VICKIE NAVY and LINDA SHAVER

v. Docket No. 94-MBOT-840

BOARD OF TRUSTEES

DECISION

Grievants, Linda Shaver and Vickie Navy allege they were improperly assigned as Administrative Secretaries at pay grade 10, under the “Mercer reclassification”. Ms. Shaver seeks classification as Administrative Associate, pay grade 14, while Ms. Navy requests classification as Program Assistant II, pay grade 13. Both request that the relief, with backpay and benefits, be made effective January 1, 1994, the date the classification system was implemented. (See footnote 1) Level four hearings were conducted on August 2 and 14, 1996, and the matter became mature for decision on October 31, 1996, the due date for submission of proposed fact/law proposals.

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

Findings of Fact

1. At all times relevant to this matter Grievants have been employed by the Board ofTrustees (Respondent) in the Cardiology Section of the Department of Medicine at West Virginia University (Ms. Shaver), and the Computer Center at Marshall University (Ms. Navy).

2. In 1991, all higher education classified employees, including Grievants, were asked to complete a Position Information Questionnaire (PIQ) prior to the reclassification. Employees were 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.

3. As a result of the Mercer reclassification, Grievants were placed in the classification of Administrative Secretary, pay grade 10, effective January 1, 1994. (See footnote 2)

4. Respondent's job description for Administrative Secretary states the general function of this employee is to perform “a variety of secretarial duties following established departmental policies, procedures, and methods in support of an administrative unit(s) or academic department(s).”

5. Ms. Shaver's primary job duties prior to January 1, 1994, consisted of processing prescriptions

for patients, including obtaining information with the Medical Records Chart for verification prior to phoning in prescriptions, working with the Physician Coordinator to assist with patient transfers from outside institutions, scheduling all meetings for Cardiology, including candidate interviews, making travel, vehicle, and lodging arrangements, setting itineraries for the physicians, arranging appreciation luncheons and dinners for the Heart Disease Research Fund, supervising the work generated by the physicians, including transcriptions, insurance forms, gathering materials and equipment necessary for lectures, training and performance review of the typing clerk and administrative secretary, maintaining confidential files on faculty and staff, preparemonthly reports on finances, census and evaluations of Fellows, attend and take minutes of patient care discussion at the monthly Quality Assurance Meeting, maintain schedules for physicians at seven satellite clinics, coordinate all CME functions, and maintain the accounting system for the Section's $400,000.00, plus, annual budget.

6. Ms. Navy's primary job duties prior to January 1, 1994, consisted of preparing, tracking and monitoring purchase orders for the department, processing travel arrangements for the department, preparing invoices and managing accounts payable for the department, attending the monthly User's Group BANNER (student information system) meetings with subsequent preparation of the minutes of that meeting, supervising the work of five work study students and student assistants, processing leave records and reports for the department, engaging in inventory management of office supplies and other materials for the department, preparing correspondence after investigating matters related to purchasing, inventories, travel, and accounts payable, managing all personnel records for the department, gathering date pertaining to computer use, prices, on hard/software and vendor information, maintaining the financial records, including analyzing the expenditures by type and fund on a periodic basis, handling logistical arrangements for candidate interviews, campus and state wide training, and special programs sponsored by the Computer Center, serving as liaison for the department on orders for certain types of services provided by the Computer Center, such as software site licenses, network connection orders, etc.

7. The point range for Pay Grade 10 is from 1475 points to 1560 points.

8. The Administrative Secretary job title received 1549 total points from the followingdegree levels in each of the thirteen point factors (See footnote 3): 4.0 in Knowledge; 3.0 in Experience; 2.0 in Complexity and Problem Solving; 2.0 in Freedom of Action; 1.0 in Scope and Effect, Impact of

Actions; 2.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 1.0 in Intrasystems Contacts, Nature of Contact; 2.0 in Intrasystems Contacts, Level; 1.0 in External Contacts, Nature of Contact; 3.0 in External Contacts, Level; 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; 3.0 in Physical Coordination; 2.0 in Working Conditions; and 1.0 in Physical Demands.

9. The point range for Administrative Associate, at pay grade 14, is from 1655 points to 1755 points.

10. Program Assistant, pay grade 13, has a point range from 1866 points to 1984 points.

Discussion

A. Burden of Proof

The burden of proof in misclassification grievances 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; 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 grievants asserting misclassification must identify the job they feel they are 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).

Grievants are not likely to meet their burden of proof in a Mercer grievance merely byshowing that their job duties better fit one job description than another, without also identifying which point factors they are challenging, and the degree level they believe they should have received. (See footnote 4) While some “best fit” analysis of the definitions of the degree levels is involved in determining which degree level of a point factor should be assigned, where the position fits in the higher education classified employee hierarchy must also be evaluated. In addition, this system must by statute be uniform across all higher education institutions; therefore, the point factor degree level 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., 194 W.Va. 97, 459 S.E.2d 374 (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, 195 W.Va. 430, 465 S.E.2d 887 (1995). The higher education employee challenging his classification thus will have to overcomea substantial obstacle to establish that he is misclassified. (See footnote 5)

Grievants offer varying proposals in support of their requests for relief. To properly determine whether they are correctly classified and/or compensated requires a review of the degree levels assigned to the positions in the challenged point factors.

B. Application of the Point Factor Methodology

Grievants challenged the degree levels received in the point factors Knowledge, Experience, Complexity and Problem Solving, Freedom of Action, Scope and Effect/Impact, Intrasystems Contacts/Nature and Level, External Contacts/Nature, Direct Supervision Exercised/Number and Level. (See footnote 6)

Knowledge

The Job Evaluation Plan ("the Plan") defines Knowledge as: "the minimum level of education equivalency and/or training typically required for an incumbent to reach acceptable occupational competence on the job. The factor considers the technical, theoretical, and/or mechanical skills required, and the complexity and diversity of the required skills."

The JEC assigned Administrative Secretary a degree level of 4.0, defined in the Plan as "[j]ob requires basic knowledge in the specific area typically obtained through a business, technical or vocational school as might normally be acquired through up to 18 months of education or trainingbeyond high school." Grievants assert that their duties warrant a degree level of 5.0, defined in the Plan 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 as associate's degree of over 18 months and up to 3 years beyond high school."

Ms. Navy testified that the higher degree level is warranted because many of her activities, such as processing software renewal licenses, occur on an annual basis and therefore a lengthier training

period is required. Ms. Shaver asserts that her duties and responsibilities are comparable to those of Administrative Associate, and requires that she possess corresponding knowledge, skills, and abilities, entitling her to the same degree level of 5.0.

Margaret Robinson Buttrick, Chair of the JEC, testified on Respondent's behalf during that portion of the level four hearing in which Ms. Navy's claim was addressed. Ms. Buttrick stated that Grievant Navy provides basic information and routine clerical support, making the 4.0 the appropriate degree level. She also noted that a degree level of 5.0 requires an Associate level degree which Ms. Navy is not required to possess.

LuAnn Moore, Senior Compensation Analyst at West Virginia University, testified on Respondent's behalf regarding Ms. Shaver's claim. Ms. Moore also concluded at a degree level of 4.0 was accurate for Ms. Shaver because no consideration was given to her patient contact since it had not been included on her PIQ, that monitoring budget balances was within the job description of Administrative Secretary, and because other employees, including the Department Manager, University Health Associate administrators, and accountants, shared the same job responsibilities.

Although it may generally be accepted that possession of more extensive education would enhance an individual's ability to master the duties of his position, this factor is intended to measureonly the minimum requirements for an entry level employee to perform the job at an acceptable level, keeping in mind that a training period would be necessary for all employees. Perkins v. Board of Trustees/WVU-Parkersburg. Docket No. 94-MBOT-733 (Oct. 31, 1996). As in virtually all cases, an employee with a higher degree of education might perform the duties with a shorter training period and offer the employer other benefits of additional knowledge.

Comparison with other classification titles is not productive in that it is each employee's PIQ that is the measure and description of that individual's job duties. While Ms. Shaver asserts that the knowledge required of her position is comparable to that of another title, such an evaluation is less quantitative and less objective than the point factor methodology of the Mercer plan. Payne v. Bd. of Directors, 94-MBOD-372 (Jan. 8, 1997). Such evidence is not relevant or probative in these cases. Perkins v. Bd. of Trustees/W.Va. Univ., Docket No. 94-MBOT-474 (March 12, 1997). In any event, the evidence of record in this matter does not establish that the duties performed by Grievants would require more than 18 months of education or training beyond high school. While they performs a great variety of functions, many are controlled by university policies and procedures. Given the

learning period necessary for all new employees, the record contains no evidence to support a finding that more than 18 months of post-secondary education would be required to fulfill the duties of this position.

Experience

The Plan defines experience as "the amount of prior directly related experience required before entering the job. Previous experience or training should not be credited under this factor if credited under Knowledge." See Jones, et al. v. Bd. of Trustees/W.Va. University, Docket No. 94- MBOT-978 (Feb. 29, 1996). The JEC awarded the position of Administrative Secretary 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 Shaver requests a degree level of 5.0, defined by the Plan as "[o]ver three years and up to four years of experience." Ms. Shaver testified that her job requires that she be familiar with medical terminology and medical- legal matters, deal with patients, and balance the demands of the office with people relying on the support staff. She must complete her responsibilities while dealing with significant interruptions and frustrations, determine priorities and procedures, and deal with a heavy work load. Of particular interest, Ms. Shaver stated that the advanced level of experience was necessary to respond to patient calls wherein they advise her of their symptoms and she directs them on a course of action. Depending on their description, she may advise them to simply keep their next appointment, to take certain medication, or report immediately to the emergency room. Ms. Shaver stated that she regularly performs this function without consulting a physician. (See footnote 7)

Ms. Moore testified that when considered with the related point factor "Knowledge", 1-2 years of experience was sufficient to prepare an entry level employee in this position and noted the Ms. Shaver's work in patient care was not included on her PIQ. (See footnote 8)

One to two years experience is not sufficient to prepare an employee to manage the patient files of multiple physicians, coordinate services to several satellite offices, manage an office staff, and engage in patient care to the level in which Ms. Shaver is involved. Over three years experience is not excessive given the broad range of responsibilities assigned to the employee. Grievant hasproven that the JEC erred in assigning this position a degree level of 3.0, and that 5.0 is correct.

Complexity and Problem Solving

The Plan defines Complexity and Problem Solving as "the degree of problem-solving required, types of problems encountered, the difficulty involved in identifying problems and determining an

appropriate course of action. Also considered is the extent to which guidelines, standards and precedents assist or limit the position's ability to solve problems."

The JEC awarded the position of Administrative Secretary a degree level of 2.0 in this point factor. A degree level of 2.0 is defined in the Plan as "[p]roblems encountered require the employee to make 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 judgement required to interpret instructions or perform basic computation work such as in the comparison of numbers of facts."

Grievant Navy requests a degree level of 3.0, defined 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 judgement to locate and select the most appropriate guidelines, references, and procedures for application, and adapt standard methods to fit variations in existing conditions.

Ms. Navy states that the Director and Associate Director are frequently absent form the office so that she must open the mail and take appropriate action. She also arranges facilities for meetings, makes calls, and hosts meetings. Other efforts which she performs independently include tracking purchase orders, supervising work-study students, making travel arrangements for approximatelytwenty employees, maintaining leave records for the department, and keeping inventory up to date. Ms. Navy asserts that these duties frequently entail a myriad of problems which require that she use initiative and resourcefulness to resolve.

Ms. Shaver requests a degree level of 4.0 defined in the Plan as:
[p]roblems 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.

Ms. Shaver states that as one of three office support staff serving fourteen physicians and five to six fellows, she must prioritize, delegate, and supervise all of the work done by the remaining staff, as

well as impose discipline and complete evaluations. She schedules satellite clinics and caters to the demands of physicians' individual preferences regarding patient treatment. She also works with patients and their families, processing pre-certification, etc. She must often work with incomplete or conflicting data. While she is provided guides from University Health Associates, WVU Hospital, the Department of Medicine and the Cardiology Section, the most common source of conflicts which she must resolve arise from procedural conflicts between the Department and Section guides.

Ms. Buttrick and Ms. Moore both testified that Administrative Secretaries were assigned a degree level of 2.0 because they deal with routine matters, such as leave, purchasing, and travel, for which Respondent has well-defined procedures for making basic decisions. Ms. Buttrick conceded that perhaps some independent judgement might be exercised, but not to such a degree as to warrant a 3.0. Ms. Moore noted that Grievant Shaver's supervisor is present to make recommendations andapprove her work.

The evidence establishes that Grievants perform myriad duties; however, their actions are generally determined by guidelines, regulations, or procedures. Ms. Navy frequently responds to calls and mail inquiries in the absence of the Director or Assistant Director; however, there is no evidence that she makes independent decisions regarding these matters. Making travel arrangements, maintaining leave reports and records and dealing with purchase order problems are routine and guided by policy. Therefore, it cannot be determined that the JEC erred in assigning Ms. Navy a degree level of 2.0 in this point factor.

While Ms. Shaver manages many areas, and has developed instructional manuals for the office staff, it would appear that much of her work is completed with the assistance of guidelines. A significant exception involves those determinations which she makes regarding patient care, i.e., what action should be taken in the situation at hand. In these matters Grievant does in fact exercise independent judgement based upon information contained in the patient file and that provided over the telephone. Using this as a basis, her response is the result of training and information which she has gained over the years. Although the JEC was not provided this information for its consideration, clearly it should have been included. Grievant has proven that these decisions are not basic and that her work falls within the 4.0 degree level.

Freedom of Action

The Plan defines Freedom of Action as:

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

Administrative Secretary was accorded a degree level of 2.0, defined by the Plan as: “[t]asks are structured to the extent that standard operating procedures serve as a gauge to guide the employee's work. The employee can occasionally function autonomously with the immediate supervisor available to answer questions. Questionable items are referred to the immediate supervisor.”

Grievant Navy requests a degree level of 3.0, defined by the Plan as:
[t]asks are moderately structured with incumbent working from objectives set by the supervisor. At this level, the employee organizes and carries out most of the work assignments in accordance with standard practices, policies, instructions or previous training. The employee deals with some unusual situations independently.

Ms. Navy asserts that she is required to make responsible decisions exercising broad knowledge without any written manual, guidelines, or policies.

Grievant Shaver requests a degree level of 4.0, defined 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.

Ms. Shaver cites her work scheduling clinics, and physician and patient demands as the basis for this point factor. Her supervisor is two floors away and she deals with most situations without assistance. Additionally, she deals with medical emergencies and office administrative matters. Sheresolves conflicts, prepares meeting agenda, drafts correspondence for the physicians and

generally oversees the daily functioning of the office.

Ms. Buttrick testified that Grievant Navy was properly placed at the 2.0 degree level because her duties are very structured and routine. While Grievant must keep up to date on changes, the policies and procedures which she uses have been in place for some time. Ms. Moore testified that 2.0 was proper for Ms. Shaver because her work is structured and standardized.

It is clear from the evidence the Grievants deal with a variety of situations and that they resolve many, if not most, without assistance. However, it appears that their duties are generally repetitive in nature and controlled to a great extent by policies and procedures. Further, lack of an on-site supervisor is not evidence that the employee exercises a great deal of freedom of action. In fact, usually the converse is true. Titus, et al. v. Bd. of Trustees/Bd. of Directors, Docket No. 94- MBOT-659 (Dec. 31, 1996). In consideration of the foregoing, it cannot be determined that Grievants were incorrectly ranked 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 tot he 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: administration, support services, revenue generation, financial and/or asset control, and student advisement and development. In making these judgements, 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 judgement, and that errors are not due to sabotage, mischief or lack of reasonable attention and care.

Scope and Effect is divided into two subdivisions, Impact of Actions and Nature of Action. Administrative Secretary was accorded a degree level of 1.0 in Impact of Actions, defined in the Plan

as “work is limited to immediate work function and short-term situations.”

Both Grievants request a degree level of 2.0, defined by the Plan as “[w]ork affects either an entire work unit or several major activities within a department.” Ms. Navy explains that she resolves problems for the medical school, faculty and staff, and works with vendors, students, and the BANNER system. She is responsible for purchase orders of many thousand dollars and maintains the filing system. Grievant Shaver argues that her work affects the entire work unit, i.e., the Cardiology Section.

Ms. Buttrick stated that the ultimate authority for Ms. Navy's work lies elsewhere and that her duties are limited to the actual functional area of the computer center. Because this point factor measures the employee's impact, not the impact of the work area, Ms. Buttrick concluded that 1.0 was correct for Ms. Navy. Ms. Moore noted that Ms. Shaver's supervisor had been credited for responsibility in this area.

The examples provided by Grievants are of serious nature and concern to individual employees; however, this factor is to be considered as to the effect errors would have on an institution as a whole. In this case, errors or accidents by Grievants are of considerable magnitude in that they might disable the computer system campus wide for a period of time, or result in thedeath of an individual if misdirected. However, even the most serious errors committed by Grievants would have minimal to no effect on the overall mission of to institution and the higher education systems. Based upon the evidence it cannot be determined that the degree levels assigned by the JEC to Grievants in this point factor were clearly wrong.

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 Administrative Secretary a degree level of 1.0 in Nature of Contact, defined in the Plan as “[r]outine information exchange and/or simple service activity;

requires common courtesy (e.g., furnishing or obtaining factual information, ordering supplies, describing simple procedures)."

Grievant Navy requests a degree level of 2.0 in Nature, defined in the Plan as "[m]oderate tact and cooperation required; communication is largely of a non-controversial nature and handled in accordance with standard practices and procedures (e.g., explaining simple policies and procedures, coordinating/scheduling complex meeting or conference arrangements.)" Ms. Navy states that she communicates approximately once a day with departmental staff, chairs, and secretaries relating to their computer connection. She also must work with vendors during the processing of purchase orders. In both instances, Grievant claims that she must use a soothing toneand tactful manner if the individuals are anxious or upset.

Grievant Shaver requests a degree of 3.0, defined as "[s]ubstantial sensitivity and cooperation required; discussions are frequently controversial and require some delicacy (e.g., project interactions, interpretations of complex policies, resolution of somewhat difficult problems.)" Ms. Shaver cites work with patients and physicians in support of this degree level.

The JEC awarded Administrative Secretary 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 Shaver requests a degree level of 3.0, defined by the Plan as "supervisors, managers, and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office." Ms. Shaver testified that she works with Deans and Directors on search committees and when scheduling meetings for the physicians. She also meets with the Assistant Dean on a weekly basis.

Addressing both the Nature and Level portions of this point factor, Ms. Buttrick testified that Ms. Navy's work is routine, and rarely exceeds the boundaries of the unit, therefore, a degree level of 1.0 is correct. Ms. Moore stated that Grievant Shaver's supervisor had taken credit for those responsibilities relating to faculty recruiting, itineraries, and dinners, so Grievant could not claim the same credit.

The evidence establishes that Grievants primarily engage in routine exchange of information which requires common courtesy. Grievant Shaver's work with patients may not be considered in this point factor which is limited to her contact with employees within the system. Although she may have some contact with Deans or Directors, this contact may with their assistants or secretaries and does

not constitute a significant portion of her work. Therefore, Grievants have failed to provedthat the JEC determinations were clearly wrong on either division of this point factor. (See footnote 9)

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 Administrative Secretary a degree level of 1.0 in Nature of Contact, defined in the Plan as "[r]outine information exchange and/or simple service activity; requires common courtesy (e.g., furnishing or obtaining factual information, ordering supplies, describing simple procedures)."

Grievant Navy argues that she is entitled to 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 n on-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.)

Ms. Navy cites individuals contacted when scheduling meetings, vendors, and visitors as external contacts with whom she must exercise tact and cooperation.

Ms. Buttrick stated that as with Intrasystems Contacts, Grievant Navy's work in External Contacts is routine and rarely outside the unit. While she does greet visitors and communicate withvendors, Ms. Buttrick noted that these duties would entail providing basic information and would require only common courtesy rather than moderate tact.

Ms. Navy established that she may communicate with visitors and vendors; however, this communication is limited to providing routine information, and requires only that she be polite and courteous. A level of 1.0 is the correct degree level for the Nature section of this point factor.

Direct Supervision Exercised

This factor measures the job's degree of direct supervision exercised over other 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 a unit. The number of subordinates should be reported in full-time equivalency (FTE) and not head count.

This factor is subdivided into Number of Direct Subordinates and Level of Supervision. Administrative Secretary was slotted at a degree level of 1.0 in Number, defined in the Plan as "[n]one." Grievants request a degree level of 3.0 in the Number category of this factor, defined as "2-3."

Grievant Navy asserts that she supervises 5 work-study students which equals 2-3 full time employees. Ms. Shaver states that she has 1 or 2 subordinates and a work-study student to supervise.

The JEC awarded Administrative Secretary a degree level of 1.0 in Level of Supervision, defined as "[m]inimal or no responsibility for the work of others; however, may provide functional guidance to student workers or lower-level employees on a non-essential basis."

Grievant Navy requests a degree level of 2.0 in this factor, defined as "[r]esponsible for directing and monitoring the work of student workers essential to the operation of the unit." Ms. Navy cites the work-study students, noting that she schedules their time, maintains their payrollrecords, directs and supervises their work. She asserts that no other employees performed these duties.

Grievant Shaver requests a degree level of 3.0 or 4.0. The Plan defines 3.0 as "[l]ead control over non-exempt employees performing the same work at this job. Lead responsibility includes training, assigning tasks, checking the work of others, and insuring supplies and tools are provided at the work site." Level 4.0 is defined as "[d]irect supervision over a unity of non-exempt employees or lead responsibility over a group of exempt employees. Most of the time is spent assigning, reviewing, and checking work or eliminating normal difficulties involving standard policies, procedures, or work practice. Input would be significant in subordinate employees' performance appraisal, hire or fire decisions." At the level four hearing Ms. Shaver opined that 4.0 was more accurate but conceded that she did not perform at this level more than 50% of the time.

Student employees are not considered in this point factor unless they are considered essential to the operations of the department. If the goals and objectives of the work unit would be met without

the students, even if completion by regular employees required a longer period of time, the student workers are deemed non-essential. Very few student workers are considered essential in the system. Only situations in which the absence of students would result in the absence of services, such as food service in the Mountainlair, were student employees considered essential. Ms. Buttrick, stated that the students assigned to the Computer Center are considered non-essential because while the work they complete alleviates time constraints, the office would not close absent their presence. Although the students may be of significant assistance to Ms. Navy, she has failed to show that the essential work of the office would not be completed without them. Therefore, Grievant has failed to prove that she is entitled to higher degree levels in either the Nature or Level portions of this pointfactor.

Ms. Moore testified that Grievant Shaver's supervisor was given the elevated credit in this point factor in that she was listed as the individual who completed employee evaluations. Although Ms. Shaver may provide functional guidance for the workers, Ms. Moore concluded that a degree level of 1.0 was appropriate in both the Nature and Level sections of this point factor.

Ms. Shaver clearly supervises two regular employees. The Department Manager works form an office in a different wing of the building. It is not necessary that a supervisor be on site at all times, and Grievant stated that she meets with her supervisor approximately once a month. Meanwhile, Grievant is the employee responsible for the daily office functions. Because she completes performance appraisals and has input in hiring and firing decisions, Grievant has proven that she is entitled to a degree level of 3.0 in Number, and 4.0 in Level of Direct Supervision Exercised.

C. Summary

___Grievant Navy 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. Her duties and responsibilities fall squarely within the job title of Administrative Secretary. Grievant Shaver has established that the JEC erred in the degree levels assigned in the point factors of Experience, Complexity and Problem Solving, and Direct Supervision Exercised. The increased points allocated to these factors elevate her total score to 1931 points, which falls within pay grade 14.

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.

3. Grievant Navy failed to prove by a preponderance of the evidence that the Job Evaluation Committee's assignment of degree levels to cited point factors was clearly wrong or arbitrary and capricious.

4. Grievant Shaver has established that the Job Evaluation Committee's assignment of degree levels to the point factors Experience, Complexity and Problem Solving, and Direct Supervision Exercised were clearly wrong.

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

6. Grievant Shaver has proven by a preponderance of the evidence that her duties and responsibilities place her in a classification other than Administrative Secretary and that she is entitled to be compensated at pay grade 14.

Accordingly, the grievance is **DENIED** in part and **GRANTED** in part. Respondent is hereby Ordered to reclassify Ms. Shaver either as Administrative Associate or other job title at pay grade 14, with backpay and all other benefits to which she is entitled, effective January 1, 1994.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia or Cabell 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: March 28, 1997 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

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

Footnote: 2

Ms. Navy was initially classified as a Program Assistant I, pay grade 12. She first requested classification as Executive Secretary, pay grade 14; however, upon review by the JEC, she was reclassified as Administrative Secretary, pay grade 10.

Footnote: 3

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

Footnote: 4

A grievant may challenge any combination of point factor degree levels, so long as 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: 5

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

Footnote: 6

Ms. Shaver stated that she is entitled to a degree level of 4.0 in Physical Coordination, but did not address the point factor during the level four hearing, and specifically withdrew it from consideration in her proposed findings and conclusions, noting that "it is not necessary to consider the points that would be generated by a change in this factor, in order to determine that [she] should be reclassified as a [sic] Administrative Associate . . ."

Footnote: 7

That Grievant acts in this capacity was confirmed by Dr. Leeman Phillips Maxwell at the level four hearing.

Footnote: 8

Ms. Shaver responded that her duties relating to patient care were deleted from her PIQ at the direction of her supervisor who stated that it was illegal for her to be engaging in such activities.

Footnote: 9

It was not clear that Grievant Navy challenged the Level potion of this point factor; however, evidence did not support a higher degree level.