

**HAROLD PAYNE, et al.,**

**v.**

**DOCKET NO. 94-MBOD-787**

**BOARD OF DIRECTORS,**

**WEST VIRGINIA STATE COLLEGE, et al.**

## **DECISION**

Grievants Harold Payne, Dewey Stewart, Joseph Booker, Clyde Leedy, and David Seal each alleges he was misclassified effective January 1, 1994, in the "Mercer reclassification" [\(See footnote 1\)](#). Grievant Seal seeks as relief to be classified as a Landscape Gardener, Pay Grade 12, effective January 1, 1994, and backpay to January 1, 1994. The remaining Grievants seek as relief to be classified as Roads and Grounds Worker II's, Pay Grade 9, effective January 1, 1994, and backpay to January 1, 1994. Grievants challenge the degree levels received in several point factors. A Level IV hearing was held on September 7, 1995, January 17, March 13, and May 23, 1996. This matter became mature for decision on July 1, 1996, with receipt of Respondents' fact/law proposals. [\(See footnote 2\)](#)

The following Findings of Fact are properly made from the record developed at Level IV.

### **Findings of Fact**

1. Grievant Seal is employed at Concord College. The remaining Grievants ("WVSC Grievants") are employed at West Virginia State College.
2. In 1991, all higher education classified employees 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. Each Grievant filled out a PIQ in 1991.
3. Grievants were classified in the Mercer reclassification as Roads and Grounds Worker I's, Pay Grade 7, effective January 1, 1994.
4. Grievant Seal's primary job duties (with the percentage of time he performs these duties

shown in parenthesis) are mowing grass, planting flowers, trimming bushes, removing snow, emptying trash cans and otherwise keeping the grounds clean (40%); moving furniture and supplies (40%); and helping carpenters, plumbers, welders and mechanics, and "doing what others don't want to do" (20%). 5. Grievant Seal's supervisor gives him assignments orally each day when he arrives at work, and may assign him other tasks during the day.

6. Grievant Seal operates tractors, lawn mowers, weed eaters, trucks, electric trimmers, backhoes and other equipment.

7. Grievant Seal lifts items weighing up to 50 pounds every day, and items weighing more than 50, but less than 75 pounds once a week when delivering paper. Once a month, on average, he moves furniture weighing more than 75 pounds, and frequently he must carry it up and down stairs. Usually another person is helping him carry the furniture.

8. Persons classified as Landscape Gardeners perform skilled landscape gardening by assisting in the development of landscape designs; preparing soil beds; deciding what flowers and shrubs will survive in a particular location and planting them; detecting, diagnosing and treating plant and tree diseases and insect infestations; diagnosing turf problems and applying treatment; skilled pruning, including aesthetic shaping of flowers, shrubs and trees; preparing and mixing chemicals and ensuring their proper application and storage; operating groundskeeping equipment; and instructing lower-level groundskeeping personnel.

9. Grievants Payne, Leedy, Booker and Stewart all perform the same job duties, although the percentage of time each spends performing a particular duty varies somewhat, and is approximate. Their primary job duties (with the percentage of time spent performing these duties in parenthesis) are mowing grass, trashremoval and disposal, picking up litter, cleaning outdoor areas, leaf removal, edging, aerating, overseeding and fertilizing turf, watering turf and plants, and removing snow (40 to 60%); planting flowers and shrubs, transplanting plants, mulching, pruning and shaping hedges and trees, mixing chemicals, applying insecticides, fungicides and herbicides, and assuring gasoline, oil and chemicals are properly stored and work areas clean (25 to 30%); cleaning and performing general maintenance and minor repairs on equipment (10%); moving furniture, digging for broken water lines and other special services to assist maintenance, construction of landscaping structures, and concrete and asphalt repair (5 to 20%).

10. The WVSC Grievants operate backhoes, end loaders, dump trucks, fork trucks, snow plow

trucks, tractors, lawn maintenance equipment, including 1, 2, and 5 gallon sprayers and 150 gallon boom sprayers, and power tools used in landscape construction and maintenance and equipment repair. They each have a Class "D" (Commercial) Driver's License.

11. The WVSC Grievants change the oil and belts on the equipment they use when the maintenance schedule indicates it is necessary. They perform minor repairs on the equipment they use, such as replacing parts on mowing decks, when the equipment breaks down. They use cutting torches to replace parts.

12. The WVSC Grievants are not told what to do each day, unless a special project is assigned. They know, for example, that the grass needs to be mowed, and they go ahead and mow without being assigned a particular area or day to mow. They decide what plants will survive in a particular location.

13. Persons classified as Roads and Grounds Worker II's perform mowing, trimming, landscape construction, and snow removal, operating equipment such as mowers, weed eaters, tractors, spreader trucks, backhoes, dump trucks, snow plows, forklifts, concrete equipment, chain saws, gasoline post hole diggers, and pull vacuums 40% of the time; engine repair 35% of the time; and other related duties, such as moving furniture, painting, working with concrete, and carpentry work 25% of the time.

14. The Roads and Grounds Worker I Job Title received 1283 total points from the following degree levels in each of the thirteen point factors [\(See footnote 3\)](#): 3.0 in Knowledge; 2.0 in Experience; 1.5 in Complexity and Problem Solving; 1.0 in Freedom of Action; 1.0 in Scope and Effect, Impact of Actions; 1.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 1.0 in Intrasystems Contacts, Nature of Contact; 1.0 in Intrasystems Contacts, Level of Contact; 1.0 in External Contacts, Nature of Contact; 1.0 in External Contacts, Level of Contact; 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; 4.0 in Working Conditions; and 4.0 in Physical Demands. Respondents' Exhibit

4. 15. The Roads and Grounds Worker II Job Title received 1468 total points from the following degree levels in each of the thirteen point factors: 3.0 in Knowledge; 3.0 in Experience; 2.0 in Complexity and Problem Solving; 2.0 in Freedom of Action; 1.0 in Scope and Effect, Impact of Actions; 1.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 1.0 in

Intrasystems Contacts, Nature of Contact; 1.0 in Intrasystems Contacts, Level of Contact; 1.0 in External Contacts, Nature of Contact; 1.0 in External Contacts, Level of Contact; 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; 4.0 in Working Conditions; and 3.0 in Physical Demands. Respondents' Exhibit 4.

16. The Landscape Gardener Job Title received 1656 total points from the following degree levels in each of the thirteen point factors: 4.5 in Knowledge; 3.0 in Experience; 2.0 in Complexity and Problem Solving; 2.5 in Freedom of Action; 1.0 in Scope and Effect, Impact of Actions; 2.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 1.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level of Contact; 1.0 in External Contacts, Nature of Contact; 1.0 in External Contacts, Level of Contact; 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; 4.0 in Working Conditions; and 4.0 in Physical Demands. Respondents' Exhibit 4.

17. The point range for a Pay Grade 7 is from 1253 through 1320 points. The point range for a Pay Grade 8 is from 1321 through 1394 points. The point range for a Pay Grade 9 is from 1395 through 1474 points. Respondents' Exhibit 3.

## **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 § 4.17; 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 or PIQ's 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. However, no interpretation or construction of a term used in the Job Evaluation Plan (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. Watts v. Dept. of Health and Human Res., 465 S.E.2d 887 (W. Va. 1995). The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. ([See footnote 5](#))

## B.

### Comparison of Grievants' Duties to Landscape Gardener and Roads and Grounds Worker II

The Generic Job Description for the Landscape Gardener Job Title is attached to this Decision as Appendix A. There are no Generic Job Descriptions for either Roads and Grounds Worker I ("R&GW I") or II ("R&GW II"). Margaret Robinson Buttrick, Human Resources Administrator for the State College and University Systems, and Chairman of the JEC, explained that a Generic Job Description indicates the majority of duties performed by the majority of persons in the Job Title. She stated it is not all encompassing, but it gives an idea of what the majority of people in the Job Title do on a regular basis. She stated it is not used for classification or for job evaluation. She stated PIQ's are used for this purpose. ([See footnote 6](#)) She testified that the General Function stated in the Generic Job Description would be the same for all the persons in the Job Title.

The WVSC Grievants placed into evidence, as Grievants' Exhibit 3, the PIQ for a R&GW I at West Virginia Institute of Technology ("WVIT"), and as Grievants' Exhibit 4 the PIQ for a R&GW II at WVIT.

Mrs. Buttrick could not state whether Grievants' Exhibit 4 was representative of the duties of the four persons classified as R&GW II's. She stated "it's a good guess that it is", but she had not taken a look at the other PIQ's.

Mrs. Buttrick opined that Grievant Seal should probably be classified as a Laborer, Pay Grade 5, or Trades Helper, Pay Grade 9, because of the amount of time he spends moving furniture and helping persons not involved in roads and grounds. However, Grievants' Exhibit 3 lists duties and responsibilities very similar to Grievant Seal's. It states:

<u>% of Time</u>	<u>Duties and Responsibilities</u>
50%	Work orders
10%	Deliver supplies and material pickup
15%	Grass cutting
10%	Snow removal

The PIQ also indicates the general purpose of the position as "[u]pkeep of [g]rounds, [m]ove furniture, snow removal, misc[ellaneous] paint/concrete and other jobs as assigned." This person, like Grievant Seal, appears to spend less than half his time performing grounds work, although the description "[w]ork orders" is vague. He apparently spends a significant amount of time moving furniture since it is listed as part of the general purpose of the job. He must do some carpentry and mechanical work, because his PIQ lists "[b]asic mechanical and carpentry knowledge" as required knowledge, skills or abilities. Grievant Seal also helps carpenters and mechanics.

Grievant Seal performs some of the duties of a Landscape Gardener, such as pruning and operation of groundskeeping equipment. However, it is clear that a Landscape Gardener's primary duties involve the art of landscape design, and diagnosis and treatment of turf, flower, shrub and tree problems, while Grievant Seal's primary duties involve mowing the grass and planting flowers, along with a wide variety of other non- landscaping duties. This is not to say that with Grievant Seal's years of experience he could not perform the duties of a Landscape Gardener. His job simply does not require him to perform those duties, and he has not proven he should have been classified as a Landscape Gardener. [\(See footnote 7\)](#)

The PIQ's of the WVIT R&GW I and R&GW II are essentially identical, except for the statement of duties and responsibilities. There is very little difference between the duties and responsibilities of the two positions. Mrs. Buttrick distinguished the R&GW II Job Title from the job performed by the WVSC

Grievants in two areas. She stated as the first distinction that R&GW II's perform engine repair 35% of the time, whereas the WVSC Grievants spend only 10% of their time working on equipment. [\(See footnote 8\)](#) She also stated as a distinction that R&GW II's drive dump trucks, which requires a CDL (Commercial Driver's License) [\(See footnote 9\)](#), operate fork lifts, concrete equipment, and "lots of other equipment." She asserted that the WVSC Grievants do not operate this type of equipment. Mrs. Buttrick also stated the percentage of time spent operating such equipment would have an impact on classification, but did not explain how she arrived at this conclusion or what percentage of time would represent the break point. The R&GW II PIQ provides no such percentage information.

The evidence is clear that the WVSC Grievants operate heavy equipment requiring a CDL, and that they repair equipment. Thus, the WVSC Grievants' duties seem to better fit those of a R&GW II. The only differences between the WVSC Grievants' duties and those of a R&GW II are the amount of time spent performing equipment maintenance and repair (10% for the WVSC Grievants versus 35% for the R&GW II), and the WVSC Grievants mix, apply and assure proper storage of chemicals, which the R&GW II does not do (but the Landscape Gardener does). Whether these differences are significant enough to prevent the WVSC Grievants from being classified as R&GW II's will be analyzed in a comparison of the degree levels assigned to the two Job Titles in the point factors at issue. It is also necessary to make such a point factor comparison as a second step in analyzing whether Grievant Seal should be classified as a Landscape Gardener.

C. Application of the Point Factor Methodology

Grievant Seal challenged the degree levels received in the point factors Complexity and Problem Solving, Freedom of Action, Physical Coordination and Physical Demands. The WVSC Grievants challenged the degree levels received in the point factors Experience, Complexity and Problem Solving, and Freedom of Action. Following are the differences between the degree level assigned the point factors for the R&GW I Job Title, the R&GW II Job Title, the Landscape Gardener Job Title and the degree levels Grievants argued they should have received in each of these point factors:

EX    CPS FA    PC    PD    [\(See footnote 10\)](#)

Roads and Grounds Worker I	2	1.5	1	2	4
Roads and Grounds Worker II	3	2	2	2	3

Landscape Gardener	3	2	2.5	2	4	
Grievant Seal's Argument	N/A	2	3	5	5	
WVSC Grievants' Argument	3	3	3	N/A	N/A	Respondents' Exhibit 4. Each of the point factors challenged by Grievants will be addressed separately below. <a href="#">(See footnote 11)</a>

1. Experience

The Job Evaluation Plan ("the Plan") defines 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.

Grievants received a degree level of 2.0 in this point factor. The WVSC Grievants argued they should have received a degree level of 3.0, as did the R&GW II Job Title.

A degree level of 2.0 is defined in the Plan as "[o]ver six and up to twelve months of experience." A degree level of 3.0 is defined in the Plan as "[o]ver one year and up to two years of experience."

The WVSC Grievants argued that experience is needed to safely mix and apply chemicals, operate heavy equipment, prune, and perform landscaping work. Mrs. Buttrick pointed out that the job requires a high school education in addition to experience. She stated some knowledge of this type of work would be necessary, but not a lot. She asserted that teenagers perform "roads and groundsmaintenance" as part-time work while still in high school, but she did not identify the specific duties which would be assigned teenagers. She stated there is an on-the-job training period, and the probationary period in higher education is six months. She stated the R&GW II's received a degree level of 3.0 in Experience, because they operate dump trucks, fork lifts, and other equipment, and they spend 35% of their time repairing equipment.

As noted above, the WVSC Grievants proved they operate heavy equipment requiring a CDL, and they repair equipment. Regardless of whether someone spends 10% of his time or 35% of his time repairing equipment, the same level of experience is required to successfully perform the repairs. The same is true of the operation of heavy equipment. The same level of experience is required to acquire a CDL and safely operate heavy equipment regardless of whether someone spends 1% or 95% of his time operating this equipment. The distinction would be in the level of repairs being performed, and the type of work being performed using the heavy equipment. The record does not support that there is any distinction in the level at which the R&GW II's and the WVSC Grievants are



performing. Accordingly, the WVSC Grievants proved they should have received the same degree level in this point factor as a R&GW II, a 3.0.

## 2. Complexity and Problem Solving

The Plan defines Complexity and Problem Solving as follows:

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

Grievants received a degree level of 1.5 in this point factor. Grievant Seal argued he should have received a degree level of 2.0, as did the Landscape Gardener Job Title. The WVSC Grievants argued they should have received a degree level of 3.0. The R&GW II Job Title received a degree level of 2.0 in this point factor.

Mrs. Buttrick explained that a degree level of 1.5 would have been awarded the R&GW I Job Title, because the PIQ's of all the persons placed in the Job Title indicated that sometimes they encountered problems above the routine, so that they should receive credit for more than a degree level of 1.0. She stated they were not making "basic decisions" on a regular, recurring basis by using procedures, so they did not fall within a degree level of 2.0. Mrs. Buttrick stated she believed the problems encountered by Grievant Seal would fall within a degree level of 1.5. She explained that treating plant diseases using standard procedures would be a basic decision.

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

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

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

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

A degree level of 3.0 is defined in the Plan 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 Seal testified that he must mow grass on steep hills, and pointed out this is dangerous on a tractor. He must decide the best way to safely accomplish this task.

While Grievant Seal must exercise care and good judgment when operating lawn care equipment, he has not proven the problems he encounters rise to a degree level of 2.0. Grievant Seal's supervisor decides what work will be done by Grievant each day. Most of the time the tasks he performs involve routine problems with simple solutions, with very little judgment required, rather than "some judgment [being] required to interpret instructions or perform basic computation work such as in the comparison of numbers or facts". Deciding the best way to mow a steep hill could rise to the level of a "basic decision"; however, Grievant Seal mows the same grass every week, every summer, for example, and once the decision about the best way to mow has been made, the mowing would be accomplished the same way each time. None of Grievant Seal's duties require the degree of problem solving involved in diagnosing and deciding the proper treatment of plants, shrubs, trees and turf, or choosing the proper plants for a location, as a Landscape Gardener would encounter. Grievant Seal was, nonetheless, given some credit at the 2.0 degree level.

The WVSC Grievants stated they encounter problems in the operation and repair of equipment. They also choose plants, mix and spray chemicals, and assure proper storage of chemicals. While instructions, procedures and guidelines should cover all important aspects of these duties, they are not simple and clear-cut, with procedures well defined, and the problem and solution are not exactly the same each time. Repairing equipment cannot be characterized as routine, as the repair work depends entirely upon what has broken, and the same part will not necessarily break each time, nor will the parts necessarily be the same on two pieces of similar equipment. The fact that a special license is required in order to operate heavy equipment indicates that this duty is more than routine. Mixing, applying and storing chemicals is not routine. The undersigned will take notice that this duty is affected by weather conditions, whether the application is made in a high traffic area, the use made of the application area, what plants and animals are in the application area, what other items are in the storage area, what chemicals are being used, and changing regulations. In choosing the proper plant for a location, there are many choices and many factors to consider.

The WVSC Grievants produced no evidence to prove the problems they encounter rise to the level of complex problems with solutions requiring some resourcefulness and originality. Certainly this

may occasionally be the case with equipment repair, particularly withhold equipment, and Grievants hinted of this in the evidence that they must use cutting torches on parts.

Some of the WVSC Grievants' duties, such as mowing grass, also fall within a degree level of 1.0. The R&GW II also performs this duty, as well as snow removal and moving furniture. Respondent presented no evidence to explain why the R&GW II would not have also received a degree level of 1.5 in this point factor. The WVSC Grievants spend one-tenth of their time maintaining and repairing equipment, while the R&GW II PIQ indicates the employee spends a little over a third of his time repairing equipment. The R&GW II does not, however, encounter problems at a degree level of 2.0 most of his time. The problems encountered by the WVSC Grievants and the R&GW II are more complex than those encountered by Grievant Seal and the WVIT R&GW I. Grievants have proven there is not a distinction between the R&GW II duties and their duties for purposes of applying this point factor, and they should have received the same credit as a R&GW II, a 2.0.

### 3. Freedom of Action

The Plan defines Freedom of Action as:

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

Grievants received a degree level of 1.0 in this point factor. Grievant Seal argued he should have received a degree level of 2.5, as did the Landscape Gardener Job Title. The WVSC Grievants argued they should have received a degree level of 3.0. The R&GW II Job Title received a degree level of 2.0.

The definitions in the Plan show that at a degree level of 1.0:

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

The definitions in the 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 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.

Mrs. Buttrick explained this point factor looks at how frequently the employee's work is reviewed by his supervisor, and the type of guidance given to the employee; for example, whether an employee decides each day how to do his job, or whether the supervisor sets this out. She stated that a degree level of 1.0 would be assigned when the tasks are set out each day by the supervisor, reviewed by the supervisor, the supervisor knows where the employee is and what he is doing, and the employee has little or no freedom in determining his activities. She further testified that mowing the grass is routine, and would fall within a degree level of 1.0, even though the WVSC Grievants perform this duty without being told when to do so. She stated on cross-examination that there are no rules on how often a supervisor must supervise the work. She explained that an employee working at a degree level of 3.0 would not receive daily assignments from the supervisor, and would have very moderate or limited supervision. She stated this person would know the objectives set by the supervisor, and would organize and carry out the work assignments using the available information and would deal with unusual circumstances in an independent manner. She further stated that the supervisor of an employee who received a degree level of 2.0 or 2.5, has some standard operating procedures; the employee knows what has to be done and would come in and perform his job each day. She did not explain why the R&GW II Job Title received a degree level of 2.0 in this point factor.

Grievant Seal is given his assignment each day by his supervisor. While he must decide the best way to mow the grass and where to start mowing, trimming or planting, his freedom to make decisions is limited and he repeats the same tasks. Grievant Seal's job falls squarely within a degree level of 1.0. The WVSC Grievants do not receive daily assignments. They perform some tasks over and over in the same way, and know when these tasks must be performed, such as mowing the grass and trimming. These tasks can be characterized as routine and fall within a degree level of 1.0. However, the R&GW II performs these same tasks.

The WVSC Grievants failed to prove they should have received a degree level of 3.0 in this point factor. At a degree level of 3.0, the supervisor would set an objective such as, "keep the grounds in

perfect condition", and the employees would then work together to do everything necessary to achieve this goal. The evidence does not support a finding that the WVSC Grievants function without additional instruction beyond such an objective. Rather the evidence indicates most of the time they are directed to particular grounds maintenance activities, other than repair of equipment and those duties which are routine.

The WVSC Grievants perform equipment maintenance and repair on their own without being told to do so. Maintenance could be characterized as routine. The same maintenance would be performed on the same equipment time after time, following the maintenance schedule. Equipment repair, however, is necessary when equipment breaks down. The WVSC Grievants determine whether it is a minor repair, what parts are needed for a minor repair, obtain the part from purchasing or order and pick it up themselves, and replace the part, all without being told anything other than they are responsible for minor equipment repairs. Equipment repairs could fall within a degree level of 3.0, as Grievants make repairs as needed. This duty would be performed based on the general objective and directive to keep the equipment in working condition.

As discussed under Complexity and Problem Solving, Grievants have proven several of their duties are not routine, and accordingly, fall within a degree level of 2.0, while many of their duties fall within a degree level of 1.0, as is the case with the R&GW II. There is no indication that the R&GW II duties fall within a degree level of 2.0 most of the time. The R&GW II and the WVSC Grievants have more Freedom of Action than Grievant Seal and the WVIT R&GW I. The WVSC Grievants have proven they should have received as much credit in this point factor as the R&GW II, a 2.0.

#### 4. Physical Coordination

Physical Coordination is defined in the Plan as:

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

Grievants received a degree level of 2.0 in this point factor, as did the Landscape Gardener Job Title. Grievant Seal argued he should have received a degree level of 5.0.

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

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

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

Work 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.

A degree level of 4.0 is defined in the Plan as:

Work requires skill and accuracy or other manual actions involving rapid physical motions and closely coordinated performance on or with office equipment; or a high degree of manual skill and exactness in the use of hand instruments or equipment.

Finally, a degree level of 5.0 is defined in the Plan as:

Work requires extraordinary skill and precision with complicated and/or difficult manual skill involving coordinated physical motions and exactness in the use of hand instruments or tools requiring delicate timing and placement of movements.

Mrs. Buttrick explained that hand-eye coordination, the type of equipment used by the employee, and the skill needed to prevent injury or accidents involving both the employee and other persons are important in application of this point factor. Mrs. Buttrick stated that the operation of tractors, lawn mowers, and grounds equipment, and driving a truck would require simple hand-eye operations. She stated that jobs which dealt with electrical wiring or sophisticated equipment, which required a high level of precision or skill, or in which the employee could cause extreme harm to himself, such as burns, received a degree level of 5.0, and that few Job Titles received this level.

Mrs. Buttrick stated that the type of equipment used by Grievant Seal is exactly what is set out in the definition of a degree level of 2.0. The undersigned agrees. Grievant Seal did not indicate that speed or accuracy are requirements of his job. He must exercise the same level of care as someone using power tools. 5. Physical Demands

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

This factor considers the physical demands of the job as measured by the exertion placed on the skeletal, muscular and cardiovascular systems of the incumbent. It also takes into account the quality of the physical working conditions in which the job is normally performed such as lighting adequacy, temperature extremes and variations, noise pollution, exposure to fumes, chemicals, radiation, contagious diseases, heights and/or other related hazardous conditions.

Grievants received a degree level of 4.0 in this point factor, as did the Landscape Gardener Job Title. Grievant Seal argued he should have received a degree level of 5.0.

A degree level of 4.0 is defined in the Plan as:

Considerable 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.

A degree level of 5.0 is defined in the Plan as:

Extremely strenuous, with frequent physical exertion such as the lifting of very heavy items (more than 75 pounds), deep bending, climbing and/or working in difficult or cramped positions for long periods of time.

Mrs. Buttrick stated this point factor measures regular and recurring physical activity, meaning on a daily basis, or a majority of the time rather than occasionally. She stated that a degree level of 4.0 gives credit for the lifting, climbing and moving around which must be done to take care of the grounds. She opined that Grievant Seal's job did not involve the heavy lifting credited in the 5.0 degree level, or working in a cramped position, such as someone performing asbestos abatement work or an electrician working in a crawl space. She believed Grievant Seal would fall within a degree level of 3.0 based upon his testimony that, on average, he would carry 25 to 50 pounds.

Grievant Seal's lifting, usually with assistance, of heavy furniture one time per month, is not frequent lifting. Nothing in his duties indicates he would do deep bending as opposed to bending, or would work in difficult or cramped positions for long periods of time.

#### D. Summary

Grievant Seal failed to prove the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning his Job Title, or in assigning the degree levels in the point factors to his Job Title. The WVSC Grievants proved the JEC was clearly wrong in classifying them as Roads and Grounds Worker I's, Pay Grade 7, and that they should have been placed in the Job Title Roads and Grounds Worker II, Pay Grade 9.

### **Conclusions of Law**

1. The governing boards are required by W. Va. Code § 18B-9- 4 to establish and maintain an equitable system of job classifications for all classified employees in higher education.

2. The burden of proof in a misclassification grievance is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.17. The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community

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

3. The Job Evaluation Committee's interpretation and explanation of the Generic Job Description and point factors will be given great weight unless clearly wrong, where the proper classification of a grievant is almost entirely a factual determination. See Tennant v. Marion Health Care Foundation, 459 S.E.2d 374 (W. Va. 1995); Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995).

4. The Job Evaluation Committee's decision that Grievant Seal is not a Landscape Gardener is not clearly wrong or arbitrary and capricious.

5. The Job Evaluation Committee's assignment of degree levels to the point factors for the Roads and Grounds Worker I Job Title is neither clearly wrong nor arbitrary and capricious.

6. The Job Evaluation Committee's decision that Grievants Payne, Leedy, Booker and Stewart are Roads and Grounds Worker I's is clearly wrong.

Accordingly, the grievance of Grievant Seal is **DENIED**. The grievances of Grievants Payne, Leedy, Booker and Stewart are **GRANTED**, and it is **ORDERED** that they be classified as Roads and Grounds Worker II's, Pay Grade 9, effective January 1, 1994, and backpay is awarded in the amount of the difference between their respective salaries had they been properly classified on that date and the amount received as Roads and Grounds Worker I's, Pay Grade 7, if any.

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

**BRENDA L. GOULD**

**Administrative Law Judge**

**Dated: September 19, 1996**

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[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.*

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[Footnote: 2](#)

*Grievants declined to submit written argument.*

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[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.*

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[Footnote: 4](#)

*A grievant may challenge any combination of point factor degree levels, so long as he clearly identifies the point factor degree levels he is challenging, and this challenge is consistent with the relief sought. See Jessen, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-1059 (Oct. 26, 1995); and Zara, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-817 (Dec. 12, 1995).*

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[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.*

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[Footnote: 6](#)

*This is not the first Mercer hearing in which Respondent has emphasized the use of PIQ's rather than Generic Job Descriptions. The undersigned would note, however, that some of the PIQ's placed into evidence in this case, as in many others, do not clearly describe the person's duties and responsibilities. Respondents' JEC member witnesses have also stated in several Mercer hearings that particular PIQ's were supplemented orally at JEC meetings by campus human resource personnel. All of this is an indication to the undersigned that PIQ's alone are less reliable for classification purposes than Generic Job Descriptions.*

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[Footnote: 7](#)

*Grievant Seal did not argue he should have been classified as a R&GW II, and consistent with this Grievance Board's practice of requiring the grievant to identify the specific Job Title in which he believes he should have been placed, the undersigned will not address whether Grievant Seal should have been classified as a R&GW II. See Elkins, supra; and Otey v. W. Va. Div. of Rehab. Serv., Docket No. 94-RS-538 (Jan. 31, 1995).*

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[Footnote: 8](#)

*Mrs. Buttrick stated she believed the "[l]arge and small engine repair" listed on Grievants' Exhibit 4 was mostly major repair work, unlike the maintenance and minor repair work which the WVSC Grievants perform. She based this belief upon her recollection that "supplemental information" was provided to the JEC by Ms. Nutter, that if equipment breaks down, the employee would determine what part is broken and replace it. She did not identify Ms. Nutter, but the*

*undersigned will take notice from other Mercer hearings that Ms. Nutter is the Director of Human Resources at West Virginia Institute of Technology, and a JEC member. See Wilkinson v. Bd. of Trustees, Marshall Univ., DocketNo. 94-MBOT-765 (Aug. 26, 1996). It is unclear how Ms. Nutter could have supplemented the PIQ's without this information being reduced to writing and made a part of either the PIQ's or the JEC decision. Accordingly, this testimony is hearsay which is not within any of the hearsay exceptions, and the undersigned will not give any weight to it.*

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[Footnote: 9](#)

*The PIQ for the Roads and Grounds Worker II does not indicate that in 1991 a CDL was a requirement for the position.*

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[Footnote: 10](#)

*These headings are shorthand for the following point factors: EX is Experience; CPS is Complexity and Problem Solving; FA is Freedom of Action; PC is Physical Coordination; and PD is Physical Demands. Where N/A is used in the chart, it means Not Applicable inasmuch as the Grievant referred to is not challenging the degree level received in the point factor.*

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[Footnote: 11](#)

*The R&GW II Job Title received a lower degree level than the R&GW I Job Title in the point factor Physical Demands. The WVSC Grievants are not challenging the degree level received in this point factor. The Landscape Gardener Job Title received a higher degree level than the R&GW I Job Title in the point factors Knowledge, Experience, Scope and Effect/Nature of Actions, and Intrasystems Contacts/Level of Contact. Grievant Seal is not challenging the degree level received in these point factors. Respondent did not argue this point. Accordingly, the undersigned will not address these differences.*