

5. The PRT transports nearly two million passengers annually, the vast majority of whom are WVU students who rely on the system to get to and from their classes. See G Ex 1.

6. Grievants directly supervise PRT Systems Operators who operate the PRT from a Central Control Room through a dedicated computer network employing custom operational software. Because of the nature of the System Operator position and chronic personnel shortages, Grievants are "working supervisors" who must frequently fill in for the System Operators.

7. The JEC determined that the minimum level of education or training required to reach an acceptable level of competence in Grievants' positions could be acquired through a business, technical or vocational school in a program involving up to 18 months of education or training beyond high school. Therefore, the JEC evaluated Grievants' positions at Level D for Factor One, Knowledge, under the Mercer Plan's "Point Factor Methodology."
R Ex 1 & 2.

8. The JEC determined that over two years and up to three months of prior work experience is

necessary for entry into Grievants' positions. As a result, Grievants' positions were evaluated at Level D for Factor Two, Experience, under the Mercer Plan. R Ex 1 & 2.

9. The JEC applied the Point Factor Methodology to Grievants'positions, evaluating the Impact of Actions element of Factor Five, Scope and Effect, at Level B.

10. Grievants' scope of responsibility within the PRT is substantially the same as another group of employees who are classified as Supervisor/PRT Maintenance.

11. The JEC applied the Point Factor Methodology to the Supervisor/PRT Maintenance positions, evaluating the Impact of Actions element of Factor Five, Scope and Effect, at Level C.

12. Teresa Crawford, a Senior Compensation Analyst at WVU, and Brian Warmuth, a Human Resource Administrator at West Liberty State College, were present when the JEC evaluated Grievants' positions on appeal. Neither of these witnesses articulated any basis for the disparate treatment of Grievants' positions and the Supervisor/PRT Maintenance positions by the JEC, simply noting that the decisions were made by "majority rule" and opining Grievants were nonetheless "fairly classified."

13. In order to be assigned to the next higher pay grade under the Respondent's Mercer Plan, Grievants' positions would have to be evaluated at levels which would generate a minimum 2114 total points under the Point Factor Methodology. R Ex 3.

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 onthe 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 (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 on 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); Burke, supra. 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 Rehabil-itation, Docket No. VR-88-006 (Mar. 28, 1989).

4. Grievants failed to prove by a preponderance of the evidence that the JEC's interpretation and application of the Mercer Job Evaluation Plan to their positions as regards the evaluations assigned to Factor 1, Knowledge, or Factor 2, Experience, was clearly wrong or otherwise unsupported by the available evidence.

5. Grievants failed to prove by a preponderance of the evidence that the JEC's interpretation and application of the Mercer Job Evaluation Plan to their positions was clearly wrong in regards to assigning values of less than Level D to the Nature of Action element and/or Level 4 to the Impact of Actions element ofFactor 5, Scope and Effect.

6. The Respondent failed to articulate a meritorious basis for the JEC's disparate treatment of the Supervisor/PRT Systems Operator and Supervisor/PRT Maintenance positions in regard to the values assigned to the Impact of Actions element of Factor 5, Scope and Effect. However, awarding Grievants the correct number of points for Factor 5 does not increase their total points under the Mercer Plan to the minimum of 2114 points required to be assigned to the next higher pay grade.

Accordingly, this Grievance is **DENIED** .

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: December 12, 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: 2The "original" PIQs contained marks that were color-coded, thereby indicating who made which mark. However, those PIQs were destroyed in an accident at the State College and University Systems Central Office. Thus, copies from the Human Resources Office at each institution became the "best evidence" of the original PIQs. Contrary to instructions disseminated during training sessions for supervisors, these supervisors did not initial their marks on the PIQ.

Footnote: 3Because Factor 5 employs a "matrix" approach, levels under the Impact of Actions element are stated numerically while levels under the Nature of Action element are stated alphabetically.

Footnote: 4This Grievance Board has previously noted 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" and that the JEC is not precluded from assigning a different point level to a given factor under such circumstances. Jessen, supra.

Footnote: 5Respondent's witnesses indicated that the JEC, in the course of applying the Point Factor Methodology, considered such circumstances as working relationships between positions in deciding whether a given position was assigned to the proper pay grade. The undersigned notes that this Grievance Board, in its decision in Jessen, supra, elevated the employees directly supervised by Grievants from Pay Grade 12 to Pay Grade 13. This decision should not be construed to preclude the JEC from re-evaluating Grievants' positions in light of Jessen and assigning Grievants to a higher pay grade in accordance with the Plan.