

KENT HASTINGS, et al., .

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Grievants, .

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v. . Docket No. 94-MBOT-943

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BOARD OF TRUSTEES, WEST VIRGINIA .

UNIVERSITY, .

.

Respondent. .

DECISION

This is a grievance by Kent Hastings, Thomas Gallagher [\(See footnote 1\)](#), and James Brown (Grievants) challenging their classification as Electronics Technicians in Pay Grade 13 by the Respondent Board of Trustees (BOT) under the Job Evaluation Plan for State College and University Systems of West Virginia developed by William M. Mercer, Inc. (Mercer Plan). Grievants allege that they should have been classified in a separate job title from other Electronics Technicians, properly reflecting the unique nature of their assigned duties. They further claim that their duties and responsibilities were not properly evaluated in accordance with the Mercer Plan. These grievances were initiated in August 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. [\(See footnote 2\)](#) In accordance with W. Va. Code § 18-29-5(b), the three grievances at issue here were consolidated by Order dated January 23, 1995. A Level IV evidentiary hearing was conducted in this Board's office in Elkins, West Virginia, on August 31, 1995. This matter became mature for decision on October 12, 1995, upon receipt of written post-hearing arguments.

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. [\(See footnote 3\)](#) Employees were also asked to rate various aspects of their position, under a scale set forth in the Mercer Plan. R Ex 2. 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, consisting of representatives from human resources and classified staff, 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 (R Ex 2), 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 Electronics Technician, the JEC assigned points for each listed category as shown:

Knowledge	5.0
Experience	3.0
Complexity and Problem Solving	3.0
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	5.0
Working Conditions	3.0
Physical Demands	3.0

See R Ex 1.

Using a mathematical formula not at issue, the foregoing levels were calculated to award these positions 1,859 total points, equating to Pay Grade 13. [\(See footnote 4\)](#) At the time Grievants were reclassified, the starting pay for Pay Grade 13 was \$17,460 per year.

Grievants are assigned to maintain and repair various electronic systems associated with the operation of the Personal Rapid Transit System (PRT) at West Virginia University (WVU). The PRT is more fully described in this Board's previous decision in Jessen v. Board of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995). Grievants explained their role in the "general comments" section of their 1991 PIQs:

The PRT system is an automated transportation system used by several thousand university students and faculty as well as the general public daily. The Electronics Technicians' primary responsibility is to perform the maintenance actions required to keep this system operating reliably and safely. In order to accomplish this, it is necessary for every technician to be proficient in the trouble shooting and repair of all the PRT electronics systems. While a limited amount of specialization on a particular system may be acceptable during normal operation, every technician must be trained and ready to work on any of the PRT electronics systems when called on to do so during an emergency or downtime event. The broad range of knowledge of everything from analog to digital circuitry; from television to microprocessors and more; will be critical in getting the PRT back in operation as quickly and safely as possible. It is the Electronics Technician's responsibility to have this knowledge and apply it properly to achieve that goal.

Summary of Level IV Testimony

Robert Dewitt, PRT Electronics Shop Supervisor for the past eight years, testified that he supervises nine electronics technicians at the PRT, including Grievants. Before becoming a supervisor, he was a Lead Electronics Technician III at the PRT. Mr. Dewitt explained that during 10 of 16 work shifts each week, the most senior Electronics Technician on duty makes decisions regarding repair methods and trouble shooting procedures to be followed.

Mr. Dewitt noted that most of the circuit boards employed at the PRT are one-of-a-kind items designed by Boeing Aerospace for the PRT and replacement boards are not commercially available.

Thus, defective circuit boards must be repaired in-house by Grievants or their peers. Because of redundant circuits, a majority of the system failures on the PRT are intermittent. This makes the task of trouble-shooting failures more difficult. In addition, multiple faults sometimes occur, thus making the trouble-shooting process more complex.

PRT vehicles are operated by an on-board computer called the vehicle control and communications system (VCCS). Most PRT electronics equipment is considered safety-critical. All PRT electronics equipment was manufactured to "military specifications," meaning the equipment had been tested before it was delivered or installed, it must meet more precise tolerances, and it will withstand greater extremes of temperature. Extra precaution must be taken to maintain the equipment in accordance with these higher specifications. Failure to properly repair certain components could defeat the built-in collision avoidance system, resulting in vehicle collisions involving possible injuries or death. Two or three electronics technicians work each shift at the PRT. Grievant Hastings works the "midnight shift" from 10:00 p.m. to 6:00 a.m. Grievant Brown works the "afternoon shift" from 2:00 p.m. to 10:00 p.m. According to Mr. Dewitt, all technicians are responsible for knowing all aspects of the job. However, each technician does not perform the same duties on a regular basis as some are more "specialized." Thus, Grievant Hastings primarily works with propulsion while Grievant Brown specializes in the on-board computers.

Ralph Beatty, Assistant Director of Utilities for the WVU Physical Plant, testified for Respondent. At the time he testified, Mr. Beatty had held that position for 7 months. He previously served as the HVAC (heating, ventilation and air conditioning) Shop Supervisor. In his current capacity, Mr. Beatty supervises the Electric Shop Foreman who, in turn, supervises 3 Electronics Technicians in the Physical Plant. Additional Electronics Technicians work at the WVU Health Sciences Center under separate supervision.

According to Mr. Beatty, the Electronics Technicians in the Physical Plant work on a variety of electronics, including the direct digital controls (DDC) for the heating and air conditioning systems, with which he is particularly familiar. He explained that DDCs are computerized systems that control various aspects of the environment in a group of buildings. When these controls break down, classes may have to be suspended, but such events happen very infrequently. Mr. Beatty noted that his Electronics Technicians repair and maintain the scoreboards used at various athletic events. Further, they repair fire alarm systems throughout the campus. They also repair lab equipment used by

various academic departments. This often involves a one-of-a-kind electronic device with no available instructions or schematic. Mr. Beatty indicated that he had no direct knowledge of the work performed by other Electronics Technicians outside the Electric Shop. The technicians under his supervision work in all areas of WVU except the Health Sciences Center and the PRT.

Teresa Crawford, a Senior Compensation Analyst in the Department of Human Resources at WVU, testified for the Respondent. Ms. Crawford has handled classification and compensation matters at WVU for over ten years. Her areas of responsibility for classification matters include the PRT, Physical Plant and Health Sciences Center. Ms. Crawford has a Masters in Business Administration and has achieved recognition as a "certified compensation professional" from the American Compensation Association. Her testimony will be discussed in greater detail as each of Grievants' contentions is hereinafter discussed.

DISCUSSION

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).

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 found to be clearly wrong if there is no substantial evidence in the record supporting the finding or, a 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 assigned to a separate classification from other generic Electronics Technicians, such as "PRT Electronics Technician." A similar claim was addressed by this Grievance Board in Burke v. Board of Directors, Fairmont State College, Docket No. 94- MBOD-349 (Aug. 8, 1995). There, it was noted:

Grievants may challenge their initial classification by asserting that the JEC and governing boards should have developed another classification. Grievants taking this path, however, have a nearly insurmountable burden to prove that the JEC and governing boards abused their broad discretion in failing to create an additional classification.

Burke, supra. Accord, Mitchell v. Bd. of Directors, Docket No. 94- MBOD-348 (May 21, 1996).

Ms. Crawford explained that Grievants were given the same job title as other Electronics Technicians because the JEC determined the differences in their duties and responsibilities were not sufficient to warrant creating a separate job title. One of the tasks of the JEC was to eliminate separate titles unless warranted by significant differences in duties and responsibilities. Thus, the PRT Electronics Technician I, II and III job titles were "collapsed" into the Electronics Technician classification. Ms. Crawford opined that Grievants had been assigned the proper job title.

Ms. Crawford's conclusion was supported by Mr. Beatty who, after hearing Grievants' evidence, agreed that their duties were similar to the Electronics Technicians under his supervision. While each group works on different equipment, he indicated that the theory applied is the same. Even though the JEC elected to create separate job titles for some employees on the PRT, such as "PRT Systems Operator," Grievants' duties and responsibilities are not as PRT-specific as these other positions. Moreover, the JEC had a reasonable basis to conclude that differences between Grievants' duties and the duties of other technicians working on electronics equipment in the Physical Plant and Health Sciences Center were not so significant as to warrant creation of another job classification. Thus, Grievants failed to demonstrate that this decision by the JEC was arbitrary and capricious or amounted to an abuse of the JEC's broad discretion. See Mitchell, supra; Burke, supra. See also Love v. W. Va. Library Comm'n, Docket No. 94-LC-145 (Sept. 23, 1994).

Grievants further challenged, either directly or indirectly, the ratings they received from the JEC on several of the point factors used to assign positions to a specific pay grade. These contested

factors [\(See footnote 5\)](#) will be reviewed in the order they appear in the Mercer Plan, beginning with Experience.

Factor 2, Experience.

The Job Evaluation Plan provides that Factor 2, Experience:

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.

In regard to Factor 2, each Grievant responded to the question, "Please describe the type and least amount of workexperience required, if any, for a person coming into this position and justify how the experience is essential to the performance of the duties and responsibilities," by stating:

Due to the highly unique design of the PRT system and the multitude of the individual electronic subsystems contained within it, the electronics technician II needs to have two years of experience as an electronics technician I to become familiar with most procedures and technical aspects of the system. During system malfunctions the technician must be able to diagnose complex problems quickly, therefore experience working in this system can be critical to the system operation.

Each grievant checked level "D" or 4, indicating that "over two years and up to three years of experience" was the minimum amount of experience required for a new hire in the position. There was no indication that Mr. Dewitt or Terry Hoskins, their second-level supervisor, took exception to this rating.

Grievant Brown had 11 years' experience in the electronics field before he began working at the PRT. He was hired as a PRT Electronics Technician I and was promoted to a PRT Electronics Technician II after 1 year. He had been an Electronics Technician II for 13 years when he was reclassified under the Mercer project. Grievant Brown testified that an employee needed 2 to 3 years of experience in order to work independently making necessary repairs to the PRT in an efficient manner.

Ms. Crawford explained that the JEC applied Factor 2, Experience, to indicate the least amount of experience required for a new employee to come into the position. In applying both the Knowledge and Experience factors, the JEC was looking at the minimum qualifications for the position. Thus, in addition to an associate's degree or its equivalent in formal training, a new employee would need over one year and up to two years of experience to enter this position.

Although "job experience" may be objectively measured, 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. Zara v. Bd. of Trustees, Docket No. 94-MBOT-817 (Dec. 12, 1995). Grievants failed to establish that a newly-hired employee with only one to two years of experience could not perform the essential duties of Grievants' positions at a minimum level of competence, following a reasonable period of on-the-job training. Consequently, Grievants did not establish that the JEC's decision to rate the experience requirement for their positions at Level 3 was clearly wrong.

Factor 3, Complexity and Problem Solving

In regard to this factor, the Job Evaluation Plan states:

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.

When completing their PIQs in 1991, Grievants provided the following "example of the common types of problems faced during the past year and the course of action taken to solve these problems:"

A typical system failure could result in actions such as the following. A malfunction results in loaded vehicles stopping on the guideway. The technician first isolates the defective system (vehicle electronics, collision avoidance system, station to vehicle communication and guideway inductive loop system, . . . etc.). By using test equipment and information available in tables and manuals, a determination is made of which circuit failed and the type of failure. Corrective measures are then taken based on the analysis of the problem as quickly as possible to keep downtime to a minimum for the system and any stranded passengers.

Based upon the forgoing example, 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 "C" or 3 on this factor. The Job Evaluation Plan defines Level C

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 Brown stated that Level D is more appropriate than Level C because the available manuals "frequently" contain inaccurate data. When this situation is encountered, Grievants' work becomes more complex, as defined at Level D. He noted that after 17 years of operation, they were still encountering first- time failures of an electronic component where the manual is either incomplete or inaccurate. These types of problems are normally encountered when trouble shooting failures, not when conducting scheduled maintenance. However, according to his estimate, a technician encounters such events on a monthly basis, on average.

Mr. Dewitt stated Grievants can follow manuals, schematics and diagrams when performing much of their work, but are expected to be resourceful and come up with their own solutions when dealing with intermittent and multiple faults. Ms. Crawford explained that this factor attempts to evaluate the thought process an employee must go through to solve problems encountered in their job. Typically, paraprofessional and technical positions, such as Grievants', were rated at Level C. 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. Jones v. Bd. of Trustees, Docket No. 94-MBOT-978 (Feb. 29, 1996). See Watts v. W. Va. Dept. of Health & Human Resources, 465 S.E.2d 887 (W. Va. 1995); Burke, supra. Although Grievants may occasionally encounter situations requiring them to resolve problems that are complex enough to be rated above Level C, these situations do not arise with sufficient frequency to compel a higher rating. Thus, a preponderance of the evidence will not support a finding that the JEC's determination was clearly wrong.

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 B and Level C. Level B 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 C 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.

On their PIQs, Grievants listed the following "daily" guidance and review provided by their supervisors:

The supervisor establishes goals (work plan) and the electronics technician II completes these using established procedures and guidelines. At times such as system malfunction the technician sometimes must use his own discretion to alter the priorities of the workload to ensure the efficient operation of the system.

Grievants further listed the following policies, procedures or regulations governing their job: "Operation, Maintenance, repair and technical regulations and guidelines are contained within PRT maintenance manuals which were compiled under guidelines of the U. S. Department of Transportation and Boeing." Grievants presented minimal new evidence at Level IV to support their contention that they should have been rated at Level D or 4, rather than at B/C or 2.5. Ms. Crawford explained that this factor does not measure the extent to which a supervisor is present to oversee the work process. Instead, the evaluation focused on the amount of control the employee had over his work assignments. The more standard operating procedures in place, and the more repetitive the work, the lower the rating. She noted that completing assigned tasks independently with little or no supervision, as Grievants routinely do, does not involve working from broad goals or objectives.

Further, in Ms. Crawford's opinion, the narrative comments on Grievants' PIQs do not support a Level D rating under this factor. Moreover, unless the job described in the PIQ supports the rating level checked by the employees and their supervisors, she stated that the JEC did not approve their ratings. In Grievants' case, they generally apply standard operating procedures, but are also called upon to deal with unusual situations independently. Thus, the JEC determined that their duties fell somewhere between Level B and Level C, rating Grievants' positions at 2.5 for Freedom of Action.

The JEC determinations of how the degree levels are applied must be given great weight. Burke, supra. This is particularly true when it comes to a factor involving considerable leeway for subjective determination, such as Freedom of Action. See Jessen, supra. Accordingly, the JEC conclusion that Electronic Technicians should be assigned a 2.5 rating for this point factor has not been shown to be clearly wrong or arbitrary and capricious.

Factor 5, Scope and Effect

In regard to Scope and Effect, the Job Evaluation Plan offers the following guidance:

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 the 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.

Under Factor 5, Scope and Effect, Grievants responded to the question on their PIQs, "Describe 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," by stating:

Electrocution in lab or guideway, vehicle collision with workers or other vehicles, falls from elevated guideways and injuries to PRT personnel or passengers resulting from vehicle malfunction if the system safety features were compromised due to insufficient knowledge or careless repair techniques. At the very least, since this is the primary transportation system for the university, any failure will result in the disruption of passenger travel between campuses.

Factor 5 involves a matrix approach containing two complimentary elements, "Impact of Actions" and "Nature of Action." Each Grievant checked level "D" on his PIQ as best describing his job. [\(See footnote 6\)](#) That level reads:

Work contributes to or ensures the effectiveness of operations or services having significant impact within 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.

Someone, either Mr. Dewitt or Mr. Hoskins, indicated on the PIQs that level "B" best described Grievants' job. [\(See footnote 7\)](#) That level reads:

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.

At Level IV, Grievant Brown explained that level "D" best reflects their positions because an error committed by Grievants when working on safety-related components could easily result in an accident that would cause substantial costs and disrupted service. He noted that an error by a technician working on a television, video recorder or similar electronic item would not have as serious consequences as an error by one of Grievants working on safety-related electronics systems in an automated passenger vehicle. However, he acknowledged that no mistakes have actually resulted in an accident or harm to any individual.

Ms. Crawford discussed the JEC's application of Factor 5, noting that this factor was designed to compensate for differences between large and small institutions while applying a single, comprehensive classification scheme. Scope and Effect involves application of a matrix, with one element being the nature of the work performed and the other element involving the impact on the institution. The JEC rated Grievants at Level B under Nature of Action and Level 1 for Impact of Actions. [\(See footnote 8\)](#) According to Ms. Crawford, the JEC interpreted this factor to measure things that occur in a normal work day, not errors that might occur in a worst-case scenario. The JEC determined that measuring the results from possible errors, as stated in the Job Evaluation Plan, was not as meaningful as measuring the results of proper job accomplishment.

As previously held in Jessen v. Board of Directors, Docket No. 94-MBOT-1059 (Oct. 26, 1995), value judgments are an inherent element of the function of position classification. See Steven W. Hays & T. Zane Reeves, Personnel Management in the Public Sector 101-120 (1984). Unfortunately, the wording of the PIQ questions regarding this factor led Grievants to believe that the impact of errors and safety-related concerns was of greater importance than the JEC intended or determined was warranted. The JEC's determination that emphasis should be placed on measuring proper job performance, rather than errors, was not so inconsistent with the general language of the Job Evaluation Plan as to constitute an abuse of discretion. See Watts, supra. Likewise, the Respondent articulated a rational basis for the interpretation developed in the course of applying the Mercer Plan. See Jessen, supra. Therefore, the undersigned is not persuaded that the JEC's decision was either arbitrary and capricious or clearly wrong.

Factor 6, Breadth of Responsibility

According to the Job Evaluation Plan:

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

On their PIQs, Grievants indicated that they were accountable for one functional area, warranting a Level B rating. Ms. Crawford testified that the person responsible for the functional area where Grievants worked at WVU would be in a non-classified position. Indeed, no classified employees at WVU received credit above Level A under this factor. Grievants presented no effective rebuttal to Ms. Crawford's testimony regarding the JEC's application of this factor. Accordingly, the JEC rating on this factor will stand.

Factor 7, Intrasystems Contacts

In regard to Intrasystems Contacts, the Job Evaluation Plan offers the following guidance:

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

in original.)

Grievants checked Level C on the Level of Contact section of their PIQs indicating regular and recurring contact with "[s]upervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office." However, all of the examples shown in response to a request to list the official title of people with whom Grievants regularly communicate involve other WVU employees at the PRT. Someone in Grievants' chain of supervision lowered this rating to Level B, "[s]taff and faculty outside the immediate work area," and Level B was adopted as the proper Level of Contact by the JEC.

At the hearing, Grievants did not contest the Level of Contact rating, focusing instead upon the Nature of Contact. Grievants indicated on their PIQs that the proper Nature of Contact for their Intrasystems Contacts was reflected by Level 2:

Moderate tact and cooperation required; communication is largely of a non-controversial nature and handled in accordance with standard practices and procedures (e.g., explaining simple policies and procedures,

coordinating/scheduling complex meeting or conference arrangements.)

Grievant Brown testified that they may be called upon to explain to students and others how the PRT operates. However, he admits that this is not part of their regular duties and such encounters happen only "once in a while." Ms. Crawford related that this factor only applies when such activities are essential and necessary to complete the tasks assigned to an employee.

The JEC's interpretation of this factor, as explained by Ms. Crawford, is entitled to great weight. While Grievants may have contacts at Level 2 on occasion, a preponderance of the evidence indicates that such contact is incidental to their primary job duties, repairing electronic equipment. Accordingly, the JEC's ratings on this factor are accepted.

Factor 8, External Contacts

According to Respondent's Job Evaluation Plan:

This factor appraises the responsibility for working with or through other people outside the SCUSWV to get results. Consider the purpose and level of contact encountered on a regular, recurring and essential basis during operations. Consider

whether the contacts involve furnishing or obtaining information, influencing others or negotiation. (Emphasis in original.)

Like Intrasytems Contacts, this factor has two elements: Nature of Contact and Level of Contact. Grievants only disagree with the JEC's rating on the Nature of Contact of element. The JEC rated Grievants at Level 1:

Routine information exchange and/or simple service activity; requires common courtesy; (e.g., furnishing or obtaining factual information, ordering supplies, describing simple procedures).

Grievants contend they should have been rated at Level 2, which is defined the same as under Intrasytems Contacts. Grievant Brown explained that they work with outside contractors who are designing new circuit boards for the VCCS. However, he noted that he dealt with such personnel "infrequently," meaning as often as once or twice a week, and then not at all for a month or longer. Ms. Crawford declared that this factor required regular and recurring contact, meaning contact on almost a daily basis. Thus, Grievants' contacts with contractor representatives would not be frequent enough to warrant evaluation under this factor.

Again, Ms. Crawford's explanation of the JEC's application of this factor is consistent with the broad language of the Job Evaluation Plan and basic principles of position classification. Although Grievants do have contacts at Level 2 on occasion, and such contacts appear to be essential to the performance of their duties, they are not so regular and recurring as to warrant the higher rating sought. Accordingly, the JEC's determination is upheld.

Factor 13, Physical Demands

The Respondent's Job Evaluation Plan states:

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 described the physical effort required by their positions on their PIQs as follows:

The electronics technician II must be able to lift, carry, and manipulate heavy and awkward objects (vehicle on-board computer, propulsion modules, station power supplies, etc.) on a regular basis. He must work in cramped areas to access cable

trays, wiring runs and system components on the guideway, in station electronics rooms and in the vehicles. He must also be able to walk a considerable distance at a fast pace while carrying a load to reach area that are inaccessible by vehicle during a system malfunction.

Consistent with this narrative, Grievants rated themselves at Level D or 4: "Considerable physical exertion required involving bending, stooping, climbing, lifting or carrying of heavy items (over 50 and up to 75 pounds) and periodically working in difficult or awkward positions." Neither of Grievants' supervisors who reviewed the PIQ indicated any disagreement with this rating, or their factual description of their duties. The JEC rated Grievants at Level C or 3: "Moderate physical effort required involving long periods of standing, walking on rough surfaces, bending and/or stooping; periodic lifting of moderately heavy items (over 25 and up to 50 pounds)."

Grievant Brown, who spends approximately 95 per cent of his time working on the VCCS, explained that this component is frequently removed and replaced in each vehicle as a trouble shooting technique, due to their tendency to fail intermittently. See G Ex B. He noted the 72-pound VCCS cannot be repaired unless it is removed from the PRT vehicle, lifted to a test bench, and further manipulated to access various components. See G Ex C. Mr. Dewitt confirmed this requirement in his testimony. Although other PRT personnel may assist Grievants in removing heavy components from the vehicles on occasion, Grievants usually perform this task without assistance. Once the equipment is in their work area, they must lift the equipment without assistance to accomplish the necessary testing and repair. Mr. Dewitt estimated that the average technician working on the VCCS would have to complete the removal and replacement process a minimum of three times per shift. Likewise, technicians working on propulsion modules, which weigh 50 pounds or more, must lift them approximately three times per shift.

Grievants introduced an excerpt from Boeing's Vehicle Maintenance Manual to illustrate the physical demands of their jobs. G Ex C. Grievant Brown testified that the Electronics Technicians at the PRT routinely encounter heat, cold, moisture, and noise in their work environment. In addition, they are regularly required to work in awkward positions on the elevated guideway, in crawl spaces, in manholes and on ladders. Moreover, this work may be required in inclement weather.

Grievant Hastings testified that he works on propulsion systems and other vehicle components, or station electronics, depending on the shift he is working. He works on the VCCS occasionally, but "not on a regular basis." He normally works on the midnight shift and concentrates on components

that can be repaired while the system is not in operation. According to Grievant Hastings, Mr. Gallagher primarily worked on station electronics and guideway components, prior to taking medical retirement.

Mr. Beatty noted in his testimony that Physical Plant Electronics Technicians normally move heavy lab equipment from the lab to the shop and back, as these items cannot be worked on while students are present. Some items are so heavy they must be moved by more than one person. However, he did not indicate how much a typical "heavy" item weighs.

Ms. Crawford noted that Physical Demands was intended to measure "gross motor skills" while Physical Coordination measured "fine motor skills." She recalled that most employees who were rated at Level D worked in craft positions. It was recognized that Grievants' work, involving circuit boards and similar components, requires a higher level of fine motor skills than most of the craft positions. At the same time, it was determined that Grievants would not be engaging in physical exertion as frequently as most of their counterparts in the crafts. Ms. Crawford described this process as a "trade-off," further noting that the JEC believed that Electronics Technicians spent more time working in a shop environment with components on a workbench, than they did doing heavy lifting.

The testimony of Grievant Brown and Mr. Dewitt established that Grievants Brown and Hastings are regularly required to lift components weighing between 50 and 75 pounds. Further, this heavy lifting was demonstrated to be essential to the effective performance of their assigned duties. In addition, Mr. Dewitt confirmed that all 8 Electronics Technicians assigned to the PRT are expected to be able to perform this same work at anytime. Mr. Beatty's testimony indicated that the 3 Electronics Technicians under his supervision are required to lift heavy lab equipment on a regular basis, moving it to their shop for repair.

Although the JEC may not have been aware of the extent to which Grievants are required to lift heavy objects in the performance of their duties, Grievants did not demonstrate that the JEC's conclusion that other craft employees were required to lift heavy items more frequently was in error. Certainly, the JEC could have rated Grievants at 3.5 or 4.0 based upon the heavy lifting requirements inherent in their work.

However, the decision reached by the JEC is not so implausible that it cannot be ascribed to a difference of view. See Bedford County Memorial Hosp. v. Health & Human Serv., 769 F.2d 1017 (4th Cir. 1985). Although Ms. Crawford and the undersigned might have voted to rate Grievants

higher than 3.0 under Physical Demands, the arbitrary and capricious standard of review does not permit the undersigned to substitute his judgment for that of the JEC. See Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993). See generally, Staton v. Wyoming County Bd. of Educ., 184 W. Va. 369, 400 S.E.2d 613 (1990). Thus, the JEC's conclusion that the predominant work which Grievants perform does not involve "considerable physical exertion" under the hierarchy of ratings set forth in the Respondent's Job Evaluation Plan does not represent such a departure from the available evidence as to represent a clear mistake of fact or an arbitrary and capricious determination. Accordingly, the JEC was not clearly wrong in assigning a Level C rating for Physical Demands. See Zara v. Bd. of Trustees, Docket No. 94-MBOT-817 (Dec. 12, 1995).

Inasmuch as Grievants failed to demonstrate by a preponderance of the evidence that any of the ratings they were assigned by the JEC were in error, they have not established a basis to change their pay grade or classification. 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) and are assigned to repair a variety of electronic equipment and components necessary to operation of the Personal Rapid Transit System (PRT). Grievants were each initially classified under the Mercer Plan as an Electronics Technician in Pay Grade 13.

2. Grievants submitted a timely 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. R Ex 2.

4. Grievants contested the point values they were assigned on Factor 2, Experience, Factor 3, Complexity and Problem Solving, Factor 4, Freedom of Action, Factor 5, Scope and Effect, Factor 6, Breadth of Responsibility, Factor 7, Intrasystems Contacts, Factor 8, External Contacts, and Factor

13, Physical Demands.

5. The JEC applied the Point Factor Methodology to Grievants' positions, evaluating each contested factor as follows: Factor 2, Experience, at Level C; Factor 3, Complexity and Problem Solving, at Level C; Factor 4, Freedom of Action, at Level B/C (2.5); Factor 5, Scope and Effect, at Level B for Nature of Action and Level 1 for Impact of Actions; Factor 6, Breadth of Responsibility, at Level A; Factor 7, Intrasystems Contacts, at Level B for Level of Contact and Level 1 for Nature of Contact; Factor 8, External Contacts, at Level 1 for Nature of Contact and Level B for Level of Contact; and Factor 13, Physical Demands, at Level C. See R Ex 1 & 2.

6. Many of the systems on which Grievants work are directly related to the safety of the PRT. An inadvertent error in repairing a system component could result in a serious accident. No accidents or injuries have occurred at the PRT as a result of an error by an Electronics Technician.

7. All PRT electronics equipment was built to "military specifications" and must be maintained to the higher tolerances represented by these specifications. 8. Grievant Brown spends up to 95 per cent of his time working on the vehicle control and communications system (VCCS), an on-board computer installed in the PRT vehicles. Grievant Hastings spends a majority of his time working on propulsion systems in the vehicles, but also works on station electronics.

9. Grievants normally follow manuals, schematics and diagrams when performing much of their work. On the average of once each month, Grievants will encounter an event where the existing written guidance is determined to be incomplete or inaccurate, requiring Grievants to devise and document an alternate solution to the problem presented.

10. On occasion, Grievants are called upon to explain to students and others how the PRT operates. This is not a part of their regular duties.

11. The VCCS described in Finding of Fact Number 9 weighs approximately 72 pounds. When repairing the VCCS, Electronics Technicians are required to lift it out of the vehicle, transport it to their shop on a cart, lift it to a workbench or table, manipulate it on the bench while performing necessary testing and repairs, and reverse the process, returning the VCCS to a PRT vehicle. A similar process is involved in repairing the propulsion modules which weigh approximately 50 pounds.

12. Electronics Technicians do not spend as much time lifting heavy components as they do working on the components in the shop environment. 13. Electronics Technicians working in the

Physical Plant at WVU apply the same basic theories of electronics when repairing various electronic components for which they are responsible, including computer control devices for heating and air conditioning systems, laboratory equipment, athletic scoreboards and fire alarm systems.

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 JEC 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. A Mercer Grievant may challenge his initial classification by asserting that the JEC should have developed another classification. A grievant taking this path, however, has a nearly insurmountable burden to prove that the JEC abused its broad discretion in failing to create an additional classification. Mitchell v. Bd. of Directors, Docket No. 94-MBOD-348 (May 21, 1996); Burke, supra.

5. Grievants failed to establish that the JEC abused its discretion in failing to create a separate classification, such as "PRT Electronics Technician," for them. See Mitchell, supra; Burke, supra. See also Love v. W. Va. Library Comm'n, Docket No. 94-LC-145 (Sept. 23, 1994).

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 Factor 2, Experience, Factor 3, Complexity and Problem Solving, Factor 4, Freedom of Action, Factor 5, Scope and Effect, Factor 6, Breadth of Responsibility, Factor 7, Intrasystems Contacts, Factor 8, External Contacts, and Factor 13, Physical Demands, was clearly wrong or otherwise unsupported by the available evidence.

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.

LEWIS G. BREWER
Administrative Law Judge

Dated: May 28, 1996

[Footnote: 1](#)

As of the time of the Level IV hearing, Mr. Gallagher was no longer employed by the Respondent. However, his grievance was not moot as he could be entitled to backpay, should this grievance be granted.

[Footnote: 2](#)

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: 3](#)

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

[Footnote: 4](#)

Pay Grade 13 spans a range from a minimum of 1756 points to a maximum of 1865 points. See R Ex 2.

[Footnote: 5](#)

Grievants received a higher rating (Level E) from the JEC on Factor 11, Physical Coordination, than they claimed on their PIQs (Level D). However, it is clear that Grievants were not contending that this rating should be lowered, nor did Respondent seriously argue that the JEC was in error when it awarded a higher rating.

[Footnote: 6](#)

Because Factor 5 employs a "matrix" approach, levels under the Impact of Actions element are stated numerically while levels under the Nature of Action element are stated alphabetically.

[Footnote: 7](#)

The immediate and second level supervisors were instructed to note their comments in red and blue ink, respectively. However, because the original PIQs were accidentally destroyed while in the custody of Respondent, the origin of these marks cannot be readily determined.

[Footnote: 8](#)

Grievants were not asked to rate their "Impact of Actions" on their PIQs, apparently because this factor contains more objective standards requiring some knowledge outside the employee's normal scope of responsibility.