

JOHN JONES, et al., .

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Grievants, .

v. . DOCKET NO. 94-MBOT-978

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BOARD OF TRUSTEES, .

WEST VIRGINIA UNIVERSITY, .

.

Respondent. .

DECISION

This is a grievance by John Jones, Paul Lucas, and David Core (Grievants) challenging their classification as Plasterer/Masons in Pay Grade 12 by the Respondent Board of Trustees (BOT) under the Job Evaluation Plan for the State College and University Systems of West Virginia developed by William M. Mercer, Inc. (Mercer Plan). Their grievances were initiated in August of 1994 in accordance with specific procedures established in § 18 of the Legislative Rule for Personnel Administration promulgated by the University System of West Virginia Board of Trustees on May 5, 1994. 128 C.S.R. 62. In October 1994, BOT waived these grievances to Level IV. [\(See footnote 1\)](#) In accordance with W. Va. Code § 18-29-5(b), these three grievances were consolidated by Order of Consolidation dated January 25, 1995. A Level IV evidentiary hearing was conducted in this Board's office in Elkins, West Virginia, on August 18, 1995. At the conclusion of that hearing, the parties agreed to make written post-hearing submissions and this matter became mature for decision on September 22, 1995.

Because grievances challenging pay and classification are not disciplinary in nature, Grievants have the burden of proving by a preponderance of the evidence that they have been misclassified. 156 C.S.R. 1 § 4.17 (1989). See W. Va. Code § 18-29-6 ¶ 5; Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). Whether Grievants are properly classified is substantially a factual

determination that must be made on a case-by- case basis. Burke, supra. See Snider v. W. Va. Bureau of Environment, Docket No. 95- DEP-306 (Sept. 29, 1995).

Grievants generally contend the Respondent's Job Evaluation Committee (JEC) JEC should have classified them as Trades Worker-Lead at Pay Grade 14. Alternatively, Grievants assert they were not correctly evaluated on five of twelve factors in the Mercer Plan's "Point Factor Methodology." Proper evaluation of those factors would place the Plasterer/Mason classification in a higher pay grade.

The process under which Grievants were reclassified, effective January 1, 1994, began with completion of a Position Information Questionnaire (PIQ). PIQs are highly-structured documents, 17 pages in length, on which individual employees describe the duties of their position, as well as certain minimum qualifications required to carry out their duties. [\(See footnote 2\)](#) Employees were further asked to rate various aspects of their position, under a scale set forth in the Mercer Plan. R Ex 4. 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 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 to review the PIQs, assign employees to the appropriate classification, and evaluate each classification factor by factor. In the course of this process, the JEC applied the Point Factor Methodology, interpreting the various factors as required to assign scores for all factors to each classification. After reviewing all PIQs submitted by those employees classified as Plasterer/Mason, the JEC assigned points for each listed category as shown (R Ex 3):

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	3.0
Physical Demands	4.0

Using a mathematical formula not at issue, the foregoing levels were calculated to award these positions 1,723 total points, equating to Pay Grade 12. At the time Grievants were reclassified, the starting pay for Pay Grade 12 was \$16,596 per year.

Summary of Level IV Testimony

Grievant John Jones testified that he has worked at West Virginia University (WVU) for 14 years. He was a Laborer at WVU for 2 years before assuming his present position. Prior to being hired by WVU, Mr. Jones worked for a general contractor for 6 years, completing an "apprenticeship" in plaster and masonry. This was not a formal union apprenticeship. Based upon his work experience, Mr. Jones believes a new employee in his position should have a minimum of six years' experience. He explained the broad spectrum of work he performs includes brick laying, block laying, concrete finishing, installing ceramic tile and plastering. According to Mr. Jones, each of these activities represents a trade requiring a four-year apprenticeship to reach the journeyman level. In addition, Mr. Jones has two year's schooling as a draftsman, a skill which he routinely employs in his work.

In regard to Complexity and Problem Solving, Mr. Jones explained that he and Mr. Lucas occasionally run into structures where the actual configuration varies markedly from the blueprints and drawings prepared by the architect. Typically, they independently devise a solution for these atypical situations and advise their immediate supervisor of their approach. Their immediate

supervisor normally gives them a written work order or request, generally instructing them to complete the project. The supervisor comes to their work area on a daily basis to check on their progress.

Mr. Jones asserted that he supervised one employee assigned to him as a "helper" for a number of years. He and Mr. Lucas give these employees work assignments, inspect their work and insure they have the necessary tools, equipment and supplies to do their work. However, they do not schedule leave, render evaluations, or maintain time records for them. That activity is accomplished by Grievants' immediate supervisor. Likewise, they do not have hiring and firing authority over them. These employees are presently classified under the Mercer process as "General Trades Helper" in Pay Grade 9. Grievants train new Helpers in performing various tasks related to the plaster and masonry crafts.

Edward Horton, a General Trades Helper, testified that he worked with Grievants Jones and Lucas for over ten years. Ordinarily, each Plasterer/Mason has one Helper assigned to perform various "laborer" tasks under their immediate supervision. Mr. Horton acknowledged that he is not qualified to perform journeyman-level work as a plasterer or mason.

Mr. Jones normally works with either building maintenance or "new" construction, the latter involving demolition of existing construction and replacement with new. He estimates that 90 percent of his time is devoted to such new construction.

Grievant Paul Lucas, like Mr. Jones, works at the WVU Health Sciences Center. Prior to being hired as a "Senior Mason" at WVU in 1985, Mr. Lucas had been a "unionbricklayer" for 25 years. He completed a four-year formal apprenticeship in order to obtain that status. In the course of his employment at WVU, he has worked with cement, concrete block, glazed tile, and ceramic tile. When assigned a project, he and Mr. Jones will check out the job site and determine the methods and materials required to complete the job. Their immediate supervisor defers to them on specific methods to be followed in completing the work. On occasion, they have filled in for their immediate supervisor when he was absent, a practice which ceased when the Mercer classification system was implemented.

Grievant David Core has worked at WVU for 24 years, the past 16 as a Plasterer/Mason. In addition to performing many of the same duties as Mr. Jones and Mr. Lucas, Mr. Core works with epoxies and various coatings. In that regard, he conducts research on the best material available for

a project, locates providers, obtains prices and orders required supplies. When working in confined spaces, he must wear a respirator.

Mr. Core declared that 8 to 10 years of experience would be necessary to perform his job at the entry level. At the time he started in his present position, he had completed a four-year apprenticeship. Mr. Core described resolving a problem with stained slate as illustrating a typical situation calling for complex problem solving. He similarly discussed a project involving refurbishing an obsolete brick-lined incinerator.

Mr. Core has other employees assigned to assist him when needed, particularly when working in confined spaces. These helpers have included Laborers, Carpenters and Asbestos Abatement Workers. He gives them on-the-job training regarding the work they perform. In particular, Mr. Jefferson, an Asbestos Abatement Worker, is generally assigned to assist Mr. Core in various ways, including mixing materials and obtaining tools. At one time, Mr. Core had another Plasterer/Mason, Danny Murray, under his "lead," teaching him to perform ceramic tile work.

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 B.S. and M.B.A. degrees reflecting an emphasis in personnel administration, 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 became actively involved in Grievants' reclassification during the "initial slotting process," the first phase of the Mercer project in which the JEC was actively involved.

In regard to Factor 1, Knowledge, and Factor 2, Experience, Ms. Crawford explained that the Job Evaluation Plan 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 Grievants here, 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, Grievants were awarded a Level 4 rating under Knowledge, requiring "up to 18 months of education or training beyond high school." The on-the-job training phase of their apprenticeship was considered when they were awarded a Level 3 under Factor 2, Experience. Under cross-examination, Ms. Crawford noted the JEC initially considered rating the Grievants at Level 5 for Knowledge and Level 1 for Experience, electing to split the credit between Knowledge and Experience as more realistically reflecting the nature of the apprenticeship process. Ms. Crawford agreed that most formal apprenticeship programs involved four years of training to reach the journeyman level.

Ms. Crawford also explained that Grievants' 2.5 rating under Factor 3 for Complexity and Problem Solving resulted from a determination by the JEC that their work fell somewhere between Level 2 and Level 3. (The JEC elected to break down ratings to "half levels" and no smaller.) In Ms. Crawford's opinion, when Grievants apply their prior experience and training in adapting to specific site conditions, that is equivalent to having available "methods and precedents" as stated under Level C.

In regard to Factor 9, Direct Supervision, Ms. Crawford explained that the "Level of Supervision" relates to the type of supervisory duties performed by an individual while the "Number of Direct Subordinates" refers to the average number of employees over whom the individual would be exercising supervision.

Prior to the Mercer reclassification, a few craft employees at WVU were compensated at the higher pay grade assigned to certain craft employees who were classified as "Seniors." Thus, the Plasterer/Masons were in the same pay grade as a Senior Carpenter. This was done, in part, because there were no higher level employees available, including supervisors, who could teach them needed skills. Further, if additional employees were to be hired in these categories, the higher paid employees would serve as "lead" craftsmen for the newer hires. However, they were not designated with the "Lead" title since this was not part of their day-to-day duties. Under the Mercer

system, as developed by the JEC, the "Senior" category was eliminated in favor of designating certain positions as "Lead," and Lead status was defined narrowly to include only those with responsibility over other journeyman- level craft positions. Moreover, various journeyman-level craft employees may have one or more helpers assigned to them without obtaining "lead" status.

DISCUSSION

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).

These standards must now be applied in reviewing the decisions challenged here, beginning with Grievants' contention that they should have been classified as Trades Workers - Lead. Employees alleging that they were misclassified under the Mercer process may demonstrate that another specific job classification constitutes the "best fit" for the duties they are assigned. See Campbell-Turner v. Bd. of Trustees, Docket No. 94-MBOT- 1035 (Jan. 31, 1996). Grievants here identified another existing classification title in the Mercer system, Trades Worker - Lead, which they claim is more appropriate than their present classification of Plasterer/Mason. However, Grievants failed to demonstrate that the duties they perform are substantially the same as the duties assigned to those other employees in the state college and university system who have been classified as Trades Worker - Lead under the Mercer process. Likewise, as will hereinafter be discussed, Grievants failed to demonstrate that the degree levels which they should have properly received under the Mercer Point Factor Methodology were identical to the degree levels assigned to the Trades Worker - Lead

position title by the JEC. [\(See footnote 3\)](#) Therefore, Grievants failed to establish that the proper classification for the duties they perform, under the Mercer Job Evaluation Plan, is Trades Worker - Lead.

Grievants also contend that the Plasterer/Mason classification was undervalued when the JEC rated certain factors using the Point Factor Methodology. In particular, they challenge the degree levels assigned to their positions under Factor 1, Knowledge; Factor 2, Experience; Factor 3, Complexity and Problem Solving; Factor 4, Freedom of Action; and Factor 9, Direct Supervision Exercised. These point factors will be discussed in order with Factors 1 and 2 as being considered jointly.

Factor 1, Knowledge, and Factor 2, Experience

The Respondent's Job Evaluation Plan (R Ex 4) 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, theoret-ical, and/or mechanical skills required, and the complex-ity and diversity of the required skills.

The PIQ forms direct each employee to "indicate the lowest level of education and/or training usually required to understand and perform the work. Tell us what is required, not the incumbent's own educational level. Do not include job-related experience because that is covered in the next question." Each Grievant 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.

Although Grievants' immediate supervisor and second level supervisor had authority to change all ratings, they reviewed Grievants' PIQs without noting exceptions to the rating levels marked by Grievants. [\(See footnote 4\)](#)

As indicated in Ms. Crawford's testimony, the JEC evaluated the knowledge requirement for these positions at Level "D" or 4. The Job Evaluation Plan 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.

The Job Evaluation Plan defines Factor 2, Experience, as follows:

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

Factor 2 contains eight levels ranging from "no experience and up to six months of experience" (Level 1) to "more than eight years of experience" (Level 8). Messrs. Jones and Lucas indicated on their PIQs that Level "F" or 6, "over four years and up to six years of experience," best reflected the minimum experience requirement for their jobs. They reiterated this opinion in their testimony at Level IV. Mr. Core marked Level "D" or 4 on his PIQ in 1991, indicating "over two years and up to three years of experience" represented the "least amount of prior experience normally required in order to perform the duties of the job." R Ex 1 at 5. At Level IV, Mr. Core increased his estimate to eight to ten years of experience without clearly explaining why his estimate had changed from 1991.

Respondent presented no evidence to dispute Grievants' evidence that masons, bricklayers, plasterers and similar crafts normally require a formal apprenticeship of four years' duration to attain the journeyman level. Likewise, there was no evidence that Respondent hires a Plasterer/Mason who has not completed such an apprenticeship or its equivalent. Instead, according to Ms. Crawford's testimony, the JEC elected to allocate the classroom and on-the-job training portions to Knowledge and Experience, respectively. Accordingly, the JEC rated Grievants at Level 4 under Knowledge, reflecting "up to 18 months of education or training beyond high school," and at Level 3 under Experience, indicating "over one year and up to two years of experience."

While Ms. Crawford represented that this allocation was intended to prevent employees from "double-dipping" (counting their training and experience twice), even a cursory analysis indicates that Grievants were short-changed by this approach. After the JEC allocated 18 months of Grievants' four-year (48-month) apprentice-ship to Knowledge, that left 30 months, or 2.5 years, to be allocated to Experience. By rating the Experience requirement for Plasterer/Mason at Level 3, 1 to 2 years, the JEC disregarded at least 6 months of Grievants' experience without any stated rationale or explanation. Where the JEC's decisions are not supported by substantial evidence of record or are based upon an apparent mistake of fact, Grievants may be assigned the correct rating level in accordance with the Mercer plan. Jessen v. Bd. of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995). See Bd. of Educ. v. Wirt, 192 W. Va. 568, 453 S.E.2d 402 (1994).

In order to rectify this situation, Grievants must be awarded the number of points they would have received had their positions been properly evaluated by the JEC. See Jessen, supra. Had the JEC correctly allocated credit for completion of a four-year formal apprenticeship between Knowledge and Experience, Experience would have been rated at Level D or 4, reflecting between two and three years' minimum experience. Thus, Grievants should have received 280 points under Factor 2, 56 points above the number assigned to Level C. See R Ex 4, "Factor Point By Level." Adding these 56 points brings their total points to 1779. A minimum of 1756 points is needed to be assigned to Pay Grade 13 while 1866 total points are necessary to reach Pay Grade 14. Accordingly, while Grievants are properly classified as Plasterer/Masons, the Respondent will be required to assign Grievants to Pay Grade 13 and to pay backpay retroactive to January 1, 1994, based upon the difference, if any, between each Grievant's actual salary and the salary each would have received had he been assigned to Pay Grade 13 at that time.

Grievants further contend that they should have been rated at Level 6 or higher under Experience, without any double credit for experience obtained during their formal apprenticeship. This is because Respondent employs them to work in multiple trades, including laying concrete block, brick, ceramic tile and glazed tile, as well as working with plaster and concrete. As noted by this Grievance Board in Zara v. Board of Trustees, Docket No. 94-MBOT-817 (Dec. 12, 1995), the minimum amount of experience required to perform the essential duties of a position represents a subjective determination regarding which reasonable people may reach different conclusions. Further, while formal apprenticeship programs of three to four years may exist in each of these craft areas, Grievants did not demonstrate that any Plasterer/Mason hired by the Respondent has ever completed more than one apprenticeship as of the time that employee was hired. Indeed, Mr. Core started to work in 1979 after having completed only his basic four-year apprenticeship.

Nonetheless, it is clear that the same situation exists today as when Grievants were paid as if they were "Senior" craftsmen under the previous classification plan; there are no employees, either supervisors or lead craftsmen, available to train a new Plasterer/Mason, and a newly-hired Plasterer/Mason is expected to function somewhere above the journeyman level by working with a variety of materials. However, as previously discussed, had the JEC correctly recognized that Plasterer/Masons receive 30 months of on-the-job training above the 18 months of "classroom training" for which they received credit under Factor 1, Grievants would have been rated at Level D,

or 4, under Factor 2, Experience. Having rectified this apparent mistake of fact to conform to the record, the undersigned finds Grievants did not demonstrate that a minimum of two to three years of experience is inadequate for a new employee to perform the essential functions of the Plasterer/Mason job classification.

Factor 3, Complexity and Problem Solving

In regard to Complexity and Problem Solving, the Job Evaluation Plan offers the following guidance:

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

Grievants contend that they should have been rated at Level "D" or 4 for this factor, which is defined as:

Problems encountered are complex and varied due to incomplete and/or conflicting data. General policies, procedures, principles, and theories of specific professional disciplines are available as guidelines; however, these guides may have gaps in specificity or lack complete applicability to work assignments. Employee must utilize analytical skills in order to interpret policies and procedures, research relevant information, and compare alternative solutions.

The JEC evaluated Grievants at a 2.5 on this factor, indicating that their positions fell somewhere between a "B" and a "C" under the Job Evaluation Plan. Level B is defined therein as follows:

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.

The Job Evaluation Plan contains the following definition for Level C:

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.

In support of their claim to a Level D rating, Grievants demonstrated that it was common to encounter site conditions in their work which differed from the conditions depicted in architect's drawings or blueprints. Additionally, they are required to work in some situations without existing plans or drawings. In such circumstances, Grievants must select the most appropriate technique to complete the project in a safe and effective manner. While they usually report their selected solution to their supervisor, this is just to make him aware of their actions, as he normally defers to their judgment on such matters.

Explaining the JEC's rationale for assigning a lower rating to Grievants, Ms. Crawford opined that the prior experience obtained in dealing with varying site conditions provided Grievants with "methods and precedents" to use in deciding what course of action to follow in completing a project. This explanation is entitled to great weight, unless it is contrary to the plain meaning of the language in the Job Evaluation Plan, or is inherently unreasonable. See Watts v. W. Va. Dept. of Health & Human Resources, 465 S.E.2d 887 (W. Va. 1995); Burke, supra. Accordingly, Grievants have not demonstrated that the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a 2.5 rating to these positions under Factor 3.

Factor 4, Freedom of Action

Explaining Freedom of Action, Respondent's Job Evaluation Plan states:

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 Grievants at a 2.5 level under Factor 4, indicating that the Freedom of Action enjoyed by these positions falls somewhere between Level 2 and Level 3. Level 2 is defined by the Job Evaluation Plan as follows:

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 Job Evaluation Plan defines Level 3 as:

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.

Grievants presented minimal evidence in support of their contention that they should have been rated at Level 3 rather than a half step lower. They described the limited supervision which their supervisors exercised in regard to overseeing their work. Generally, the supervisor determines priorities by assigning work orders or projects to Grievants but defers to Grievants in regard to specific methods or means to be employed in completing the project. Nonetheless, the supervisor normally checks on the progress of each project on a daily basis, even if he only appears at the worksite to ask "How's it going?"

In the context of the Mercer Job Evaluation Plan, it does not appear unreasonable for the JEC to expect Grievants, as journeyman-level craftsmen, to perform their duties under limited supervision, given that their options are inherently narrowed by the established methods incorporated in their particular craft. Such traditional methods for completing a task appear to fall within the Level 2 definition of "standard operating procedures." In these circumstances, Grievants have not demonstrated that the JEC was clearly wrong or acted in an arbitrary or capricious manner in assigning a 2.5 rating to Grievants' positions under Factor 4.

Factor 9, 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. (emphasis in original)

Factor 9 is broken down into two elements: (1) Level of Supervision; and (2) Number of Direct Subordinates. Under Level of Supervision, the JEC rated Grievants at Level A, defined as:

Minimal 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 do not qualify under Level B which reads: "Responsible for directing and monitoring the work of student workers essential to the operations of the unit." Grievants contend they function at

Level C which states:

Lead control over non-exempt employees performing the same work as this job. Lead responsibility includes training, assigning tasks, checking the work of others, and insuring supplies and tools are provided at the work site.

Ms. Crawford explained in her testimony that the JEC made a deliberate effort to define "lead" workers more narrowly to specifically exclude employees who do not direct other employees at the journeyman level. Indeed, the language of the Job Evaluation Plan is even narrower, limiting application to those performing the "same work." Accordingly, it does not appear that Grievants operate above Level A as defined here.

However, Grievants did demonstrate by a preponderance of the evidence that they are normally assigned a "helper," generally a lower-level employee such as a General TradesHelper, but occasionally another craftsman, such as an Asbestos Abatement Worker. [\(See footnote 5\)](#) The record indicates that Grievants routinely provide functional guidance to these helpers in much the same manner as a lead worker would provide to a subordinate craftsman doing the same work. Moreover, as one helper has been "assigned" to one Grievant for nearly 10 years, it cannot be said that this represents an "informal work relationship." [\(See footnote 6\)](#) Thus, the JEC's failure to credit Grievants with one subordinate under Factor 9 was clearly wrong. See Jessen, supra.

Accordingly, Grievants should have been credited at Level A with providing functional guidance to one employee. This would place them at Level 2 under the matrix in Factor 9 and equate to 77 points, 12 points above their previous rating under this factor. Correcting this error increases the total points assigned to these positions to 1791, well short of the 1866 necessary to reach Pay Grade 14. Thus, this finding does not change the remedy previously determined to be required in this matter.

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

FINDINGS OF FACT

1. Grievants are employed by West Virginia University (WVU). Grievants John Jones and Paul Lucas are assigned to the Health Sciences Center. Grievant David Core is assigned to the Physical Plant.

2. Grievants timely submitted a request for review of their classification by the Respondent's Job Evaluation Committee (JEC), seeking a higher pay grade.

3. Under the Mercer Plan positions are evaluated under a "point factor methodology" wherein point values are assigned to 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). See R Ex 4.

4. Grievants Jones and Lucas are assigned to complete a variety of projects involving plastering and masonry, including pouring and finishing concrete, laying brick, laying concrete block, setting ceramic tile, setting glazed tile, installing stone and marble, and applying plaster. Grievant Core is assigned similar duties, as well as drywall finishing.

5. The normal training for a journeyman mason involves a formal apprenticeship of four years' duration.

6. The JEC allocated credit for the skills and training obtained by a Plasterer/Mason through a formal apprenticeship between Factor 1, Knowledge, and Factor 2, Experience. Grievants were given credit for up to 18 months of "classroom" training under Knowledge as reflected by a Level D or 4 rating. Grievants were 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 Plasterer/Mason positions, 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. Grievants are normally assigned one employee, usually a Trades Worker Helper or another craftsman who is not classified as a Plasterer/Mason, to assist them in completing their projects. Grievants provide functional guidance to these employees, as well as perform training, assign tasks, check their work and insure that the necessary tools and supplies are provided, in much the same manner as a lead worker controls his or her subordinates.

9. The JEC evaluated Factor 9, Direct Supervision Exercised, at Level A for Level of Supervision, and credited Grievants with no direct subordinates under the second element, Number of Direct Subordinates.

10. In order to be assigned to the next higher pay grade under the Respondent's Job Evaluation Plan, Grievants' positions would have to be evaluated at levels which would generate a minimum

1756 total points.

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. Grievants failed to prove by a preponderance of the evidence that the JEC's interpretation and application of the Mercer Job Evaluation Plan to their positions as regards the evaluations assigned to Factor 3, Complexity and Problem Solving, and Factor 4, Freedom of Action, was clearly wrong or otherwise unsupported by the available evidence. 5. In the process of allocating the four-year apprenticeship normally completed by persons hired to fill Grievants' positions between Factor 1, Knowledge, and Factor 2, Experience, the JEC discounted at least six months of such apprenticeship without any rationale or explanation. Where the JEC's decisions are not supported by substantial evidence of record, or are based upon an apparent mistake of fact, Grievants may be assigned the correct rating level in accordance with the Mercer plan. Jessen, supra. See Bd. of Educ. v. Wirt,

supra.

6. Grievants failed to prove by a preponderance of the evidence that the JEC's interpretation and application of the Mercer Job Evaluation Plan to their positions as regards the evaluations assigned to the Level of Supervision element of Factor 9, Direct Supervision Exercised, was clearly wrong or otherwise unsupported by the available evidence. However, Grievants established by a preponderance of the evidence that the JEC was clearly wrong in failing to credit them with providing functional guidance to one employee normally assigned to them as a "helper." 7. Grievants demonstrated by a preponderance of the evidence that by assigning the point values to which they are properly entitled under the Mercer Plan to Factor 1, Knowledge, Factor 2, Experience, and Factor 9, Direct Supervision Exercised, their properly classified position of Plasterer/Mason should be assigned to Pay Grade 13.

Accordingly, this Grievance is **GRANTED**. The Respondent Board of Trustees is hereby **ORDERED** to allocate the properly classified Plasterer/Mason positions occupied by Grievants John Jones, Paul Lucas, and David Core to Pay Grade 13, retroactive to January 1, 1994, and to pay each of them damages in the form of the difference between the salaries they would have received had their positions been properly allocated to Pay Grade 13 and the salaries which each of them received while their positions were improperly allocated to Pay Grade 12, if any.

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

LEWIS G. BREWER

Administrative Law Judge

Dated: February 29, 1996

[Footnote: 1](#)

These grievances were among over 540 grievances waived to Level IV at the same time by the BOT and the Board of Directors for the State College System of West Virginia. For a more detailed recitation of the procedural history involving these grievances,

see the "background" section of this Board's decision in Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995).

[Footnote: 2](#)

PIQs are essentially position descriptions that were primarily developed to facilitate the job evaluation process.

[Footnote: 3](#)

Unlike the grievants in Campbell-Turner, supra, Grievants here challenged the degree levels assigned under all four point factors, Experience, Complexity and Problem Solving, Freedom of Action, and Direct Supervision Exercised, where the JEC rated them lower than employees classified as Trades Worker - Lead.

[Footnote: 4](#)

However, someone in Mr. Core's chain of supervision took exception to some of his narrative comments under Knowledge and Experience. Since no supervisors testified, it is not clear who made these comments. See R Ex 1 at 4-5.

[Footnote: 5](#)

It is noted that there are certain factual distinctions between the duties performed by Mr. Core and the duties assigned to Messrs. Jones and Lucas. However, "[p]osition classifications are based on the basis that a range of difficulty and responsibility exists . . . within a particular class" Steven W. Hays & T. Zane Reeves, Personnel Management in the Public Sector 101-120 (1984). Moreover, "[n]uances among jobs do not deserve separate classifications." Id. at 110. The undersigned does not find that any of these distinctions are significant.

[Footnote: 6](#)

This type of relationship exists on those occasions when Grievants are involved in a project requiring additional employees, such as a concrete pour, where Grievants may be augmented by other craft employees such as carpenters, and Grievants assume a "lead" role, since the project primarily involves their particular craft (masonry).