

ARTHUR DEAVERS, et al.

v. Docket No. 94-MBOT-914

BOARD OF TRUSTEES/BOARD OF DIRECTORS

DECISION

Grievants, Roy Bate, Charles Bledsoe, Linda Campolong, Betty Cartwright, Frances Cogar, Jackie Cowell, Susan Dadisman, Arthur Deavers, Charles Dewitt, Larry Elmo, Bobby Everly, William Exline, Roger Filipovsky, Kathy Foley, Lonnie Foley, Sharon Ford, Audrey Gray, Kenneth Groves, Ronald Groves, Geneva Hall, Delbert Harless, Barbara Harvey, Oliver Harvey, Agnes Horton, Michael Joplin, Dixie Keefover, Kenneth Laishley, Lynne Lambert, David Martin, Jimmy Mays, James Mitchell, Karen Mitchell, Delmas Molisee, Constance Moore, Carolyn Morris, Willard Myers, Helen Nastasi, Connie Naylor, Doris Nicola, Robert Perdue, Carl Pritchard, Bobby Riley, Kathy Rizer, Edward Robinson, Deloris Rogers, Imogene Scott, Beverly Salisbury, Barbara Smith (Myers), Frank Stager, Gloria St. Clair, Wilbur Stewart, Stuart Swaney, Patricia Trippett, Barbara Turney, Joan Wagner, Isa Wiles, Freddie Wolfe, and Lloyd Wolverton, allege they were improperly assigned as Building Service Workers at Pay Grade 4 or Building Service Workers - Lead, Pay Grade 7, under the "Mercer reclassification," and seek to be compensated at higher levels, with backpay, effective January 1, 1994, the date the classification system was implemented. [\(See footnote 1\)](#) A level four hearing was conducted on March 18-21, 25, 26, May 20 and 31, 1996, and the matter became mature for decision with the submission of post-hearing fact/law proposals by the parties on or before September 30, 1996.

The following Findings of Fact are properly made from the record developed at level four.

Findings of Fact

1. Grievants are employed by the Board of Trustees or the Board of Directors (Respondents) as Building Service Workers or Building Service Worker - Leads, at West Virginia University, Concord College, Marshall University, and West Virginia State College. [\(See footnote 2\)](#)

2. In 1991, all higher education classified employees, including Grievants, were asked to complete

a Position Information Questionnaire (PIQ) prior to the reclassification. 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. 3. As a result of the Mercer reclassification, Grievants were classified as Building Service Workers at Pay Grade 4, or Building Service Worker - Leads, Pay Grade 7, effective January 1, 1994.

4. Grievants' primary job duties prior to January 1, 1994, vary somewhat depending on location, but generally consisted of commercial or industrial janitorial service to the different facilities of their respective campuses.

5. The general function of Building Service Workers is to clean their assigned areas which include, but are not limited to, student centers, offices, classrooms, auditoria, hallways, laboratories, etc. Cleaning duties specifically include the gathering and removal of refuse from wastebaskets, floors, and other surfaces, and transferring it to the nearest dumpster, vacuuming, dusting, sweeping, mopping, scrubbing, buffing, waxing, and polishing the various types of floor surfaces. Grievants may do spot removal of stains in upholstery and carpeting, wash windows inside and out, and arrange furniture for specific activities (set ups). In the performance of their duties, Grievants may use heavy equipment and chemicals which require preparation. Grievants are exposed to potentially dangerous substances, including blood and human waste, requiring that protective articles such as gloves be worn.

6. Lead workers handle the day to day organization of the work in their assigned buildings, generally direct the efforts of their co-workers and bear responsibility for insuring the work is completed in a proper manner, as well as perform the same duties as Building Service Workers. These duties evolved somewhat during the period of 1991-1993, when leads began managing larger crews covering a wider geographic area, requiring that they perform more supervisory duties. Leads are responsible for training new employees and dealing with conflicts that arise, including scheduling problems, and ordering new products.

7. The Building Service Worker job title received 1089 total points from the following degree levels in each of the thirteen point factors [\(See footnote 3\)](#): 2.0 in Knowledge; 1.0 in Experience; 1.0 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 Intrasytems Contacts, Nature of Contact; 1.0 in Intrasytems Contacts, Level; 1.0 in External

Contacts, Nature of Contact; 1.0 in External Contacts, Level; 1.0 in Direct Supervision Exercised, Number; 1.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 2.0 in Physical Coordination; 3.0 in Working Conditions; and 3.0 in Physical Demands.

8. The Building Service Worker - Lead job title received a total of 1377 points from the following degree levels in each of the thirteen point factors: Knowledge - 2.0; Experience - 2.0; Complexity and Problem Solving - 1.5; Freedom of Action - 1.5; Scope and Effect, Impact of Actions - 1.0; Scope and Effect, Nature of Actions - 1.0; Breadth of Responsibility - 1.0; Intrasystems Contacts, Nature of Contact - 1.0; Intrasystems Contacts, Level - 1.0; External Contacts, Nature of Contact - 1.0; External Contacts, Level - 1.0; Direct Supervision Exercised, Number - 3.0; Direct Supervision Exercised, Level - 3.0; Indirect Supervision Exercised, Number - 1.0; Indirect Supervision Exercised, Level - 1.0; Physical Coordination - 2.0; Working Conditions 3.0; and Physical Demands - 3.0.

9. The point range for Pay Grade 4 is from 1077 points to 1130 points.

10. Grievant Scott requests reassignment to Pay Grade 5, which has a point range from 1131 points to 1189 points.

11. Grievants represented by WVSEU and Local 814 request reassignment to Pay Grade 6, which has a point range from 1190 points to 1252 points.

12. Grievant Bledsoe and Grievants represented by Ms. Cramer request reassignment to Pay Grade 7, which has a point range from 1253 points to 1320 points.

13. Grievants represented by WVU-ACE, classified as Building Service Workers and assigned to all areas excluding the Mountainlair, request reassignment to Pay Grade 8, which has a point range from 1321 points to 1394 points.

14. Grievants represented by WVU-ACE, classified as Building Service Workers and assigned to the Mountainlair, request reassignment to Pay Grade 9, which has a point range from 1395 points to 1474 points.

15. Grievants represented by WVU-ACE, classified as Building Service Worker - Lead request reassignment to Pay Grade 13, which has a point range from 1756 points to 1865 points.

Discussion

A. Burden of Proof

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 §4.1; 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, without also identifying which point factors he is challenging, and the degree level he believes he should have received. [\(See footnote 4\)](#). 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 and W.Va. Civil Serv. Comm'n, 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 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 Resources, 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. [\(See footnote 5\)](#)

Grievants offer varying proposals and requests for relief. Those Building Service Workers represented by WVU-ACE request classification at pay grade 8, with the exception of those individuals assigned to the Mountainlair, who request compensation at pay grade 9. The Cramer group and Grievant Bledsoe request compensation at pay grade 7 while Grievant Scott requests pay

grade 5, and Grievants represented by Local 814 and WVSEU request pay grade 6 [\(See footnote 6\)](#). The Building Service Worker - Lead Grievants request compensation at pay grade 13. [\(See footnote 7\)](#) To properly determine whether Grievants herein are correctly classified and/or compensated requires a review of the degree levels assigned to the positions in the challenged point factors.

B. Application of the Point Factor Methodology

Grievants challenged the degree levels received in the point factors Knowledge, Experience, Complexity and Problem Solving, Freedom of Action, Scope and Effect /Impact of Actions and Nature of Actions, Internal Contacts/Nature of Contact and Level, External Contacts/Nature of Contact and Level, Direct Supervision Exercised/Number and Level, Physical Coordination, and Physical Demands. Following are the degree levels assigned by the JEC to the point factors for the Building Service Workers and Building Service Worker - Lead job titles, which Grievants contest, and the degree levels which Grievants argue are proper for their position and would place them in the correct pay grade.

Knowledge

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

The JEC assigned both Building Service Worker and the Lead positions a degree level of 2.0, 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 represented by WVU-ACE, Local 814, and WVSEU argue that their duties are more correctly measured at level 3.0, 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 argue that the higher level of education is appropriate in that they must be able to read and understand directions for equipment and cleaning products, as well as be able to apply percentages and ratios when mixing cleaning fluids. They must also understand procedures for dealing with bodily substances including vomit, urine, and feces. They must read and understand material safety data sheets, and complete room condition check sheets and work orders. Grievants argue that the higher level is in fact an actual requirement as implemented by supervisors. Supervisors Denise Kitzmiller, Paul Kelly, and Stephen Bodkin testified that they attempt to hire only applicants with a high school diploma or GED as Building Service Workers, because it is essential that incoming employees be able to read and understand directions on cleaning agents and the machinery used.

Testifying on behalf of the JEC, Senior Compensation Analyst Teresa Crawford noted that this factor establishes the minimum knowledge required of the employee at the time they are hired for the position, and that many Building Service Workers who do not currently possess a diploma or GED perform their duties satisfactorily. Requiring a diploma or GED, which does not insure that the individual can read and understand, creates an artificial hiring barrier, according to Ms. Crawford, and precludes the hiring of persons who may possess the minimal reading and math skills required in this position. Although it may generally be accepted that possession of a diploma or GED would enhance an individual's ability to master the duties of his position, this factor is intended to measure only the minimum requirements for an entry level employee to perform the job at an acceptable level, keeping in mind that a training period would be necessary for all employees. Perkins v. Bd. of Trustees/ WVU-Parkersburg, Docket No. 94-MBOT-733 (Oct. 31, 1996). As in virtually all cases, an employee with a higher degree of education might perform the duties with a shorter training period and offer the employer other benefits of additional knowledge. The evidence of record establishes, however, that the duties related to Building Service Worker, may be satisfactorily performed by an individual without a high school diploma or GED. This conclusion is best supported by the fact that a number of employees in this classification currently do not possess a high school diploma or GED.

Experience

The Plan defines experience as "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." See Jones, et al. v. Bd of Trustees/West Virginia University, Docket No. 94-

MBOT-978 (Feb. 29. 1996).

The JEC awarded the position of Building Service Worker a degree level of 1.0 in this factor, defined by the Plan as “[n]o experience or up to six months of experience.” Grievants represented by WVU-ACE, WVSEU, and Ms. Cramer request a degree level of 2.0, defined by the Plan as “[o]ver six and up to twelve months of experience.” Grievants represented by Local 814 request a degree level of 3.0, defined as [o]ver one year and up to two years of experience.”

Lead workers were assigned a degree level of 2.0, and request assignment at 5.0, defined by the Plan as “[o]ver three years and up to four years of experience.”

Grievants argue that the higher levels are supported in that they are required to operate various types of cleaning equipment, such as high speed buffers, and use a variety of cleaning techniques. The additional experience is necessary, they argue, to satisfactorily complete workloads increased as the result of downsizing, without supervision. Familiarity with cleaning chemicals and experience in operation of the equipment are mandatory for new employees who have less time available for training or research on the job.

Leads assert that a level of 5.0 is appropriate because they must be capable of performing Building Service Worker duties in all areas, train new workers, resolve day to day problems, customer complaints, and inquiries, manage, monitor, and coordinate employees, including completing paperwork for leave time, etc. Additionally, they are responsible for seeing that the work is completed and must prioritize assignments and assign areas.

Respondents again assert that this factor measures the minimum level required to perform the duties of the position at the entry level. Ms. Crawford noted that while prior experience is useful to insure a good employment history, it is not necessary to measure this factor, and that employees are expected to need a period of time to learn the specifics of their work. She stated that most tasks could be learned within 6 months, with the exception of those duties which may only be performed in a cyclical fashion, such as stripping and waxing floors.

Accepting that Grievants may be expected to serve the same area with fewer employees, the facts do not support the higher level sought in this factor. While it would be advantageous to the employer and other employees for new employees to report for work at a fully functional level, this situation is not attainable as a practical matter. As entry-level employees Grievants are not expected to know how to operate equipment or use cleaning agents, but they are expected to learn these

functions of their jobs during a reasonable learning period after employment.

Because Lead workers are assigned supervisory and administrative duties relating to Building Service Workers it is necessary that they acquire additional experience prior to assuming this role. However, six to twelve months of experience is adequate to train new employees. Although Grievants do not receive training relating to prioritizing work and supervising employees while Building Service Workers, it is reasonable that six to twelve months experience, together with an initial training period in the Lead position, would provide a base knowledge for completion of these tasks.

Grievants have failed to prove that a degree level of 1.0 for Building Service Worker and 2.0 for Leads is clearly wrong.

Complexity and Problem Solving

The Plan defines Complexity and Problem Solving as “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.”

The JEC assigned the position of Building Service Worker a degree level of 1.0, defined in the Plan as “[r]outine 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.”

Grievants represented by WVU-ACE assigned to the Mountainlair and Grievants represented by Ms. Cramer assert that a degree level of 1.5 more accurately reflects their duties, while Grievants represented by WVSEU and Grievants St.Clair (Local 814) and Scott claim that 2.0 is the proper degree level for this point factor, while Grievant Turney (Local 814) asserts that 3.0 is appropriate. The Plan does not define half levels; however, a degree level of 2.0 is defined as:

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

A degree level of 3.0 is defined by the plan as:

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

The JEC assigned the position of Building Service Worker - Lead a degree level of 1.5. Grievants assigned to the Mountainlair argue that 2.0 is the proper level for their duties.

Grievants assert that the higher levels are proper because they must resolve a wide variety of cleaning and maintenance problems daily. They face situations which include unstopping toilets and replacing air conditioning filters, electric switch plates and faucets, in areas as diverse as dormitory rooms, apartments, and common areas. When facing any given situation, Grievants must exercise their judgment to make decisions resolving the problem. They must interpret instructions and properly utilize supplies and equipment to attain the desired results without supervision or assistance. Grievants argue that no simple, standardized instructions are provided to direct their daily activities.

Building Service Workers assigned to the Mountainlair claim that their work involves more than routine problems and is more demanding because they are specifically trained to deal with the public and work under a rigorous and tight schedule. The Mountainlair consists of a variety of areas to be served, including a theater, game room, food court, restaurant, computer center, pub, copy center, post office, offices, and meeting rooms. Grievants assigned to the Mountainlair are responsible for cleaning and maintaining the facility which is promoted as a "showplace." On any given day numerous meetings are scheduled, requiring individualized "set ups" of chairs, tables, stages, podiums, pianos, and other equipment.

Leads are responsible for receiving and implementing daily set up schedules, coordinating crews, and setting priorities. Grievants characterize problems and conflicts as "the norm," and their goal is to assure that all customers are satisfied. Because the work environment is so fast-paced, decisions must be made on the spot. Both Building Service Workers and Leads assigned to the Mountainlair consider themselves not only industrial janitors, but also salespeople, public relations promoters, equipment experts, "gofers", stagehands, laborers, reservations clerks, and the first line of defense for whatever problems arise.

Ms. Crawford testified that Building Service Workers were assigned a degree level of 1.0 because they deal with routine problems for which Respondent has well-defined procedures, and they are normally trained with oral instructions. Leads were assigned a degree level of 1.5 because they must decide how to get high priority work done in case of absences, and know how to call in maintenance crews in emergency situations. Ms. Crawford noted that by comparison Assistant Supervisors were allocated a 2.0 in this point factor and their duties included higher responsibilities, including the completion of reports.

Grievants are faced with many situations daily which require that they determine how best to proceed. Although Grievants are expected to do what is best in any situation, frequently the solutions are simple. For example, a stain on a carpet would require the use of the proper cleaning agents. In other situations, the employee might be expected to choose among a variety of available solutions. While Grievants may be required to make many decisions every day as to what should be done in any given situation, established procedures and instructions are available to assist them. Grievants assigned to the Mountainlair are assigned some duties which differ from other Building Service Workers; however, their work is fairly routine with procedures and instructions available. Grievants have not proven Respondents' determination in this regard was clearly wrong or arbitrary and capricious.

Breadth of Responsibility

The Plan defines Breadth of Responsibility as:
the variety of specific functional areas in which the job may have formal and ongoing accountability. In reviewing this factor, consider the level of in-depth knowledge required as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations. [Examples of some functional areas within the following divisions would include: (1) Student Services--Housing, Admissions, Financial Aid, Counseling; (2) Business and Finance--Purchasing, Auditing, Grants and Contracts, Bursar.]

The JEC awarded Building Service Worker and Building Service Worker - Lead a degree level of 1.0 in this point factor, defined by the Plan as "[a]ccountable for only immediate work assignments but not for a functional area."

Grievant Bledsoe requests a level of 5.0 in this point factor, defined by the Plan as "[i]n-depth knowledge of and accountability for four or more functional areas as measured by the incumbent's

ability to answer detailed and complex questions relative to policies, procedures, laws and regulations.”

Grievant's position in this area is unclear, but he appears to base his request on different geographic areas for which he is responsible, or on different facets of his responsibilities. Respondent argues that Grievant is not responsible for any matters outside his immediate work assignment. Because Grievant is not accountable for any duties beyond his immediate work assignment, a degree level of 1.0 was not improper in this point factor.

Freedom of Action The Plan defines Freedom of Action as:

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.

Building Service Worker was accorded a degree level of 1.0, defined by the Plan as: [t]asks 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 represented by WVU-ACE, Grievant Harless (WVSEU), and by Ms. Cramer request a degree level of 2.0, defined by the Plan as “

[t]asks 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.”

Grievant St.Clair represented by Local 814 and the Building Service Workers - Lead request a degree level of 3.0, defined by the Plan as “[t]asks are moderately structured with incumbent working from objectives set by the supervisor. At this level, the employee organizes and carries out most of the work assignments in accordance with standard practices, policies, instructions or previous training.

The employee deals with some unusual situations independently.”

Grievant Mays (WVSEU) and Grievant Turney (Local 814) argue that their duties are more properly defined at a 4.0 level as:

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

Grievants argue that they work almost entirely without supervision, leaving them to resolve problems to the best of their ability. Ms. Crawford testified that Grievants work with little supervision because their tasks are highly structured and routine. She indicated that this factor supported a designation of 1.0 for Building Service Workers. Leads were assigned a degree level of 1.5 based upon their additional responsibilities to ensure that the work was completed.

The evidence establishes that Grievants work without constant supervision but exercise only minimal freedom of action as their positions are highly structured. Their duties and responsibilities are established and repetitive, such as the cleaning of floors, disposal of waste, and setting up conference rooms. Building Service Workers generally function with clear, and highly specific instructions. Procedures, practices, and time schedules limit Grievants' freedom of action in performing tasks. Lead Grievants exercise more freedom in that they must make some basic decisions as to what must be done and prioritize the work; however, tasks remain clear-cut and procedures are well defined. Thus, the evidence supports Respondent's determination that levels of 1.0 and 1.5, respectively, are appropriate for this point factor.

Scope and Effect

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

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.

Scope and Effect is divided into two subdivisions, Impact of Actions and Nature of Action; however, Grievants challenge only the Nature of Action. Building Service Worker and Leads were awarded a degree level of 1.0 in Nature of Action, defined by the Plan as “[w]ork 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.”

Grievants represented by WVSEU, Ms. Cramer, and Grievant St. Clair (Local 814), argue that they are entitled to a degree level of 2.0, defined in the Plan as “[w]ork 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.”

Grievant Turney (Local 814) asserts that she is entitled to a degree level of 4.0, defined in the Plan as “[w]ork contributes to or ensures the effectiveness of operations or services having significant impact within the institution and involves application of policies and practices to complex or important matters. Errors could easily result in substantial cost, inconveniences, and disruption of services within the affected area.”

Building Service Worker - Leads assigned to the Mountainlair request a degree level of 2.0 in this point factor.

Grievants argue that substantial harm could be done if a high speed buffer or other equipment of considerable size and weight, should “get out of control” and injure individuals or possibly run through a wall or damage the flooring. Harm could also easily be suffered, Grievants state, if cleaning fluids

were improperly mixed, causing bodily injury or damage to surface upon which it is applied.

Respondent asserts that a degree level of 1.0 was properly applied to both Building Service Workers and Leads because it accurately reflects the types of duties performed by employees who provide support services. The examples provided by Grievants are of serious nature and concern to individual employees; however, this factor is to be considered as to the effect errors would have on an institution as a whole. In this case, errors or accidents would incur minor inconvenience and/or cost to the institution. Even the most serious errors committed by Grievants would have minimal to no effect on the overall mission of the institution and the higher education systems. A degree level of 1.0 was appropriate for this point factor.

Intrasystems Contacts

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

appraises the responsibility for working with or through other people within the [State College and University Systems of West Virginia] to get results. Consider the purpose and level of contact encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, explaining policies or discussing controversial issues. This factor considers only those contacts outside the job's immediate work area.

Intrasystems contacts is subdivided into Nature of Contact and Level of Regular, Recurring, and Essential Contact. The JEC awarded Building Service Worker a degree level of 1.0 in Nature of Contact is defined in the Plan as “[r]outine information exchange and/or simple service activity; requires common courtesy (e.g., furnishing or obtaining factual information, ordering supplies, describing simple procedures).”

Grievants represented by WVSEU request a degree level of 2.0 in Nature, defined in the Plan as “[m]oderate 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.)” Grievant Turney (Local 814) requests a degree level of 3.0, defined as “[s]ubstantial sensitivity and cooperation required; discussions are frequently controversial and require some delicacy (e.g., project interactions, interpretations of complex policies, resolution of somewhat difficult problems.)”

The JEC awarded Building Service Worker a degree level of 1.0 in Level of Regular, Recurring and Essential Contact, defined in the Plan as “[l]imited to immediate associates and own supervisor

within immediate office, unit, or related units.”

Grievants represented by WVU-ACE, including Leads, and WVSEU request a degree level of 2.0 in Level of Contact, defined in the Plan as “[s]taff and faculty outside the immediate work unit.”

Grievants assert that they must be tactful when dealing with faculty and staff to coordinate their work around individual preferences, events and practices. Respondent argues that common courtesy is appropriate because interaction with other employees, etc., is not a primary function of Grievants' positions. Ms. Crawford stated that to the minimal extent that Grievants engage in this type of communication, it is a performance issue and not a classification issue.

The record establishes that many Grievants work the midnight shift and have virtually no contact with faculty and staff outside their work units. Clearly, some Grievants do work during the day or evening at locations where contact is made with faculty and staff; however, it does not appear that such contact is regular, recurring or essential to Grievants' duties. Grievants have presented several instances in which this conclusion would initially appear to be questionable. Grievant Mays works in the gymnasium and must maintain communication with coaches. Grievants assigned to the Mountainlair certainly communicate with staff who have offices in that building. Grievants who work at the Creative Arts Center would reasonably have contact with faculty and staff during performances or exhibits. However, it is not conclusive that any Grievant's contact with faculty and staff is regular and essential. Even those Grievants cited would appear to have irregular, and for the most part, not essential, contact with faculty and staff. As previously noted, Grievants' work is routine, so, even though duties may vary from location to location, they are likely to know what needs to be done and when.

Any interaction that may occur between Grievants and their immediate associates or supervisor when planning their work would require only common courtesy, that is, being polite or considerate. Grievants are not expected to exercise a perception of the right thing to say or do without offending someone, or to engage in controversial matters. Although Grievants surely work with some individuals who are more difficult than others, their interactions in providing routine information or a simple service activity may be completed by acting with common courtesy.

Grievants have failed to prove that the JEC determination was clearly wrong on this point factor.

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.

This factor consists of two parts, Nature of Contact and Level of Regular, Recurring and Essential Contact. The JEC awarded the position of Building Service Worker a degree level of 1.0 in Nature of Contact, defined in the Plan as “[r]outine information exchange and/or simple service activity; requires common courtesy (e.g., furnishing or obtaining factual information, ordering supplies, describing simple procedures).”

Grievants represented by Local 814 argue they are entitled to a degree level of 2.0 in Nature of Contact, defined in the Plan as:

[m]oderate 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.)

The JEC awarded the positions of Building Service Worker and Building Service Worker - Lead a degree of 1.0 in External Contacts/Level, defined in the Plan as “[e]xtremely infrequent; virtually no contact beyond immediate work unit/area; or occasional contacts are incidental to the purpose of the job.”

Grievants represented by WVSEU argue that they are entitled to a degree level of 2.0, defined as “[g]eneral public, visitors, and/or service representatives and vendors.” Grievants represented by Local 814 and WVU-ACE, including Leads, request a degree level of 3.0, defined as “[s]tudents, parents, alumni, faculty of institutions outside the systems, sales engineers, higher-level product representatives, recruiters and/or prospective students.

Grievants cite contacts with international students who are unfamiliar with our culture and customs, as well as daily interactions with domestic students and parents, as requiring moderate tact and cooperation. Grievants assigned to student housing facilities state that they give tours of the facility to prospective students and parents. Grievants assigned to the Mountainlair particularly stressed their contact with the twenty-five or more thousand people who pass through the student center daily. These contacts include students, parents, alumni, and visitors. Numerous Grievants testified that their supervisors had stressed to them that the Mountainlair is a showplace, and that it is

their duty to insure customer satisfaction. They recall much emphasis being placed on the fact that they work at a tax-supported institution, and their salaries flow from those who use the facility. Grievant Joplin specifically stated that he had been disciplined for not treating a student with the proper courtesy and respect. Grievants who testified on this matter consistently stated that they understood external communications to be an essential job function.

Respondent concedes that some Grievants may have regular and recurring contact with students, but that the key for advanced credit in this point factor is whether the contact is essential to the duties of their positions. Ms. Crawford testified that the interaction described by Grievants was marginal, or such a small part, of their primary duties, that it was non-essential and did not support a higher degree level. As to the nature of interaction, Ms. Crawford stated that it consisted of Grievants providing information and would require only common courtesy rather than moderate tact. Addressing Grievants' understanding that their external interaction was an essential part of their duties, she distinguished this as a performance factor rather than a classification issue.

Grievants have established that they may communicate with students, parents, and others, relating to any number of subjects on a daily basis. This communication, insofar as it relates to their work as Building Service Workers, is limited to providing routine information or service activity, and requires only that they be polite and considerate. A level of 1.0 is the correct degree level for the Nature section of this point factor.

The record establishes that Grievants are well instructed in the area of public relations, and should serve as examples to other classified and unclassified employees at these institutions. Clearly, those Grievants assigned to the Mountainlair are exposed to more external contacts than other Grievants; however, Grievants assigned to the dormitories have daily contact with students. Some are required to provide tours of the facilities to prospective students and parents. Building Service Workers assigned to the Creative Arts Center and the Puskar Building interact with members of the public who attend activities in those facilities. Unfortunately, these contacts, while important, are not part of the cleaning and set up duties which constitute the position of Building Service Worker, and cannot be used to raise the degree level in this point factor.

Direct Supervision Exercised

This factor measures the job's degree of direct supervision exercised over others in terms of the level of subordinate jobs in the organization, the nature of the work performed, and the number supervised. Only the formal assignment of such responsibility should be considered; informal work relationships should not be

considered. Supervision of student workers may be taken into account if they are essential to the daily operation of the unit. The number of subordinates should be reported in full-time equivalency (FTE) and not head count.

This factor is subdivided into Number of Direct Subordinates and Level of Supervision. Building Service Worker was slotted at degree level 1.0 in Number, defined in the plan as "[n]one." Grievants represented by WVSEU request a degree level of 1.5 in the Number category of this factor. Half levels were not defined in the Plan; however, 2.0 was defined as "[o]ne." The JEC placed Lead workers at a degree level of 3.0, defined by the Plan as "2-3." Lead Grievants request a degree level of 5.0, defined by the Plan as "7-10."

The record reflects that Grievant Mays is assigned 4-5 student workers several months during the year. The students assist him at sporting events, and he characterizes them as essential to the unit during this period of time. The Leads assert that during the 1991-94 time period changes in personnel assignments had increased the number of their subordinates to 7-10 persons, elevating the degree level in this point factor.

Respondent argues that student employees are not considered in this point factor unless they are considered essential to the operations of the department. If the goals and objectives would be met without the students, even if completion by regular employees required a longer period of time, the student workers are deemed non-essential. Ms. Crawford testified that very few student workers were considered essential in the system. Only situations in which the absence of students would result in the absence of services, such as food service in the Mountainlair, were student employees considered essential.

Addressing the Leads' request for a degree level of 5.0, Ms. Crawford noted that approximately 578 Building Service Workers, and 76 Leads, are employed in the higher education system throughout the state. She acknowledges that while some Leads may supervise more than 3 employees as reflected in this degree level, the JEC applied the concept of averaging in this point factor. The result was that the degree level was determined by the level held by the majority of Leads. She further noted that Assistant Supervisors were allocated a degree level of 5.0, but may supervise as many as 22 employees. Apparently, the students assigned to Grievant Mays assist with building and equipment maintenance and preparation for sporting events. While their presence is undoubtedly a benefit, Grievant does not state that the work would not get done without the students.

Because work-study students are considered non-essential, and non-essential employees are not included in this category, Grievant Mays cannot be given a level of 1.5 in this point factor.

The Building Service Worker - Leads claim to a degree level of 5.0 is more problematic. Simple division of Leads into Building Service Workers indicates there to be approximately 7.6 Workers per lead. Of course, actual assignments vary and some Leads supervise more employees. Because this degree level was determined numerically, it cannot be determined that the JEC erred in assigning Leads a 3.0 in this point factor. [\(See footnote 8\)](#)

___The JEC awarded Building Service Worker a degree level of 1.0 in Level of Supervision, defined as “[m]inimal or no responsibility for the work of others; however, may provide functional guidance to student workers or lower-level employees on a non-essential basis.”

Grievants represented by WVSEU also request a degree level of 1.5 in this factor. A degree level of 2.0 is defined as “[r]esponsible for directing and monitoring the work of student workers essential to the operation of the unit.” Because the student workers assigned to Grievants were not essential, a claim to a degree level of 1.5 is not supported.

Physical Coordination

Physical Coordination is defined in the Plan as “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.”

The JEC awarded Building Service Worker a degree level of 2.0, defined in the Plan as “[w]ork 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 represented by WVSEU and Grievant Bledsoe request a degree level of 3.0, defined in the Plan as “[w]ork requires some speed and accuracy of hand/eye coordination in the use of somewhat complicated instruments, equipment or hand or power tools requiring some speed and adeptness.”

Grievants cite heavy floor cleaning and other equipment which they use in the course of their duties as the basis for their request. Respondent argues that a degree level of 2.0 reflects the motor skills and precision required in Grievants' use of this equipment.

This point factor reflects the fine motor skills necessary to perform the duties of the position. While Grievants must exhibit some hand/eye coordination in operation of the equipment, speed in performing this work is not essential. Certainly, some skill is necessary in the correct usage of the machinery; however, it does not appear to require the speed and adeptness expected of an employee rated at level 3.

Physical Demands

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

[t]his 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.

The JEC awarded Building Service Worker and Lead positions a degree level of 3.0 in this factor, defined as “[m]oderate physical effort required involving long periods of standing, walking on rough surfaces, bending and/or stooping; periodic lifting of moderately heavy items (over 25 and up to 50 pounds).”

Grievants represented by WVU-ACE and WVSEU request a degree level of 4.0, defined in the Plan as “[c]onsiderable physical exertion required involving bending, stooping, climbing, lifting or carrying heavy items (over 50 and up to 75 pounds) and periodically working in difficult or awkward positions.”

Grievants base the higher degree level on the weight of trash cans, equipment and furniture which they move. Respondent argues that the rating of 3.0 was based on the norm and not occasional events. The rating was supported, according to Ms. Crawford, by the long periods of time Grievants stand, walk, and lift during their daily routine.

Grievants maintain constant physical activity while on duty. The evidence also shows that they lift furniture or large trash bags and they move and operate equipment which may weigh more than one hundred pounds. At times they may be required to work in an awkward position, such as cleaning around toilets. However, Grievants are not required to lift more than 50 pounds. Refuse may be divided into smaller bags. Assistance may be requested when moving heavy furniture or other items. While large floor scrubbers and buffers are quite heavy and cumbersome, Grievants generally roll and push, rather than lift, these items. While this area appears to be borderline on the degree level, it

cannot be determined that the 3.0 awarded by the JEC is clearly wrong.

D. Summary

___Grievants have failed to prove that the JEC was clearly wrong or acted in an arbitrary and capricious manner in the allocation of degree levels in the referenced point factors. Neither has it been established that Grievants assigned to the Mountainlair should be assigned a higher pay grade than Building Service Workers assigned elsewhere. While those employees at the Mountainlair do spend a higher percentage of their time on set ups, while other Building Service Workers primarily clean, their duties and responsibilities fall squarely within the job title of Building Service Worker.

In addition to the foregoing facts and narration it is appropriate to make the following formal conclusions of law.

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 Grievants to prove by a preponderance of the evidence that they are not properly classified. 156 C.S.R. 1, §4.1. 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, if one exists, and point factors will be given great weight unless clearly wrong, where the proper classification of a grievant is almost entirely a factual determination. See Tennant v. Marion Health Care Found., 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. Grievants failed to prove by a preponderance of the evidence that the Job Evaluation Committee's assignment of degree levels to cited point factors was clearly wrong or arbitrary and capricious.

5. Grievants have failed to prove that their duties and responsibilities warrant compensation at any higher pay grade.

Accordingly, the 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.

Date: December 10, 1996 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

[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](#)

Grievants are essentially in eight groups. Linda Campolong and Michael Joplin represented themselves, Charles Bledsoe was represented by a co-worker, Imogene Scott was represented by counsel. Grievants Bate, Cartwright, Lambright, Horton, Keefover, Swaney, Robinson, and Hall were represented by Tammy Cramer, a co-worker. Grievants Harless and Mays were represented by the West Virginia State Employees Union (WVSEU), Grievants Turney and St. Clair were represented by Local 814, and the remainder of Grievants were represented by WVU-ACE.

[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. 6, 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](#)

At hearing, the Local 814 Grievants requested reassignment to Pay Grade 8. In post hearing argument filed by their counsel, Grievants requested reassignment to Pay Grade 6 based upon a comparison to the position of Housekeeper I. Grievants limited the challenged point factors to Scope and Effect/Nature of Actions; Intrasystems Contacts/Level, and Physical Demands, because reassignments in those areas would provide adequate points for Pay Grade 6, they did "not find it necessary to pursue additional points in all factors where they disagree with the JEC."

[Footnote: 7](#)

Although Grievants Joplin and Campolong represented themselves at hearing, their claim for relief is the same as the Leads represented by WVU-ACE, and they will be considered part of that group for purposes of this decision.

[Footnote: 8](#)

Administrative notice is taken that the averaging applied by the JEC benefitted those Leads who supervised fewer employees, and that while Leads assigned more employees may appear to have suffered in this point factor, the data line was checked to insure that the lower degree level did not affect the pay grade. If the pay grade was affected, the position was reviewed and the creation of an additional level for the job was considered. In the present case, those Leads with more subordinates would not have been assigned a higher pay grade if they had received a higher degree level in this point factor.