

**SAMUEL WEST,**

**Grievant,**

**v. DOCKET NO. 94-MBOT-1044**

**BOARD OF TRUSTEES,**

**WEST VIRGINIA UNIVERSITY,**

**Respondent.**

### **DECISION**

This is a grievance by Samuel West (Grievant) challenging his classification effective January 1, 1994, as a Locksmith in Pay Grade 12 by the Board of Trustees, West Virginia University (Respondent), under the Job Evaluation Plan (JEP) for the State College and University Systems of West Virginia developed by William M. Mercer, Inc. (Mercer Plan). This grievance was initiated in August of 1994 in accordance with specific procedures established in Section 18 of the Legislative Rule for Personnel Administration promulgated by the University System of West Virginia Board of Trustees on May 5, 1994. 128 C.S.R. 62. In October 1994, Respondent waived this grievance to Level IV. [\(See footnote 1\)](#) A Level IV evidentiary hearing was conducted in the Grievance Board's office in Morgantown, West Virginia, on January 26, 1996. This matter became mature for decision with the receipt of Respondent's written post-hearing submission on February 26, 1996. Grievant did not file any post-hearing argument.

Grievant is classified as a Locksmith, Pay Grade 12. Grievant seeks to be classified as a Locksmith, Pay Grade 13, effective January 1, 1994. Grievant's "Statement of Grievance" states:

I believe that my position has been placed in the wrong pay grade. I do not believe the points were accurately assigned to represent the responsibility and depth of the duties required of this position. Furthermore, I believe this happened because of a lack of understanding on the part of the JEC of the requirements of the job of locksmith. A locksmith performs a highly technical and skilled job that requires a specialized knowledge. A locksmith's job also mandates a high degree of confidentiality and trust.

All levels of supervisors, from my immediate supervisor to the Physical Plant director, support my position that the pay grade currently assigned is too low for the level of responsibility for the position of locksmith and should be raised.

Grievant generally contends the JEC should have classified him as a Locksmith at Pay Grade 13. Grievant asserts he was not correctly evaluated on six of thirteen factors in the Mercer Plan's "Point Factor Methodology."

The process under which Grievant was reclassified, effective January 1, 1994, began with completion of a Position Information Questionnaire (PIQ). PIQs are highly-structured documents, 17 pages in length, on which individual employees describe the duties of their position, as well as certain minimum qualifications required to carry out their duties. PIQs are essentially position descriptions that were primarily developed to facilitate the job evaluation process. Employees were further asked to rate various aspects of their position, under a scale set forth in the Mercer Plan. The mechanics of this Job Evaluation Plan are generally referred to as the "Point Factor Methodology." PIQs were reviewed by the immediate supervisor and one level of management above the immediate supervisor, before being considered by the Job Evaluation Committee (JEC). The JEC consists of representatives from human resources and classified staff and is responsible for "review of classification decisions across the system." § 11.5, 128 C.S.R. 62 (1994).

Once all PIQs were completed, the JEC met as a committee and determined the application and interpretation of the various point factors contained in the JEP [\(See footnote 2\)](#) while conducting the process of reviewing the PIQs and assigning values to each factor. After reviewing all PIQs submitted by the locksmiths, the JEC assigned degree levels for each factor as shown:

**FACTOR DEGREE LEVEL**

Knowledge	4.0
Experience	3.0
Complexity and Problem Solving	2.5
Freedom of Action	2.5
Scope and Effect - Impact of Actions	1.0
Scope and Effect - Nature of Actions	2.0
Breadth of Responsibility	1.0

Intrasystems Contact - Nature of Contact	1.0
Intrasystems Contact - Level of Contact	2.0
External Contacts - Nature of Contact	1.0
External Contacts - Level of Contact	2.0
Direct Supervision - Number of Direct Subordinates	1.0
Direct Supervision - Level of Supervision	1.0
Indirect Supervision - Number of Indirect Subordinates	1.0
Indirect Supervision - Level of Supervision	1.0
Physical Coordination	4.0
Working Conditions	2.0
Physical Demands	2.0

Using a mathematical equation which is not at issue, the foregoing levels were calculated to award these positions a total of 1,681 total points, equating to a Pay Grade 12 position. The Point Score Range for Pay Grade 12 is 1655 to 1755.

Teresa Crawford, a Senior Compensation Analyst in the Department of Human Resources at WVU, testified for Respondent. Ms. Crawford has handled classification and compensation matters at WVU since 1984. In that capacity, she is responsible for classification and compensation matters pertaining to employees in the Physical Plant, as well as the maintenance engineering unit in the Health Sciences Center. In addition to holding a B.S. in psychology, a B.S. Business Administration and a M.B.A. degree, Ms. Crawford is certified as a compensation professional by the American Compensation Association.

Ms. Crawford explained that the basis of the Mercer classification system was to insure equity in classifications at all colleges and universities in the state system. PIQs are based upon the duties assigned to the position, not the qualifications of the individuals occupying the position.

Ms. Crawford was actively involved in the reclassification of the Locksmith position. She had many discussions with Mr. Dorsey Jacobs, Director of the Physical Plant at WVU, and Mr. Gary Miller, Director for Maintenance Engineering at the Health Sciences Center, concerning the duties

and responsibilities of Locksmiths at WVU. Subsequently, Ms. Crawford presented and explained that information to the JEC.

Ms. Crawford also testified that the Locksmith position went through many changes and was originally rated lower at a pay grade 11. However, after the internal review and appeal process, the Locksmith position was changed to a pay grade 12. Part of the reasoning for this change was to keep the craft positions consistent with each other.

## **DISCUSSION**

Because grievances challenging pay or classification are not disciplinary in nature, grievant has the burden of proving by a preponderance of the evidence that he has been misclassified. 156C.S.R. 1 § 4.17 (1989). See, W. Va. Code § 18-29-6 ¶ 5; Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). 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). The higher education employee challenging his classification thus will have to overcome a substantial obstacle in attempting to establish that he is misclassified. ([See footnote 3](#))

Whether Grievant is properly classified is substantially a factual determination that must be made on a case-by-case basis. Burke, supra. See, Snider v. W. Va. Bureau of Environment, Docket No. 95-DEP-306 (Sept. 29, 1995). Determinations of the JEC regarding application of the Mercer Plan's point factor methodology are essentially questions of fact. As such, the JEC's interpretation and explanation of the point factors and Generic Job Description at issue will be given great weight unless clearly erroneous. See, Tennant v. Marion Health Care Foundation, 459 S.E.2d 374 (W. Va. 1995); Burke, supra. Likewise, subjective determinations of the JEC regarding application of the JEP'S point factor methodology to an employee or group of employees are entitled to deference when being reviewed by this Grievance Board. However, such subjective determinations may nonetheless be found to be arbitrary and capricious if not supported by a rational basis, or to be clearly wrong if there is no substantial evidence in the record supporting the finding or, review of the evidence of record makes it clear that a mistake has been made. Jessen v. Bd. of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995). See Frymier- Halloran v. Paige, 458 S.E.2d 780, 788 (W. Va. 1995); Bd. of Educ. v. Wirt, 192 W. Va. 568, 453 S.E.2d 402 (1994); Kyle, supra.

These standards must now be applied in reviewing the decision challenged here, beginning with Grievant's contention that he should have been classified as a Locksmith, pay grade 13. Grievant contends that the Locksmith classification was undervalued when the JEC rated certain factors using the Point Factor Methodology. In particular, he challenges the degree levels assigned to the Locksmith position under Factor 1, Knowledge; Factor 2, Experience; Factor 3, Complexity and Problem Solving; Factor 4, Freedom of Action; Factor 5, Scope and Effect; and Factor 12, Working Conditions; and Factor 13, Physical Demands. These point factors will be discussed in order.

### **Factor 1, Knowledge, and Factor 2, Experience**

The Respondent's Job Evaluation Plan explains Factor 1, Knowledge, as follows:

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.

The PIQ forms directed each employee to "indicate the lowest level of education and/or training usually required to understand and perform the work. Tell us what is required, not the incumbent's own educational level. Do not include job-related experience because that is covered in the next question." Under this part, the JEC evaluated the knowledge requirement for the Locksmith position at Level "D" or 4. The JEP contains the following description of this level:

Job requires basic knowledge in a specific area typically obtained through a business, technical or vocational school as might normally be acquired through up to 18 months of education or training beyond high school.

On his PIQ, [\(See footnote 4\)](#) Grievant rated the knowledge requirement for his position at Level "E" or 5, indicating:

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

Grievant's assessment of the locksmith position under this factor, was in error because he clearly combined aspects of the Knowledge and Experience Factors. While testifying, Grievant continuously intermingled the terms "knowledge" and "experience." At times, Grievant seemed to use the terms

interchangeably. Furthermore, Grievant's opinion on how his position should be rated in this category changed throughout the process. When Grievant and a co-worker completed their PIQs, an "F" or 6 was marked. Later, during the internal appeal process, Grievant stated that the Locksmith position should be equal to the other trades and receive a "C" or 3 rating. However, at the Level IV hearing, Grievant stated that the Locksmith position should have been assigned a "D" under Knowledge. He stated to reach the "D" rating, he added some degree of on-the-job experience to reach this conclusion.

Under Factor 2, Experience, the JEP uses the following definitions:

C or 3 = Over one year and up to two years of experience.

D or 4 = Over two years and up to three years of experience.

E or 5 = Over three years and up to four years of experience.

F or 6 = Over four years and up to six years of experience.

G or 7 = Over six years and up to eight years of experience.

The JEC evaluated the experience requirement for the Locksmith position at Level "C" or 3. Grievant, when completing the PIQ with a Locksmith co-worker, marked a "G" or 7. However, at the Level IV hearing, Grievant stated that the Locksmith position should have been assigned an "F" or 6 under Experience.

In regard to Factor 1, Knowledge, and Factor 2, Experience, Ms. Crawford explained that the JEP seeks to identify the minimum amount of knowledge and experience an employee must have before entering a position. It is assumed that any employee entering a new job will undergo a certain amount of on-the-job training to be oriented in the specific duties of his new position. There was a conscious effort to ensure that experience gained in obtaining the requisite level of knowledge was not also credited toward the amount of experience required to enter the position. Thus, experience obtained in the course of completing a formal training program, having been counted once under Knowledge, should not be counted a second time in establishing the minimum level of experience required under Factor 2.

Accordingly, when considering a craft position such as that occupied by Grievant, the JEC recognized that a formal apprenticeship involves a certain amount of classroom work, in addition to on-the-job training under the tutelage of a skilled craftsman. Thus, Grievant was awarded a Level "D" or 4 rating under Knowledge, requiring "up to 18 months of education or training beyond high school."

The on-the-job training phase of his apprenticeship was considered when he was awarded a Level 3 under Factor 2, Experience.

### **Factor 3, Complexity and Problem Solving**

The JEP describes 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.

The Locksmith position received a degree level of 2.5 in this point factor. A degree level of 2.5 is not specifically defined, but, as explained by Ms. Crawford, means the job duties and responsibilities fell between a 2.0 and a 3.0. A degree level of 2.0 is defined in the JEP as:

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

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

Problems encountered can be somewhat complex and finding solutions to problems may require some resourcefulness and originality, but guides, methods and precedents are usually available. Diversified guidelines and procedures must be applied to some work assignments. Employee must exercise judgment to locate and select the most

appropriate guidelines, references, and procedures for application, and adapt standard methods to fit variations in existing conditions.

Grievant marked a "C" or 3 on his PIQ for complexity and problem solving. To buttress his argument Grievant pointed out that "locksmithing" is not just changing locks, cuttings keys, and playing with safes. It is a very precise trade which requires one to work in twenty-eight to fifteen thousandths of an inch.

Grievant also testified that the locks at West Virginia University are set-up on a "Great Great Grand Master System." This is a six tier system. A lock for this type of system contains a set of pins. The pins in the lock work in relation to each other in thousandths of an inch. In each key there are six cuts. The cuts are represented by numbers one through nine. When a key is inserted into a lock which aligns all of the pins with the shear line in the lock, the lock will function. If the pins are off twenty-eight thousandths of an inch, the lock will malfunction and will permit entry of the wrong person

or will lock a person in or out.

However, there are established procedures for locksmiths, and they are confined to a given lock system. The lock system is rigid and does not allow any creativity in devising a new or different system. Furthermore, Grievant merely explained the Great Great Grand Master System and did not specify the percentage of time that is spent on the different tasks which he is required to perform. Based on the testimony, Grievant did not demonstrate that the JEC was clearly wrong or acted in an arbitrary or capricious manner in assigning a 2.5 rating to the Locksmith position under Factor 3.

#### **Factor 4, Freedom of Action**

The Job Evaluation 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.

The JEC rated the Locksmith position a 2.5 for this point factor.

The definitions in the Job Evaluation Plan show that at a degree level of 2.0:

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. The definitions in the Job Evaluation Plan show that at a degree level of 3.0:

Tasks 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 marked a "D" or 4 on his PIQ for Freedom of Action which is described as:

Tasks 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.

In the context of the JEP, it does not appear unreasonable for the JEC to expect Grievant, as a skilled craftsman, to perform his duties under limited supervision, given that his options are inherently narrowed by the established system and methods incorporated in the locksmith craft. Such traditional



methods for completing a task appear to fall between the parameters of the second and third levels of the Freedom of Action range. Furthermore, based on the testimony, Grievant did not demonstrate that the JEC was clearly wrong or acted in an arbitrary or capricious manner in assigning a 2.5 rating to the Locksmith position under Factor 4.

### **Factor 5, Scope and Effect**

Factor 5, Scope and Effect, measured both the Nature of Actions and Impact of Actions together by utilizing a matrix. 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.

The JEC rated the Locksmith position a 1.0 in Scope and Effect, Impact of Actions, and a 2.0 in Scope and Effect, Nature of Actions. A degree level of 1.0 in Scope and Effect, Impact of Actions, is defined in the Job Evaluation Plan as "[w]ork is limited to immediate work function and short-term situations."

A degree level of 2.0 in Scope and Effect, Nature of Actions, is defined in the Job Evaluation 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.

On the PIQ under Factor 5, classified employees were asked to complete two parts. Part two will be discussed first because the responses in this part align with the levels defined in the Nature of Action section of Factor 5. Part two stated:

This question measures the position's scope of responsibility with regard to the overall mission of the institution or the West Virginia higher education systems, as well as the magnitude of any potential error. Decisions regarding the potential magnitude of an

error should consider the level within the systems that could be affected as well as the size of the area and its impact on overall operations. In making these judgments, consider how far-reaching is the impact and of what importance to the institution and/or the higher education systems is the work product, service or assignment. Also, assume the one would have the normal education, training or experience to do the job and that errors are not due to sabotage, mischief or lack of reasonable attention and care. Check the one response which best describes this job.

Grievant marked "D" which states:

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

While the record is unclear, the rating a position received under Impact of Actions seems to have been based, at least in part, on responses given to the first part of Factor 5. It asked classified employees to "[d]escribe the types of problems which could result from an error made by someone in this job who did not have good job knowledge and use sound judgment." Grievant's response was "[t]heft of property or personal injury. The inability of some parts of the University to function as needed."

Grievant apparently did not understand Scope and Effect. He testified:

While I disagree with the numbers because I would surely think that the actions and the rest of it I deal with and have tried to explain the effect on the University. Again, I can only find that it can be very costly. The Scope can be very small or very broad depending on the decision I make.

In support of his theory, Grievant also stressed "the ethics" that are required of a locksmith. Grievant testified that a locksmith has total access to every building\room on campus, including the safes in the Office of the Bursar and all of the computer facilities on campus. Grievant further speculated that if he "went off the deep end" that he could cause thousands and thousands of dollars worth of damage.

However, this factor is not intended to measure this type of potential liability. The definition assumes that "errors are not due to sabotage, mischief or lack of reasonable attention and care." Scope and Effect, by definition, is intended to measure the "responsibility [of a position] with regard to the overall mission of the institution or the West Virginia higher education systems, as well as the magnitude of any potential error." Furthermore, Ms. Crawford testified that in examining Scope and Effect, the JEC was "looking at normal duties and responsibilities of a position and what impact the

outcome of those responsibilities would have on the institution under normal operating kinds of conditions." Grievant also failed to indicate what he thought was the appropriate level for the Locksmith position under the Impact of Actions part of Scope and Effect and the Undersigned can not speculate as to what level Grievant thought was correct. In summary, Grievant did not demonstrate that the JEC was clearly wrong or acted in an arbitrary or capricious manner in assigning the Locksmith position a 1.0 in Scope and Effect, Impact of Actions, and a 2.0 in Scope and Effect, Nature of Actions.

### **Factors 12 and 13, Working Conditions and Physical Demands**

Under the Mercer Classification System, working conditions combined with physical demands comprise a matrix. However, Grievant challenged only the working conditions component of Factor 12. According to the JEP:

[t]his factor considered 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 Working Conditions section of the PIQ contained two parts.

In the first part, classified employees were asked to "[d]escribe the working conditions of [their respective] job, including any unpleasant features like heat, cold, high levels of noise, exposure to chemical substances, contagious diseases, etc." Grievant's written response on the PIQ was "[m]ust be able to work in all areas, such as offices, classrooms, equipment and electrical and chemical areas. Must be able to work in various temperatures from heat [sic] to cold."

Below is the second part and Grievant's response:

This question considers the quality of working conditions as measured by lighting adequacy, temperature extremes and variations, noise pollution, exposure to fumes, chemicals, radiation, contagious diseases, heights and/or other related hazardous conditions. Check only one response.

Grievant marked the third response which states:

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

In support of his position, Grievant also testified, during the Level IV hearing,

Things that I don't believe the committee understands that when you're standing outside in a doorway and the temperature is 18-19 degrees, you are working with metal you can't wear gloves because you are working with things that are measured in thousandths of an inch. This is an example. And you're gonna be there for an hour with the door propped open and its a wind tunnel. That if I don't get that door right somebody's locked out at night or somebody gets in while somebody's locked out or somebody's in there working, excuse me. Are things that can happen. We are asked to do a lot of things in some severe cold and while the job includes being able to work in poorly lit conditions, sometimes, and it seems to be on a regular basis not a once in a life-time or once in a month or something. I'd say it would be more on a weekly basis. The temperature and the light and the things that and the things that we are excepted to repair, which should be replaced due to money, lead to a good bit of stress, mental stress.

The JEC rated the Locksmith position a "B" or 2 in Working Conditions which is defined in the JEP as:

Occasional minor discomforts from exposure to less-than- optimal temperature and air conditions. May involve dealing with modestly unpleasant situations, as with occasional exposure to dust, fumes, outside weather conditions, and/or near-continuous use of a video display terminal. (Emphasis in original.)

Respondent failed to explain how the JEC arrived at its conclusion. Respondent also failed to present any evidence contradicting the testimony of Grievant concerning the frequency with which he performs his work outside in the cold.

Webster's II New Riverside University Dictionary, copyright 1994, defines "occasional" as "[o]ccuring from time to time: infrequent." "Routine" is defined in terms as habitual, regular, ordinary, not special. "Weekly" is more than occasional and could be easily called routine. However, the term weekly probably does not rise to the level of "frequent", which is used in the fourth definition under Working Conditions. [\(See footnote 5\)](#)

Therefore, Grievant proved by a preponderance of the evidence that the locksmith position should have been rated a "D" or 3 under Working Conditions. This would place the locksmith classification at Level 3 under the matrix in Factor 12 and equate to four points, only one point above the previous rating under this factor. Correcting this error increases the total points assigned to the Locksmith classification to 1682, well short of the 1756 necessary to reach Pay Grade 13. The following Findings of Fact are properly made from the record developed at Level IV.

### **Findings of Fact**

1. Grievant, an employee of West Virginia University, was classified in the Mercer reclassification as a Locksmith, Pay Grade 12, effective January 1, 1994.
2. All classified employees were asked to complete a Position Information Questionnaire ("PIQ") prior to the reclassification. The 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 filled out a PIQ in 1991.
3. Under the JEP positions are evaluated under a "point factor methodology" wherein point values are assigned to thirteen "job evaluation factors": (1) knowledge; (2) experience; (3) complexity and problem solving; (4) freedom of action; (5) scope and effect; (6) breadth of responsibility; (7) intrasystem contacts; (8) external contacts; (9) direct supervision exercised; (10) indirect supervision exercised; (11) physical coordination; (12) working conditions; and (13) physical demands. 128 C.S.R. 62 § 2.27 (1994).
5. The normal training for a journeyman locksmith involves a three year formal apprenticeship.
6. The JEC allocated credit for the skills and training obtained by a locksmith through a formal apprenticeship between Factor 1, Knowledge, and Factor 2, Experience. The locksmith position was given credit for up to 18 months of "classroom" training under Knowledge as reflected by a Level D or 4 rating. The locksmith position was rated at Level C or 3 under Factor 2, Experience, indicating "over one year and up to two years of experience."
7. The JEC applied the Point Factor Methodology to the locksmith position, evaluating both Complexity and Problem Solving, Factor 3, and Freedom of Action, Factor 4, halfway between Level B and Level C, assigning a 2.5 rating to both of these factors.
8. The JEC rated the Locksmith position a 1.0 in Scope and Effect, Impact of Actions, and a 2.0 in Scope and Effect, Nature of Actions.
9. The JEC evaluated Factor 12, Working Conditions, at level "B" or 2.

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

### **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. Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995).
2. The burden of proof in a misclassification

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

3. Determinations of the Job Evaluation Committee regarding application of the Mercer Plan's point factor methodology are essentially questions of fact. In that regard, the JEC's interpretation and explanation of the point factors and PIQs at issue will be given great weight unless clearly erroneous. Burke, supra. See generally, Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W. Va. 1995). Likewise, subjective determinations of the JEC regarding application of the Mercer Plan's point factor methodology to an employee or group of employees are entitled to deference when being reviewed by this Grievance Board. However, such subjective determinations may nonetheless be found to be arbitrary and capricious if not supported by a rational basis, or to be clearly wrong if there is no substantial evidence in the record supporting the finding or, review of the evidence of record makes it clear that a mistake has been made. Jessen v. Bd. of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995). See Frymier- Halloran v. Paige, 458 S.E.2d 780, 788 (W. Va. 1995); Bd. of Educ. v. Wirt, 192 W. Va. 568, 453 S.E.2d 402 (1994); Kyle v. W. Va. State Bd. of Rehabilitation, Docket No. VR-88-006 (Mar. 28, 1989).

4. Grievant did not demonstrate that the JEC was clearly wrong or acted in an arbitrary or capricious manner in assigning the Locksmith position: (1) a "D" or 4 for Knowledge; (2) a "C" or 3 for Experience; (3) a 2.5 for Complexity and Problem Solving; (4) a 2.5 for Freedom of Action; and (5) a 1.0 in Scope and Effect, Impact of Actions, and a 2.0 in Scope and Effect, Nature of Actions.

5. Grievant proved by a preponderance of the evidence that the JEC acted arbitrarily and capriciously in assigning the Locksmith classification a "B" or 2 for Working Demands and that the Locksmith classification should have been assigned a "C" or 3. Where the JEC's decisions are not supported by substantial evidence of record, or are based upon an apparent mistake of fact, Grievant's classification may be assigned the correct rating level in accordance with the Mercer plan. Jessen, supra. See, Bd. of Educ. v. Wirt, supra.

6. If the degree level of factor 12, Working Conditions, assigned to Grievant was changed so that Grievant received a degree level of 3.0 in Working Conditions, the total points for the locksmith position would change from 1681 points to 1682 points.

7. To be assigned to the next higher pay grade under the Respondent's Job Evaluation Plan, the locksmith position would have to be evaluated at levels which would generate a minimum 1756 total

points.

8. Grievant failed to establish by a preponderance of the evidence that the locksmith position should have been classified at a Pay Grade 13.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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.

Dated: 4/25/96

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JEFFREY N. WEATHERHOLT  
ADMINISTRATIVE LAW JUDGE

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[Footnote: 1](#)

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

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[Footnote: 2](#)

*According to the definitions set forth in Respondent's regulations, a "factor" is: "One of thirteen elements used to evaluate jobs." 128 C.S.R. 62 § 2.27 (1994). The thirteen factors are listed as knowledge, experience, complexity and problem solving, freedom of action, breadth of responsibility, scope and effect, intrasystem contacts, external contacts, direct supervision exercised, indirect supervision exercised, working conditions, physical coordination and physical demands. 128 C.S.R. 62 § 2.27 (1994). The Mercer Plan submitted into evidence by Respondent lists only twelve factors, with physical coordination and physical demands combined as Factor Twelve. Some factors, such as scope and effect, were further broken down into two or more elements so that each position was ultimately assigned point values in eighteen categories.*

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[Footnote: 3](#)

*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.*

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[Footnote: 4](#)

*During the hearing, the PIQ of Mr. Paul J. Stewart, a locksmith at WVU, was used and admitted into evidence. Grievant testified that his PIQ was identical to Mr. Stewart's except for the name blank. At the time of the hearing these cases were consolidated. However, at the beginning of the hearing, Grievant stated that Mr. Stewart did not wish to proceed with his grievance. Upon an appropriate motion by Respondent, the Undersigned dismissed the grievance of Mr. Stewart. Mr. Stewart was sent appropriate notice of the hearing, did not appear at the hearing and has not communicated with the Undersigned since the Level IV evidentiary hearing.*

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[Footnote: 5](#)

*Webster's II New Riverside University Dictionary, copyright 1994, defines "frequent" as "[h]appening or appearing often or at close intervals."*