**GLEN BLON,**

**Grievant,**

**v. Docket No. 01-HE-357**

**WEST VIRGINIA UNIVERSITY,**

**Respondent.**

**D E C I S I O N**

**Glen Blon ("Grievant"), employed by West Virginia University ("WVU") and assigned to the Physical Plant as a Certified Trades Worker, pay grade 13, filed a level one grievance on February 2, 2001, requesting compensation at pay grade 14, with back pay to 1997.** (See footnote 1) **After being denied at the lower levels, this grievance was appealed to level four on May 22, 2001, and was placed in abeyance pending review of the Physical Plant job families by the Job Evaluation Committee ("JEC").** (See footnote 2) **Grievant's position was not upgraded, but was reslotted as Trades Specialist, pay grade 13, pursuant to this review. In March 2004, Grievant was upgraded to Trades Specialist Lead II, pay grade 15. As a result, Grievant revised his requested relief to back pay from February 2001 to March 2004. A level four hearing was conducted on January 20, 2005, at which time Grievant was represented by Kathleen Abate, Esq., and WVU was represented by Assistant Attorney General Samuel R. Spatafore. After an extension requested by Ms. Abate, the grievance became mature for decision upon receipt of proposed findings of fact and conclusions of law filed by the parties on or before June 28, 2005. The following Findings of Fact are properly made from the record developed at levels two and four.**

**Findings of Fact 1. The higher education system in West Virginia utilizes the "Mercer" classification plan. This name is derived from the name of the company which assisted higher education in developing the classification system, William M. Mercer, Inc., and is generally referred to as "the Plan." Under the Plan, positions are evaluated pursuant to a "point factor methodology" wherein point values are assigned to thirteen "job evaluation factors:" (1) Knowledge (KN); (2) Experience (EX); (3) Complexity and Problem Solving (CPS); (4) Freedom of Action (FA); (5) Scope and Effect/Impact of Actions (SE/I) and Scope and**

**Effect/Nature of Actions (SE/N); (6) Breadth of Responsibility (BR); (7) Intrasystem Contacts/Level (IS/L) and Intrasystem Contacts/Nature (IC/N); (8) External Contacts/Level (ECL) and External Contacts/Nature(EC/N); (9) Direct Supervision Exercised/Number (DSE/N) and Direct Supervison Exercised/Level (DSE/L); (10) Indirect Supervision Exercised/Number (ISE/N) and Indirect Supervision Exercised/Level (ISE/L); (11) Physical Coordination (PC); (12) Working Conditions (WC); and (13) Physical Demands (PD). 131 C.S.R. 62 § 2.27 (1994).**

**2. Initially, the employee completes a Position Information Questionnaire (PIQ) answering a series of questions designed to elicit information describing their job duties and responsibilities, along with the minimum qualifications for their positions, "data lines" of particular degree levels for each point factor are determined and the employee is "slotted" into the job title which most closely fit his or her duties. The degree levels foreach point factor in a job title are weighted and combined, creating a numerical point total, which in turn determines each job's pay grade.**

**3. Grievant has been employed by WVU since December 1989, and was assigned to Unit 35 at the Physical Plant when this grievance was filed in 2001. Grievant's classification at that time was Certified Trades Worker, a position compensated at pay grade 13. Grievant was promoted in March 2004, to Trades Specialist Lead II, pay grade 15.**

**4. The Certified Trades Specialist job title was placed in pay grade 13, having received 1816 total points from the following degree levels in each of the thirteen point factors: 4.5 in Knowledge; 4.0 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 of Contact; 1.0 in External Contacts, Nature of Contact; 2.0 in External Contacts, Level of Contact; 1.0 in Direct Supervision Exercised, Number; 1.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 4.0 in Physical Coordination; 3.0 in Working Conditions; and 4.0 in Physical Demands.**

**5. Trade Specialist Lead was placed in pay grade 14, receiving the following degree levels in each of the thirteen point factors: 4.0 in Knowledge; 4.0 in Experience; 3.0 in Complexity and Problem Solving; 3.0 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 of Responsibility; 1.0 in Intrasystems Contacts, Nature of Contact; 2.0 in IntrasystemsContacts, Level of Contact; 1.0 in External Contacts, Nature of Contact; 2.0 in External Contacts, Level of Contact; 4.0 in Direct Supervision Exercised, Number; 3.0 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.**

**6. Grievant is assigned to Unit 35, a team of "first responders" to emergency maintenance calls. Grievant must assess the problem, and then either correct it himself, or contact the Morgantown Department of Public Safety, the Fire Department, or other Physical Plant employees for assistance.**

**7. Grievant completed a PIQ in December 2000 which listed his duties and the percentage of time they required as: conducting daily routine inspections and maintenance of facilities (40%); answer emergency calls (25%); asbestos abatement (20%); manual and computer documentation, keep work area clean (10%); and, maintain certification, pick up material for emergency situations, etc. (5%).**

**8. Grievant completed a PIQ in December 2003, in which he indicated that 45% of his time was spent conducting routine inspections and maintenance, 40% was answering emergency calls, 10% training new employees, cleaning the shop, pest removal, and delivering materials for emergency situations. The remaining 5% of his time was spent maintaining asbestos certification, operating lifts, assisting the Supervisor in developing preventative maintenance programs.**

**9. Grievant challenges the degree level in the following point factors: Experience; Complexity and Problem Solving; Freedom of Action; Scope and Effect/impactand Nature; Intrasystem Contacts/Nature and Level; and External Contacts/Nature and Level.**

**Discussion A. Burden of Proof and Standard of Review 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 § 4.21; 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 higher education grievant is not likely to meet his burden of proof 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." The Mercer classification system is largely a "quantitative" system, in which the components of each job are evaluated using the point factor methodology. Therefore, the focus is upon the point factors the grievant is challenging. A grievant may challenge any combination of point factor degree levels, so long as he clearly identifies the point factor degree levels he is challenging, and this challenge is consistent with the relief sought. See Jessen, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-1059 (Oct. 26, 1995); and Zara, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94- MBOT-817 (Dec. 12, 1995). While some "best fit" analysis of the definitions of the degree levels is involved indetermining 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. Finally, whether a grievant is properly classified is almost entirely a factual determination. As such, the JEC's interpretation and explanation of the point factors and Generic Job Descriptions or PIQ's at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 194 W. Va. 97, 459 S.E.2d 374 (1995); Burke, supra. The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. B. Application of the Point Factor Methodology Grievant argues that because he is required to work without a Lead, and is required to apply a variety of skilled trades in responding to emergency situations, his position should be rated higher than employees with experience and skill in one trade, and who work with a Lead, such as the plumbers, who were upgraded to pay grade 13. WVU asserts that Grievant was properly classified and compensated.**

**The following table shows the differences between the degree levels assigned by the JEC to the job title of Certified Trades Worker, and the degree levels Grievant argues should have been awarded in the challenged point factors.**

| | EX | CPS | FA | SE/I | SE/N | IC/N | IC/LN | EC/N | EC/L |
|---|---|---|---|---|---|---|---|---|---|
| Certified Trades Worker | 3.0 | 2.5 | 2.5 | 1.0 | 2.0 | 1.0 | 2.0 | 1.0 | 2.0 |
| Trades Worker Lead | 4.0 | 3.0 | 3.0 | 1.0 | 2.0 | 1.0 | 2.0 | 1.0 | 2.0 |
| Grievant's Request | 5.0 | 3.0 | 3.5 | 3.0 | 3.0 | 2.0 | 3.0 | 2.0 | 2.5 |

The points from Grievant's data line would entitle him to a pay grade 14. (See footnote 3)

Experience

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.

Grievant's job title received a degree level of 3.0, and Grievant argued he should have received a degree level of 5.0. A degree level of 3.0 is defined in the Plan as:

Over one year and up to two years of experience.

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

Over three years and up to four years of experience.

Grievant argues that because his job requires knowledge and experience in a variety of trades, from carpentry to plumbing to asbestos abatement, and that he must apply these skills without supervision of a Lead, his job requires more than three years experience. Grievant further notes that Trades Workers with only one skill, such as plumbers and plasterer/masons, were given a 4.0 for Experience, thus he should be entitled to a higher level.

Cynthia Curry, a member of the JEC, and Human Resources Director at WVU, testified that the degree level assigned was the minimum amount of experience required to complete the duties, and that the JEC could not require more than the minimum experience necessary because it artificially limits applicants for the position.

Grievant's logic that multiple skills require more years of experience because a certain amount of time is required to learn each skill is not applied by the JEC. While it may require two years to learn plumbing, carpentry, etc., an individual could be acquiring the skills simultaneously. While the individual may not be as expert in any one trade as someone who has devoted themselves to a single area, the JEC was not looking for that degree of expertise in this position, and their determination was not clearly wrong.

**Complexity and Problem Solving**

**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.**

**Grievant's job title received a degree level of 2.5, and Grievant argued he should have received a degree level of 3.0. A degree level of .5 was assigned by the JEC to a job title when the duties fell partially within two degree levels. See Gregg, supra. A degree level of 2.0 is defined in the Plan as:**

**Problems encountered require the employee to make basic decisions regarding what needs to be done, but the employee can usually choose among a few easily recognizable solutions. Established procedures and specific instructions are available for doing most work assignments, with somejudgment 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 judgement 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 because he is a first responder, and must locate, select, adapt, and apply diversified guides and procedures to various conditions, the higher degree level is more appropriate.**

**Ms. Curry testified that a degree level of 2.5 was appropriate for Grievant's position based upon a comparison to other jobs in the hierarchy of job titles. She further noted that there are many levels of supervisors and Lead positions that Grievant may consult.**

**Because Grievant works alone and is the first responder to emergencies, he is required to engage in finding solutions to a broad range of situations. However, Grievant's decisions are**

relatively basic, as he determines whether he can handle the problem, or if other individuals need to be called. Awarding a degree level of 2.5 in this point factor was not clearly wrong. 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.

Grievant argued he should have received a degree level of 3.5 rather than a 2.5. A degree level of 2.0 is defined in the Plan as:

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.

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

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

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

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 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 argues that he is entitled to the higher score because during the period of time in question he had no Lead supervision, he assessed what work was to be done and who would perform various aspects of the work, coordinated the work with the Department of Public Safety, Fire Department, etc., and he independently dealt with unusual situations such as breaking and entering, smoke detection, and floods.

WVU argues that a degree level of 2.5 was proper because Grievant does, in fact, have a supervisor who would ultimately bear responsibility for relevant matters addressed by Grievant. Ms. Curry noted that a degree level of 3.5 was awarded to Physical Plant Managers and Assistant Directors.

Although Grievant was not directed by a supervisor, in person, on a daily basis, his Freedom of Action is limited. He "organizes and carries out most of the work assignments in accordance with standard practices, policies, instructions or previous training," and the assignment of a degree level 2.5 was not clearly wrong.

Scope and Effect

Measures the scope of responsibility of the position with regard to the overall mission of the institution, and/or the West Virginia higher education systems, as well as the magnitude of any potential error. Decisions regarding the nature of action should consider the levels within the systems that could be affected, as well as impact on the following points of institutional mission: Instruction, Instructional support, research, public relations, administration, support services, revenue generation, financial and/or asset control, and student advisement and development. In making these judgments,consider how far-reaching is the impact and of what importance to the institution and/or the higher education systems is the work product, service or assignment. Decisions regarding the impact of actions should take into account institutional scope and size as reflected by operating budget, 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 department 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 attention and care.

This point factor consists of two parts, Impact of Actions and Nature of Actions. Grievant

**challenged the degree levels received in both parts.**

**Impact of Action**

**Grievant argued he should have received a degree level of 3.0 rather than a 1.0 in Impact of Actions. A degree level of 1.0 is defined in the Plan as:**

**Work is limited to immediate work function and short- term situations.**

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

**Work affects the operations of more than one school or division of a specialized school, branch campus, community college or baccalaureate-level institution with an operating budget of <$13M; a school or division of a graduate or baccalaureate-level institution with an operating budget of $13- 18M; several departments within a graduate or baccalaureate- level institution with an operating budget of $19-$25M; a major department within a graduate-level institution with an operating budget of more than $50M; or a major department within a doctoral-level institution with an operating budget of more than $200M.**

**Grievant argues that he should have been awarded a degree level of 3.0 because his duties affect many students and employees, and the operation of a work unit or major activities in a department. Examples given were electrical and water problems, and their impact.**

**WVU argues that 1.0 is the proper degree level because Grievant works in short- term situations which are not substantial, constant, or frequent.**

**Evaluating Grievant's own description of his work, the emergency situations he deals with are short-term, and while a considerable number of students and/or employees may be involved, it does not affect an entire work unit or several major activities within a department. The JEC's determination that 1.0 was proper was not clearly wrong.**

**Nature of Action**

**Grievant argued he should have received a degree level of 3.0 rather than a 2.0 in Nature of Actions. A degree level of 2.0 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.**

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

Work 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.

Grievant argues that because his work falls within the definition of the third degree, he should have been assigned the higher level. WVU asserts that 1.0 was correct because Grievant's work involved standard approaches to handling situations. The evidence supports a finding that Grievant's work falls squarely within the 1.0 level assigned by the JEC.

Intrasystem Contacts

This factor appraises the responsibility for working with or through other people within the SCUSWV [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. The factor considers only those contacts outside the job's immediate work area.

This point factor consists of two parts, Level of Contacts and Nature of Contacts. Grievant challenged the degree levels received in both parts.

Level

Grievant argued he should have received a degree level of 3.0 rather than a 2.0 in Level of Intrasystem Contacts. A degree level of 2.0 is defined in the Plan as:

Staff and faculty outside the immediate work unit.

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

Supervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office.

Grievant argues that his contact with building directors, deans, professors and technicians, as well as supervisors, craft and service personnel, and the Department of Public Safety. entitled him to a degree level of 3.0.

WVU asserts that Grievant's contacts with professors, deans, etc., are not regular,

recurring and essential to his position, as is required by definition. Ms. Curry testified that typically if a Dean had a problem, he would contact Grievant's supervisor or the manager, not Grievant.

Grievant does not meet the regular, recurring and essential element of this point factor to be awarded a degree level of 3.0.

Nature

Grievant argued he should have received a degree level of 2.0 rather than a 1.0 in Impact of Actions. A degree level of 1.0 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 is defined in the Plan as:

Moderate tact and cooperation required; communication is largely of a noncontroversial 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 argues that he is entitled to the higher degree level because of his contacts with building directors, deans, professors and technicians, as well as supervisors, craft andservice personnel, and the Department of Public Safety. Grievant asserts that he speaks with these individuals regarding emergency situations, and that the contact goes beyond routine information exchange since he must work with individuals in a stressful environment which requires tact and cooperation.

WVU argues that in the examples provided by Grievant he is providing routine information. As an example, Ms. Curry explained that a degree level of 2.0 would be given to financial aid counselors who must work with students and parents.

Although Grievant must be courteous in situations which faculty, students, and others are not always on their best behavior, his communications are limited to advising other to evacuate a building, for example. While not always well received, Grievant is , in fact, providing factual information, and a degree level of 1.0 was not clearly wrong.

**External Contacts**

**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 point factor also consists of two parts, Level of Actions and Nature of Actions. Grievant challenged the degree levels received in both parts.**

**Level Grievant argued he should have received a degree level of 3.0 rather than a 2.0 in Level of External Contacts. A degree level of 2.0 is defined in the Plan as:**

**General public, visitors, and/or service representatives and vendors.**

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

**Students, parents, alumni, faculty of institutions outside the systems, sales engineers, higher-level product representatives, recruiters and/or prospective students.**

**Grievant claims 2.5 would be the correct degree level because his job duties requires him to have essential and recurring contacts with outside law enforcement and the fire department, as well as students.**

**WVU argues that 2.0 was correct because students are incidental contacts, and Grievant's contacts outside the institution are extremely infrequent.**

**It is not clear from the evidence of record what amount of Grievant's time is spent engaged in external contacts with the entities cited, but it does appear to be a small percentage of his work day. Therefore, WVU's claim that it is extremely infrequent will be accepted. Grievant failed to prove that he is entitled to the higher degree level in the point factor.**

**Nature**

**Grievant argued he should have received a degree level of 2.0 rather than a 1.0 in Nature of External Contacts. A degree level of 1.0 is defined in the Plan as:**

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

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

Moderate tact and cooperation required; communication is largely of a noncontroversial 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 argues that he should be awarded the higher degree level because his contact went beyond routine information, and required coordination and cooperation largely of a noncontroversial nature handled in accordance with standard practices.

WVU asserts that 1.0 was the correct degree level because Grievant's contact with the external entities was not regular, recurring and essential. Ms. Curry testified that Grievant's contacts outside the institution are extremely infrequent.

While Grievant must contact the Morgantown fire department when required, there is little evidence that he regularly engages in external contacts. Although contacting the fire department is vitally important, the evidence does not support a finding that it is a duty which requires a significant portion of his time. Further, Grievant's contact requires that he act in a polite and courteous manner, and he is not required to exercise tact or deal with delicate situations requiring diplomacy to avoid offending an individual. The evidence does not establish that the degree level of 1.0 was clearly wrong.

C. Summary Grievant did not prove by a preponderance of the evidence that he was incorrectly evaluated on any of the challenged point factors. In addition to the point factor argument, Grievant also asserted that his PIQ was virtually identical to a co-worker who was compensated at pay grade 14. This issue cannot be addressed because there is a lack of evidence that the co-worker was properly classified. Further, it is noted that sometime prior to May 2004, the JEC added two job titles to the Plan, Trades Specialist II, pay grade 14, and the position presently held by Grievant, Trades Specialist Lead II, pay grade 15. Thus, the change in the co-worker's salary was apparently due a change in the Plan, making a comparison virtually impossible.

The following conclusions of law support the decision reached.

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 § 4.21.**

**3. The Job Evaluation Committee's interpretation and explanation of point factors will be given great weight unless clearly wrong, where the proper classification of a grievant is almost entirely a factual determination. See Tennant v. Marion Health Care Found., 194 W. Va. 97, 459 S.E.2d 374 (1995); Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94- MBOD-349 (Aug. 8, 1995). 4. The JEC's determination that Grievant's duties placed him in the classification of Certified Trades Worker, pay grade 13, is not clearly wrong.**

**Accordingly, this grievance is DENIED.**

**Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Monongalia County. Any 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.**

**DATE: JULY 19, 2005**

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**SUE KELLER**

**SENIOR ADMINISTRATIVE LAW JUDGE**

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***Footnote: 1***

***.Although not specifically requested, this would place Grievant in the job title of Trades Worker Lead.***

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***Footnote: 2***

***[2]David Sturms was a joint grievant upon appeal to level four, but settled his claim, and is therefore Ordered DISMISSED from this grievance.***

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***Footnote: 3***

***[3]To the extent that any of the degree levels requested at the level four hearing were inconsistent with those addressed by counsel in her proposed findings of fact and conclusions of law, those discussed at hearing will be considered. In any event, the outcome of the decision remains unchanged.***