TERESA BENNETT,

Grievant,

v. **DOCKET NO. 94-MBOT-719**

BOARD OF TRUSTEES/

WEST VIRGINIA SCHOOL OF OSTEOPATHIC MEDICINE,

Respondent.

DECISION

Teresa Bennett submitted a grievance challenging her classification as a Curriculum/Grade Management Coordinator in Pay Grade 15. She seeks to be placed in Pay Grade 18. Grievant was classified by the Respondent Board of Trustees ("BOT") under the Job Evaluation Plan for State College and University Systems of West Virginia. The Job Evaluation Plan was developed by the Respondent's Job Evaluation Committee ("JEC") with assistance from a private consultant, William M. Mercer, Inc. and is known as the "Mercer Plan" or "Plan." (See footnote 1) The Plan employs a "point factor methodology" which evaluates each job title by analyzing specific characteristics termed "factors" (See footnote 2) , assigning a rating or "degree level" within each factor, and applying a weighted equation to the assigned levels to arrive at a numerical total. This total then determines the job title's pay grade.

A Level IV hearing was conducted in this Board's office in Charleston, West Virginia, on October 1, 1996. This matter becamemature for decision on October 22, 1996, following the receipt of timely post-hearing submissions from the parties.

Grievant specifically challenges the degree level ratings received in several point factors used to evaluate her position and assign it a pay grade under the Mercer Plan. The point factors challenged are: Complexity and Problem Solving; Freedom of Action; Scope and Effect/Nature; Breadth of Responsibility; Intrasystems Contacts; External Contacts/Nature; and Direct Supervision Exercised.

The following Findings of Fact are properly made from the record developed at Level IV:

FINDINGS OF FACT

1 1. All classified employees were asked to complete a Position Information Questionnaire (“PIQ”) prior to the reclassification. PIQs are 17 page documents on which individual employees described the duties of their position, as well as certain minimumqualifications required to carry out their duties. PIQs are position descriptions developed to facilitate the job evaluation process. Employees were also asked to rate various aspects of their position by comparison with definitions nearly identical to those set forth in the Plan. The PIQ was reviewed, commented upon, and signed by the employee's supervisor, and the supervisor's supervisor. Grievant filled out a PIQ in 1991. She had been employed for approximately one month prior to filling out the PIQ.

2 2. Grievant is employed by West Virginia School of Osteopathic Medicine ("WVSOM") as a Curriculum/Grade Management Coordinator, and has been employed performing essentially the same duties since 1991. Grievant is the only person in this job title in the entire higher education system.

3 3. Grievant's supervisor is and was Michael Cope, Associate Dean for Preclinical Education.

4 4. Grievant's job duties are essentially the same as they were on January 1, 1994, and include general development, operation and management of WVSOM's curriculum database (50% of her time) and of WVSOM's grade management database (35% of her time). Grievant also spends up to 15% of her time assisting her supervisor on special projects, recruiting guest lecturers, composing complex correspondence, and performing other tasks as assigned.

5 5. Grievant is a part of WVSOM's Curriculum Management Committee, which oversees the curriculum and recommends changes thereto. The Committee consists of Grievant, Associate and Assistant Deans, the Director of the Office of EducationalDevelopment, other faculty, and students. Grievant reviews the existing curriculum and makes initial determinations regarding how changes recommended by the Committee can be implemented. Such changes include increasing or reducing the number of hours for given courses or disciplines; changing the order of a class, program, or lecture within the schedule; changing the physical location of a class; and phasing in major curriculum changes for entering freshmen while maintaining the prior curriculum for prior classes, thus phasing in changes over a two year period. Grievant has a computer scheduling program to assist her in her scheduling duties. Grievant's proposed curriculum schedule is then presented to the Committee for review and possible revision. Grievant also provides information, expertise and advice

to the Committee on recommended ways to revise and reorganise the curriculum, and advises the Committee when recommended changes cannot be made for some reason.

6 6. Grievant grades examination cards for freshman and sophomore students by using a "card reader." She also obtains grading sheets from faculty. Grievant verifies grades, calculates course grades by weighting grades given on specific assignments (the weights are determined according to the schedule), and verifies her results by providing the information to the instructor. The computerized grading program compiles information regarding the number of students failing the test, which questions have a 50% passing response rate, and similar information, which Grievant highlights and provides to the instructors along with thegrades. Instructors may then make corrections and/or revise the way the test should be graded, and Grievant will then recalculate grades by reprogramming the system to the new requirements. The grades are again reviewed by the instructor, and are distributed to students. When finalized, Grievant enters data regarding the grades on a spreadsheet program, verifies them, and gives the information to the Registrar's office.

7 7. Schedule disputes arise when major curriculum changes are recommended, and also when last minute or temporary changes are requested by faculty or made necessary for other reasons. Grievant resolves such disputes by discussing and coordinating changes among faculty and visiting lecturers, and by obtaining a consensus as to the best schedule to adopt. Rescheduling impacts and must take into account individual instructors' personal and professional schedules; physical locations available for use; the title and content of the class or lecture, and its logical order of presentation within the curriculum; whether a laboratory requirement is attached to the class or lecture; and similar factors. Grievant creates alternate or revised schedules and developes consensus among affected parties in order to finalize and implement the schedules. Grievant has always been able to convince the individuals involved that a particular schedule is acceptable.

8 8. When a student disputes a grade, Grievant reviews the grade information in her database, compares it to information provided by the student, and then corrects any computation or recording errorsshe may have made. If her review shows that she made no errors, she refers the student to the instructor.

9 9. Major conflicts and questions regarding policy are referred to Grievant's supervisor.

10 10. Grievant has no written rules or guidelines regarding curriculum scheduling. She does have some deadlines set by school policy, such as beginning and ending dates for classes. She uses the

methodology and procedure she has used previously in scheduling, with changes to that methodology and procedure as dictated by her experience.

11 11. Grievant is given "leads" or suggestions regarding potential visiting lecturers, which she then follows up independently. She contacts the potential lecturer, discusses the schedule and content of the lecture and the compensation, and attempts to recruit the individual as a lecturer. If she cannot contact the individual directly or leave a message for him/her, Grievant will find other ways to contact the person, such as locating alternate telephone numbers or an E-mail address. If the scheduled lecturer does not report as scheduled, Grievant must find a substitute on short notice. If she is unable to do so, the class must be informed and dismissed, and the subject matter of the lecture is either omitted from the students' education or must be inserted at another point in the curriculum.

12 12. Grievant works without close supervision. Her supervisor informed her of applicable guidelines and/or deadlines when she started work in 1991. Grievant structures her own daily and weeklytasks to accomplish the goals and objectives set by her supervisor. Grievant is often involved in setting deadlines for her own work, informing her supervisor of how long assignments are estimated to take. She does not report regularly to her supervisor. Grievant's work is reviewed when it is finished, if at all, and she does not have regular status conferences with her supervisor. She discusses her work with her supervisor approximately monthly. Grievant also involves her supervisor when potentially controversial matters arise.

13 13. Grievant has daily or weekly contact with Associate Deans, an Assistant Dean, System Chairs and Discipline Coordinators as well as faculty. Her contact with these persons involves scheduling and grades, resolving conflicts as noted above, coordinating scheduling needs, recruiting visiting lecturers, and exchanging confidential information regarding student grades.

14 14. Grievant has daily or weekly contact with visiting or potential lecturers (doctors or other professionals) and students regarding scheduling and grades.

15 15. Grievant must select and supervise two part-time student workers who each work five to ten hours per week.

DISCUSSION

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that he or she is not properly classified. 156 C.S.R. 1 §4.19; W. Va. Code § 18- 29-6.

Burke, v. Bd. of Directors, Fairmont State College, DocketNo. 94-MBOD-349 (Aug. 8, 1995). The grievant must identify the job he or she feels is being done. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991). The grievant must also identify which point factor degree levels are challenged. This is because the Mercer reclassification system is not based upon "whole job comparisons." Rather, the Mercer system is largely a "quantitative" system in which the components of each job are analyzed separately. The components are then evaluated using the point factor methodology contained in the Plan. Burke, supra. A grievant may challenge any combination of point factor degree levels, so long as he or she clearly identifies the ones being challenged, and this challenge is consistent with the relief sought. See Zara v. Bd. Of Trustees, Docket No. 94-MBOT-817 (Dec. 12, 1995); and Jessen v. Bd. Of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995).

Some "best fit" analysis is involved in determining which degree level of a point factor should be assigned. However, this system must by statute be uniform across all higher education institutions. Therefore, the point factors are not assigned to the individual, but to the job. Burke, supra. In order to maintain the integrity of the overall classification scheme, the "best fit" must be determined in relation to other similar positions. The individual grievant's case must be analyzed with reference to where the position fits in the higher education classified employee hierarchy. In this case, whether Grievant is properly classified is almost entirely a factual determination. As such, the JEC's interpretation and explanation of the point factors at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W. Va. 1995); Burke, supra. Of course, no interpretation or construction of a term is necessary where the language is clear and unambiguous. See Watts v. Dept. Of Health & Human Resources, 465 S.E.2d 887 (W. Va. 1995). A Mercer grievant may prevail by demonstrating his or her reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehab., Docket No. VR-88-006 (Mar. 28, 1989). However, the grievant will have to overcome a substantial obstacle in attempting to establish that he or she is misclassified.

Grievant challenged her ratings in several of the factors analyzed in assigning her title and pay grade. Each point factor which is subject to dispute in this grievance will be addressed separately.

A. COMPLEXITY AND PROBLEM SOLVING:

The Plan defines Complexity and Problem Solving as:

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

(All definitions herein are taken from the Plan, Jt. Exh. D, unless otherwise noted.) Grievant was assigned level 3.5 in this factor, which is between the defined levels of 3 and 4. Level 3 is defined as:

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

Level 4 is defined as:

> Problems encountered are complex and varied due to incomplete and/or conflicting data. General policies, procedures, principles, and theories of specific professional disciplines are available as guidelines; however, these guides may have gaps in specificity or lack complete applicability to work assignments. Employee must utilize analytical skills in order to interpret policies and procedures, research relevant information, and compare alternative solutions.

Grievant seeks assignment of level 5, which is defined as:

> Problems encountered involve unusual circumstances, variations in approach, and incomplete or conflicting data. Employees exercise considerable analytical, valuative and reasoning skill in researching information and developing new methods to perform work assignments or optimum solutions to problems. The development of new programs, procedures or methods are typical end results of the problem-solving process. Determination of the effectiveness of a policy or practice may be involved at this level.

Grievant gave examples of typical problems: last minute changes to the schedule which create conflicts in the schedule or for instructors which she must then resolve; program malfunctions; the major reorganization of the curriculum required when the Family Medicine program was added; and locating/contacting lecturers. Her supervisor, Mr. Cope, testified that Grievant negotiates and coordinates schedules in order to resolve scheduling conflictsthrough consensus. Grievant uses the methodology and procedure she has used and modified since she took her job in accomplishing her task. She has no written rules or guidelines. She uses common sense in finding alternative ways to contact lecturers.

Respondent's witness, Brenda Nutter, testified that considerable analytical skills were not needed in Grievant's position. She gets directives from the Curriculum Committee, and problems are resolved ultimately by that body. Grievant's supervisor is also available to assist, she stated. She also

explained that this factor considers common and recurring problems, not the single most difficult task confronting the position.

The types of problems encountered by Grievant fall into several categories: revising the curriculum, resolving scheduling conflicts, addressing grade disputes, and doing less complex tasks such as contacting individuals who are difficult to locate. It appears that there is little difficulty involved in identifying problems. However, determining an appropriate course of action may be more difficult. While specific written guidelines and procedures are generally not available, Grievant does have precedents, general policy and deadlines. It is clear that some problems encountered are complex, that some are due to conflicting data, and that resourcefulness and originality are required to resolve some of them.

Grievant must sometimes adapt prior methods to address current problems, although some problems have limited options for resolution. Grievant must compare alternative solutions whenresolving schedule conflicts or making major curriculum changes, and perhaps in addressing the absence of an instructor. However, the evidence does not indicate that new programs, procedures or methods are typical end results of Grievant's problem-solving, nor that determinations of the effectiveness of a policy or practice are involved.

While Grievant may vary her approach in dealing with affected individuals, achieving a consensus, and resolving schedule conflicts, such variations are in the nature of fine-tuning existing methods and policies. Such fine-tuning does not constitute using variations in approach as stated in the level 5 definition. Rather, the definition suggests that problems encountered at level 5 are of many markedly different types, which call for markedly different problem solving methods. These methods employ analytical, valuative, and reasoning skills. New methods and solutions are researched and developed during the problem- solving process at this level.

Grievant's common and recurring problems fall into several definite categories, and only a few approaches to resolve them are possible. Resolving scheduling conflicts may involve many variables, but there are limited times and spaces available from which to choose. As Grievant stated that consensus is always reached, it appears that one optimal solution is always available and is perhaps often clear. Grievant's role regarding grading conflict is of a routine informational nature, in that information is retrieved, compared and verified. If a clear mistake has beenmade, it is corrected. Grievant does not solve the problem, but refers it to an instructor for resolution.

On this evidence, and considering more than Grievant's single most difficult problem of making major curriculum changes, it cannot be said that assignment of level 3.5 by the JEC was clearly wrong or arbitrary.

B. 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 was assigned level 3.5, which is between the defined levels of 3 and 4. The definitions show that at level 3:

> 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.

At level 4:

> 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 todetermine feasibility, compatibility with other work, or effectiveness in meeting the objectives of the unit.

Grievant seeks assignment of level 4. She notes that her responsibilities were explained when she took her job, and that since then she has planned and carried out each assignment independently. Her supervisor confirmed this, stating that he had told Grievant what her responsibilities were when she took the job. He stated that Grievant structures her own work. He does no review until Grievant's work is finished, unless Grievant brings a potentially controversial development to his attention. Mr. Cope confirmed that Grievant resolves scheduling conflicts among faculty independently.

Ms. Nutter stated that this factor does not take into consideration the quantity or quality of work performed by an incumbent. She stated that certain deadlines apply to Grievant's work, and that having a certain number of curriculum hours to fit into a certain time frame provides more than

minimal structure for her curriculum work.

While the descriptions of Grievant's curriculum scheduling work seem to meet the definition of level 4, her other work does not. Her grading work is more routine, and is governed by specific instructions on formulas to apply and procedures to follow before grades are finalized. Similarly, structure is provided to Grievant's recruitment and scheduling of visiting lecturers simply through the limited options available. If a visiting lecturer cannot accommodate WVSOM's requirements on scheduling, Grievant testified that she would simply find another lecturer. If ascheduled lecturer does not arrive, Grievant has only a few options from which to choose in addressing the problem. Thus, it appears that at least half of Grievant's work qualifies for level 3 assignment, if not a lower level, while the rest qualifies for level 4 assignment. Consequently, the JEC's assignment of level 3.5 is neither clearly wrong nor arbitrary and capricious.

C. SCOPE AND EFFECT/NATURE:

The factor 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, 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.

The factor is analyzed in two parts. Grievant challenged only the assignment of level 4 under the Nature of Action ("Nature") part of the factor. Level 4 is defined as:

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

Level 5 is defined as:

> Work involves planning, developing, and operating a major program or service having a broad impact within the institution by solving critical operational problems or developing and/or implementing new procedures and concepts. Work also involves extensive and consequential support, development, or recommendation of major objectives, policies, programs or practices. Errors could easily result in major costs, problems and disruptions within the affected area.

Grievant opines that she independently plans, develops and operates a major service: scheduling the WVSOM curriculum. That work clearly affects the entire staff and student population, and directly impacts the central educational function of the institution. Grievant states that her grading work would result in major problems and disruptions if errors occurred. Her supervisor agreed that, although costs may be moderate, errors in Grievant's curriculum and grading work would result in major disruption of services and major inconvenience.

Respondent's witnesses noted that level 5 is the highest level available under this part of the factor, and would be assigned to higher level administrators such as the Assistant Vice President of Student Affairs at Fairmont State College. Ms. Nutter stated that Grievant does not actually develop new policies, procedures or concepts. Her supervisor ultimately is responsible and makes decisions, or her work is approved by the Curriculum Committee. Further, Ms. Nutter stated that grading and scheduling do notconstitute major services (such as Counselling) or major programs (such as the Upward Bound and Trio programs). Rather, grading and scheduling are "tasks" and "duties."

Ms. Nutter's testimony that scheduling the curriculum does not constitute a major service is neither clear nor persuasive. It is hard to accept the assertion that setting the institution's entire curriculum schedule cannot be characterized as a major service. However, that is only a small part of the definition involved with level 5. It seems clear that Grievant does not plan or develop the curriculum changes on her own initiative. Rather, curriculum changes are identified and recommended by the Committee, and Grievant then independently attempts to implement the recommendations only in regard to scheduling. Even then, her revision of the curriculum schedule must be reviewed and approved by either her supervisor or the Committee. Her work is more appropriately characterized as supporting or contributing to the effectiveness of the educational operations or services of WVSOM. Clearly, she deals with complex and important matters in her curriculum work, and does so exercising a great deal of discretion and judgment. However, her work does not unequivocally reach the highest level in all respects. Her non-curriculum work is obviously

on a level lower than level 5. On this record, the value judgment inherent in choosing to assign level 4 rather than level 5 is not so implausible that it cannot be ascribed to a difference of view between reasonable minds. Such does not meet the burden of proof imposed upon a grievant in these cases.

D. BREADTH OF RESPONSIBILITY:

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

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

Grievant was assigned level 1, which is defined as "[a]ccountable for only immediate work assignments but not for a functional area." Level 2 is defined as "[i]n-depth knowledge of and accountability for one functional area as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations." Grievant seeks assignment of level 3, which is defined as "[i]n-depth knowledge of and accountability for two functional areas as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations."

Grievant states that the two functional areas are curriculum scheduling and student grading. Respondent states that most titles received a level 1 assignment under this factor, and that a functional area generally has an assigned budget for which the person has formal budgetary responsibility.

The definition clearly requires formal accountability, rather than just responsibility. While the examples given in thedefinition and in Ms. Nutter's testimony do not clarify whether or not curriculum and grading might constitute "functional areas," a determination on this issue may be made without addressing that term of art. Grievant presented no evidence that she was in any sense formally accountable for either activity. Thus, her duties must necessarily fall within a degree level of 1. See, Jordan v. Bd. of Trustees, Docket No. 94-MBOT-983 (Nov. 25, 1996) and decisions cited therein.

E. INTRASYSTEMS CONTACTS:

Intrasystems Contacts is defined 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.

(Emphasis in original.) This factor is analyzed in two parts, Nature of Contact ("Nature") and Level of Regular, Recurring and Essential Contact ("Level"). Grievant challenged her rating in both parts.

1. NATURE:

Grievant was assigned level 2 in Nature, which is defined as:

> Moderate tact and cooperation required; communication is largely of a non-controversial nature and handled in accordance with standard practices and procedures (e.g., explaining simple policies and procedures, coordinating/scheduling complex meeting or conference arrangements.)

Grievant seeks assignment of level 3, which is defined as:

> Substantial sensitivity and cooperation required; discussions are frequently controversial and require some delicacy (e.g., project interactions, interpretation of complex policies, resolution of somewhat difficult problems.)

Grievant notes her daily communications regarding scheduling and grading. She must juggle competing needs and desires of many individuals in making schedule adjustments, and must make all parties feel that they have been treated fairly. Otherwise, consensus could not be reached. Grading issues involve the sensitive matter of student scores and grades, which is also confidential information. She notes that she coordinates among more than one group in her curriculum scheduling work.

Ms. Nutter correctly stated that dealing with persons who may have difficult personalities or who want to be flattered does not necessarily require "substantial sensitivity." She stated that Grievant must be tactful, but no more. She noted that Counsellor IIs who deal with suicidal students were assigned level 3, and that Associate Deans of Student Services were assigned level 2. She also stated that Grievant's contacts were primarily routine information exchange.

Grievant herself is not charged with resolving scheduling problems at a philosophical or theoretical level. Rather, she is to find the best logistical implementation of the Curriculum Committee's recommendations. Indeed, testimony indicated that a memorandum is sent from the Committee or a high level administrator informing the appropriate administrator of changes which must be made in the curriculum. That administrator then determines how toimplement the changes in terms of course content, presentation and order, and/or efficiency of instruction. Grievant is not

involved in this decision-making, nor can she modify the Committee's decree. Grievant assimilates the information provided through the Committee, and revises her curriculum program schedule to accomodate the changes. Her activity is clearly covered under the level 2 definition, which specifically identifies coordinating/scheduling complex meeting or conference arrangements as an example activity. The JEC's determination to rate Grievant at this level cannot be said to be clearly wrong.

2. LEVEL:

Grievant was assigned level 3 in Level, which is defined as:

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

Grievant seeks level 4, which is defined as:

> Deans or Directors in an institution or Assistant Directors in the Systems' Central Office.

Grievant has regular, recurring and essential contacts with Associate Deans, doctors, System Chairs and Discipline Coordinators. She stated that she discusses controversial topics with Deans about twice per year. Ms. Nutter stated that contact twice per year is not considered regular, recurring, and essential contact.

Grievant's twice yearly contacts with Deans must be discounted. However, contacts with Assistant and Associate Deans are regular, recurring and essential. There is no specific mentionin the definitions of Associate Deans. However, it is reasonable to take a broad meaning of the term "Dean" as including Deans of all descriptions. Thus, Grievant has shown it more likely than not that her regular, recurring and essential contacts meet the level 4 definition, and Respondent has failed to rebut her evidence.

F. EXTERNAL CONTACTS:

External Contacts is defined in the Plan as:

> This factor appraises the responsibility for working with or through other people <u>outside</u> the SCUSWV to get results. Consider the purpose and level of contact encountered on a <u>regular</u>, <u>recurring</u> and <u>essential</u> basis during operations. Consider whether the contacts involve furnishing or obtaining information, influencing others or negotiation.

Like Intrasystems Contacts, this factor is analyzed in two parts, Nature of Contact ("Nature") and

Level of Regular, Recurring and Essential Contact. Grievant challenged her rating in Nature.

Grievant was assigned level 2 in Nature, which is defined 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 seeks assignment of level 3, which is defined as:

> Substantial sensitivity and cooperation required; discussions are frequently controversial and require some delicacy (e.g., project interactions, interpretation of policies, resolution of problems.)

Grievant notes her daily communication with visiting lecturers regarding scheduling and WVSOM policy and procedure. She and her supervisor stated that, as these persons cannot make as much moneylecturing as they do in their private practices, and as they have competing demands on their time, Grievant must conduct negotiations with them to obtain commitments to lecture. Grievant also noted her daily contact with students about grades as involving confidential information.

Ms. Nutter again stated that dealing with difficult personalities does not necessarily require one to use substantial sensitivity in one's contacts. She again stated that Grievant's communications were primarily routine information exchanges.

Both Grievant and her supervisor stated unequivocally that Grievant was responsible not simply for scheduling guest lectures, but for recruiting the lecturers. This constitutes more than simple information exchange. While some degree of persuasion is employed, these contacts do not involve frequent discussions of a controversial nature. At any rate, recruiting lecturers is a small part of Grievant's job duties. Therefore, even if her recruiting activities were assumed to involve level 3 contacts, the larger part of her duties and contacts do not. Consequently, the JEC's rating at level 2 of External Contacts/Nature is not clearly wrong.

G. DIRECT SUPERVISION EXERCISED:

> This factor measures the job's degree of <u>direct</u> 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 <u>essential</u> to the daily operation of the unit. The number of subordinates should bereported in full-time equivalency (FTE) and not head count.

(Emphasis in original.) This factor is analyzed in two parts, Number of Direct Subordinates ("Number") and Level of Supervision ("Level"). Grievant challenged her rating in both parts.

1. NUMBER:

Grievant was assigned level 1 in Number, which is defined as "[n]one." She seeks assignment of level 2, which is defined as "[o]ne."

Grievant states that she selects, trains and supervises two part-time student workers. These students work five to ten hours per week each. Ms. Nutter testified that twelve months of service at 37.5 hours per week equals one full time equivalent employee. Jt. Ex. C. She also testified that there is "no rounding up for this point factor." Id. Consequently, two students working at even ten hours per week each cannot equal one full time equivalent employee. Grievant cannot prevail, from a purely mathematical application of the terms of the Plan.

As Grievant cannot meet the level 2 definition in Number, there is no reason to analyze whether or not the student workers are essential, in order to reach the question of Level. Under this factor, if one meets the level 1 definition in Number, one cannot receive any higher rating than level 1 under Level.

SUMMARY

Grievant has shown that the JEC was clearly wrong, or arbitrary and capricious, in its rating of the factor IntrasystemsContacts/Level. The JEC's ratings in other factors were not clearly wrong, arbitrary or capricious.

By assigning Grievant the appropriate number of points under this factor, she is entitled to an increase of 18 points, for a total of 2128 points for the job title. This falls within the scale of Pay Grade 16.

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 classifi cations 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 § 4.19.

3. Determinations of the Job Evaluation Committee("JEC") regarding application of the Mercer Plan's point factor methodology are essentially questions of fact. In that regard, the JEC's interpretation and explanation of the point factors 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). See generally, Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W. Va. 1995).

4. Subjective determinations of the JEC regarding application of the Mercer Plan's point factor methodology to an employee or group of employees are entitled to deference when being reviewed by this Grievance Board. Such determinations may nonetheless be foundto be arbitrary and capricious if not supported by a rational basis, or to be clearly wrong if there is no substantial evidence in the record supporting the finding or if review of the evidence makes it clear that a mistake has been made. Burke, supra. See Frymier-Halloran v. Paige, 458 S.E.2d 780, 788 (W. Va. 1995); Bd. of Educ. v. Wirt, 192 W. Va. 568, 453 S.E.2d 402 (1994); Kyle v. W. Va. State Bd. of Rehab., Docket No. VR-88-006 (Mar. 28, 1989).

5. The JEC's assignment of degree levels to the point factors Complexity and Problem Solving, Freedom of Action, Scope and Effect/Nature, Breadth of Responsibility, Intrasystems Contacts/Nature, External Contacts/Nature, and Direct Supervision Exercised for Grievant's position is neither clearly wrong nor arbitrary and capricious.

6. The JEC was clearly wrong, arbitrary or capricious in assigning Grievant's rating under the factor Intrasystems Contacts/Level. Assigning the correct number of points under this factor results in an increase of 18 points, or a total of 2128 points for this job title, which equates to Pay Grade 16.

Accordingly, this Grievance is **GRANTED.** The Respondent Board of Trustees is hereby **ORDERED** to change the data line for Grievant's job title, as she is the only Curriculum/Grade Management Coordinator, and to allocate Grievant to Pay Grade 16, retroactive to January 1, 1994, and to pay her the difference, if any, between the salary she would have received had she beenproperly allocated to Pay Grade 16 and the salary which she received while she was improperly allocated to Pay Grade 15.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Greenbrier County. 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.

JENNIFER J. MEEKS **Administrative Law Judge**

Dated: December 5, 1996

Footnote: 1

The reader is referred to Burke v. Bd. Of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995) for a discussion of the background of the Mercer Plan mass reclassification project, the procedural history of the grievances arising from the reclassification, and the definitions of some terms of art specific to the Mercer Plan reclassification.

Footnote: 2

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