

LEONARD LOVELY, et al.,

v.

DOCKET NO. 94-MBOT-762

BOARD OF TRUSTEES,

MARSHALL UNIVERSITY

DECISION

Grievants Leonard Lovely and Tommy Burchell each alleges he was misclassified effective January 1, 1994, in the "Mercer reclassification" ([See footnote 1](#)). Each Grievant seeks as relief a higher Pay Grade, a Pay Grade 10, for his classification, effective January 1, 1994, and backpay from January 1, 1994. Each Grievant challenges the degree levels received in several point factors. A Level IV hearing was held on June 26, 1996. This matter became mature for decision on August 14, 1996, the deadline for submission of post- hearing written argument. ([See footnote 2](#)) The following Findings of Fact are properly made from the record developed at Level IV.

Findings of Fact.

1. Grievant Lovely has been employed at Marshall University ("MU") since 1989. Grievant Burchell has been employed at MU since 1983.
2. In 1991, all higher education classified employees were asked to complete a Position Information Questionnaire ("PIQ"). Employees were to describe their job duties and responsibilities and the job requirements on the PIQ, by answering a series of questions designed to elicit this information. Each Grievant completed a PIQ in 1991.
3. Grievants were classified as Parking Attendant II's ("PA II"), Pay Grade 6, effective January 1, 1994.
4. Grievants' primary job duties (with the percentage of time they perform these duties in parenthesis) are patrolling the parking lots to enforce parking rules and issuing parking tickets (45%); maintaining parking lots and meters, including cleaning lots, painting lines, and repairing broken meters (10%); collecting money from parking meters and taking money from the parking office to the

Bursar's Office (10%); training and supervising work study students and student assistants (5%); directing traffic for special events (10%); maintaining two-way radio communication at all times with the MU parking and transportation office, and with the public safety office as needed (5%); assisting in parking permit issuance, posting property, cleaning the stock room, keeping track of inventory and restocking inventory, delivering and picking up items, reporting security and safety hazards, and relieving the dispatcher (5%); maintaining the motor pool by checking the oil, tires and gasoline, and taking vehicles to a private garage for maintenance (5%); and providing battery boost and lock-out services to persons using the parking areas and adjoining areas within one- block (5%).

5. Grievant Burchell received one day of instruction on how to patrol the parking areas and write tickets. He attended two days of training in the repair of parking meters.

6. Grievants decide in what order to patrol the parking lots to which they are assigned, what days every summer and in what order to clean all parking lots and paint lines, when to repair parking meters, and when to collect money from parking meters each day. Grievants have decided not to collect money from some parking meters every day, because those meters do not generate much revenue. Their supervisor at times directs the priority of parking lot maintenance. Grievants are assigned to work particular areas and perform particular tasks during special events.

7. Grievants have been instructed to enforce the parking rules. They have not been instructed to waive the parking rules when they think it is appropriate. Nonetheless, Grievants exercise discretion in ticketing, declining to write tickets in special circumstances, but if their supervisor disagreed with the exercise of discretion, Grievants could be in trouble. They have been instructed that they are not to void tickets.

8. When issuing permits Grievants must know how much parking permits cost, which permits are free, and what parking areas may be assigned to students, faculty and staff. They must obtain a copy of the vehicle registration and enter the data into the computer, write receipts and make change.

9. Each Grievant writes approximately 45 tickets each day during the summer, and approximately 150 each day other times of the year. Grievants ticket everyone according to the parking rules, including faculty, students, administrators, MU donors and the general public.

10. One or two times each day Grievants are confronted by someone who is irate because he has been ticketed, or because Grievants will not let him park where he wants to park without a permit.

Grievants explain to the person why he received a ticket and why the violation cannot be ignored, or why he must have a permit, and direct further comments to the parking office. Grievant Lovely has been threatened and pushed by persons he has ticketed. Grievants have been instructed to be courteous and helpful. Grievants did not list dealing with irate persons as a job duty on their PIQ's.

11. Grievants operate hand-held computerized ticket writers, weed eaters and blowers when cleaning parking areas, power drills when posting signs, and drive sign posts in the ground with an approximately 75 pound manually operated pile driver.

12. Grievants work outside every day, 80% of the day. When painting lines on parking lots each summer, they are exposed to higher temperatures, and fumes.

13. The parameters used by the JEC for determining whether someone is exposed to extreme levels of temperature are from normal office conditions to outdoor temperatures.

14. The PA II Job Title received 1248 total points from the following degree levels in each of the thirteen point factors [\(See footnote 3\)](#): 2.0 in Knowledge; 2.0 in Experience; 1.5 in Complexity and Problem Solving; 1.0 in Freedom of Action; 1.0 in Scope and Effect, Impact of Actions; 1.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 1.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level of Contact; 1.0 in External Contacts, Nature of Contact; 3.0 in External Contacts, Level of Contact; 3.0 in Direct Supervision Exercised, Number; 3.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 1.0 in Physical Coordination; 3.0 in Working Conditions; and 3.0 in Physical Demands. Joint Exhibit J.

15. The point score range for a Pay Grade 6 is from 1190 to 1252 total points. Joint Exhibit I.

16. The point score range for a Pay Grade 7 is from 1253 to 1320 total points. Joint Exhibit I.

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, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va.

Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

A grievant is not likely to meet his burden of proof in a Mercer grievance merely by showing that the grievant's job duties better fit one job description than another, because the 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 in Mercer Decisions issued by this Grievance Board is upon the point factors the grievant is challenging. [\(See footnote 4\)](#) 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 Mercer grievant may prevail by demonstrating his reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehabilitation, Div. of Rehabilitation Services, Docket No. VR-88-006 (Mar. 28, 1989).

Finally, whether a grievant is properly classified is almost entirely a factual determination. As such, the Job Evaluation Committee's ("JEC") interpretation and explanation of the point factors and Generic Job Descriptions or PIQ's at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W. Va. 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. Dept. of Health and Human Res., 465 S.E.2d 887 (W. Va. 1995). The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. [\(See footnote 5\)](#)

B. Application of the Point Factor Methodology

Grievants challenged the degree levels received in Knowledge, Complexity and Problem Solving, Freedom of Action, Scope and Effect/Nature of Actions, Intrasystems Contacts/Nature of Contact, External Contacts/Nature of Contact, Physical Coordination, and Working Conditions.

Following are the differences between the degree levels assigned in the challenged point factors for the PA II, and the degree levels Grievants argued they should have received:

SE IC EC

	<u>KN</u>	<u>CPS</u>	<u>FA</u>	<u>NA</u>	<u>NC</u>	<u>NC</u>	<u>PC</u>	<u>WC</u>	(See footnote 6)		
PA II			2	1.5	1	1	1	1	1	3	
Grievants' Argument				3	2	2	2	3	3	2	4

Joint Exhibit J. 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 2.0, which is defined in the Plan as:

Job requires junior high school level education as might normally be acquired through up to 9 years of schooling, which provides the incumbent with the ability to read, write, and perform arithmetic procedures, understand direct written instruction, and receive and transmit simple information. Requires knowledge of basic work rules, procedures or operations, and ability to operate equipment and machines.

Grievants argued they should have received a degree level of 3.0, which is defined in the Plan as:

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

Grievants argued their supervisor would not hire anyone for the position who did not hold a high school diploma, because she believed everyone working at MU should have at least a high school degree. They also argued a high school diploma was necessary to be able to carry on a conversation with the persons with whom they come in contact, and they have to be able to access information on the computer. Grievants also pointed out the Roads and Grounds Worker I received a degree level of 3.0, and in the summer they mow grass most of the time.

Teresa Crawford, Senior Compensation Analyst in the Department of Human Resources at West Virginia University and non-voting member of the JEC, testified that in applying this point factor the JEC looked at the minimum level of knowledge needed for an employee to be able to successfully perform the job after a normal period of on-the-job training. She stated the JEC also tried not to create any artificial barriers to employment for minorities. She stated that the JEC decided that

someone without a high school degree could perform the duties of the position, and for purposes of screening applicants, someone without a high school degree could be considered for the position. She stated Roads and Grounds Workers have a minimum Knowledge requirement of a high school degree or GED because they must be able to learn and understand proper lawn maintenance, plant light requirements, proper care of plants, proper pruning techniques, and proper operation of equipment.

Grievants have focused on the part of the degree level 2.0 definition which states a junior high level education is required. This is understandable. However, the rest of the definition details the types of abilities needed. To perform their job duties, Grievants must be able to read and write, understand direct written instruction, receive and transmit simple information, have knowledge of basic work rules and procedures or operations, and be able to operate equipment and machines. It is not part of Grievants' job duties to carry on a conversation with persons using the parking areas, although it may be a helpful, and may be reflected on a performance evaluation. They are required to be courteous and to inform persons inquiring of the parking rules. Grievants have not proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning their Job Title a degree level of 2.0.

2. Complexity and Problem Solving

The Plan defines Complexity and Problem Solving as follows:

This factor measures the degree of problem-solving required, types of problems encountered, the difficulty involved in identifying problems and determining an appropriate course of action. Also considered is the extent to which guidelines, standards and precedents assist or limit the position's ability to solve problems.

Grievants argued they should have received a degree level of 2.0, rather than a 1.5 in this point factor. A degree level of 1.5 is not defined in the Plan. Ms. Crawford explained the JEC assigned a "half-level" in both Complexity and Problem Solving and in Freedom of Action when the duties and responsibilities fell partially within the lower degree level and partially within the next higher degree level.

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

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

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

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

Grievants argued they decide what they will do each day. Grievants stated the most common problem they face is dealing with irate people. They stated they almost weekly also have to decide how to get large vehicles out of tight spots in the parking areas, and they try to help motorists determine why their cars will not start, and help them get their vehicles started.

On their PIQ's Grievants stated they solve problems with angry motorists as follows:

[i]nform motorist they have recieved the ticket because of (reason) and they may contest the ticket in the parking office . . . [i]nform person of policy and refer further comments to parking office . . . [i]nform that person why their car is being towed away, where to, and how to reclaim it, and refer additional comments to parking office.

It is clear that Grievants handle each angry motorist the same way. In a courteous manner, they tell them the parking rules and direct them to the proper person to hear their complaint. They hear the same complaints each day, and they handle them the same way each day.

Most of Grievants' job duties are the same each day, and they have rules and simple instructions to follow in performing all important aspects of the job. Deciding which parking lot to patrol first is not an important aspect of the job. Most of their job duties fall within a degree level of 1.0. Repairing parking meters and helping motorists with their car problems may fall within a degree level of 2.0, but these duties comprise only a small portion of Grievants' job, and Grievants received credit for some problem solving at the 2.0 level. Grievants have failed in their burden on this point factor.

3. Freedom of Action

The Plan defines Freedom of Action as:

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

Grievants' Job Title received a degree level of 1.0 in this point factor which is defined in the Plan as:

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

Grievants argued they should have received a degree level of 2.0, which is defined in the Plan as:

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

Grievants argued their supervisor does not tell them what to do each day. They meet with their supervisor each morning to find out whether there is anything going on they need to know about.

Ms. Crawford explained this point factor does not measure whether the supervisor is standing over the employee. She stated Grievants' duties are repetitive, they follow rules and procedures and guidelines, they have received instruction on how to complete their duties, and do the same types of duties each day, all of which is within a degree level of 1.0.

Grievants perform the same duties over and over. They patrol all parking lots, enforcing the same rules, writing tickets, helping motorists, repairing broken meters and collecting meter money. They do not have to be told to do this each day. They clean and paint the same lines on every lot every summer. They exercise very limited discretion in how they perform these duties. Grievants have failed to prove their duties fall within a degree level of 2.0.

4. 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 are challenging only the degree level received in Nature, arguing they should have received a 2.0 rather than a 1.0.

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

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

A degree level of 2.0 in Nature 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.

Grievants argued if they did not write tickets, no money would be collected from tickets; and if they were driving unsafely they could run over someone.

Ms. Crawford stated this point factor measures the primary purpose of the position. She testified Grievants are providing a service, and they are not part of a process.

Grievants' arguments are rejected. By definition, this point factor does not address failure to exercise reasonable attention and care. Further, "[a]s noted in previous decisions interpreting the Plan, interpretation of these similarly-worded provisions involves a subjective value judgment, which is an inherent element of the function of position classification. Hastings [v. Bd. of Trustees], Docket No. 94-MBOT-943 (May 28, 1996); Jessen [v. Bd. of Trustees], Docket No. 94-MBOT-1059 (Oct. 26, 1995)." Miller v. Bd. of Directors, Shepherd College, Docket No. 94-MBOD-495 (Oct. 29, 1996). The evidence presented does not provide a substantial basis to conclude that the rating Grievants received was so inconsistent with the language in the Plan as to constitute an abuse of discretion by the JEC. See, Hastings, supra, and Miller, supra.

5. Intrasytems Contacts

Intrasytems 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 also consists of two parts, Nature of Contact and Level of Contact. Grievants are

challenging only the degree level received in Nature, arguing they should have received a 3.0 rather than a 1.0.

A degree level of 1.0 in Nature 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 argued their contacts with persons whom they have ticketed are controversial.

Ms. Crawford stated Grievants are not persuading or negotiating. She stated they are to use common courtesy to explain the rules and to provide information. She stated this is not a controversial discussion, even though the persons approaching Grievants to complain about receiving a parking ticket may be irate and threatening. The undersigned agrees. Grievants are not resolving problems or interpreting complex policies. Grievants' role in talking to persons who have been ticketed, regardless of who they are or how angry they are, is to provide them with information on parking rules in a courteous manner, and to direct them to the proper place to appeal a ticket. It may be difficult for Grievants to control themselves while someone is yelling at them about a ticket, but this does not change the purpose of the contact on Grievants' part, which is to provide information and describe simple procedures.

6. External Contacts

External Contacts is defined in the Plan as:

This factor appraises the responsibility for working with or through other people outside the SCUSWV to get results. Consider the purpose and level of contact encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, influencing others or negotiation.

Like Intrasystems Contacts, this point factor consists of two parts, Nature of Contact and Level of Contact. Grievants are again challenging only the degree level received in Nature, arguing they should have received a 3.0 rather than a 1.0. The definitions of the degree levels are so similar to those of the degree levels under Intrasystems Contacts/Nature of Contact, that they will not be repeated here.

Grievants repeated the argument used under Intrasystems Contacts, and also argued they assist with crowd control during special events, and meet dignitaries visiting MU. Grievants argued they must exhibit sensitivity because the individual who is attempting to park illegally or who has been ticketed could be a large contributor to MU. Ms. Crawford stated this point factor is applied in the same fashion as Intrasystems Contacts, and her analysis of Grievants' contacts was the same.

Grievants' contacts with dignitaries are solely courteous greetings. Grievants' contacts with contributors to MU who are parking illegally or have been ticketed are solely to receive and relay information on the parking rules in a courteous manner. Grievants have failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level of 1.0 in this point factor.

7. Physical Coordination

Physical Coordination is defined in the Plan as:

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

Grievants' Job Title received a degree level of 1.0, which is defined in the Plan as:

Work requires normal level of ability common in almost every job, such as writing, sorting, filing/reviewing text materials, and/or occasional use of office equipment without any demand for speed.

Grievants argued they should have received a degree level of 2.0, which is defined in the Plan as:

Work requires simple hand/eye operations and some accuracy and regularity of motions, such as set-up and operation of basic instruments or equipment, and/or the occasional use of standard hand or power tools with minimal speed requirements.

Grievants argued they use hand and power tools, perform data entry and paint lines. Ms.

Crawford opined that Grievants' duties could fall within a 2.0, because they operate equipment to write tickets, clean parking areas and paint lines. Grievants have proven they fall within the definition

of a degree level of 2.0.

8. 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' Job Title received a degree level of 3.0, which 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.

Grievants argued they should have received a degree level of 4.0, which 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 argued they work in the same weather conditions as Roads and Grounds Workers, and that Job Title received a degree level of 4.0 in this point factor. Ms. Crawford testified Roads and Grounds Workers work outside all the time, except in severe weather. She also pointed out that Roads and Grounds Workers not only walk on asphalt (as Grievants do), they pour asphalt.

Whether something is extreme depends upon the parameters used for comparison. Whether someone is exposed to extreme levels of temperature depends on whether the parameters are from office working conditions to outside working conditions, or from office working conditions to working in a freezer or boiler room, for example. Under the former comparison, Grievants work in extreme temperatures; however, under the latter, they do not. The undersigned concludes from Ms. Crawford's testimony that Roads and Grounds Workers received a 4.0 because they always are outside, which indicates that exposure to outside temperatures is at the outer edge of the parameter, and would be extreme as compared to normal office conditions. Her testimony regarding pouring asphalt was almost an aside, and she did not indicate that Roads and Grounds Workers frequently pour asphalt, or for prolonged periods of time.

Grievants have proven that working outside exposes them to extreme temperatures. 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.

C. Summary

Grievants proved their job duties, if rated independently, would entitle them to a degree level of 2.0 in Physical Coordination and a 4.0 in Working Conditions. These changes would add 34 points and 14 points, respectively to the PA II total points, making the total 1296, [\(See footnote 7\)](#) which is a Pay Grade 7. [\(See footnote 8\)](#)

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. The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).
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 Foundation, 459 S.E.2d 374 (W. Va. 1995); Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995).
4. The Job Evaluation Committee's assignment of degree levels to the point factors Physical Coordination and Working Conditions was clearly wrong in evaluating Grievants' job duties.

Accordingly, the grievances of Leonard Lovely and Tommy Burchell are **GRANTED IN PART AND DENIED IN PART**. Respondent is **ORDERED** to place Grievants in a Pay Grade 7, effective January 1, 1994, and to pay Grievants the difference between the pay they would have received had

they been assigned to this Pay Grade on that date, and the pay they actually received.

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

BRENDA L. GOULD

Administrative Law Judge

Dated: November 27, 1996

[Footnote: 1](#)

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

[Footnote: 2](#)

Neither Respondent nor Grievant Burchell submitted post-hearing written argument. Grievant Lovely's representative submitted late-filed written argument on September 9, 1996, stating as the reason for her tardiness that she had been off work. The undersigned is aware that Grievant's representative had been seriously ill. Respondent did not object to the late filing. Due to the lack of any objection, and the good cause for late filing, this written submission will be considered by the undersigned as if timely filed.

[Footnote: 3](#) *The thirteen point factors are set forth in 128 C.S.R. 62 § 2.27, and 131 C.S.R. 62 § 2.27. Burke, supra.*

[Footnote: 4](#) *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, W. Va. Univ., Docket No. 94-MBOT-1059 (Oct. 26, 1995); and Zara, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-817 (Dec. 12, 1995).*

[Footnote: 5](#) *This discussion is not intended to address challenges to the way the Mercer system as a whole is set up, that is, challenges to the methodology.*

[Footnote: 6](#) These headings are shorthand for the following point factors: KN is Knowledge; CPS is Complexity and Problem Solving; FA is Freedom of Action; SE, NA is Scope and Effect/Nature of Actions; IC, NC is Intrasystems Contacts/Nature of Contact; EC, NC is External Contact/Nature of Contact; PC is Physical Coordination; and, WC is Working Conditions.

[Footnote: 7](#) A higher degree level in either of these point factors would add enough points to place Grievants in a Pay Grade 7. Their Job Title was only four points away from a Pay Grade 7.

[Footnote: 8](#) Respondent did not argue that Grievants should have received a lesser degree level in any point factor. Accordingly, the undersigned will not address the point factors not challenged by Grievants.