SANDRA WHITE,

Grievant,

v. **DOCKET NO. 94-MBOT-795**

BOARD OF TRUSTEES/

MARSHALL UNIVERSITY,

Respondent.

DECISION

Grievant alleges she was misclassified as a Research Assistant I, effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) . She seeks as relief to be reclassified in the institution-specific title (See footnote 2) of Clinical and Laboratory Research Coordinator with back pay to January 1, 1994. In addition to challenging the job title she received, Grievant has also challenged specific "point factors" (See footnote 3) used in the Mercer classification system. A level four hearing was held in the Grievance Board's office in Charleston, West Virginia, on January 22, 1997. This matter became mature for decision on March 5, 1997, the deadline for submission of the parties' fact/law proposals.

The following findings are appropriately made from the record developed at level four.

Findings of Fact

1. Grievant is employed by Marshall University in the Obstetrics and GynecologyDepartment of the School of Medicine. Effective January 1, 1994, she was classified as a Research Assistant I at Pay Grade 15.

2. In 1991, all higher education classified employees, including Grievant, were asked to complete a Position Information Questionnaire (PIQ) prior to the Mercer reclassification. Employees were to describe their job duties and responsibilities, along with the minimum qualifications for their positions, on the PIQ by answering a series of questions designed to elicit this information. Grievant

completed a PIQ in 1991.

3. During the job evaluation process, whereby the Mercer classification system was applied to each individual higher education employee, “data lines” of particular degree levels for each point factor were developed for each job title in the system. Employees with similar duties were grouped together in a job title for purposes of developing this data line. The final step of the classification process was the “slotting” of each employee into the job title which most closely fit his or her duties.

4. The degree levels for each point factor in a job title were used to arrive at a numerical point total, which determined each job's Pay Grade.

5. Generic job descriptions were developed for the various job titles within the higher education system in 1994 after the implementation of the reclassification system. These descriptions were compiled by looking at the common duties and responsibilities of all incumbents in each job title as reflected on the PIQs. Generic job descriptions were not used in the classification process; they were not meant to serve as position descriptions and are merely a compilation of the common duties performed by persons in the particular job title.

6. Grievant's job duties are in two major areas: laboratory research and clinical studies. She does research projects with her supervisor and independently after discussing topics with him. Her laboratory research duties also include management of supplies and equipment, providing training and assistance to technicians and graduate students, and oversight of the lab's daily operations and ongoing experiments. Grievant's clinical studies work involves obtaining specimens from patients, which may be processed in the lab or shipped to another facility. This aspect of her duties also requires her to generally coordinate everyone involved in the study and ensure that all follow the study's set protocol. The protocol, i.e. the prescribed method for carrying out the study, may be determined by an outside sponsor, such as a pharmaceutical company, and must be approved by Marshall University.

7. The Research Assistant I job title received a total of 1996 points under the Mercer system, placing it in Pay Grade 15. The point range for Pay Grade 15 is from 1985 to 2113 points.

Discussion

A. Burden of Proof

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance

of the evidence that she is not properly classified. 156 C.S.R. 1 § 4.17; W.Va. Code § 18-29-6. Burke v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job she feels she is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

A grievant is not likely to meet her burden of proof in a Mercer grievance 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.” It is largely a “quantitative” system, inwhich the components of each job are evaluated separately by applying the point factor methodology contained in the Job Evaluation Plan (hereinafter “Plan”). Therefore, the focus in Mercer grievances for this Board is upon the point factors the grievant is challenging. (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. The system must by statute be uniform across all higher education institutions; therefore, the point factor degree levels are not assigned to the individual, but to the job title. W. Va. Code §18B-9-4; Burke, supra. A Mercer grievant may prevail by demonstrating her 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 at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W. Va. 1995); Burke, supra. However, no interpretation or construction of a term used in the Plan (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. Watts v. Dept. of Health and Human Resources, 465 S.E.2d 887 (W. Va. 1995). The higher education employee challenging herclassification thus will have to overcome a substantial obstacle to establish that she is misclassified. (See footnote 5)

In accordance with the foregoing discussion, a grievant must show that she was slotted into the wrong job title, that the point factor degree levels assigned to her job title are incorrect, or that she is entitled to an individual data line because of the unique nature of her position. In order to determine if

Grievant was misclassified, the point factors and degree levels disputed must be discussed separately in detail.

B. Application of the Point Factor Methodology

1. Experience

The Plan defines Experience as follows:

> 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 1.0, which is defined by the Plan as “[n]o experience or up to six months of experience.” She argues she is entitled to a degree level of 5.0 in this point factor, which is defined as “[o]ver three years and up to four years of experience.” Grievant testified that, in order to competently conduct research, a bachelor's degree is necessary, along with experience. In her PIQ, she stated that at least four years of experience working in a laboratory with lab instruments, chemicals, and infectious biological materials would be needed, along with at least two years working with patients in a clinical setting. She testified that experience enhances one's ability to establish a rapport with the patients.

Respondent's witness, Margaret Buttrick, chairperson of the JEC, testified that the level 1.0given for this factor was reflective of the average entry abilities of all the incumbents in the job title. She explained that averaging was used to develop the data line for each job title; otherwise, there would be a data line for each employee instead of for each job. She believed that a bachelor's degree in science with up to six months of experience would be sufficient to perform Grievant's duties. Grievant did not challenge the rating she received for Knowledge, a 6.0, which provides that a relevant bachelor's degree is the minimum requirement.

The Knowledge and Experience point factors measure only the minimum level of competence to perform the basic duties of a particular job, keeping in mind that an initial training and learning period is essential. Kretzmer v. Bd. of Directors, 94-MBOD-751 (Feb. 6, 1997). Additionally, the two factors are interrelated, so experience credited under the Knowledge factor cannot also be credited under Experience. Resp. Ex. 1. Grievant's evidence is inconclusive, because she did not specifically address why the knowledge gained in a four-year college program in science would not be sufficient for enabling one to conduct research and lab studies. The minimum amount of experience required to perform the duties of a particular position involves a subjective determination upon which reasonable

minds may differ. Zara v. Bd. of Trustees, Docket No. 94- MBOT-817 (Dec. 12, 1995). Grievant's evidence is unsufficient to support a finding that the JEC's decision was clearly wrong.

2. 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. Grievant received a 3.5 degree level for this factor, and she requests a 4.0. Although half levels are not specifically addressed in the Plan, they were awarded by the JEC when most incumbents' duties did not fit completely into one level or the other, and a substantial number of duties were performed at both levels. R. Ex. 1.

A degree level of 3.0 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.

A degree level of 4.0 is defined in the Plan 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.

___Problems Grievant encounters include adverse reactions in patients who are part of clinical research projects. In such cases, Grievant stated on her PIQ that the patient's participation would be discontinued and follow-up procedures would be conducted. However, she testified under cross examination that the appropriate follow-up procedure would normally be part of the protocol for the project, and unusual situations would require consultation with the physician. Also, in laboratory experiments, desired results may not be achieved, requiring adjustment of the methods and materials. Grievant did not explain what determines how these adjustments are made, nor did she specify exactly what her role in this is.

Ms. Buttrick opined that the majority of Grievant's described duties are at level 3.0 and areonly sometimes at level 4.0. Since the protocol is established and followed, its provisions normally govern how problems are solved. She also noted that, in conducting experiments, methods which work

would be followed again.

___Quite obviously, the set protocol for the projects Grievant works on provides solutions and guidelines for solving problems. Absent compelling evidence, the Grievance Board will not second guess JEC decisions. Wood v. Bd. of Directors, Docket No. 94-MBOD-480 (March 11, 1997). It is not unreasonable to characterize Grievant's duties as falling both within the level 3.0 and level 4.0 definitions, so the JEC's decision will not be disturbed.

___3. 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's job title received a level 3.0 for this point factor, and argues she should have received a 4.0.

The definitions in the Plan show that at a degree level of 3.0:

> 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 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, havingdeveloped 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.

___In clinical studies, Grievant works on her own while obtaining specimens and ensuring that the protocol is followed. She and the physician then work together in “checking off” the requirements as they are fulfilled. With regard to laboratory studies, she works on the project under the direction of a microbiologist, who directs the course of the research and reviews the accumulated data.

Although she performs her work without much close supervision, Grievant did state that, in any research project, the protocol must be followed exactly. Ms. Buttrick believed that Grievant's duties

fall comfortably within the level 3.0 definition, because the protocol places limits on her freedom of action. The general aspects of each project are discussed between the grievant and her supervisor, which are then carried out according to the established guidelines. The key issue in measuring this point factor is "whether the employee has the option to make decisions on her own if and when such situations arise." Kretzmer, supra. The level 3.0 definition accurately describes Grievant's duties, wherein she "organizes and carries out [her work] in accordance with standard practices, policies, instructions or previous training." Her objectives are determined by her supervisor and a set protocol, so the degree level 3.0 for this factor is appropriate.

4. Intrasystems Contacts

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

> [A]ppraises the responsibility for working with or through other people within the [State College and University Systems of West Virginia] to get results. Consider thepurpose 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.

This point factor has two aspects which form a matrix, which are Nature of Contact and Level of Regular, Recurring and Essential Contact. Grievant has contested the 1.0 degree level she received for each aspect, arguing entitlement to a level 3.0 for Nature and a level 2.0 for Level.

A degree level of 1.0 in Level of Contact is "[l]imited to immediate associates and own supervisor within immediate office, unit, or related units." Level 2.0 in Level of Contact is defined in the Plan as "[s]taff and faculty outside the immediate work unit." According to Grievant, her "immediate" work unit is the lab itself, which includes her supervisor, who is a faculty member, and graduate students. She listed those with whom she communicates outside her work unit as the department chairman, other doctors, nurses and secretaries, qualifying her for a level 2.0. Ms. Buttrick explained that Grievant's work unit is the OB/GYN department, which includes all the people she listed, qualifying her for only level 1.0. Her explanation was based on the organizational chart for the medical school.

Ms. Buttrick's analysis of what constitutes the "work unit" is more plausible than Grievant's. If Grievant's immediate work unit is the lab only, her interpretation ignores her clinical duties, which comprise approximately half of her responsibilities. On her PIQ, Grievant stated that she communicates with physicians and nurses regarding patient care, examinations, and compliance with

project protocol. Assuming that these physicians and nurses are employed in OB/GYN, they are essential to accomplishment of her clinical responsibilities, and could easily be defined as “immediate associates.” Moreover, the level 1.0 definition under Level of Contact includes persons “within immediate office, unit, or related units.” Although some of Grievant's associates are not in the lab itself, they are all employed in related units of OB/GYN. Where subjective determinations are required to interpret the Plan, a plausible explanation by the JEC which is not inconsistent with the terms of the Plan will be accepted. Grievant has not proven that the JEC's allocation of a 1.0 degree level for this factor was clearly wrong or arbitrary and capricious.

A degree level of 1.0 in Nature of Contact 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 in Nature is defined in the Plan 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.)

Level 3.0 for Nature 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's argument for a level 3.0 for Nature is based upon her contacts with patients involved in research projects, because she believes that substantial sensitivity is required to deal with patients' confidential medical information. Ms. Buttrick testified that Grievant is not entitled to any higher level for this factor, because, although the information itself is confidential and sensitive, it is not controversial and does not require cooperation or negotiation. The information is sensitive, but not the interaction, which is the focus of this point factor. She opined that Grievant is simplysharing and providing information, which is covered in the level 1.0 definition.

“Even where confidential matters are involved, contacts can still be noncontroversial and handled by standard practices and procedures.” Hawkins v. Bd. of Trustees, 94-MBOT-882 (Apr. 30, 1997) [citing Mitchell v. Bd. of Directors, Docket No. 94-MBOD-348 (May 21, 1996)]. Grievant has provided

extensive testimony that, when she is working on a clinical study, she must follow the established protocol exactly. It should also be noted that, under this point factor, we are not dealing with the communication between Grievant and the patients, but between Grievant and others in the office about the patients. No cooperation or negotiation is required to relay the information, so she is not entitled to any higher degree level.

5. 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.

As with Intrasystems Contacts, this factor is divided into Nature and Level. Grievant has challenged only the 1.0 degree level she received for Nature of Contact, and she believes she should be given a 3.0. The degree level definitions are virtually identical to those for Nature of Intrasystems Contacts set forth above, so they will not be reiterated here.

Most of Grievant's contacts outside the system are with project sponsors, which are usually pharmaceutical company representatives. She also deals with patients on a regular basis. She alleges that project sponsors contact her weekly while research is ongoing to get updates on the progress of the project and to ask questions regarding how various aspects are being handled. Grievant believesthat these communications require substantial cooperation, because she must assure the sponsor that Marshall University is capable of handling the project. She testified that complying with the prescribed protocol and its timelines also requires substantial cooperation. Because research information and patient records are both confidential, Grievant believes that her communications with patients are at level 3.0.

As with Intrasystems Contacts, Ms. Buttrick opined that only the patient information itself is confidential, and the exchange of the information is a routine communication. As to Grievant's dealings with project sponsors, she believed that these were also routine information exchanges, where Grievant answers questions regarding the project. She noted that Grievant does not negotiate contracts with these sponsors, nor is it her decision which projects will be undertaken, which would make the communications more difficult and controversial. Although not addressed by the grievant,

Ms. Buttrick also mentioned that students, who are considered External Contacts, work with Grievant on a daily basis in the lab, where factual and routine information is exchanged.

As discussed under the previous point factor, just because information is confidential, the communications themselves need not be. Mitchell, supra. In addition, Grievant has not demonstrated that her communications with project sponsors are controversial, and they appear to involve routine exchanges of information. As with other point factors, Nature of Contact involves a subjective determination regarding the sensitivity required in a position's essential communications. Miller v. Bd. of Directors, Docket No. 94-MBOD-495 (Oct. 29, 1996). Grievant's evidence does not prove that she was erroneously evaluated at level 1.0.

6. Direct Supervision Exercised

> This factor measures the job's degree of direct supervision exercised over others interms of the level of subordinate jobs in the organization, the nature of the work performed, and the number supervised. Only the formal assignment of such responsibility should be considered; informal work relationships should not be considered. Supervision of student workers may be taken into account if they are essential to the daily operation of the unit. The number of subordinates should be reported in full-time equivalency (FTE) and not head count.

This factor is divided into Number of Direct Subordinates and Level of Supervision. Grievant has challenged only the rating she received for Level.

The degree level 1.0, which Grievant's job title received, is defined as:

> Minimal 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 is seeking a level 3.0, which is defined as follows:

> Lead control over non-exempt employees performing the same work as this job. Lead responsibility includes training, assigning tasks, checking the work of others, and insuring supplies and tools are provided at the work site.

Grievant was given credit under Number for two to three direct subordinates. She testified that, between 1991 and 1993, she provided training and assistance to graduate students and lab technicians, consisting of training them regarding the institution's research methods, teaching them how to use the equipment, and answering questions. However, she did not have any hiring or firing

authority over them.

Ms. Buttrick believed that Grievant was given appropriate credit for providing functional guidance to these individuals, which consists of answering questions and providing training, but with no formal responsibility for their work. Formal supervision, she opined, requires hiring/firing authority, assigning work, and/or conducting performance evaluations. Grievant did not indicate that she has any formal authority over the students or technicians. Grievant's testimony also did not demonstrate that these people perform the same work that she does, which would also qualify herfor lead worker credit.

Providing training and answering questions does not constitute formal supervisory responsibility. Grievant does not assign or monitor the work of students or technicians, so she cannot be given credit for any more than functional guidance at level 1.0.

7. Physical Coordination

Physical Coordination is defined in the Plan as:

> This factor assesses the amount of psychomotor skill involved in performing the job. Consider the complexity of body movements, speed/timing of movements, precision of movements, and need for close visual attention regularly required by the job in performing the work.

Grievant's job title received a level 3.0 for this point factor, and she believes she should have received a level 4.0.

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

> Work requires some speed and accuracy of hand/eye coordination in the use of somewhat complicated instruments, equipment or hand or power tools requiring some speed and adeptness.

A degree level of 4.0 is defined as:

> Work requires skill and accuracy or other manual actions involving rapid physical motions and closely coordinated performance on or with office equipment; or a high degree of manual skill and exactness in the use of hand instruments or equipment.

Grievant does not believe that level 3.0 recognizes the hand/eye coordination and exactness she must utilize when working with delicate equipment and toxic or hazardous substances. Much of her work must be done very carefully and precisely.

Ms. Buttrick explained that the higher levels under this point factor were given to individuals

whose work is mostly technical, manual tasks. Such individuals were credited at a high level forPhysical Coordination, because they work mostly with their hands, and were expected to be at lower levels of knowledge, problem-solving ability, and decision-making duties. She noted that Grievant was credited for having a bachelor's degree and that her position is a knowledge-oriented job, not a technical one. Although she must be accurate in accomplishing her duties, the focus of her job is her knowledge.

The evaluation Grievant received for this point factor appears, again, to be the result of the averaging process previously described by Ms. Buttrick. There is, in fact, no evidence that Grievant's duties require “speed” as described in the level 3.0 definition, and the level 2.0 definition more accurately describes her need to be accurate and have good hand/eye coordination. It has been held by this Board that a similar position, a lab manager, was appropriately evaluated at level 2.0, because “[h]er duties [were] a mixture of knowledge, management and organizational skills, and some technical ability.” Perkins v. Bd. of Trustees, 94-MBOT-474 at 20 (March 12, 1997). The same logic applies to Grievant, so the level 3.0 degree level allocated to her position will not be disturbed.

C. Generic Job Descriptions

Grievant presented evidence at level four comparing various generic job descriptions in support of her allegations that she was incorrectly classified. Generic job descriptions were compiled after implementation of the Mercer system and were not used in the classification process. Each employee's PIQ, not a generic description, is the specific measure and description of that individual's job duties. Moreover, to compare generic job descriptions “would be to resort to the less quantitative, less objective classification method of 'whole job comparison,' abandoning the point factor methodology which the JEC adopted.” Payne v. Bd. of Directors, 94-MBOD-372 at 17(Jan. 8, 1997). Therefore, Grievant's evidence in this regard is not relevant or probative and will not be discussed by the undersigned.

D. Summary

Grievant has argued that she should have been classified in an institution-specific title rather than as a Research Assistant I, by challenging the degree levels given to her job title for various point factors. She did not prove by a preponderance of the evidence that the JEC's evaluation as applied to her position or her job title was clearly wrong or arbitrary and capricious with regard to any of the challenged point factors.

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 classification for all classified employees in the higher education system.

2. The burden of proof in a misclassification grievance is on the grievant to prove by a preponderance of the evidence that she 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 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 found to be arbitraryand capricious if not supported by a rational basis; they may also be clearly wrong if there is no substantial evidence in the record supporting the finding or if review of the evidence reveals that a mistake has been made. Burke, supra. See Frymier-Halloran v. Page, 458 S.E.2d 780, 788 (W.Va. 1995).

5. The JEC's evaluation of Grievant's position in the challenged point factors was not clearly wrong nor arbitrary and capricious.

6. Grievant did not prove by a preponderance of the evidence that she was incorrectly classified as a Research Assistant I, Pay Grade 15.

Accordingly, this grievance is **DENIED**.

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

court.

DATE: June 19, 1997 _____ **V.**

DENISE MANNING

Administrative Law Judge

Footnote: 1

The reader is referred to Burke 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

An institution-specific title is a job title created for a position which exists only at one institution in the higher education system.

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 she clearly identifies the point factor degree levels she 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).

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.