

DONNA TITUS, et al.

v. Docket No. 94-MBOT-659

BOARD OF TRUSTEES/BOARD OF DIRECTORS

DECISION

Grievants, Donna Titus, Drema Starkey, Norma Bukovac, and Marie Claytor allege they were improperly assigned as Administrative Secretaries at Pay Grade 10, and Grievant Connie Leinen alleges that she was improperly classified as Administrative Secretary - Senior at Pay Grade 12, under the "Mercer reclassification," and seek to be classified and compensated at higher levels, with backpay, effective January 1, 1994, the date the classification system was implemented. [\(See footnote 1\)](#) Level four hearings were conducted on May 28-30, and July 22, 1996, and the matter became mature for decision with the submission of post-hearing fact/law proposals by the parties on or before September 5, 1996.

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

Findings of Fact

1. Grievants are employed by the Board of Trustees or the Board of Directors (Respondent) at West Virginia University, Marshall University, West Virginia University - Parkersburg, and West Virginia State College,.
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 Titus, Bukovac, Claytor and Starkey were classified as Administrative Secretary, Pay Grade 10. Grievant Leinen was classified as Administrative Secretary - Senior, Pay Grade 12, effective January 1, 1994.
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. Respondent's job description for Administrative Secretary - Senior states the general function of this employee is to perform “a variety of complex secretarial duties and incidental administrative support duties following established university/college and governing boards policies and procedures. This position typically supports an administrator of a school/college/center/institution, a large and complex department/division or a major program area.”

6. The primary job duties of Grievants classified as Administrative Secretary, prior to January 1, 1994, consisted generally of typing, composing correspondence from verbal instructions, maintaining and monitoring balances of state-appropriated funds, grants, etc., maintaining their supervisor's calendar, scheduling appointments and complex committee meetings, developing and implementing office procedures regarding mail, filing, recordkeeping, etc., serving as a source of information of departmental policies and procedures, screening all incoming correspondence, collecting and depositing outgoing mail, receiving and greeting visitors, and providing assistance to their supervisors.

7. Grievant Leinen's primary job duties, prior to January 1, 1994, consisted of those set forth in Finding of Fact 6 and included additional duties in the areas of accounting (budget and grant related work) and providing assistance to faculty members.

8. The Administrative Secretary job title received 1549 total points from the following degree levels in each of the thirteen point factors [\(See footnote 2\)](#): 4.0 in Knowledge; 3.0 in Experience; 2.0 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 Intrasytems Contacts, Nature of Contact; 2.0 in Intrasytems 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 Administrative Secretary - Senior job title received a total of 1730 points from the following degree levels in each of the thirteen point factors: Knowledge - 4.0; Experience - 4.0; Complexity and Problem Solving - 2.5; Freedom of Action - 2.5; Scope and Effect, Impact of Actions - 2.0; Scope and Effect, Nature of Actions - 2.0; Breadth of Responsibility - 1.0; Intrasytems Contacts, Nature of

Contact - 2.0; Intrasystems Contacts, Level - 2.0; External Contacts, Nature of Contact - 1.0; External Contacts, Level - 3.0; Direct Supervision Exercised, Number - 1.0; Direct Supervision Exercised, Level - 1.0; Indirect Supervision Exercised, Number - 1.0; Indirect Supervision Exercised, Level - 1.0; Physical Coordination - 3.0; Working Conditions 2.0; and Physical Demands - 1.0.

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

11. The point range for Pay Grade 12 is from 1655 points to 1755 points.

12. Grievants Titus, Starkey, Bukovac, and Claytor request reassignment to Pay Grade 12.

13. Grievant Leinen requests reclassification to Administrative Associate, Pay Grade 14, which 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 by showing 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. [\(See footnote 3\)](#) While some “best fit” analysis of the definitions of the degree levels is involved in determining which degree level of a point factor should be assigned, where the position fits in the higher education classified employee hierarchy must also be evaluated. In addition, this system must 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 his reclassification was made in an arbitrary and capricious manner. See Kyle v. W.Va. State Bd. of Rehabilitation, Div. of Rehabilitation Services and W.Va. Civil Serv. Comm'n, Docket No. VR-88-006 (Mar. 28, 1989).

Finally, whether a grievant is properly classified is almost entirely a factual determination. As such, the Job Evaluation Committee's (JEC) interpretation and explanation of the point factors and generic job descriptions at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W.Va. 1995); Burke, supra. However, no interpretation or construction of a term used in the Job Evaluation Plan (which provides the definitions of point factors and degree levels) is necessary where the language is clear and unambiguous. Watts v. Dept. of Health and Human Resources, 465 S.E.2d 887 (W.Va. 1995). The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. [\(See footnote 4\)](#) Grievants offer varying proposals in support of their requests for relief. To properly determine whether Grievants 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 of Actions and Nature of Actions, Intrasystems Contacts/Nature of Contact and Level, External Contacts/Nature of Contact, Direct Supervision Exercised/Number and Level, Physical Coordination, and Physical Demands.

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 - Senior a degree level of 4.0, defined in the Plan as "[j]ob requires basic knowledge in a specific area typically obtained through a business, technical or vocational school as might normally be acquired through up to 18 months of education or training beyond high school." Grievant Leinen asserts that her 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 an associate's degree of over 18 months and up to 3 years beyond high school." Grievant Leinen, the only non-faculty, full-time employee assigned to the Social Work Department, argues that a degree level of 5.0 is appropriate because she manages the day to day operations of the department,

including preparation of budgets and grant proposals, which require significant knowledge in accounting. She also prepares overhead slides for the professors to use in their classes, and, with objectives from class syllabi, she reviews the text and develops outcomes. Grievant types syllabi, maintains student records, compiles the graduation list, and generates probation and dismissal letters. She contends that these duties require that she be trustworthy.

Brenda Nutter, Director of Human Resources at West Virginia Institute of Technology, testified on behalf of the JEC during this portion of the level four hearing. Ms. Nutter noted that this factor establishes the minimum knowledge required of the employee at the time they are hired for the position, and that 18 months of post-secondary education was deemed adequate for a new employee to assume the duties of an Administrative Secretary - Senior position. Ms. Nutter also noted that while it is necessary for an employee to be trustworthy, it is not considered in the allocation of Mercer point factors.

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 measure only 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. However, the evidence of record in this matter does not establish that the duties performed by Grievant require more than 18 months of education or training beyond high school.

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/West Virginia 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." Grievants Titus, Bukovac, and Claytor request a degree level of 4.0, defined by the Plan as "[o]ver two years and up to three years of experience."

Administrative Secretary - Senior was assigned a degree level of 4.0. Grievant Leinen requests a degree level of 6.0, defined by the Plan as “[o]ver four years and up to six years of experience.”

Grievants argue that the higher levels are supported in that they are required to engage in complex work and must maintain confidentiality. Additionally, Ms. Bukovac notes that as secretary to a Division Dean it is necessary for her to be familiar with practices and policies. Ms. Claytor notes that she must work with mathematical symbols and statistical tables which requires special skills. Ms. Titus testified that prior experience at the institution was needed to understand the procedures and to “sort out who was who”.

Ms. Leinen testified that she is responsible for 80-150 student files. This requires that she post grades into transcripts, and check grade point averages to determine if students should be placed on academic probation, be dismissed, or graduate. Accuracy is critical in that her work affects student aid. During the summer months, the faculty is generally not available, and she operates the office on a day-to-day basis. Additionally, she processes paperwork for community members who participate in the faculty practice program, and is responsible for maintaining the departmental budget. Respondent again asserts that this factor measures the minimum level required to perform the duties of the position at the entry level.

While it is accepted that additional experience would assist a new employee in functioning at an optimal level, Grievants have failed to prove that the higher degree levels are necessary for a new employee to perform their work.

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 basic decisions regarding what needs to be done, but the employee can usually choose among a few easily recognizable solutions. Established procedures and specific instructions are available for doing most work assignments, with some judgment required to interpret instructions or perform basic computation work such as in the comparison of numbers or facts.”

The JEC awarded the position of Administrative Secretary - Senior a degree level of 2.5 in the point factor. The Plan does not define half levels; however, a degree level of 3.0 is 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 judgment to locate and select the most appropriate guidelines, references, and procedures for application, and adapt standard methods to fit variations in existing conditions.

Grievants Titus, Claytor and Leinen assert that a degree level of 3.0 is appropriate for their positions. Ms. Titus bases her claim on the fact that she works with diversified guidelines and procedures to pay invoices and process orders. She opined that other employees in pay grade 10 have no involvement in these activities. Ms. Claytor states that she must estimate book orders each semester. Ms. Leinen notes that when the Department of Social Work was moved from the College of Liberal Arts to the School of Medicine they were no longer given the customary support from the Dean's office and there were no guides, methods, or precedents in place, requiring that she resolve problems on her own.

Grievant Starkey requests a degree level of 4.0 in this point factor. A degree level of 4.0 is 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.

Grievant Starkey asserts that 4.0 is the correct degree level because of the variety of demands on her time each day, "including answering the phone and responding to questions as well as directing calls, answering questions and providing information to students. . . assisting with walk-ins and phone calls for the adjoining Student Assistance Center, pulling files for advisors, setting up and maintaining files for each student seen at the center." (Grievant's Finding of Fact 29).

Ms. Nutter and LuAnn Moore both testified that Administrative Secretaries were assigned a degree level of 2.0 because they deal with routine problems for which Respondent has well-defined procedures for making basic decisions. Ms. Nutter testified that the JEC determined 2.5 to be correct

for Senior Administrative Secretaries because the supervisor is present to make recommendations and approve their work. While Grievant Leinen may work in a unique situation, Ms. Nutter stated that it did not affect the complexity of her duties.

The evidence establishes that Grievants Titus, Claytor, and Starkey perform a myriad of duties; however, their actions are generally determined by guidelines and regulations. Grievant Leinen experienced a transitory period when the Department of Social Work was transferred to the School of Medicine, during which she was required to identify and/or develop practices and procedures in order to function satisfactorily in the new setting. This situation does not appear to be ongoing. Grievant Leinen is required to perform duties which require a higher degree of problem solving, but many of her duties may be completed by making basic decisions and working within established procedures. Therefore, it cannot be determined that the JEC erred in assigning Grievants degree levels of 2.0 and 2.5, respectively, in this point factor.

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 regulations which 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."

Administrative Secretary - Senior was awarded a degree level of 2.5 in this point factor. The degree level of 3.0 was 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.

Grievant Titus requests a degree level of 2.5 based upon the minimal amount of supervision she receives and her ability to resolve most problems on her own. Grievant Claytor argues that a degree level of 3.0 is correct based upon her work dealing with students. Grievants Starkey and Leinen assert that 4.0 accurately measures their duties.

The Plan defines the 4.0 level 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. Starkey argues that her duties fall within the description of this level and her work is not checked by her supervisor on a daily basis. Ms. Leinen asserts that she is responsible for the day-to-day operations of the Social Work department. This means that she must determine what needs to be done and insure that those matters are completed. She does this without review by her supervisors. As the only 12 month employee in the department, she claims that without her functioning in such an independent manner no work would be completed during 3 months each year.

Ms. Nutter testified that Grievant Leinen was properly placed at the 2.5 degree level because her supervisor reviews her work and is ultimately responsible for errors. Ms. Nutter and Ms. Moore testified that 2.0 was proper for the remaining Grievants because their work is structured and standardized.

It is clear from the evidence that Grievants deal with a variety of situations and that they resolve many, if not most, without assistance. However, in the course of their duties, Grievants must follow policies and procedures. Further, it appears that Grievants are given work assignments in some form on a daily basis and have little freedom in choosing the tasks they will complete. Although Grievant Leinen works essentially alone during the summer, her work is apparently structured, allowing her to complete necessary activities without constant supervision. 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 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 higher education systems is the work product, service or assignment. Decisions regarding the impact of actions should take into account institutional scope and size as reflected by operating budget, student enrollment and institutional classification. Also, consideration should be given for the possibility that a unit, program or department within a large institution may be equivalent in size to multiple units, programs or departments within a smaller institution. In making these interpretations, assume that the incumbent would have normal knowledge, experience and judgment, and that errors are not due to sabotage, mischief or lack of reasonable attention and care.

Scope and Effect is divided into two subdivisions, Impact of Actions and Nature of 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." Administrative Secretary - Senior was allocated 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."

Grievants Titus and Starkey argue that their duties merit a degree level of 2.0. Grievant Leinen requests a 3.0 in the point factor based upon the unique organization of placing the Social Work department in the School of Medicine. Because of this arrangement, Grievant asserts that her work impacts on other divisions when an error is made. As an example, Grievant recounted a situation when an error was made on a graduation list, which led to involvement by the Registrar's office and the Legal Department. A degree level of 3.0 in Impact of Actions is defined in the Plan as:

Work affects the operations of more than one school or division of a specialized school, branch campus, community college or baccalaureate-level Institution with an operating budget of less than \$13M; a school or division of a graduate or baccalaureate-level Institution with an operating budget of \$13-\$18M; several departments within a graduate or baccalaureate-level Institution with an operating

budget of \$19-\$25M; a major department within a graduate-level Institution with an operating budget of more than \$50M; or a moderate-size department within a doctoral-level Institution with an operating budget of more than \$200M.

Grievant Claytor asserts that 4.0 is the correct degree level for her duties in that she engages in purchasing from vendors and students could be affected if the wrong process or procedure was used in ordering books, catalogs, and class schedules. Errors could cause “major breakdowns” for departments, including Administration and the Community College, as well as the outside distributors, according to Grievant.

The degree level of 4.0 is defined by the Plan as [w]ork affects the entire operations of a specialized school, branch campus, community college or baccalaureate-level institution with an operating budget of <\$13M; more than one school or division of a graduate or baccalaureate-level institution with an operating budget of \$13-\$18M; a school or division of a graduate or baccalaureate-level institution with an operating budget of \$19-\$25M; several departments within a graduate-level institution with an operating budget of more than \$50M; or a major department within a doctoral-level institution with an operating budget of more than \$200M.

Administrative Secretary and Administrative Secretary - Senior were awarded a degree level of 2.0 in Nature of Action, defined by the Plan as “[w]ork contributes to the accuracy, reliability, and acceptability of processes, services, or functions. Decisions are limited to the application of standardized or accepted practices and errors could result in some costs and inconveniences within the affected area.”

Grievant Leinen asserts that she is entitled to a degree level of 3.0, defined in the Plan as: [w]ork provides guidance to an operation, program, function or service that affects many employees, students or individuals. Decisions and recommendations made involve non-routine situations within established protocol, guidelines, and/or policies. Errors could easily result in moderate costs and inconveniences within the affected area.

Ms. Leinen argues that her work “provides guidance to the Dean's office and Registrar's office.” Specifically, she compiles lists of students who graduate, are placed on academic probation, or are dismissed. Errors, such as allowing a student to graduate without completing all requirements, could

result in moderate cost and inconvenience.

Respondents argues that Grievants perform routine work that would affect only their own work units.

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 involving an employee would incur minor inconvenience and/or cost to the institution. Even the most serious errors committed by Grievants would have minimal to no effect on the overall mission of the 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).”

The JEC awarded Administrative Secretary - Senior 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.)”

Grievants Bukovac, Claytor, and Starkey request a degree level of 2.0 because they must use moderate tact when dealing with faculty and staff, to coordinate their work around individual preferences, events and practices. Grievant Leinen requests a degree level 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. Leinen states that her position requires that she work with confidential information ranging from student grades to client data. She characterizes issues of academic probation and dismissals as controversial.

Respondents argue that Grievants engage only in routine information exchange requiring common courtesy, with the exception of Ms. Leinen who is, at times, required to exercise moderate tact and cooperation. The JEC awarded Administrative Secretary and Administrative Secretary - Senior 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 Leinen requests a degree level of 4.0, defined by the Plan as “Deans or Directors in an institution or Assistant Directors in the Systems' Central Office.”

Ms. Leinen states that she has contact with the Registrar's office and financial aid office 6 to 8 weeks of each semester and that she routinely contacts Associate Deans. JEC member Brenda Nutter testified that the amount of time Grievant expends speaking to Deans or Directors is minimal and cannot support the higher degree level.

The evidence establishes that Grievants primarily engage in routine exchange of information which requires common courtesy. Grievant Leinen is the exception to this finding in that her duties at times require that she use tact when communicating with her contacts. 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 prove that the JEC determinations were clearly wrong on either division of this point factor.

External Contacts

External Contacts is defined in the Plan as:

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

This factor consists of two parts, Nature of Contact and Level of Regular, Recurring and Essential Contact. The JEC awarded the position of Administrative Secretary and Administrative Secretary - Senior 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).”

Grievants Starkey and Leinen argue that they are 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 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. Leinen cites contact with the W. Va. Department of Health and Human Resources and the Council on Social Work Education. She also meets with the accreditation review team, coordinates travel arrangements and provides information necessary in the student files.

Ms. Crawford testified that the interaction described by Grievants consisted of their providing information and would require only common courtesy rather than moderate tact. Addressing Grievants' understanding that their external interaction was an essential part of their duties, she distinguished this as a performance factor rather than a classification issue.

Grievant Bukovac was expressly concerned that her work relating to, and with, students, had been properly credited. This aspect falls under External Contacts/Level of Regular, Recurring and Essential Contact. The JEC awarded Administrative Secretaries a degree level of 3.0, defined as “[s]tudents, parents, alumni, faculty of institutions outside the systems, sales engineers, higher-level product representative, recruiters and/or prospective students.” This degree level clearly acknowledges Grievants' work with students. Grievants have established that they may communicate with students, parents, and others, relating to any number of subjects on a daily basis. This communication, insofar as it relates to their work as Administrative Secretaries, is limited to providing routine information or service activity, and requires only that they be polite and considerate. 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 others in terms of the level of subordinate jobs in the organization, the nature of the work performed, and the number supervised. Only the formal assignment of such responsibility should be considered; informal work relationships should not be considered. Supervision of student workers may be taken into account if they are essential to the daily operation of the unit. The number of subordinates should be reported in full-time equivalency (FTE) and not head count.

This factor is subdivided into Number of Direct Subordinates and Level of Supervision.

Administrative Secretary and Administrative Secretary - Senior were slotted at degree level 1.0 in Number, defined in the plan as “[n]one.” Grievants Starkey and Leinen request a degree level of 2.0 in the Number category of this factor, defined as “[o]ne.”

Ms. Leinen testified that she regularly has at least two student workers who each work 20 hours per week. Because she is responsible for assigning and directing their work, she argues that she supervises the equivalent of one full-time employee. Ms. Starkey also testified that during the relevant time period she regularly trained 2 work-study students.

Respondent argues that 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 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. Ms. Crawford testified that very few student workers were 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. Crawford opined that Grievants would complete the office work without the benefit of the student workers, if in a less efficient manner.

___The JEC awarded Administrative Secretary and Administrative Secretary - Senior 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.”

Grievants Starkey and Leinen also request 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.”

Although the students may be of significant assistance to Grievants, Ms. Crawford's testimony is persuasive in that the essential work of the office would be completed without them. While Grievants may be required to complete the tasks performed by the students in their absence, the flow of their work would change, but would be completed. Other, less pressing matters may be delayed; however, Grievants did not prove that the essential duties of the office would not continue. Therefore, the student workers assigned to Grievants are not considered essential, and their claim to a degree level of 2.0 is not supported.

Physical Coordination

Physical Coordination is defined in the Plan as “the amount of psychomotor skill involved in performing the job. Consider the complexity of body movements, speed/timing of movements, precision of movements, and need for close visual attention regularly required by the job in performing the work.”

The JEC awarded Administrative Secretary - Senior a degree level of 3.0, defined in the Plan as “[w]ork 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.”

Grievant Leinen requests a degree level of 4.0, defined in the Plan as “[w]ork requires skill and accuracy or other manual actions involving rapid physical motions and closely coordinated performance on or with office equipment; or a high degree of manual skill and exactness in the use of hand instruments or equipment.” Ms. Leinen testified that the higher level is supported by her heavy workload which requires that she combine speed with skill and accuracy for typing and calculator keying.

This point factor reflects the fine motor skills necessary to perform the duties of the position. While Grievants must exhibit some hand/eye coordination in operation of the equipment, speed in performing this work is not essential. Certainly, some skill is necessary in the correct usage of the machinery; however, it does not appear to require the speed and adeptness expected of an employee rated at level 4.

Physical Demands

Physical Demands is defined in the Plan in conjunction with Working Conditions as:

[t]his factor considers the physical demands of the job as measured by the exertion placed on the skeletal, muscular and cardiovascular systems of the incumbent. It also takes into account the quality of the physical working conditions in which the job is normally performed such as lighting adequacy, temperature extremes and variations, noise pollution, exposure to fumes, chemicals, radiation, contagious diseases, heights and/or other related hazardous conditions. The JEC awarded the Administrative Secretary - Senior position a degree level of 1.0 in this factor, defined as “[j]ob is physically comfortable; individual is normally seated and has discretion about walking, standing, etc. May occasionally lift very lightweight objects.”

Grievant Leinen requests a degree level of 2.0, defined in the Plan as “[l]ight physical effort required involving stooping and bending; individual has limited discretion about walking, standing, etc., occasional lifting of lightweight objects (up to 25 pounds).” Ms. Leinen states that several times a week she is required to hand carry confidential information from the School of Medicine to the main

college campus which is 8 blocks away. Additionally, she is required to lift the paper supply delivered to her office each semester, as she places it in storage.

It is not determined that Grievant's walk of 8 blocks to deliver the documents is physically uncomfortable. Understandably, the comfort level may vary with the weather and the individual's tolerance, it does not appear that Grievant performs this activity on a daily basis but only as needed. The evidence also does not eliminate the possibility of other arrangements for the transfer of the paperwork. There is also no evidence to support Grievant's claim that she is required to lift boxes of paper. Surely, she is not prohibited from opening the box and moving it in more manageable portions. Even if she lifts full boxes, this activity appears to occur only once a semester and is not part of her regular, daily duties. In consideration of the foregoing, it cannot be determined that the 1.0 awarded by the JEC is clearly wrong.

D. Summary

___Grievants have 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. Their duties and responsibilities fall squarely within the job title of Administrative Secretary and Administrative Secretary - Senior.

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. Grievants 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. Grievants have failed to prove that their duties and responsibilities warrant classification and/or compensation at any higher pay grade.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of 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: December 31, 1996 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

[Footnote: 1](#)

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

[Footnote: 2](#)

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

[Footnote: 3](#)

A grievant may challenge any combination of point factor degree levels, so long as he clearly identifies the point factor degree levels he is challenging, and this challenge is consistent with the relief sought. See Jessen, et al. v. Bd. of Trustees, W.Va. Univ., Docket No. 94-MBOT-1059 (Oct. 6, 1995); and Zara, et al., v. Bd. of Trustees, W.Va. Univ., Docket No. 94-MBOT-817 (Dec. 12, 1995).

[Footnote: 4](#)

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