JOHN GEORGE

v. Docket No. 94-MBOT-454

BOARD OF TRUSTEES/WEST VIRGINIA UNIVERSITY

D E C I S I O N

Grievant, John George, alleges that he was improperly classified as a Refrigeration Technician at Pay Grade 12 under the "Mercer reclassification". Grievant challenges specific point factors which he argues support his request for classification as Refrigeration Technician, Pay Grade 17, with backpay, effective January 1, 1994, the date the classification system was implemented. (See footnote 1) A level four hearing was conducted on November 26, 1996, and the matter became mature for decision with the submission of post-hearing fact/law proposals by the parties on or before March 20, 1997.

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

Findings of Fact

1. Grievant is employed by the Board of Trustees (Respondent) at West Virginia University, assigned to the Health Sciences Center.

2. Prior to January 1, 1994, Grievant held the job title of Refrigeration Technician.

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

4.. As a result of the Mercer reclassification, Grievant was classified as a Refrigeration Technician at Pay Grade 12.

5. Grievants' primary job duties prior to January 1, 1994, generally consisted of the installation, maintenance, and repair of air conditioning and refrigeration systems. The types and number of each type of equipment for which Grievant is responsible are: refrigerators (355); low temperature freezers

(76); walk-in coolers (26); air conditioners (36); ice machines (41); refrigerated water coolers (86); and refrigerated centrifuge and cryostats (126).

6. The Refrigeration Technician job title received 1723 total points from the following degree levels in each of the thirteen point factors (See footnote 2) : 4.0 in Knowledge; 3.0 in Experience; 2.5 in Complexity and Problem Solving; 2.5 in Freedom of Action; 1.0 in Scope and Effect, Impact of Actions; 2.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 1.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level; 1.0 in External Contacts, Nature of Contact; 2.0 in External Contacts, Level; 1.0 in Direct Supervision Exercised, Number; 1.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 4.0 in Physical Coordination; 3.0 in Working Conditions; and 4.0 in Physical Demands. 7. After a second review in Spring 1996, the JEC increased the degree level awarded to “Knowledge” by .5 points for positions which required certification. The increased total points elevated Refrigeration Technician to pay grade 13.

8. The point range for pay grade 13 is from 1756 points to 1865 points.

9. The point range for pay grade 17 is from 2255 points to 2407 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, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W.Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

A grievant is not likely to meet his burden of proof in a Mercer grievance merely by showing that the grievant's job duties better fit one job description than another, without also identifying which point factors he is challenging, and the degree level he believes he should have received. (See footnote 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 bystatute 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 employee challenging 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 challenges the degree levels received in the point factors Knowledge, Experience, Complexity and Problem Solving, Freedom of Action, Scope and Effect /Impact of Actions, Intrasystems Contacts/Nature of Contact and Level, External Contacts/Nature of Contact and Level, Direct Supervision Exercised/Number and Physical Coordination. Following are the degree levelsassigned by the JEC to the point factors for the Refrigeration Technician job title which Grievant contests, and the degree levels which Grievant argues would place him in the correct pay grade.

Knowledge

“This factor measures the minimum level of education 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 awarded the position of Refrigeration Technician a degree level of 4.5. The Plan does not define half levels which are awarded when the duties of the position contain elements of both the higher and lower levels, or when certification is required. The Plan defines a degree level of 4.0 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." A degree level of 5.0 is defined as "[j]ob 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."

Grievant asserts that he is entitled to the higher level because he has extensive training in a variety of fields; specifically, he has completed an Associates Degree in Business Management at the West Virginia Career College, taken courses in the military, completed a vocational technical course in building maintenance and construction, an industrial electronics course, asbestos abatement training and specific training in freon handling and reclamation relating to air conditioning. Grievantargues that he uses all of this knowledge on a regular basis in the performance of his duties and responsibilities.

Teresa Crawford, a senior classification and compensation analyst at West Virginia University and member of the JEC, testified on Respondent's behalf. Ms. Crawford stated that a degree level of 4.5 was appropriate credit for positions which required vocational training. She emphasized that the JEC considered the minimum education necessary for a new employee, without creating artificial barriers, and noted that Refrigeration Technician positions are currently posted with requirements of vocational training and 2 years experience. Apprenticeship skills, such a blueprint reading, are acquired on the job while working with another employee and are credited under "Experience", according to Ms. Crawford.

It is accepted that this point factor measures the minimum level of ability necessary to enter the job, taking into consideration that there is a "learning curve" for any individual entering a new position. Perkins v. Bd. of Trustees, Docket No. 94-MBOT-733 (Oct. 31, 1996). Further, the focus in Mercer grievances is upon the qualifications required of the individual entering the position, not those of the incumbent. Payne v. Bd. of Directors, Docket No. 94-MBOD-372 (Jan. 8, 1997). Although Grievant has established that he has some additional degree of training and education which undoubtedly enhances his performance, degrees in Business Management, military training, etc., are not necessary for the beginning refrigeration technician to satisfactorily perform his duties and cannot be used to attain a higher degree level.

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 ifcredited under Knowledge.” See Jones, et al. v. Bd of Trustees/W.Va. Univ., Docket No. 94-MBOT- 978 (Feb. 29. 1996).

The JEC awarded the position of Refrigeration Technician a degree level of 3.0 in this factor, defined by the Plan as “[o]ver one year and up to two years of experience.” Grievant argues that his work is more accurately reflected by a degree level of 6.0, defined by the Plan as “[o]ver four years and up to six years of experience.”

Grievant stated that “more than six [years experience is needed] really” based upon the highly technical work he performs. Grievant recalled that when he began this position there was much he did not know and needed to learn “real quick”. He opined that his situation is not like anywhere else in town, and that without the additional experience an employee would be in trouble. Ms. Crawford stated that Experience and Knowledge are related, and that both measure only the minimum level of competence to perform the basic duties of a particular job, keeping in mind that an initial training and learning period is essential.

As with Knowledge, Grievant's argument that more experience would be beneficial to the employee is accurate, but not considered by this classification plan. Grievant did not offer any evidence to prove that an individual with one to two years experience could not minimally perform the duties of the position. The minimum amount of experience required to perform the essential duties of a position represents a subjective determination upon which reasonable minds may differ. Zara v. Bd. of Trustees, Docket No. 94-MBOT-817 (Dec. 12, 1995), and the JEC's rating for Experience cannot be deemed clearly wrong.

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 assigned the position of Refrigeration Technician a degree level of 2.5. The Plan does not define half levels which were assigned when the position duties and responsibilities fell partially within the lower degree level and partially within the next higher degree level.

A degree level of 2.0 is defined by 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.

A degree level of 3.0 is defined by the plan as:

[p]roblems encountered can be somewhat complex and finding solutions to problems may require some resourcefulness and originality, but guides, methods and precedents are usually available. Diversified guidelines and procedures must be applied to some work assignments. Employee must exercise judgment to locate and select the most appropriate guidelines, references, and procedures for application, and adapt standard methods to fit variations in existing conditions.

Grievant argues that he should have received a degree level of 3.0 based upon his primary responsibility, maintenance. Grievant asserts that he must exercise care and use good judgment to make arrangements for food and other refrigerated items when the equipment is being repaired. Ms.Crawford testified that while Grievant's duties do not fall entirely within level 2.0 or 3.0, the range of complexities typical of the types of problems he faces on a daily basis are contemplated by one degree or the other, making a degree level of 2.5 correct for this position.

This factor does not measure the intricacy and complexity of the tasks performed, but measures the types of problems encountered in the performance of tasks. It evaluates how problems are discovered and addressed, and the degree of decision making required. See Wise v. Bd. of Directors/W.Va. State College, Docket No. 94-MBOT-401 (Jan. 30, 1997). Grievant's PIQ establishes that the majority of his duties involve the installation and maintenance of air conditioning and refrigeration equipment. Undoubtedly, somewhat complex technical problems arise which Grievant must resolve. However, the performance of these daily duties is aided by a limited number of options for resolution as well as procedures and guidelines. Although Grievant may be required to compare and choose among alternative solutions, it does not appear that the majority of his work involves the adaptation of standard methods to fit variations in existing conditions. Without denying

that Grievant must utilize some resourcefulness from time to time, there is no evidence that he regularly must deviate from traditional methods to complete his tasks.

The Grievance Board is reluctant to second guess the JEC's decisions absent compelling evidence. Wood v. Bd. of Directors/W.Va. State College, Docket No. 94-MBOT-480 (Mar. 11, 1997). The evidence of record in this case does not establish that Grievant performs at a degree level of 3.0 in complexity and problem solving, and it may not be determined that a degree level of 2.5 was clearly wrong.

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

The JEC assigned Refrigeration Technician a degree level of 2.5, Grievant argues that a degree level of 4.0 more accurately reflects his position.

The Plan defines a degree level of 2.0 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.”

The Plan defines a degree level of 3.0 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.”

The Plan defines a degree level of 4.0 as:

[t]asks 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 the work 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 requests the higher degree level primarily based upon the fact that he is responsible for knowing what needs to be done and notifying his supervisor of the materials needed and an estimate on the time needed to complete the assignment. Ms. Crawford stated that 2.5 was the appropriate degree level because Grievant's more advanced work, organizing and completing an assignment, would be covered by the 3.0 degree level. Her explaination for this conclusion was that Grievant functions under a work order system and is not required to resolve how to get the work done. She noted that a degree level of 4.0 was generally assigned to senior level professionals such as managers and supervisors who are given broad objectives and must plan and carry out the assignment.

Although Grievant works with little direct supervision, his tasks are structured in that his assignments are well defined by work orders. The actual installation and maintenance work is completed using standard methods and procedures of the trade. Grievant may exercise some discretion in choosing methods and dealing with some unusual situations independently; however, he is not given broad directions and asked to plan and implement goals. The evidence of record does not support a degree level of 4.0 for Refrigerator Technician 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, revenuegeneration, 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 Actions. Grievant contests only the Nature of Actions, requesting a degree level of 4.0, defined by the Plan as: [w]ork 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.

Grievant argues that this level is appropriate because he bears the responsibility of ensuring that the work is completed satisfactorily, and at times he makes materials to cut costs.

The JEC awarded Refrigeration Technician a degree level of 2.0, defined by the Plan as: [w]ork 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.

Ms. Crawford testified that the lower level was appropriate because the primary purpose of Refrigeration Technician is to provide coolant, which fits into the overall system of contributing tothe reliability of services. Ms. Crawford distinguished the 4.0 level as consisting of management, whose responsibility is to insure that the goals of the system are carried out.

This point factor measures the employee's responsibilities as they relate to the overall mission of the institution, and whether they perform their duties in a diligent and responsible manner, “errors are not due to sabotage, mischief, or lack of reasonable attention and care.” If Grievant should inadvertently cause a unit to malfunction, the institution would suffer minimal impact. While the affected area would suffer some inconvenience, the cost would likely not be substantial. The evidence of record does not support a finding that Grievant engages in planning or developing a major program or service having a broad impact. Further, it appears that a degree level of 4.0 was awarded to management level employees. See Wise, and Wood, supra. Grievant does fall within either category. It cannot be determined that the JEC was clearly wrong to assign Refrigeration Technician a degree level of 2.0 in Scope and Effect/Nature.

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, 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.

Intrasystems Contacts is subdivided into Nature of Contact and Level of Regular, Recurring, and Essential Contact. The JEC awarded Refrigeration Technician a degree level of 1.0 in Nature of Contact, defined by 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 stated that the higher degree level was appropriate because cooperation is required in scheduling his work. Ms. Crawford stated that 1.0 was appropriate because Grievant engages in routine information exchange which requires only common courtesy. Schedules involves obtaining and providing factual information to determine when an assignment can be completed. Grievant is not required to explain policies and procedures or to coordinate complex meetings or conference arrangements. Therefore, Grievant has not shown that the JEC was clearly wrong, arbitrary or capricious in assigning a degree level of 1.0 to Intrasystems Contacts/Nature.

The JEC awarded Refrigeration Technician 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 as “Supervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office.”

Grievant cites contacts to schedule appointments, and advising those individuals what will happen and when the job will be finished. Ms. Crawford testified that Grievant's primary contacts are with staff and faculty members in laboratories to schedule work assignments, a level clearly contemplated

by a degree level of 2.0. Although Grievant stated that he contacts the person in charge of the laboratory or equipment he is assigned to service, he did not give any specific names of individuals as examples of supervisors, managers, or chairs. Without more specific information it is impossible to determine that he works with the higher level administrators. Further, it seems unlikely that individuals in these positions would have immediate responsibilities managing laboratories. It is much more likely that staff and faculty would be Grievant's regular and recurring direct contacts, and without evidence to the contrary, it may not be determined that the JEC erred in assigning a degree level of 2.0 to the position of Refrigeration Technician in this point factor.

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.

This factor consists of two parts, Nature of Contact and Level of Regular, Recurring and Essential Contact. The JEC awarded the position of Refrigeration Technician 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 asserts that he is entitled to a degree level of 2.0, 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 asserts that the higher degree level is more appropriate based upon the need for him to communicate with others in the building where he is working, and the need to explain in detail what he will be doing. Ms. Crawford noted that any occasional external contacts by Grievant would primarily be with vendors, and therefore require only a routine exchange of information regarding ordering parts, obtaining prices, etc.

Grievant's testimony regarding this point factor appeared to be related to Intrasystems Contacts and lacked any specific information as to the identity of the individuals he contacts or the reason for the communication. The evidence supports a finding that Grievant's external contacts are extremely

infrequent and the involved subject matter is largely non-controversial in nature and handled in accordance with standard practices and procedures. It cannot be determined that the JEC erred in assigning Refrigeration Technician a degree level of 1.0 in External Contacts/Nature.

The JEC awarded the position of Refrigeration Technician a degree of 1.0 in External Contacts/Level, defined in the Plan as “[e]tremely infrequent; virtually no contact beyond immediate work unit/area; or occasional contacts are incidental to the purpose of the job.” Grievant requests a degree level of 2.0, defined as “[g]eneral public, visitors, and/or service representatives and vendors.” As previously stated, Grievant did not identify any specific individuals outside the system with whom he maintains regular, recurring, and essential contact. Under such circumstances, it cannot be concluded that Grievant is entitled to a higher degree level.

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.

This factor consists of two subdivisions, Number of Direct Subordinates and Level of Supervision. Grievant contests only the Number portion of this factor. The JEC awarded the position of Refrigeration Technician a degree level of 1.0 in Number, defined by the Plan as “None”. Grievant requests a degree level of 2.0, defined by the Plan as “One”. Grievant claims that a degree level of 2.0 is correct because he needs a helper for many jobs. Ms. Crawford stated that 1.0 was correct because no employee reports to Grievant. She stated that part-time or occasional helpers are not counted as subordinate employees, and that Grievant is not credited with lead authority if two colleagues work together, particularly if they are in cross crafts. Lacking any evidence that Grievant has been formally assigned supervisory responsibility over another employee, a degree level of 1.0 is considered correct.

Physical Coordination

“This factor assesses the amount of psychomotor skill involved in performing the job. Consider

the complexity of body movements, speed/timing of movements, precision of movements, and need for close visual attention regularly required by the job in performing the work."

The JEC awarded the position of Refrigeration Technician a degree level of 4.0, defined by the Plan as "[w]ork requires skill and accuracy or other manual actions involving rapid physical motions and closely coordinated performance on or with office equipment; or a high degree of manual skill and exactness in the use of hand instruments or equipment." Grievant requests a degree level of 5.0, defined as"[w]ork requires extraordinary skill and precision with complicated and/ordifficult manual skill involving coordinated physical motions and exactness in the use of hand instruments or tools requiring delicate timing and placement of movements."

Grievant asserts that 5.0 more accurately reflects the mental and manual skills, such as how and when to lift an object, which are important because they are used so much in his work. Ms. Crawford stated that 4.0 was correct because this point factor refers to the amount of precision, detail, and exactness with instruments required of the employee. She noted that climbing and lifting are considered under Physical Demands, a point factor in which Grievant rated himself a 3.0, but the JEC awarded him a degree level of 4.0. Because lifting and climbing are considered under another point factor and Grievant did not elaborate on the mental and manual skills which would elevate him to a degree level of 5.0, he has failed to prove that the JEC erred in its assessment.

D. Summary

___Grievant has failed to prove that the JEC was clearly wrong or acted in an arbitrary and capricious manner in the allocation of degree levels in the referenced point factors. Because there is no change in the point factors, Grievant is not entitled to assignment to a higher pay grade or title.

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 Grievants to prove by a preponderance of the evidence that they are not properly classified. 156 C.S.R. 1§4.1. Elkins v. Southern W.Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991). 3.

Determinations of the JEC regarding application of the Plan's point factor methodology are essentially questions of fact. In that regard, the JEC's interpretation and explanation of the point factors and PIQs at issue will be given great weight unless clearly erroneous. Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995).

4. Subjective determinations of the JEC regarding application of the Plan's point factor methodology are entitled to deference when being reviewed by the Grievance Board. Miller v. Bd. of Directors, Docket No. 94-MBOD-495 (Oct. 29, 1996).

5. Grievant failed to prove by a preponderance of the evidence that the Job Evaluation Committee's assignment of the position Refrigeration Technician to pay grade 13 was clearly wrong or arbitrary and capricious.

6. Grievant has failed to prove that his duties and responsibilities warrant different classification and/or compensation at any higher pay grade.

Accordingly, the grievance is DENIED.

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

Date: June 23, 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.