JEFFERY L. HELMICK

v. Docket No. 94-MBOT-948

BOARD OF TRUSTEES/POTOMAC STATE COLLEGE

D E C I S I O N

Grievant, Jeffery L. Helmick, employed by the Board of Trustees at West Virginia University/Potomac State College (Respondent), alleges that he was misclassified as a Facilities Attendant, at Pay Grade 8, under the "Mercer reclassification." Mr. Helmick argues that his duties and responsibilities support classification as a Theater Technician, at Pay Grade 14. He requests reclassification with backpay, effective January 1, 1994, the date the classification system was implemented. (See footnote 1) A level four hearing was conducted on August 22, 1996, and the matter became mature for decision with the submission of post-hearing fact/law proposals by the parties on or before October 8, 1996.

The following Findings of Fact are properly made from the record developed at level four.

Findings of Fact

1. Grievant has been employed by the Board of Trustees at West Virginia University/Potomac State College, since 1984. At all times pertinent to this grievance he has been assigned to work at the Church-McKee Arts Center.

2. In 1991, all higher education classified employees, including Grievants, were asked to complete a Position Information Questionnaire (PIQ) prior to the reclassification. Employees wereto describe their job duties and responsibilities and the job requirements on the PIQ, by answering a series of questions designed to elicit this information.

3. Prior to 1994 Grievant was classified as a Production Assistant. As a result of the Mercer reclassification, he was classified as a Facilities Attendant, Pay Grade 8, effective January 1, 1994.

4. BOT employs three individuals in the classification of Facilities Attendant. No generic job description exists for the classification.

5. Grievant's primary job duties prior to January 1, 1994, consisted of stage-related work, which

occupied 75% of his time, and custodial duties, which consumed the remaining 25% of his time.

6. On his PIQ, Grievant listed his stage duties as follows:

-Wires dimmer control panel according to the requirement of each performance

-Troubleshoots spotlights, cables, striplights, control breakers, and dimmers

-Focuses and gels spotlights for proper size and color according to performance requirements

-Sets up microphones on stage according to the requirements of the performance

-Wires microphone from stage outlets though the mixer/amplifier to the sound booth according to the performance requirements

-Orders replacement parts for light and sound equipment through the Maintenance office -Applies and removes weights that counter balance lights on overhead stage lighting pipes

-Maintains communication between stage and lighting booth

-Hangs spotlights in required positions

-Replaces lightbulbs in all areas

-Sets up and adjusts portable public address systems where needed

-Performs all other duties required to operate and maintain stage lighting and sound systems

-Coordinates set ups for programs and functions, including communicating with user

-Answers correspondence from outside users regarding the use of the facility. Includes answering questionnaires, supplying detailed schematics and technical information pertaining to the stage, facilities, and equipment.

-Oversees the facility operations with regard to the efficacy of all policies and procedures as well as the requirements needed for those conducting performances

-Prepares a weekly work schedule to insure that all activities in the auditorium can be held on time. Includes coordinating jobs with people

-Continuously inspects manual rigging system overhead on stage. Makes repairs as needed or reports major safety problems to physical plant supervisor

-Prepares and submits budget requests for funding of items and repairs needed to maintain the operation of the theater

-Oversees the purchase of items funded for the theater

-Oversees repairs completed at the theater and equipment.

7. Grievant's custodial duties include: dust mopping all classrooms, hallways, and stairwells,

scrubbing and refinishing floors, cleaning bathrooms, emptying trash, shampooing and vacuuming carpets, cleaning glass surfaces, furniture, walls, drinking fountains, and blackboards, moving furniture and supplies, stocking paper products in restrooms, turning off lights, clearing sidewalks and steps of snow and ice, and related duties as requested.

8. The Facilities Attendant job title received 1351 total points from the following degree levels in each of the thirteen point factors (See footnote 2) : 3.0 in Knowledge; 1.0 in Experience; 1.50 in Complexity and Problem Solving; 2.0 in Freedom of Action; 1.0 in Scope and Effect, Impact of Actions; 2.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth ofResponsibility; 1.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level; 1.0 in External Contacts, Nature of Contact; 3.0 in External Contacts, Level; 3.0 in Direct Supervision Exercised, Number; 2.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 2.0 in Physical Coordination; 1.0 in Working Conditions; and 3.0 in Physical Demands.

9. The point range for Pay Grade 8 is from 1321 points to 1394 points.

10. The point range for Pay Grade 14 is from 1866 points 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 §4.1; W.Va. Code §18-29-6. Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94- MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W.Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

A grievant is not likely to meet his burden of proof in a Mercer grievance merely by showing that his job duties better fit one job description than another, without also identifying which point factors he is challenging, and the degree level he believes he shouldhave received. (See footnote 3) While some “best fit” analysis of the definitions of the degree levels is involved in determining which degree level of a point factor should be assigned, where the position fits in the higher education classified

employee hierarchy must also be evaluated. In addition, this system must by statute be uniform across all higher education institutions; therefore, the point factor degree levels are not assigned to the individual, but to the job title. W.Va. Code §18B-9-4; Burke, supra. A Mercer grievant may prevail by demonstrating his reclassification was made in an arbitrary and capricious manner. See Kyle v. W.Va. State Bd. of Rehabilitation, Div. of Rehabilitation Services and W.Va. Civil Serv. Comm'n, Docket No. VR-88-006 (Mar. 28, 1989).

Finally, whether a grievant is properly classified is almost entirely a factual determination. As such, the Job Evaluation Committee's (JEC) interpretation and explanation of the point factors and generic job descriptions 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 Job Evaluation Plan (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. Watts v. Dept. of Health and Human Resources, 465 S.E.2d 887 (W.Va. 1995). The higher education employeechallenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. (See footnote 4)

B. Application of the Point Factor Methodology

Grievant challenged the degree levels received in the point factors Knowledge, Experience, Complexity and Problem Solving, Freedom of Action, Scope and Effect /Impact and Nature, Intrasystems Contacts/Nature and Level, External Contacts/Nature, Direct Supervision Exercised/Number and Level, Physical Coordination, and Physical Demands. Following are the differences between the degree levels assigned to the point factors assigned to the Facilities Attendant job title, and the degree levels Grievant believes his position should have been credited with in each of the contested point factors:

	KN	EX	CPS	FA	SE/I	SE/N	IC/N	IC/L	EC/N	EC/L	PC	WC	PD
Facilities Attendant	3.0	1.0	1.5	2.0	1.0	2.0	1.0	2.0	1.0	3.0	2.0	1.0	3.0
Grievant's Position	4.0	3.0	2.0	3.0	2.0	3.0	2.0	3.0	2.0	5.0	3.0	3.0	5.0

To properly determine whether Grievant is correctly classified requires a review of the degree levels assigned to the position in the challenged point factors.

Knowledge

The Job Evaluation Plan ("the Plan") defines Knowledge as: “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 JEC assigned Facilities Attendant a degree level of 3.0, defined in the Plan as "[j]ob requires basic knowledge of grammar, spelling, punctuation, and simple mathematical functions like percentages, ratios, etc., as might normally be acquired through attainment of a high school diploma or GED." Grievant asserts that his duties warrant a degree level of 4.0, defined in the Plan as "[j]ob 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."

Grievant argues that the higher degree level is warranted because of the technical training in electronics required in the performance of his duties. At level four, Grievant stated that the bulk of his duties involves the preparation of the stage area for various performances. This preparation includes extensive wiring of the lighting and sound system. He asserted that he must know and understand the capabilities of the systems to prevent overloading the circuits . Mr. Helmick explained that because each performance has specific requirements for lighting, he must wire the dimmer control panel for each performance, hang and troubleshoot the spotlights, cables, and breakers, and to otherwise ensure proper lighting for the performance. These duties require that he perform internal wiring on the dimmer board, and the house light dimmer control pack. Working with the spotlights includes their proper placement, focusing, and circuiting for each performance. Grievant opined that he could not complete this work without the knowledge he gained through the Associate in Science degree in electronics technology which he earned in 1983. LuAnn Moore, Senior Compensation Analyst in the Department of Human Resources at West Virginia University, testified that a degree level of 3.0 was proper for Grievant because custodial duties require only a junior high school or high school education and only basic electrical skills are required for his theatrical responsibilities. Ms. Moore noted that Grievant had offered more information at hearing than was on his PIQ, which had indicated that he held a "generalist position."

Although it may generally be accepted that possession of more extensive education would enhance an individual's ability to master the duties of his position, this factor is intended to measure only the minimum requirements for an entry level employee to perform the job at an acceptable level,

keeping in mind that a training period would be necessary for all employees. Perkins v. Board of Trustees/ WVU-Parkersburg, Docket No. 94-MBOT-733 (Oct. 31, 1996). It has previously been held that a degree level of 1.0 is appropriate for employees who perform custodial duties. Deavers, et al. v. Bd. of Trustees/Bd. of Directors, Docket No. 94-MBOT-914 (Dec. 10, 1996). However, the bulk of Grievant's duties involves work with electronics. These duties require more than a basic knowledge of reading, writing, and arithmetic. Specialized education is not simply desirable, it is necessary for him to complete his responsibilities. Because the Mercer plan does not provide for multi- classification, or for "averaging" when an employee performs multiple and distinctive roles, Grievant has proven that a degree level of 4.0 is required for him to complete the duties of his position. (See footnote 5)

Experience

The Plan defines experience as "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." See Jones, et al. v. Bd of Trustees/West Virginia University, Docket No. 94-MBOT-978 (Feb. 29. 1996).

The JEC awarded the position of Facilities Attendant a degree level of 1.0 in this factor, defined by the Plan as "[n]o experience or up to six months of experience." Grievant requests a degree level of 3.0, defined by the Plan as "[o]ver one year and up to two years of experience."

Grievant argues that even with his educational background in electronics, to gain familiarity with the specific equipment used in the theater would take more than a year. Dr. John Hawkins, Professor of Music at Potomac State College, corroborated Grievant's testimony, stating that an electrician would not be capable of working with the highly specialized sound equipment. Ms. Moore testified that a degree level of 1.0 was proper because custodial duties require no previous experience.

While it is true that no prior experience is required for new employees assigned to perform custodial duties, Deavers, supra, it appears that Grievant's electrical and stage work was not considered. Based upon Grievant's undisputed testimony of the duties he performs and the testimony of Professor Hawkins regarding Grievant's work with highly specialized sound equipment, it does not appear excessive that over one year of experience would be necessary for a new employee to satisfactorily perform in this position. Therefore, Grievant has established that a degree level of 3.0 was correct for this point factor.Complexity and Problem Solving

The Plan defines Complexity and Problem Solving as "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 JEC awarded the position of Facilities Attendant a degree level of 1.5 in this point factor. Grievant requests a degree level of 2.0. Half levels are not defined by the Plan; however, a degree level of 1.0 is defined as "[r]outine problems are encountered involving simple solutions. Simple, standardized instructions (usually oral) covering all important aspects of the assignment are provided to the employee. Very little judgment is required by the position. Tasks are clear-cut and procedures well defined." A degree level of 2.0 is defined in the Plan as "[p]roblems encountered require the employee to make basic decisions regarding what needs to be done, but the employee can usually choose among a few easily recognizable solutions. Established procedures and specific instructions are available for doing most work assignments, with some judgment required to interpret instructions or perform basic computation work such as in the comparison of numbers or facts."

Grievant bases his request for the higher degree level on his duties preparing the auditorium for productions. He testified that after receiving a "Facilities Usage" form he must contact the production company and obtain a schematic or lighting plot and/or channel hook up sheet. He then reviews these documents to ascertain what specific lighting requirements can be met by the Arts Center and advises the company regarding changeswhich must be made to adapt their production to the stage. This interaction often requires that Grievant make suggestions for the needed changes. Often lighting and sound designs are developed over the phone with the production company representative. When a final plan is devised, Grievant then makes the necessary changes in the wiring and sound system. Generally, additional changes are made after the production company arrives. Grievant argues that he is required to make basic decisions to implement the company's needs. He works without policy or procedure guidelines and frequently must use his own judgment in interpreting the needs of the companies and working within the limitations of the Arts Center. Additionally, while he does not schedule events at the Arts Center, Grievant must facilitate set ups and tear downs in whatever time is available, accommodating the users with the least disruption to them. This involves Grievant making independent decisions as to how best complete the work and serve the customers during scheduling conflicts.

Ms. Moore testified that Grievant makes only basic decisions, applying simple solutions to any

problems he encounters. Additionally, she noted that custodial duties were ranked at a level of 1.0 and stage duties were allocated a 2.0 in this point factor, therefore, a degree level of 1.5 was the appropriate degree level for Grievant's position.

Again, while Grievant spends a portion of his time performing custodial work, the greater amount of his work day is consumed with the stage work. In this capacity he is required to engage in the same problem solving and exercise of judgment as a full-time stage worker. Because the plan does not address pro-rating of duties, Grievant has proven that he is entitled to a 2.0 in this point factor.

Freedom of Action

The Plan defines Freedom of Action as:

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.

Facilities Attendant was accorded a degree level of 2.0, defined by the Plan as:

"[t]asks 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."

Grievant requests a degree level of 3.0, defined by the Plan as:

[t]asks are moderately structured with incumbent working from objectives set by the supervisor. At this level, the employee organizes and carries out most of the work assignments in accordance with standard practices, policies, instructions or previous training. The employee deals with some unusual situations independently.

Grievant claims the higher level is proper because he works with limited supervision, and organizes and completes his work assignments based on his own experience and knowledge. Respondent notes that whether Grievant has regular contact with his supervisor is not controlling, and that while he may work independently a great amount of the time, he may refer questions to his supervisor, as needed. Grievant's custodial work is substantially structured; however, his theatrical

work is less so. Nonetheless, Grievant's work is not completed independently in that his tasks are structured by his daily assignments, which are dependent upon the schedule for the Arts Center. Thus, while he exercises discretion in how to best meet the needs of the artists, he works to accomplish objectives set by others. The evidence further supports that he organizes and completes his assignments within applicable guidelines, and may refer matters to his supervisor. The evidence does not support a degree level of 3.0 for this position; however, Grievant has proven that he works beyond a degree level of 2.0. Therefore, a degree level of 2.5 would best define Grievant's position in this point factor.

Scope and Effect

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

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.

Scope and Effect is divided into two subdivisions, Impact of Actions and Nature of Action. Facilities Attendant was accorded a degree level of 1.0 in Impact of Actions, defined in the Plan as “work is limited to immediate work function and short-term situations.” Grievant requests a degree level of 2.0, defined by the Plan as “[w]ork affects either an entire work unit or several major activities within a department.”

Grievant concedes that his custodial work is limited to immediate work functions and short-term

situations, but argues that his theatrical work has an impact on the Music Department and the reputation of Potomac State College in the community. Citing comments that his work might influence students choosing to enroll at Potomac State, i.e., cleanliness, and presentation of slide shows, Ms. Moore testified that Grievant's work is limited to the auditorium and does not affect the overall mission of the school.

Plainly, Grievant's work is very important to the Arts Center; however, it cannot be determined that it affects either an entire work unit or several major activities within a department. The evidence of record more clearly supports a degree level of 1.0 in that Grievant's duties are contained in a relatively limited area and are of short duration, i.e., the run of the production. There is no evidence that Grievant's work specifically has, or could cause such harm to Potomac State that its reputation would be lessened. Based upon the evidence it cannot be determined that the degree levels assigned by the JEC to Grievant in this point factor was clearly wrong.

Scope and Effect, Nature

The JEC assigned Facilities Attendant a degree level of 2.0 in this point factor, defined by the Plan as “[w]ork contributes to the accuracy, reliability, and acceptability ofprocesses, services, or functions. Decisions are limited to the application of standardized or accepted practices and errors could result in some costs and inconvenience within the affected area.” Grievant requests a degree level of 3.0, defined as “[w]ork provides guidance to an operation program, function or service that affects many employees, students or individuals. Decisions and recommendations made involve non-routine situations within established protocol, guidelines and/or policies. Errors could easily result in moderate costs and inconveniences within the affected area.” (See footnote 6)

Grievant argues that his failure to wire the facility correctly for a production could cause cancellation of a performance and cost thousands of dollars. Failure to engage the arbor brakes could result in bodily harm to a performer and/or tens of thousands of dollars in damaged equipment.

This factor is to be considered as to the effect errors would have on an institution as a whole. In this case, errors or accidents involving the employee would incur minor inconvenience and/or cost to the institution. Even the most serious errors committed by Grievant would have minimal to no effect on the overall mission of the institution and the higher education systems.

Intrasystems Contacts

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

> appraises 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, recurringand 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.

Intrasystems contacts is subdivided into Nature of Contact and Level of Regular, Recurring, and Essential Contact. The JEC awarded Facilities Attendant a degree level of 1.0 in Nature of Contact, defined in the Plan as “[r]outine information exchange and/or simple service activity; requires common courtesy (e.g., furnishing or obtaining factual information, ordering supplies, describing simple procedures).” Grievant requests a degree level of 2.0 in Nature, defined in the Plan as “[m]oderate 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 cites the complexity of the functions he coordinates as the basis for the higher degree level. He notes his frequent communication with the production companies in developing their plans, and asserts that moderate tact is necessary to explain the capabilities of the facility to facility. Respondent notes that Grievant receives his job assignments via a form and that only common courtesy is required in his communications which consists of his providing routine information.

Because this point factor is limited to communication within the higher education system, Grievant's communication with outside users of the facility may not be considered. His contact within the institution is limited to providing routine information and requires only common courtesy. A degree level of 1.0 is correct for this point factor.

The JEC awarded Facilities Attendant a degree level of 2.0 in Level of Regular, Recurring and Essential Contact, defined in the Plan as “[s]taff and faculty outside the immediate work unit.” Grievant requests a degree level of 3.0, defined by the Plan as “[s]upervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office.”

Grievant argues that he communicates regularly with the Chair of the English Department, the Supervisor of the Computer Center, the Dean of Admissions and Records, Supervisor of the Library, the President of Potomac State College, and various faculty and staff members. These contacts vary, Grievant states, from daily contact with Dr. Hawkins, to weekly with President Gratto, to monthly with

other faculty and staff members. Ms. Moore testified that because Grievant's regular, recurring and essential contacts are staff and faculty, a degree level of 2.0 was correct.

Clearly, Grievant has regular, recurring and essential contact with Dr. Hawkins, a faculty member. He appears to also have regular contact with the Chair of the English Department and the President of Potomac State College. It is not clear that Grievant's contact with the latter two individuals is essential to the performance of his duties. The evidence available does not conclusively support a degree level of 3.0. Therefore, the JEC designation of 2.0 will be upheld.

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 duringoperations. Consider whether the contacts involve furnishing or obtaining information, influencing others or negotiation.

This factor consists of two parts, Nature of Contact and Level of Regular, Recurring and Essential Contact. The JEC awarded the position of Facilities Attendant a degree level of 1.0 in Nature of Contact, defined in the Plan as “[r]outine information exchange and/or simple service activity; requires common courtesy (e.g., furnishing or obtaining factual information, ordering supplies, describing simple procedures).” Grievant requests a degree level of 2.0 in Nature of Contact, defined in the Plan as:

> [m]oderate 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 testified that he believed moderate tact is needed in his communications with the various outside facility users. Dr. Hawkins confirmed that Grievant's use of tact has been helpful in avoiding confrontation and dealing with tense situations regarding various performers. Ms. Moore testified that the examples of communications listed on Grievant's PIQ, including vendors, require only a routine exchange of information with common courtesy.

Because Grievant's production work involves explaining procedures and capabilities, as well as coordinating complex arrangements, a degree level of 2.0 is appropriate for this point factor.

The JEC awarded the position of Facilities Attendant a degree level of 3.0 in External Contact, Level, defined in the plan as “[s]tudents, parents, alumni, faculty ofinstitutions outside the systems, sales engineers, higher-level product representatives, recruiters and/or prospective students.” Grievant requests a degree level of 5.0, defined by the plan as “[s]ubstantially prominent persons (e.g., community leaders, business and industry leaders) and officials of government agencies, financial agencies, and other important constituents.”

Grievant asserts that he deals on a regular basis with prominent performers and speakers, as well as community leaders, including the head of the Mineral County Development Authority, local legislators, members of the school board, county commission, and judges. He characterizes his contact with these individuals as essential to the performance of his duties because he discusses the use and capabilities of the facility with them. Ms. Moore discounted these contacts as they were not regular, recurring or essential to Grievant's position.

The record does not reflect how frequently Grievant communicates with any of the cited individuals. Grievant has failed to prove that these contacts are regular, recurring, or essential to the performance of his duties. A degree level of 3.0 is proper for this point factor.

Physical Coordination

Physical Coordination is defined in the Plan as “the amount of psychomotor skill involved in performing the job. Consider the complexity of body movements, speed/timing of movements, precision of movements, and need for close visual attention regularly required by the job in performing the work.” The JEC awarded Facilities Attendant a degree level of 2.0, defined in the plan as “[w]ork requires simple hand/eye operations and some accuracy and regularity of motions, such as set-up and operation of basic instruments or equipment, and/or the occasional use of standard hand or power tools with minimum speed requirements.” Grievant requests a degree level of 3.0, defined in the Plan as “[w]ork requires some speed and accuracy of hand/eye coordination in the use of somewhat complicated instruments, equipment or hand or power tools requiring some speed and adeptness.”

Grievant asserts that he uses drills, circular saws, and a multi-meter, which measures voltage, amperage, or ohmage, when checking for shorts or openings in wires. He also argues that speed is essential due to time constraints when getting particular jobs done. Ms. Moore acknowledged that some of Grievant's duties require accuracy and speed, but stated that a degree level of 2.0 was

proper because the majority of his duties require only simple hand/eye coordination.

This point factor reflects the fine motor skills necessary to perform the duties of the position. While completing the wiring, lighting and other theatrical duties, Grievant must exhibit more than occasional hand/eye coordination in using tools and operating the sound and lighting equipment. These duties are fairly complex and speed is essential in the set up and tear down of apparatus for a stage performance. Overall, these duties require the speed and adeptness expected of an employee rated at level 3.0.

Working Conditions

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

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

The JEC awarded the Facilities Attendant position a degree level of 1.0 in this factor, defined as “[n]o major sources of discomfort, i.e., standard work environment with possible minor inconveniences due to occasional noise, or minor heating, cooling or ventilation problems.”

Grievant requests a degree level of 3.0, defined in the Plan as “[r]outine discomforts from exposure to moderate levels of heat, cold, moisture, wetness, noise and air pollution. May involve routine exposure to light chemical substances such as cleaning solutions or occasional exposure to hazardous conditions such as radiation, chemicals, diseased laboratory animals, contagious disease, heights, and moving parts.”

Grievant asserts that he must work at heights of up to 35 feet and he is regularly exposed to high voltage. Ms. Moore testified that the JEC considered both heights and voltage because it was included on Grievant's PIQ.

Because Grievant regularly hangs lights and wires sound equipment his exposure to heights and electricity warrant a degree level of 3.0.

Physical Demands

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. The JEC awarded the position of Facilities Attendant a degree level of 3.0, defined by the Plan as “[m]oderate physical effort required

involving long periods of standing, walking on roughsurfaces, bending and/or stooping; periodic lifting of moderately heavy items (over 25 and up to 50 pounds). Grievant argues that a degree level of 5.0 more accurately describes his position. The Plan defines the 5.0 degree level as “[e]xtremely strenuous, with frequent physical exertion such as the lifting of very heavy items (more than 75 pounds), deep bending, climbing and/or working in difficult or cramped positions for long periods of time.” Grievant asserts that he often works on the catwalk over the stage, requiring that he wear knee pads, and that he often lifts very heavy objects, such as risers, scenery, speakers, amplifiers, etc. Ms. Moore testified that a degree level of 3.0 was correct based upon Grievant's overall duties which regularly occur. Ms. Moore noted that a degree level of 5.0 was assigned to positions such as furniture movers, who must regularly engage in heavy lifting.

Grievant's use of knee pads on a rough surface and occasional lifting are adequately accounted for by the 3.0 degree level. The record does not support a finding that his work is extremely and frequently strenuous. Although Grievant testified that he lifts objects which weigh more than 75 pounds 2 times per week, he also stated that he could receive assistance from the maintenance department on most occasions.

D. Summary

___A review of the PIQ's completed by the Systems' two other Facilities Attendants establishes that Grievant's duties are significantly dissimilar. Those employees primarily perform custodial duties, with some supervision of the building such as providing security, acting as a contact person for evening classes, supervising student activities, and monitoring game room equipment. These PIQ's do not indicate the employees perform any duties ofa technical or theatrical nature. Even accepting that the classification of Facilities Attendant may be broad and inclusive, it is inadequate for an employee who spends a significant portion of his work time completing technical and complex duties.

___Grievant has failed to prove that he is entitled to a pay grade 14 but has proven that his duties warranted higher degree levels in the point factors of Knowledge, Experience, Complexity and Problem Solving, Freedom of Action, External Contacts/Nature, and Working Conditions. The additional points allocated to those factors increase the total points for his position to 1673, which falls within pay grade 12. This revision is consistent with the positions of Theatre Technician and CCA (College of Creative Arts) Technician which are also slotted at pay grade 12.

Ms. Moore noted that placing Grievant in the same pay grade as Theatre Technician would not be

equitable in that those employees perform their duties full-time while Grievant is also assigned custodial duties a portion of the time. This argument is not persuasive in that Respondent did not dispute Grievant's assertion that at least 75% of his time is spent with theatre work. It appears that this number may be increased as evidenced by information provided by Potomac State College President Joseph M. Gratto, who stated in a letter dated January 31, 1994, that Grievant's theatre work is his priority and the custodial work is done as time permits. He further noted that "[s]ometimes a custodian is sent over to handle those duties because Mr. Helmick is fully involved with others." In the absence of multi-classification, it is held that Grievant must be credited with the higher level, predominant duties which he performs, and be compensated at pay grade 12. In addition to the foregoing facts and narration it is appropriate to make the following formal conclusions of law.

Conclusions of Law

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

2. The burden of proof in a misclassification grievance is on the Grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1§4.1. 3. Grievant has proven by a preponderance of the evidence that the Job Evaluation Committee's assignment of degree levels to the point factors of Knowledge, Experience, Complexity and Problem Solving, Freedom of Action, External Contacts/Nature, and Working Conditions, was clearly wrong.

4. Grievant has proven that his duties and responsibilities warrant classification and/or compensation at pay grade 12.

Accordingly, the grievance is **GRANTED** to the extent that Respondent is Ordered to reclassify Grievant to a position compensated at pay grade 12, with backpay and benefits, effective January 1, 1994.

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

provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

Date: January 28, 1997 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

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

Footnote: 2

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: 3

A grievant may challenge any combination of point factor degree levels, so long as he clearly identifies the point factor degree levels he is challenging, and this challenge is consistent with the relief sought. See Jessen, et al. v. Bd. of Trustees, W.Va. Univ., Docket No. 94-MBOT-1059 (Oct. 6, 1995); and Zara, et al., v. Bd. of Trustees, W.Va. Univ., Docket No. 94-MBOT-817(Dec. 12, 1995).

Footnote: 4

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: 5

It is noted that the position of Electrician received a degree level of 4.0 in this point factor.

Footnote: 6

Grievant did not address this point factor during the level four hearing. Issues raised in post-hearing filings are generally not considered; however, in this case, the matter will be presented although it does not affect the outcome of the decision.