HAROLD J. CREEL, et al.,

Grievants,

v. **DOCKET NO. 94-MBOT-458**

BOARD OF TRUSTEES/WEST VIRGINIA UNIVERSITY, et al.,

Respondent.

DECISION

Grievants Harold Creel, Thomas Hussion, Robert Easthom and George Fleming filed these level four grievances (See footnote 1) challenging their "Mercer" classifications, which were made effective on January 1, 1994. (See footnote 2) Grievant Creel was classified as a Plumber-Lead at Pay Grade 14, and he seeks a higher pay grade with recognition of his combination plumbing/pipefitting expertise. Grievants Hussion, Easthom and Fleming were all classified as Plumbers at Pay Grade 12. Grievants Hussion and Fleming do not request a different title, only a higher Pay Grade, and Grievant Easthom seeks classification as a Plumber-Lead at Pay Grade 14. Each grievant requests that, if granted, his new classification and/or pay grade be made effective as of January 1, 1994, with back pay. Additionally, Grievants have challenged specific point factors (See footnote 3) used to evaluate their jobs in the Mercer classification system. A level four hearing was held in this Grievance Board's office in Morgantown, West Virginia, on October 30 and 31, 1996. This matter became mature for decision on January 20, 1997, upon receipt of the parties' proposed findings and conclusions.

The following factual findings are properly made from the record developed at level four.

Findings of Fact

1. Grievants Creel, Hussion and Fleming are employed by West Virginia University ("WVU"), and Grievant Easthom is employed by Marshall University ("MU"). All of the grievants were

performing plumbing-related work prior to January 1, 1994.

2. In 1991, all higher education classified employees, including Grievants, were asked to complete a Position Information Questionnaire (PIQ) prior to the Mercer reclassification. Employees were to describe their job duties and responsibilities, along with the minimum qualifications for their positions, on the PIQ by answering a series of questions designed to elicit this information. All of the grievants completed PIQs in 1991.

3. During the job evaluation process, whereby the Mercer classification system was applied to each individual higher education employee, “data lines” of particular degree levels for each point factor were developed for each job title in the system. Employees with similar dutieswere grouped together in a job title for purposes of developing this data line. The final step of the classification process was the “slotting” of each employee into the job title which most closely fit his or her duties.

4. The degree levels for each point factor in a job title were used to arrive at a numerical total, which determined each job's Pay Grade.

5. Generic job descriptions were developed for the various job titles within the higher education system in 1994 after the implementation of the reclassification system. These descriptions were compiled by looking at the common duties and responsibilities of all incumbents in each job title as reflected on the PIQs. Generic job descriptions were not used in the classification process; they were not meant to serve as position descriptions and are merely a compilation of the common duties performed by persons in the particular job title.

6. When the Mercer classification was implemented, Grievants Hussion, Fleming, and Easthom were classified as Plumbers at Pay Grade 12. Also at that time, Grievant Creel was classified as a Plumber-Lead at Pay Grade 14.

7. Grievant Easthom's primary duties consist of general plumbing repair and installation, including faucets, drains, pumps, water lines, boilers, and toilets. He is assigned to do all plumbing work at the cafeterias, dorms, and the student center. Any projects which involve oil or gas lines, are lengthy or are considered major projects are not performed by Grievant, because MU hires private contractors to do such work.

8. Grievants Hussion and Fleming are assigned to the Health Sciences Center at WVU, and they submitted identical PIQs. Their work consists mainly of renovation and construction plumbing, with a very small portion of work in general plumbing maintenance. These grievantsfrequently design,

install and repair sprinkler systems, heating and cooling systems, gas lines, and steam systems.

9. Grievant Creel, who is also assigned mainly to the WVU Health Sciences Center, performs virtually identical work to that of Grievants Hussion and Fleming. However, Mr. Creel also has supervisory duties, which consist of assigning, coordinating, and organizing projects; ascertaining material and supply needs and ordering what is needed for each project; and providing guidance to plumbers working with him.

10. Under Mercer's numerical system which determined the pay grade for each job title, the point range for Pay Grade 12 is 1655 to 1755 points; for Pay Grade 13, the range is 1756 to 1865; and for Pay Grade 14, it is 1866 to 1984 points.

Discussion

A. Burden of Proof

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.17; W.Va. Code § 18-29-6. Burke 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, because the Mercer classification system does not use “whole job comparison.” It is largely a “quantitative” system, in which the components of each job are evaluated separately by applying the point factor methodologycontained in the Job Evaluation Plan (hereinafter “Plan”). Therefore, the focus in Mercer grievances for this Board is upon the point factors the grievant is challenging. (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. The 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 grievants are properly classified is almost entirely a factual determination. As such, the Job Evaluation Committee's ("JEC") interpretation and explanation of the point factors at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W. Va. 1995); Burke, supra. However, no interpretation or construction of a term used in the 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 HumanResources, 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)

In accordance with the foregoing discussion, a grievant must show that he was slotted into the wrong job title, that the point factor degree levels assigned to his job title are incorrect, or that he is entitled to an individual data line because of the unique nature of his position. In order to determine if Grievants were misclassified, the point factors and degree levels disputed must be discussed separately in detail.

B. Application of the Point Factor Methodology

Grievants have made varying arguments regarding the point factors they dispute. Therefore, each challenged factor will be defined and discussed below.

1. Knowledge

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

> This factor measures the minimum level of education equivalency and/or training typically required for an incumbent to reach acceptable occupational competence on the job. The factor considers the technical, theoretical, and/or mechanical skills required, and the complexity and diversity of the required skills.

The only grievant who challenged this point factor was Mr. Creel, whose job title received a level 4.0 rating, and he claims entitlement to a level 5.0.

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

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

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

> Job requires broad trade knowledge or specific technical or business knowledge

> received from a formal registered apprentice or vocational training program or obtained through an associate's degree of over 18 months and up to 3 years beyond high school.

Any discussion of this point factor must recognize that the Knowledge and Experience factors are somewhat interrelated, in that some educational programs require work experience for a degree, licensing or certification. In such situations, an employee can only receive credit for that experience under the Knowledge factor, not under both Knowledge and Experience. See Resp. Ex. 2 (Direct Testimony of Teresa Crawford). This is especially important in the instant case, because all of the grievants testified that they were entitled to higher levels under the Experience factor due to having to achieve a “journeyman” plumber level, which they allege consists of five years of on- the-job experience working under a “master” plumber.

According to Grievant Creel, the level 5.0 definition was the highest one under Knowledge which takes into consideration this five-year program, although none of the levels specifically apply. However, he also stated that there is no “journeyman” licensing requirement in West Virginia or, for that matter, for his particular position as a lead plumber. Nevertheless, Mr. Creel believes that a plumber at his level of authority should be required to have knowledge at the level of a “master” plumber, which would presumably be in excess of five years.

Teresa Crawford, Senior Compensation Analyst at WVU and a JEC member, testified on behalf of Respondent. She testified that a journeyman “license” was not required for any of the plumber positions in the higher education system. She believed that the level 4.0 given to Grievant Creel for this point factor, combined with the level 4.0 given to him for Experience, which would account for approximately four and one half years of post-high school training, was sufficient for a Plumber-Lead. Administrative notice is taken that West Virginia's only licensing requirement for plumbers is a contractor's license with a plumbing specialty, administered through the state Division of Labor. In order to obtain such a license, one only needs to pass the required tests, and there is no experience or education prerequisite to be eligible to take the tests. (See footnote 6) The grievants' references to “journeyman” and “master” plumbers do not have any authoritative meaning, and it is unknown from where they obtained these terms or their perception of the “requirements” to reach each of these levels. Accordingly, since neither Grievants' employers nor the State of West Virginia recognize or require such “titles,” they cannot be deemed to be the controlling qualifications for plumbers in the higher education system.

It cannot be stressed enough by the undersigned that the term “journeyman,” although used extensively by all parties during the level four hearing, has never been defined or explained in the record of this matter. The term is defined by Webster's New World Dictionary (1975) as “a worker who has learned his trade.” This definition is of no assistance in weighing the evidence in this case, neither does it have any legal or otherwise official meaning.

Grievant's argument for a higher degree level under the Knowledge factor is not persuasive, and he is not entitled to any change in the evaluation he received from the JEC.

2. Experience

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. All of the grievants challenged the ratings they received for this point factor. Grievants classified as Plumbers received a level 3.0, which is defined in the Plan as “[o]ver one year and up to two years of experience.” Grievants Hussion and Fleming argue they are entitled to a level 5.0, and Grievant Easthom seeks a 4.0. A degree level of 4.0 is defined as “[o]ver two years and up to three years of experience,” and level 5.0 is “[o]ver three years and up to four years of experience.”

Grievants' arguments for the higher levels vary. Mr. Easthom claims that a “journeyman” license was required when he applied for a plumbing job at MU in 1991; however, this is unsupported by any other evidence, and the above discussion under Knowledge demonstrates that such a license does not even exist. Nonetheless, Grievant Easthom argues that he should have received a higher level for Experience due to this “requirement” that a plumber work in a journeyman program for a minimum of five years.

Grievant Hussion testified that one would need more than two years of prior experience to do plumbing at WVU, due to the variety of work which must be performed. Although he stated there was no licensing requirement for the job when he was hired, he believed that the major projects and renovations at WVU require a minimum of two to three years of prior experience. Mr. Fleming testified that simple plumbing maintenance could be performed with about two years of experience, but that the more complicated work with sprinklers, steam and gas require a higher level, approximately three to five years of experience. He also noted that he had been working as a plumber for five years before he was “allowed” to work with steam.

Ms. Crawford's testimony on this factor is somewhat confusing. Initially, she stated that the JEC decided that 18 months of vocational training (recognized under Knowledge) combined with one to

two years' on-the-job training was sufficient for plumber positions. However, later in her testimony she indicated that there are more expectations of all crafts workers at WVU due to its size. In fact, she testified that, during the JEC meetings, she personally had recommended that the plumbers at WVU be rated at level 4.0 for Experience, due to the increased complexity of their duties.

Grievants Hussion and Fleming have proven by a preponderance of the evidence that they are entitled to a higher rating under Experience, because of their extensive work with renovations, construction, and non-traditional plumbing systems. Respondent has failed to rebut their claims, and, in fact, Ms. Crawford's testimony is partially supportive of their position. Therefore, the evidence establishes that these two grievants are entitled to a level 4.0 for Experience.

Mr. Easthom has failed to meet his burden of proof on this factor. His claims that five years of "journeyman" experience are required to perform his duties are, at best, questionable, and are unsupported by the evidence. He is not entitled to any higher degree level for Experience. (See footnote 7)

The Plumber-Lead job title received a 4.0 degree level for Experience, and Grievant Creel requests that he be given a 6.0, which is defined by the Plan as "[o]ver four years and up to six years of experience." He alleged that, in order to be a lead, a five-year journeyman level plus an additional three years of advanced experience is needed. According to Grievant, at least half of the time, there are no blueprints available which show where pipes can be placed or what obstructions may be encountered. An advanced experience level is helpful when decisions must be made without any available instructions, and also when other pipes, sprinkler systems, or gas lines must be moved to accomplish the project at hand. As the lead, he must take charge of this decision-making process. Once again, Ms. Crawford's testimony is somewhat contradictory. When discussing the ratings Mr. Creel received, she initially stated that the combination of what he received for the Knowledge and Experience factors was sufficient. However, she later testified that the level 4.0 he received for each would only account for four and one-half years, at most, and a lead would need to have more experience than someone at the journeyman level. She also stated that, during the JEC discussions of Mr. Creel, she had recommended he be evaluated at level 5.0 for Experience, which would give him credit for up to five and one-half years of experience.

As with Grievants Hussion and Fleming, Mr. Creel has presented strong evidence that his position requires a higher level of experience than his job title was given, and Respondent's evidence does

not contradict it. Accordingly, the evidence supports allocating a level 5.0 to Grievant Creel for Experience.

3. Complexity and Problem Solving

The Plan defines Complexity and Problem Solving as:

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

The Plumber job title received a level 2.5 rating; Ms. Crawford explained that, when significant portions of a position's job duties fell partially within two definitions, half levels were awarded. The three grievants classified as Plumbers have all requested that they be granted a level 3.0 rating.

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 availablefor 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.

Mr. Easthom testified that problems arise every day, such as when students damage equipment, drains become clogged, or parts on boilers must be replaced. He gave an example of a situation in which he had to quickly cut and replace pipe in a deteriorated drain line, which called for a quick “judgment call.” Under cross examination, however, he testified that portions of both the level 2.0 and level 3.0 definitions apply to his job, although the level 3.0 definition was better. Mr. Easthom stated that he does make basic decisions regularly. His testimony supports the degree level of 2.5 which his job title was given.

Grievants Hussion and Fleming mentioned their work with blueprints, sprinklers, steam and gas as supportive of their request for the higher degree level. Mr. Hussion testified that, through experience, plumbers learn that there may be more than one way to fix a particular problem, but he admitted that

there are basic problems and solutions which arise regularly. Both grievants testified that the majority of their duties prior to 1994 involved substantial renovation projects, during which the lead plumber made all decisions. However, Grievant Hussion did state that he was allowed to give the lead plumber his opinion on how things should be done.

Ms. Crawford believed that all Grievants were properly evaluated in this point factor, which looks at what types of decisions must be made and from what sources solutions are available. Shenoted that problem-solving credit related to renovations and new construction was given to the lead plumber, which is consistent with Grievants' testimony that the lead makes these decisions. The Plumber grievants have all admitted that portions of both levels 2.0 and 3.0 apply to their duties, so the JEC's evaluation of them at 2.5 for this point factor is correct.

Mr. Creel's job title received a 3.0 degree level, as defined above, and he believes he is entitled to a 4.0, which is defined as follows:

> 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.

Grievant Creel discussed situations similar to those cited by Grievants Hussion and Fleming, pertaining to the size and complexity of the plumbing projects at WVU. However, he also mentioned that there are some limitations on his decision-making authority, and he must inform his supervisor when changes are made in project plans. On occasion, his supervisor must approve such changes.

Ms. Crawford felt that the level 3.0 rating accurately reflected Mr. Creel's responsibilities. She testified that, in addition to dealing with the problems similar to those discussed by the other two WVU grievants, Grievant Creel received additional credit for the complexities which go with overseeing the work of other plumbers and planning the overall process of completing projects.

Although not discussed by Respondent's witness, the level 4.0 definition does not seem to describe Mr. Creel's duties. He has not demonstrated that he must use any “analytical skills” in order to reach solutions, and it is much more accurate to describe his duties as requiring the exercise ofjudgment, as set forth in the level 3.0 definition. Grievant Creel has not proven by a preponderance of the evidence that he was incorrectly evaluated on this point factor.

The evidence presented at level four by Grievants does not support the conclusion that their

evaluations in Complexity and Problem Solving were clearly wrong or arbitrary and capricious.

4. 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.

As with the previous factor, the Plumbers were given a 2.5, and the Plumber-Lead job title received a 3.0; the Plumber grievants request a 3.0, and Mr. Creel requests a 4.0.

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.

The definitions in the Plan show that at a degree level of 4.0:

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

Grievant Easthom testified that he has no supervision, and no one checks his work. There is another plumber who is known as the “project coordinator,” but Grievant stated that he does not work with this person, who has done very little plumbing work since Mr. Easthom was first employed at MU in 1991. Grievant indicated that he has virtually worked on his own from the beginning of his employment, setting daily priorities and accomplishing the needed work alone. He does a “walk through” of his assigned areas each morning, and determines where work is needed, so his daily projects are determined through this and through work requests he receives from various employees

and students. He stated that, if a problem arose which he could not handle, he would notify his supervisor (who is not a plumber) or call an outside professional for assistance.

Mr. Hussion testified that, on most jobs--especially major projects--the lead plumber is there to answer questions and make decisions. Mr. Fleming stated that, if the lead is not there, they are expected to go ahead and make decisions which may alter the original project plan. Their work is checked daily by their supervisor.

Respondent argues that the Plumber grievants are properly evaluated at 2.5 for this point factor. Ms. Crawford did not believe any of them had established entitlement to the 3.0 degree level, because they are not solely working from "objectives set by the supervisor," but are merely following work orders. She explained that the Plan contemplates the term "objective" to refer to situations in which an employee is given a general goal to meet and is then expected to take a substantial amount of time to develop a solution. As to Grievants Hussion and Fleming, the 2.5 degree level is appropriate. Most of the time, they work under fairly close supervision with occasional autonomy, and portions of their duties fall within both degree levels. However, unlike the WVU plumbers, Mr. Easthom has established that he functions at a much higher level of independence with virtually no supervision. He also undisputedly "organizes and carries out . . . work assignments in accordance with standard practices, policies . . . or previous training . . . [and] deals with some unusual situations independently." Accordingly, Grievant Easthom's duties fall entirely within the level 3.0 definition, rather than partly within levels 2.0 and 3.0; he is entitled to level 3.0 for Freedom of Action. This determination is based upon the evidence presented in the instant grievance alone. (See footnote 8)

Grievant Creel received a level 3.0 and requests a 4.0. He receives work orders from his supervisor, who checks his work once each day. Goals and deadlines are set by his supervisor, and Grievant keeps him informed of progress and problems. Mr. Creel and his supervisor work together to ensure that goals are met and problems are solved. A key issue for entitlement to a level 4.0 rating in this factor is that the employee is directly involved in establishing objectives and projects. See Hale v. Bd. of Directors, Docket No. 94-MBOD-1026 (March 21, 1997). Grievant Creel clearly testified that it is his supervisor who sets the goals and objectives, so he is not entitled to the level 4.0 degree level. He was correctly evaluated in this point factor.

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

> This factor measures the scope of responsibility of the position with regard to the overall mission of the institution, and/or the West Virginia higher education systems,

> as well as the magnitude of any potential error. Decisions regarding the nature of action should consider the levels within the systems that could be affected, as well as Impact on the following points of institutional mission: instruction, instructional support, research, public relations, administration, support services, revenue generation, financial and/or asset control, and student advisement and development. In making these judgments, consider how far-reaching is the impact and of what importance to the institution and/or higher education systems is the work product, service or assignment. Decisions regarding the impact of actions should take into account institutional scope and size as reflected by operating budget, student enrollment and institutional classification. Also, consideration should be given for the possibility that a unit, program or department within a large institution may be equivalent in size to multiple units, programs or departments within a smaller institution. In making these interpretations, assume that the incumbent would have normal knowledge, experience and judgment, and that errors are not due to sabotage, mischief or lack of reasonable attention and care.

There are two elements to this point factor, which are Nature of Actions and Impact of Actions. Grievants Creel, Hussion and Fleming challenged the 2.0 degree level their job titles received for Nature, and they claim entitlement to a 4.0. Mr. Easthom did not challenge this factor.

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

> Work contributes to the accuracy, reliability, and acceptability of processes, services, or functions. Decisions are limited to the application of standardized or accepted practices and errors could result in some costs and inconveniences within the affected area.

Level 4.0 for Nature of Actions is defined as:

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

Grievants argue that plumbing services in the Health Sciences Center have serious and important impact upon all who use the facility, including patients and doctors. In order to performtheir work, these plumbers may have to shut off oxygen, gas, or water in areas where surgery or experiments are being performed. Therefore, Grievants believe that level 4.0 describes their impact, which may cause disruption of services even injury, at the Health Sciences Center. Although it may sometimes be necessary to shut down services in a particular area, all the grievants agreed that this would not be done without giving notification and obtaining permission from those in charge of the affected department.

Respondent believes that Grievants' duties contribute to the accuracy of services which involve or utilize plumbing, which fits within the level 2.0 definition. If errors are made, the result would be some

inconvenience within the area affected. As has been recognized previously by the Grievance Board, it is to be expected that potential errors are serious matters to individual, responsible employees, but if there is little impact on the institution as a whole, the higher degree levels of Scope and Effect are not warranted. Titus v. Bd. of Trustees/Bd. of Directors, Docket No. 94-MBOT-659 (Dec. 31, 1996). Although plumbing services are important, they cannot be considered to have “significant impact” and are certainly not “complex or important matters.” As set forth in Ms. Crawford's written testimony, level 4.0 for Nature refers to the lower levels of management, who are the individuals responsible for ensuring the effectiveness of operations and services. Grievants are performing tasks which contribute to the reliability and acceptability of plumbing services, and do not have the level of responsibility contemplated by level 4.0. They are all, therefore, appropriately evaluated in Scope and Effect.

6. Breadth of Responsibility

The factor Breadth of Responsibility is defined in the Plan as:

> 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 levelof in-depth knowledge required as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations. [Examples of some functional areas within the following divisions would include: (1) Student Services--Housing, Admissions, Financial Aid, Counseling; (2) Business and Finance--Purchasing, Auditing, Grants and Contracts, Bursar.]

The only grievant who challenged this factor is Mr. Hussion, who received a 1.0 degree level and seeks a 2.0. A degree level of 1.0 is defined in the Plan as “[a]ccountable for only immediate work assignments but not for a functional area.” A degree level of 2.0 is defined as:

> In-depth knowledge of and accountability for one functional area as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations.

Grievant wishes to receive credit for the “functional area” of the Health Sciences Center. However, Mr. Hussion is a plumber who works in Health Sciences, not the person with formal responsibility for the entire department. The key term in the level definitions for this factor is “accountability.” Credit for the responsibility of a “functional area” was only given to managers and directors having full responsibility for an entire department or area. An employee who has no budgetary responsibility and is not formally accountable for a functional area is entitled only to a level 1.0. See Floyd v. Bd. of Trustees, Docket No. 94-MBOT-932 (June 14, 1996). Thus, Grievant was

not misclassified with regard to Breadth of Responsibility.

7. Intrasystems Contacts

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

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

Only Grievant Creel challenged this factor, which is divided into Nature of Contact and Level of Regular, Recurring, and Essential Contact. Grievant challenged the ratings he received in both aspects. The Plumber-Lead job title received a 1.0 for Nature and a 2.0 for Level; Grievant requests a 2.0 and a 3.0, respectively.

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

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

A degree level of 2.0 in Nature is:

> 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.)

As to Level of Contact, a degree level of 2.0 is defined in the Plan as “[s]taff and faculty outside the immediate work unit.” A degree level of 3.0 is defined as “[s]upervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office.”

Mr. Creel claims entitlement to the higher levels in this factor, because it is his responsibility to obtain permission and coordinate the work when his crew must work in a particular department. He testified that he must discuss the project with the department chair or supervisor to arrange for the work to be the least disruptive to the department's functioning as possible. He believes that tact and cooperation must be utilized to coordinate the work, and he must sometimes negotiate with the department representative to get access to the area.

Respondent's witness characterized Mr. Creel's duties as requiring a routine information

exchange with staff or faculty. According to Ms. Crawford, the person who would be assigned tocoordinate with plumbers to have work done in a particular department would “normally” be a designated staff person, like an assistant or secretary, not a supervisor or chair. However, she did not dispute, or even address, Grievant's testimony that it is a chair or supervisor whom he contacts to coordinate such projects. Mr. Creel has presented unrefuted evidence that he has ongoing and regular contacts with people who are covered by the level 3.0 definition for Level, so he has proven he is entitled to that rating.

As to Nature, Ms. Crawford did not believe that the situations described by Grievant involved any more than routine information exchange. By the time a work order is issued, most of the negotiation would have already been done by someone at the supervisor level, and Mr. Creel would only need to finalize the scheduling of the work. Again this conflicts with Grievant's testimony; he stated clearly that he is the one who contacts the department, informs them what must be done, and coordinates the project so that there will be as little inconvenience as possible. He made no mention of a higher level supervisor initiating the project for him. As with Level, Grievant has proven by a preponderance of the evidence that he is entitled to the higher degree level for Nature. He testified that he must negotiate and coordinate plumbing projects, which falls within the level 2.0 definition.

8. External Contacts

External Contacts is defined in the Plan as:

> This factor appraises the responsibility for working with or through other people outside the SCUSWV to get results. Consider the purpose and level of contact encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, influencing others or negotiation. As with Intrasystems Contacts, this point factor is divided into Nature and Level, and Grievant Creel contests the 1.0 degree level his job title was given for Nature. No other challenges were made in this grievance to this point factor. The degree level definitions for Nature of External Contacts are identical to those for Intrasystems Contacts as set forth in the preceding discussion.

Although not contested, it should be noted that Mr. Creel received credit under the Level aspect of this factor for contact with the general public, visitors and/or vendors. He testified that has no contact with vendors, because his supervisor buys all supplies. His only contacts relevant to this point factor are with the public and visitors to the Health Sciences Center; he has assisted them in the past when they needed directions to a particular department. As pointed out by Ms. Crawford, not only does assisting lost visitors not require more than common courtesy, this is not a function that is at all necessary for Grievant to accomplish his job. Mr. Creel has not proven his case on this point factor,

and he is entitled to no higher rating.

9. Direct Supervision Exercised

> This factor measures the job's degree of direct supervision exercised over others in terms of the level of subordinate jobs in the organization, the nature of the work performed, and the number supervised. Only the formal assignment of such responsibility should be considered; informal work relationships should not be considered. Supervision of student workers may be taken into account if they are essential to the daily operation of the unit. The number of subordinates should be reported in full-time equivalency (FTE) and not head count.

The only grievant to challenge this factor was Mr. Easthom, who is seeking credit for supervision so he can be classified as a Plumber-Lead. The factor is divided into Level of Supervision and Number of Direct Subordinates. The Plumber job title received level 1.0 for both aspects, which accounts for “minimal or no responsibility for the work of others,” but does give credit for non-essential guidance to student workers or lower level employees. Grievant testified that, prior to January of 1994, he was sometimes assisted by one student worker, who would work a limited amount of hours each week. Aside from a student worker, he would, at times, supervise the work of another plumber brought in for a particular job. However, Grievant's testimony was ambiguous as to whether such a plumber would be an employee of MU or an outside contractor. He seeks level 3.0 for both Level and Number, which would recognize supervision of two to three MU employees performing the same work as Mr. Easthom, over whom he has lead control.

Grievant is not supervising essential students or other employees. As Ms. Crawford stated, just because you work with someone does not mean you have lead control. The occasional part-time worker brought in to assist would not qualify for supervision credit; in fact, it is not even clear from Grievant's testimony whether these plumbers were even employed by MU. Additionally, one occasional student worker on a part-time basis does not add up to even one “full-time equivalency” employee. Finally, Grievant cannot receive credit for a student worker who is not essential. If work can be accomplished without student workers, even if additional time and effort would be required of regular employees, the students are not essential. See Deavers v. Bd. of Trustees, Docket No. 94-MBOT-914 (Dec. 10, 1996). Grievant has not proven any entitlement to credit for supervision.

C. Summary

Each of the grievants in this case has proven entitlement to higher degree levels for some of the point factors challenged. Grievant Easthom has proven that he is entitled to a level 3.0 rating for Freedom of Action, increasing the total points assigned to his job to 1773, which places him within

Pay Grade 13. Grievants Hussion and Fleming have established entitlement to a level 4.0 rating for Experience, increasing the total points assigned to them to 1779, which also raises them to PayGrade 13. Grievant Creel proved that he is entitled to a level 5.0 for Experience, level 3.0 for Level of Intrasystems Contacts and level 2.0 for Nature of Intrasystems Contacts, raising his total points to 2032, within Pay Grade 15.

As to the other point factors challenged, Grievants did not prove their case and are entitled to no higher ratings or increase in corresponding points under the Mercer classification system.

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 classification for all classified employees in the higher education system.

2. The burden of proof in a misclassification grievance is on the grievant to prove by a preponderance of the evidence that she is not properly classified. 156 C.S.R. 1 § 4.19.

3. Determinations of the Job Evaluation Committee ("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 at issue will be given great weight unless clearly erroneous. Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). See generally, Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W.Va. 1995).

4. 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. Such determinations may nonetheless be found to be arbitrary and capricious if not supported by a rational basis; they may also be clearly wrong if there is no substantial evidence in the record supporting the finding or if review of the evidence reveals that amistake has been made. Burke, supra. See Frymier-Halloran v. Paige, 458 S.E.2d 780, 788 (W.Va. 1995).

5. Grievant Easthom proved by a preponderance of the evidence that he is entitled to a degree level of 3.0 for Freedom of Action. The JEC's evaluation of him in the other point factors challenged was not clearly wrong nor arbitrary and capricious. He is entitled to be placed in a job title within Pay Grade 13.

6. Grievants Hussion and Fleming have proven by a preponderance of the evidence that they

are entitled to a degree level of 4.0 for Experience. They did not prove that the evaluations they received in the other challenged point factors were clearly wrong or arbitrary and capricious. They are entitled to placement in a job title within Pay Grade 13.

7. Grievant Creel proved by a preponderance of the evidence that he is entitled to a level 5.0 for Experience, level 3.0 for Intrasystems Contacts-Level, and level 2.0 for Intrasystems Contacts-Nature. He did not prove that he was incorrectly evaluated in the other challenged point factors. Grievant is entitled to placement in a job title within Pay Grade 15.

Accordingly, this grievance is **GRANTED**, and Respondent is ordered to place Grievants Easthom, Hussion and Fleming in an appropriate job title within Pay Grade 13, with corresponding back pay to January 1, 1994. Respondent is further ordered to place Grievant Creel in an appropriate job title within Pay Grade 15, with corresponding back pay to January 1, 1994. All Grievants are to be paid prejudgment interest from January 1, 1994, pursuant to W.Va. Code § 56-6-31.

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

DATE: March 31, 1997 _____ **V.**

DENISE MANNING

Administrative Law Judge

Footnote: 1

Grievants' cases were consolidated at level four by another Administrative Law Judge.

Footnote: 2

The reader is referred to Burke v. Bd. of Directors, Fairmont State College, Docket No. 94- MBOD-349 (Aug. 8, 1995), for a discussion of the background of the Mercer reclassification project, the procedural history of the Mercer grievances, and the definitions of various terms of art specific to the Mercer reclassification.

Footnote: 3

The thirteen point factors are set forth in 128 C.S.R. 62 § 2.27 and 131 C.S.R. 62 § 2.27. Burke, supra.

Footnote: 4

A grievant may challenge any combination of point factor degree levels, so long as she clearly identifies the point factor degree levels she 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).

Footnote: 5

This discussion is not intended to address challenges to the way the Mercer system as a whole is set up, that is, challenges to the methodology.

Footnote: 6

One could theoretically have little to no experience as a plumber and obtain a license under these requirements.

Footnote: 7

The reader is reminded that Mr. Easthom is the only grievant who is employed by Marshall University, and the evidence presented to the undersigned has established that his duties are different from the plumbers employed at WVU. Therefore, in instances where the WVU grievants have proven their case, this has no bearing on Mr. Easthom, because his evidence was quite different.

Footnote: 8

It is irrelevant to the instant case what other grievants in other cases may have alleged, even those who may work in the same department as a grievant in this case. Dana Edmonds, an electrician working in the same area of MU as Grievant Easthom, testified in his grievance that he receives daily work orders from his supervisor, so a degree level of 2.5 for Freedom of Action was deemed appropriate. See Hardee v. Bd. of Directors, Docket No. 94-MBOD-373 (Jan. 10, 1997). However, Grievant Easthom's evidence is quite different, and Respondent has not rebutted it with any additional evidence to disprove his claims.