DEBRA RICHARDS, ET AL.,

v. DOCKET NO. 94-MBOT-730

BOARD OF TRUSTEES,

WEST VIRGINIA UNIVERSITY - PARKERSBURG, ET AL.

D E C I S I O N

Grievants, Debra Richards and Charlotte Fuller, each alleges she was misclassified effective January 1, 1994, in the "Mercer reclassification" (See footnote 1) as an Executive Secretary to the President ("Secretary"). (See footnote 2) Each seeks as relief classification as an Administrative Assistant Senior ("Assistant"), Pay Grade 17, effective January 1, 1994, and backpay from January 1, 1994. As alternative relief, Grievant Richards seeks the creation of an institution-specific Job Title for herself, "AdministrativeAssistant to the President," Pay Grade 17 or 18. Grievants challenged the degree levels received in various point factors. (See footnote 3)

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

Findings of Fact

1. In 1991, all higher education classified employees were asked to complete Position Information Questionnaires ("PIQ's"). 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.

2. Grievant Fuller has been employed at West Virginia State College ("WVSC") twenty-eight years, and completed a PIQ in 1991.

3. Grievant Richards has been employed at West Virginia University - Parkersburg ("WVU-P") since 1975, and completed a PIQ in 1991. In 1993 she completed a second PIQ, because she thought the first PIQ may not have provided sufficient detail of her duties.

4. Each Grievant was classified as an Executive Secretary to the President effective January 1, 1994.

5. Grievant Fuller reports directly to Hazo W. Carter, Jr., President of West Virginia State College.

6. On January 1, 1994, Grievant Fuller's primary job duties (with the percentage of time she spent performing each duty shownin parenthesis) were typing from dictation, proofing and copying, assembling reference materials as directed by the President, filing, answering the telephone, and operating the telecopier (35%); scheduling the President's appointments at his direction, making room, food and security arrangements for meetings, and responding to inquiries about WVSC, personnel, facilities and policies or referring inquiries to appropriate personnel (20%); recommending dates for WVSC activities, drafting invitations for the President's approval and arranging for printing, getting mailing lists together, and mailing materials (10%); screening and prioritizing the President's mail, noting due dates, forwarding correspondence to other employees for response and checking their progress on responses, drafting memoranda and letters to employees, and bringing urgent matters to the President's attention (10%); typing, mailing and filing notices of appointment from personnel lists and budget documents (10%); tracking and reminding personnel of deadlines, supervising, proofing and editing documents, and assisting in updating mailing lists (10%); and contacting travel agency for travel information and making reservations after the President has selected a flight, and preparing travel reimbursement forms (5%).

7. Grievant Fuller holds an Associate's Degree in secretarial science, and she acquired a Board of Regents Degree in 1982.

8. Grievant Fuller supervises two full-time employees.

9. Grievant Richards reports directly to Eldon Miller,President of WVU-P.

10. On January 1, 1994, Grievant Richards was responsible for relieving President Miller of the administrative details of running the President's office. Her primary job duties (with the percentage of time she spent performing each duty shown in parenthesis) were supervising and organizing office operations, supervising a secretary, establishing office policies and procedures, reviewing correspondence to the President, investigating and preparing replies, bringing matters requiring the President's review to his attention, monitoring expenditures, determining budgetary needs, and authorizing expenditures (50%); providing guidance to faculty, staff and students on policies and procedures, disseminating new policies to appropriate employees, and overseeing upkeep of the WVU-P policy notebook (13%); attending meetings and following-up on matters requiring action,

coordinating the meeting schedule and agenda for Board of Visitors quarterly meetings, and prioritizing the President's schedule (13%); developing alternative solutions to student and employee complaints for the President's review and decision (13%); organizing and coordinating special projects (6%); and serving as liaison for the WVU-P Board of Directors, and communicating and interacting with donors regarding gifts (5%). (See footnote 4)

11. Grievant Richards had four and a half years of secretarial experience prior to taking on the job of thePresident's Secretary, and she had ten years of experience in the President's office prior to taking on her present duties. Prior to entering into her present duties she held a high school degree, and had completed more than 32 credit hours at WVU-P. She has been working toward attaining an Associate's Degree in Office Administration, and a Bachelor's Degree with an emphasis in Management.

12. In overseeing upkeep of the WVU-P policy notebook, Grievant Richards reviews institutional policies and Board of Trustees policies, identifying areas which should be reviewed and updated, and areas where a revision will be necessary upon approval of related Board of Trustees policies. She drafts some updates for approval by administrators, and makes some routine updates on her own. If she determines that a Board of Trustees policy clearly is not applicable to WVU-P, such as policies applying to medical schools or graduate schools, she makes the decision to remove the text of the policy from the notebook, or not place it in the notebook, but it will still be referenced in the notebook.

13. Grievant Richards sends memoranda to administrators at WVU-P asking them to review information she has attached, and respond to her. If they fail to respond, she reminds them that they need to do so.

14. In developing alternative solutions to student and employee complaints, Grievant Richards researches the problem and obtains the facts, analyzes the situation, determines which policies and procedures are applicable and interprets them wherenecessary, determines the possible solutions and the consequences of each, and advises the President of the facts, the applicable policies, the possible solutions and the solution she believes is best and why. When such matters require a quick response, she decides the best approach, consults with the appropriate personnel on campus to determine whether this approach is feasible and is acceptable to their office, and sets events in motion to reach the desired result, such as requesting that personnel take the necessary action. She

drafts a response for the President's final approval and signature, and advises him that she has already taken the action necessary to resolve the problem.

15. President Miller expects Grievant Richards to know all the policies affecting WVU-P, to be able to decide which policies apply to a situation, and to provide him with all the information applicable to a particular situation. He does not review the policies himself.

16. President Miller does not dictate correspondence or memoranda to Grievant Richards. He advises her as to how he wants a particular situation resolved, and she decides what needs to be done to accomplish the desired result and undertakes those tasks, including contacting WVU-P administrators and drafting necessary correspondence and memoranda for the President's signature. The only typing Grievant does is when she is drafting responses and finalizing them, and checking and responding to E-mail. The secretary she supervises types the President's dictation, hand- written materials, and corrections to documents, maintains hiscalendar, and makes his travel arrangements.

17. Grievant Richards resolves situations which are not critical on her own, without approval from the President, and sends out the necessary correspondence with either her own signature or she signs the President's name. She signs her name to simple responses, such as advising that the President will attend.

18. WVU-P is a branch campus of West Virginia University, and has an appropriated budget of $8 to $9 million.

19. The Secretary Job Title received 2104 total points from the following degree levels in each of the thirteen point factors (See footnote 5) : 5.0 in Knowledge; 5.0 in Experience; 3.0 in Complexity and Problem Solving; 3.0 in Freedom of Action; 3.0 in Scope and Effect, Impact of Actions; 2.0 in Scope and Effect, Nature of Actions; 1.0 in Breadth of Responsibility; 2.0 in Intrasystems Contacts, Nature of Contact; 4.0 in Intrasystems Contacts, Level of Contact; 2.0 in External Contacts, Nature of Contact; 3.0 in External Contacts, Level of Contact; 2.0 in Direct Supervision Exercised, Number; 3.0 in Direct Supervision Exercised, Level; 1.0 in Indirect Supervision Exercised, Number; 1.0 in Indirect Supervision Exercised, Level; 3.0 in Physical Coordination; 2.0 in Working Conditions; and 1.0 in Physical Demands. Joint Exhibit D.

20. The point score range for a Pay Grade 15 is from 1985 through 2113 total points. The point score range for a Pay Grade 16 is from 2114 through 2254 total points. Joint Exhibit C.

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 he is not properly classified. 156 C.S.R. 1 § 4.19; W. Va. Code § 18-29-6. Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

A grievant is not likely to meet his 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". The Mercer classification system is largely a "quantitative" system, in which the components of each job are evaluated using the point factor methodology. Therefore, the focus in Mercer Decisions issued by this Grievance Board is upon the point factors the grievant is challenging. (See footnote 6) 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 theposition 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, 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 or PIQ's at issue will be given great weight unless clearly erroneous. See Tennant v. Marion Health Care Found., 194 W. Va. 97, 459 S.E.2d 374 (1995); Burke, supra. 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 Res., 195 W. Va. 430, 465 S.E.2d 887 (1995). The higher education employee challenging his classification thus will have to overcome a substantial obstacle to establish that he is misclassified. (See footnote 7)

C. Application of the Point Factor Methodology

The following table shows the differences between the degreelevels assigned Grievants' Job Title in the point factors each challenged, the degree levels assigned the Assistant Job Title, and the degree levels Grievants argued each should have received. Where NC is used, it means the Grievant did not challenge that point factor.

	KN	EX	CPS	FA	IA	NA	NC	NC	LVL	NUM	LVL (See footnote 8)
							SE	SE	IC	EC	EC
							DSE	DSE			
Secretary	5	5	3	3	3	2	2	2	3	2	3
Assistant	6	4	4	3.5	6	3	2	2	3	3	4
Fuller Argument	6	4	4	3.5	6	3	NC	NC	NC	3	4
Richards Argument	6	6	4	4	4	4	3	3	4	NC	4

Joint Exhibit D.

Each of the point factors challenged by Grievants will be addressed separately below.

1. Knowledge

The Job Evaluation Plan ("the Plan") defines Knowledge as:

> This factor measures 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. Grievants' Job Title received a degree level of 5.0, and Grievants argued they should have received a degree level of 6.0. A degree level of 5.0 is defined in the Plan as:
>
> Job 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.

A degree level of 6.0 is defined in the Plan as:

> Job requires a thorough knowledge of a professional discipline or technical specialty as would normally be acquired through a relevant baccalaureate education program. Knowledge of principles, concepts, and methodology of a highly technical, professional, or administrative occupation is indicative of this level.

Grievant Fuller stated that someone with an Associate's Degree who was very good could

perform her duties. Her PIQ stated:

> Because of the diversity of responsibilities and interactions with internal and external groups, the person in this position must have some management and accounting skills and be proficient in the operation of various office machines and equipment.

Grievant marked a degree level of 5.0 on her PIQ, but her supervisor, WVSC President Hazo Carter, marked a degree level of 6.0, and wrote that a Baccalaureate Degree is required.

Grievant Richards' supervisor, Eldon Miller, President of WVU- P testified he agreed with Grievant's assessment that a degree level 6.0 was the proper level, and if Grievant left he "probably would" look for someone with a Bachelor's Degree to replace her, but he did not feel strongly about it. He explained he needs someone in Grievant's position who understands the entire operation of WVU-P. Her PIQ indicates that a Bachelor's Degree is required, and that other required knowledge, skills, or abilities are,"[s]kills in problem-solving, decision-making and communication; knowledge of management principles and practices; understanding of word processing and computer applications."

Margaret Robinson Buttrick, Human Resources Administrator for the State College and University Systems of West Virginia and JEC Chair, stated Grievants are not functioning at an administrative level in that they do not have authority and accountability for administrative functions. She stated Grievants provide clerical support, and perform quasi-administrative functions. As an example, she stated the person responsible for interpreting a campus wide policy or Board policy is functioning in an administrative capacity, and that Grievants do not function at this level.

Grievants have not proven a Bachelor's Degree is required. Neither Grievant offered convincing testimony on this point factor. President Miller admitted that experience at WVU-P was more important than a formal education. Grievants learned how to perform their duties from experience, not formal education.

Grievant Richards argued she has the knowledge, skills and abilities required of an Assistant. While the record supports that much of the listing of knowledge, skills and abilities for an Assistant is more applicable to Grievant than the knowledge, skills and abilities of a Secretary, it does not reflect that she has or needs "knowledge of principles, problems, and methods of public administration, including organization, personnel, and fiscal management procedures[; w]orking knowledge of administrative surveytechniques and skill in their application; familiarity with statistical and research methods[; and, w]orking knowledge of grants and contracts." All of these are listed under knowledge, skills and abilities of an Assistant, and are the types of skills one would acquire in obtaining a

Bachelor's Degree. Grievant Richards does need to be familiar with the problems and methods of the WVU-P organization, but President Miller noted this familiarity is acquired from experience at WVU-P. Grievants have not met their burdens of proof on this point factor.

2. 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.

Grievants' Job Title received a degree level of 5.0 in this point factor, and Grievant Richards argued she should have received a degree level of 6.0. A degree level of 5.0 is defined in the Plan as "[o]ver three years and up to four years of experience." A degree level of 6.0 is defined in the Plan as "[o]ver four years and up to six years of experience."

President Miller testified it takes at least four years to be qualified for Grievant's position, because the person in Grievant's position has to have a fair knowledge of and understand how the college functions, how different parts fit together, policies, the differences in issues among departments, and what occurs in academic areas. Four years is within a degree level of 5.0. Grievant Richards described the type of experience needed on herPIQ as five years minimum in a supervisory position, and "with organizational and policy matters."

Mrs. Buttrick stated the JEC based its determination of the amount of experience required upon a consistent application of the Plan, what the institution would require if it were recruiting for the position, the skills, knowledge and experience the institution would want, the background and experience in the industry of the human resource professionals on the JEC, and the standards in the industry.

While it is obvious that someone in Grievant Richards' position must have a fair amount of experience and ability, the undersigned can find nothing in the record other than opinion testimony which shows how long it takes to acquire the skills necessary to perform the duties of the position. Her supervisor's opinion supports the JEC's decision. Grievant's opinion, based upon her own experience, is merely different from that of the JEC, based upon the experience of its members and standards in the industry. The undersigned cannot find from the evidence that the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning the degree level to this point factor.

3. 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.

Grievants' Job Title received a degree level of 3.0 in thispoint factor, and Grievants argued they should have received a degree level of 4.0. Respondents' Exhibit 2.

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

> Problems encountered can be somewhat complex and finding solutions to problems may require some resourcefulness and originality, but guides, methods and precedents are usually available. Diversified guidelines and procedures must be applied to some work assignments. Employee must exercise 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.

Grievant Fuller stated she uses resources and guidelines available to her at the institution when she encounters problems, including other persons, and she knows where to look up answers if she does not know the answer. She gave examples of problems, such as students coming to the office concerned about registration and fees. She talks to them to determine to whom she can refer them, she tries to explain policies to them, and she places telephone calls to the appropriate department to obtain additional information so she can further advise the student. She stated administrators come to the office who need different types of assistance, and she tells them the policy or practice at the institution for their situations. She stated she informs PresidentCarter of the advice she has given. She stated if she can handle the problem she does so, but if not, she refers it to someone else.

Grievant Richards felt she does not just refer to appropriate references and guidelines. She stated she often must decide whether a certain policy applies to a certain situation, or whether WVU-P has the ability to make an exception to a policy. She stated she is the person executive level administrators usually come to when they need assistance with interpreting what policy is to be followed, or what a policy means. She stated often when problems arise there is more than one

solution, and once she collects all the facts, she may offer the President two or three possible solutions, and tell him what the implications are for each solution.

President Miller stated he expects Grievant to know all policies that impact WVU-P. He stated if problems come up, he expects her to understand and know the policies that impact on the situation, and to advise him of the policies, the implications, and the possible solutions, including applying policies to situations not fully addressed in the policies. He stated Grievant researches policies and is ready to present him with her analysis before he knows the problem exists. He stated he relies on her recommendations and does not research policies himself.

Mrs. Buttrick explained this point factor looks at the types of problems encountered and what the individual position must do to solve the problems. She stated that at times Grievants may encounter complex problems and they would have to use someresourcefulness to find a solution, but they generally have guidelines and procedures that apply to their work assignments. She believed they would use some judgment in locating the information they would need. She later stated, however, that she had not heard any examples of complex problems from either Grievant, and that finding time to accomplish the task assigned, as listed on Grievant Fuller's PIQ, is not the type of problem measured by this point factor, and certainly is not a complex problem. She concluded that Grievant Richards makes very basic decisions, and her duties are routine, such as maintaining the policy manual. She stated when Grievants contact administrators or others to solve problems, that is not solving complex problems. Finally, she pointed out that Grievants do not apply a specific professional discipline.

While some of Grievant Fuller's duties are more difficult because she is in the President's office, most of her duties are routine and require basic decision-making, such as typing from dictation, answering the telephone, operating the telecopier, making meeting and travel arrangements, and getting mail lists and mail ready. Grievant Fuller has not proven she should have received a higher degree level in this point factor.

Grievant Richards encounters varied problems, and she must sometimes research the situation, indicating incomplete or conflicting data. Grievant Richards "must utilize analytical skills in order to interpret policies and procedures, research relevant information, and compare alternative solutions."(4.0) While she is not the person responsible for interpreting any particular policy at WVU-P, she uses her knowledge of all policies to offer assistance to the President and others in

determining which policy applies to a particular situation, and whether that situation is specifically covered or not. While, she may certainly call upon those charged with interpreting particular policies when necessary and when they are available, this does not mean she does not interpret policies in carrying out her job duties on a daily basis.

However, Grievant Richards also "must exercise judgment to locate and select the most appropriate guidelines, references, and procedures for application. . .". (3.0) It is unclear whether "guides, methods and precedents are usually available" (3.0), but they are certainly available for some of the problems encountered. Grievant does not use "[g]eneral policies, procedures, principles, and theories of specific professional disciplines (i.e., accounting, biology, chemistry, engineering)" as guidelines (4.0), however, some of her research, policy comparison, drafting and docketing duties are comparable to duties performed by a legal assistant. By her own admission, her job requires that she exercise something which is not a part of the curriculum in acquiring a college degree, common sense. This scarce important commodity is not accounted for in the definitions of degree levels.

Grievant Richards has not proven her duties fall so frequently within a degree level of 4.0 that it is a better fit, but she has proven that many of her duties fall within that degree level. TheJEC assigned a half-level (0.5) in this point factor, and in Freedom of Action, "where the position was performing significant portions of duties and responsibilities in both levels, i.e.: part in 2 and part in 3, hence a 2.5." Respondents' Exhibit 2. Grievant Richards has proven a degree level of 3.5 is a better fit for her duties than a 3.0.

4. 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.

Grievants' Job Title received a degree level of 3.0. Grievant Fuller argued she should have received a degree level of 3.5, and Grievant Richards argued she should have received a degree level of 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.

The definitions in the Plan show that at a degree level of 4.0:

> Tasks are minimally structured with incumbent working from broad goals set by the supervisor and establishedinstitutional policies. The employee and supervisor work together to establish objectives, deadlines and projects. The employee, having developed expertise in the line of work, is responsible for planning and carrying out the assignment; resolving most of the conflicts which arise; and coordinating the work with others. The employee keeps the supervisor informed of progress and potentially controversial matters. Completed work is checked only to determine feasibility, compatibility with other work, or effectiveness in meeting the objectives of the unit.

Grievant Richards stated the President rarely gives her specific directions. She stated they sit down once a year for performance reviews and talk about the goals he would like her to accomplish the next year. President Miller testified that if a conflict arises between divisions, Grievant Richards may inform him of the conflict, and may advise him of past practice in such situations. He stated many times he will tell her what he would like to see as a solution, and then she initiates correspondence to try to achieve that solution. Sometimes she sends out such correspondence without him seeing it, and other times she asks him if he wants to take a look at it before she sends it out.

Mrs. Buttrick stated Grievants' supervisors set the objectives, and Grievants organize and carry out most of the work assignments in accordance with standard practices, policies, instructions and previous training. She believed the Presidents had set out the standards regarding how the work should be carried out, and Grievants work from those objectives and perform those tasks. She stated they may occasionally encounter a situation which they act on independently. She stated it was hard to establish even a degree level of 3.0 for Grievant Fuller's duties, because she receives verbal and written instructions daily, but shedid not indicate what degree level was a better fit for her duties.

Mrs. Buttrick equated Grievant Richards' testimony that the President communicates his general position and she carries it out, to objectives being set by the supervisor, and the employee knows what is expected of her and carries that out. She did not believe Grievant Richards has a high level of authority to act on the President's behalf. She stated Grievant Richards knows what to do each day because she knows what is expected of her.

While Grievants do not generally receive assignments from their supervisors, they do receive assignments, and their jobs are structured by this. They act on the mail which arrives each day, and the telephone calls and visitors which arrive each day for their action. At times, they perform special

assignments from the supervisor. Some tasks are performed at particular times each year. They have some freedom to assign priority to tasks, and to assign tasks to subordinates. Their authority to act is limited by their supervisor. They follow established precedents, policies, procedures, laws and regulations. They do not make policy, and generally do not make the final decision. Their work product, although performed independently, generally goes to their supervisors for approval and comments. They may receive general direction from their supervisors about how to handle a matter. The undersigned cannot find that the JEC was clearly wrong or acted in an arbitrary and capricious manner in determining that a degree level of 3.0 is a better fit for Grievants' duties than a 3.5 or 4.0.

5. Scope and Effect

Scope and Effect is defined in the Job Evaluation Plan as:

> This factor measures the scope of responsibility of the position with regard to the overall mission of the institution, and/or the West Virginia higher education systems, as well as the magnitude of any potential error. Decisions regarding the nature of action should consider the levels within the systems that could be affected, as well as Impact on the following points of institutional mission: instruction, instructional support, research, public relations, administration, support services, revenue generation, financial and/or asset control, and student advisement and development. In making these judgments, consider how far-reaching is the impact and of what importance to the institution and/or 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.

This point factor consists of two parts, Impact of Actions and Nature of Actions. Grievants are challenging the degree level received in both parts. Grievants' Job Title received a degree level of 3.0 in Impact of Actions. Grievant Fuller argued she should have received a degree level of 6.0, and Grievant Richards argued she should have received a degree level of 4.0.

A degree level of 3.0 in Impact 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 withan 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.

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

> Work affects the entire operations of a specialized school, branch campus, community college or baccalaureate-level Institution with an operating budget of [less than] $13M; more than one school of 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.

A degree level of 6.0 in Impact is defined in the Plan as:

> Work affects the entire operations of a graduate- or baccalaureate-level institution with an operating budget of $19-$25M; more than one school or division of a graduate-level institution with an operating budget of more than $50M; or a school or division of a doctoral- level institution with an operating budget of more than $200M.

Grievant Richards described her role as to relieve the campus President of administrative duties and responsibilities, and decisions she makes on his behalf and support she provides to him affect the entire campus.

Mrs. Buttrick explained this factor "was created to allow for distinctions between institutions." Respondents' Exhibit 2. She stated, "[t]he JEC focused on the relationship of the position's work product to the work unit, the institution and to the State College and University Systems." Id. She further explained that Impact

> considers how far-reaching is the position's impact onthe institution and the higher education systems. This portion of the matrix is a buildup of the impact possible for a position and looks at the primary purpose of the position's work product: 1=impact at the function level, 2=impact at the unit level, 3=impact at the department level, etc. until you get to 8. At 8, the primary purpose of the position's work product affects the entire operations of West Virginia University or several institutions within the West Virginia higher education systems.

Id. She pointed out that Grievant Fuller refers items to be handled by the departments. She stated that persons working for the President do not have institution wide impact just because the President does. She stated that Grievant Richards is not acting as the President, and is not taking over any responsibility assigned to him.

Grievant Fuller presented no evidence on the budget of WVSC. Without this information a determination as to the appropriate degree level for Grievant cannot be made.

As noted in the Findings of Fact, WVU-P is a branch campus of WVU, with an operating budget of less than $13 million. The primary purpose of Grievant Richards' work product is to keep the President's Office functioning, make sure the President addresses items which require his attention,

relieve the President of administrative tasks, manage potential crises until the President can address them, and advise the President of policies applicable to a situation and possible solutions. Her work product has an major impact on the proper functioning of the President's Office. While the Office would not function as well without Grievant, she is not making decisions for the President, and has not proven her work product affects "the entire operations" of WVU-P. Grievant Fuller argued she should have received a degree level of 3.0 in Nature of Actions, and Grievant Richards argued she should have received a 4.0, rather than a 2.0. A degree level of 2.0 in Nature is defined in the Plan as:

> Work contributes to the accuracy, reliability, and acceptability of processes, services, or functions. Decisions are limited to the application of standardized or accepted practices and errors could result in some costs and inconveniences within the affected area.

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

> Work provides guidance to an operation, program, function or service that affects many employees, students or individuals. Decisions and recommendations made involve non-routine situations within established protocol, guidelines, and/or policies. Errors could easily result in moderate costs and inconveniences within the affected area.

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

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

President Carter pointed to the importance of Grievant's role to the operations of the President's office, and accordingly, to the operations and image of the entire campus.

President Miller stated if Grievant does not handle the matters she is handling well, it could impact the entire college, and particularly could result in inconvenience, disruption of services and disharmony. He pointed out that people come to his office for assistance when they are not pleased with the formal process.

Mrs. Buttrick stated degree level 3.0 is the beginning ofprofessional level positions, and 4.0 begins with the management levels. Respondents' Exhibit 2. She stated the type of support provided to the President is not the type that would have a significant impact on the institution, but she did not make explain how this was possible.

In applying this point factor, "interpretation of these similarly-worded provisions involves a

subjective value judgment, which is an inherent element of the function of position classification. Hastings [v. Bd. of Trustees, Docket No. 94-MBOT- 943 (May 28, 1996)]; Jessen [v. Bd. of Trustees, Docket No. 94- MBOT-1059 (Oct. 26, 1995)]." Miller v. Bd. of Directors, Shepherd College, Docket No. 94-MBOD-495 (Oct. 29, 1996). In many Mercer decisions, this Grievance Board has found the JEC application of the point factors to be not inconsistent with the language used, taking into account the hierarchy in the departments. See Wood v. Bd. of Directors, W. Va. State College, Docket No. 94-MBOD-480 (March 11, 1997); Hughes v. Bd. of Trustees, W. Va. School of Osteopathic Medicine, Docket No. 94-MBOT-1002 (Jan. 28, 1997); Gregg, et al., v. Bd. of Trustees, W. Va. Network for Educational Telecomputing, Docket No. 94-MBOT-863 (Dec. 18, 1996); and Henry, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-1024 (July 31, 1996).

In evaluating Grievant Richards' duties, however, the JEC interpretation is inconsistent with the language used, and is clearly wrong. President Miller relies upon Grievant Richards' research and advice when making decisions, without researching thematter or the policies involved himself, and no one checks Grievant's work before it goes to the President to make sure she has covered all the angles. Grievant refers matters to other administrators when possible. If a matter must be decided by the President rather than another administrator, it is a matter of importance to WVU-P, which often will affect many people at the institution. Grievant has not proven her duties fall within a degree level of 4.0, because she usually is not making the decisions, but is recommending a solution to the President, providing guidance to the President, which falls within a degree level of 3.0. Her decisions are sometimes "limited to the application of standardized or accepted practices," as is stated in the degree level 2.0 definition, but they also at times involve non-routine situations. Grievant Richards has proven her duties are better described by degree level 3.0.

While President Carter stated that Grievant Fuller's experience and objectivity in providing him with interpretation of policies is important to him, the evidence does not support that this is a significant part of her duties. Further, while President Miller made it clear that he relies upon Grievant Richards alone to provide him with the policies applicable to a situation and recommended solutions, there is no evidence of this with regard to Grievant Fuller. Grievant Fuller has not proven that her duties better fit within a higher degree level.

6. Intrasystems Contacts

Intrasystems Contacts is defined in the Plan as a factorwhich:

> appraises the responsibility for working with or through other people within the SCUSWV [State College and University Systems of West Virginia] to get results. Consider the purpose and level of contact encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, explaining policies or discussing controversial issues. This factor considers only those contacts outside the job's immediate work area.

This point factor also consists of two parts, Nature of Contact and Level of Regular, Recurring and Essential Contact. Grievant Richards is challenging the degree level received in Nature only, arguing she should have received a degree level of 3.0, rather than a 2.0. 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.)

A degree level of 3.0 in Nature is defined in the Plan 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.)

On her PIQ Grievant Richards listed her contacts outside her immediate work unit as Executive Level Administrators at WVU-P, daily, to "[d]iscuss matters on [the] President's behalf, seek recommendations, problem-solving;" professional staff at West Virginia University or the Central Office, weekly, to provide or obtain information; and WVU-P faculty and staff, weekly, to advisethem on procedures or policy matters. Grievant stated she negotiates extensions of the deadline for responding to grievances with grievants, but WVU-P has few grievances. Grievant pointed out in her post-hearing written argument that the Webster's New World Dictionary, 2nd Edition, definition of interpret is "to explain the meaning of; make understandable . . . to have or show one's own understanding of the meaning of . . .."

President Miller stated Grievant deals with controversial and delicate matters, which must be handled appropriately. He stated he confides in Grievant and lets her know everything that is going on, including confidential information which the rest of the college does not know. He could not address how frequently her contacts are controversial.

Mrs. Buttrick explained that "[t]his factor does not measure incidental, infrequent or once in a while contact but the highest level of contact that the position is normally required to have in order to perform the essential functions of the job. This is the position's `normal' level of contact."

Respondents' Exhibit 2. She did not believe Grievant Richards has administrative authority to interpret complex policies, or that her discussions are controversial.

Some of Grievant Richards' discussions are handled in accordance with standard practices and procedures, and involve explaining simple policies or referring the problem to one of the departments. Some of the complaints and problems which come to the President's office have no simple standard solution and involveconflicts among departments, which require delicacy, but some of these contacts are external. When Grievant is asking administrators to perform a particular task and respond to her, and then must follow-up on her request, this may require her to tread carefully, because she is not in a position to require them to do anything, but it is a part of her job to get them to do as she asks. This could be called project interactions.

However, while it is clear that Grievant Richards at times is involved in controversial discussions, which appear essential to the performance of her duties, the undersigned cannot find from the evidence presented that her discussions are better described as frequently controversial, rather than largely non-controversial. Further, the undersigned cannot determine the frequency of project interactions or intrasystems contacts which involve resolution by Grievant of somewhat difficult problems or interpretation of policies which are complex (as opposed to simple). Grievant has not proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in deciding the regular and recurring contacts are within a degree level of 2.0.

7. 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.

Like the previous point factor, External Contacts is comprisedof Nature of Contact and Level of Regular, Recurring and Essential Contact. Grievant Richards is challenging the degree levels received in both parts. She argued she should have received a degree level of 3.0 in Nature, rather than a 2.0. The definitions of the degree levels of Nature are nearly identical to those for the Intrasystems Contacts/Nature degree levels, and need not be repeated here.

On her PIQ Grievant Richards listed her contacts as students, parents and public daily, providing policy information and problem- solving, WVU-P Board of Visitors and Foundation Board of Directors

monthly to provide information and regarding meeting agendas, and donors monthly regarding donations, scholarship endowments, memorials and publicity. In addition, President Miller testified that, when possible, Grievant handles calls for him from the Executive Director of the local Chamber of Commerce, members of the County Commission and other government agencies who call because they know him or they do not know who else to call for assistance. Sometimes Grievant handles the call by routing the caller to the proper person. Neither Grievant nor President Miller testified as to the frequency of calls from government agencies. President Miller stated that one to two times per week Grievant sends out correspondence with her own name on it which deals with irate students and parents.

Mrs. Buttrick stated Grievant Richards' contacts are not controversial, and do not require substantial sensitivity.

While the subject matter of many of Grievant Richards'discussions is of importance to WVU-P and could be of a sensitive nature, there is no indication that the discussions themselves are frequently controversial. Rather, they appear to be better characterized as largely non-controversial and handled in accordance with standard practices and procedures. When she is speaking with students, parents and the public, she is listening to their concerns and providing information about WVU-P policies. While Grievant also lists "resolution of problems," which is listed as a degree level 3.0 example, there is no evidence of the frequency of this type of contact. Further, the evidence showed that usually Grievant's role is to investigate the matter and to either lay out the problem and possible solution for the President to decide, or to take some action to initiate resolution of the problem internally, and prepare correspondence to the external contact for the President's signature. While this requires Grievant's skills, this is contact with the President, not with Grievant. Grievant has not proven the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level of 2.0.

Grievant Richards argued she should have received a degree level of 4.0 in Level, rather than a 3.0. A degree level of 3.0 in Level is defined in the Plan as:

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

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

> Mid-level representatives of government agencies,professional contacts with other

colleges and universities outside the systems.

Mrs. Buttrick stated Grievant Richards does not have to make contact with mid-level representatives of government agencies or with other colleges and universities outside the systems to get her job done. She pointed out Grievant's work with the Foundation is only 5% on her PIQ, and stated this would not impact on the degree level.

The WVU-P Board of Visitors, Foundation Board of Directors, and the Chamber of Commerce do not fall within the degree level 4.0 definition. Without evidence of the frequency of Grievant's contact with members of the County Commission, or mid-level representatives of other government agencies, the undersigned cannot find that Grievant's contacts at degree level 4.0 are regular, recurring and essential. Grievant Richards failed to prove she should have received a degree level of 4.0 in this point factor.

8. 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 point factor consists of two parts, Number of Direct Subordinates, and Level of Supervision. Grievant Fuller is challenging the degree level received in both parts, and GrievantRichards is challenging the degree level received in Level only.

Grievant Fuller argued she should have received a degree level of 3.0 in Number, rather than a 2.0. A degree level of 2.0 is defined in the Plan as one direct subordinate, and a degree level of 3.0 is defined in the Plan as two to three direct subordinates.

Mrs. Buttrick testified that if Grievant Fuller's position were evaluated independently, she would receive a 3.0 in Number, because she supervises two people. Grievant Fuller has proven her duties fall within a degree level of 3.0 in Number.

Grievants argued they should have received a degree level of 4.0 in Level, rather than a 3.0. A degree level of 3.0 in Level is defined in the Plan as:

> 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.

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

> Direct supervision over a unit 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 practices. Input would be significant in subordinate employees' performance appraisal, hire or fire decisions.

Mrs. Buttrick testified that persons supervising one employee were assigned a degree level 3.5. She explained the Secretary Job Title should have received a 3.5, and the JEC changed the degree level for this Job Title to a 3.5, effective in August 1996, when the mistake in the data line for this Job Title was discovered. She explained this changed the Pay Grade to a 16, and each personin the Job Title received a five percent pay increase as a result of the change in Pay Grade. She stated the JEC could have decided to make the change retroactive to January 1, 1994, but persons who were already above the equity step for a Pay Grade 16 would not have received an increase in pay.

Mrs. Buttrick testified that a degree level of 4.0 "is applied when the supervision includes hire and fire authority, re: responsible for the performance appraisals of non-exempt employees." Respondents' Exhibit 2 (emphasis in original). She admitted Grievant Fuller would have received a degree level of 4.0 if her position were evaluated independently.

Grievant Fuller proved she supervises two non-exempt employees, but less than 10% of her time is spent supervising. However, Respondent admitted this was still within a degree level of 4.0, and Grievant Fuller's duties are therefore within this degree level.

Like Grievant Fuller, Grievant Richards does not spend most of her time supervising. Aside from the fact that Grievant Fuller supervises two employees while Grievant Richards supervises one, their supervisory duties are the same. They both have at least significant input in hiring, firing and performance appraisals. The undersigned is unconvinced that a unit cannot be comprised of one person. Grievant Richards has proven the JEC was clearly wrong in assigning her Job Title a 3.0, and that her duties also would fall within a degree level of 4.0, based upon the evidence in this case.C. Summary

Grievant Fuller proved that if her position were rated individually, she should have received a degree level of 3.0 in Direct Supervision Exercised/Number, rather than a 2.0, and a degree level of 4.0 in Direct Supervision Exercised/Level, rather than a 3.0. These changes add 36 points to the point score total for a Secretary of 2104 points, making her total points 2140, which is within a Pay Grade 16.

Grievant Richards proved that if her position were rated individually, she should have received a degree level of 3.5 in Complexity and Problem Solving, 3.0 in Scope and Effect/Nature, and 4.0 in Direct Supervision/Level. These changes add 97 points to the Secretary point score total of 2104 points, making her total 2201 points, which is a Pay Grade 16.

Respondent pointed out that if Grievant Richards' position is being assigned its own data line, all point factors must be evaluated for her position, and she would receive a 1.0 in Physical Coordination and Working Conditions, rather than a 3.0 and 2.0. Even if these changes were made, the total points would be reduced by only 82 points, to 2119 points, which is still a Pay Grade 16. Accordingly, whether any adjustment should be made in these two point factors is moot.

Respondents admitted that if the JEC had not made an error in the data line for Grievants' Job Title, the Job Title would have been placed in a Pay Grade 16 effective January 1, 1994. Grievants did not challenge the legitimacy of the JEC decision to correct itserror effective in August 1996, with a 5% pay increase. The JEC has decided that with this method of correction, Grievants' Job Title has been treated as though it were in a Pay Grade 16 from January 1, 1994. Grievants presented no evidence to the contrary. Accordingly, Grievants have not proven they should have been placed in a different Pay Grade.

Grievant Richards compared her duties to those listed on the PIQ of Edith Kelly at WVU, an Executive Assistant to the President, Pay Grade 19, Alberta Bowyer at the College of Graduate Studies, and Cheryl Flagg at Shepherd College, both of whom were placed in the Assistant Job Title, and Cindy Anderson at the State College and University Systems Central Office, the only Administrative Assistant to the Senior Administrator, Pay Grade 17. It is understandable that Grievant would believe she was misclassified when comparing her duty statement alone to those of these employees. However, the Mercer system is not based upon whole job comparison, and requires a searching review of the entire PIQ. The key is what degree levels are appropriate in all point factors, not how similar the duty statements are. Even a minor difference in duties can easily affect the degree levels received in the various point factors. See Jordan, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-983 (Nov. 25, 1996); Barber, et al., v. Bd. of Trustees, W. Va. Univ., et al., Docket No. 94-MBOT-872 (Oct. 31, 1996); and Campbell-Turner, et al., v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-1035 (Jan. 1, 1996).

In this case, although Ms. Kelly's duties are very similar toGrievant's, Grievant engages in more

problem solving and fewer social director type activities than Ms. Kelly. Ms. Kelly has higher level contacts and supervision, and lower level physical coordination and working conditions. The two persons in this Job Title work at the universities, which have larger budgets, and accordingly, the Job Title received a higher degree level in Scope and Effect/Impact. Finally, that Job Title received higher degree levels in Knowledge, Experience, Complexity and Problem Solving, and Freedom of Action. Cindy Anderson, whose duty statement is very similar to Grievant's, also has higher level contacts than Grievant, received a higher level in Scope and Effect/Impact due to her physical location, and received higher degree levels in Knowledge and Freedom of Action. The PIQ of Cheryl Flagg shows that her duties are different from Grievant Richards', while Ms. Bowyer's duty statement alone indicates that she performs some of the same duties of Grievant and some of the duties performed by the person Grievant supervises. It is not necessary to look further into the PIQ's or Respondent's efforts to discount Ms. Bowyer's PIQ, however. Twenty employees were placed in the Assistant Job Title. The undersigned cannot make any determinations about the Assistant Job Title, from these two PIQ's alone.

Because the point factor analysis does not result in a change in Pay Grade, Grievants have not proven they were misclassified. See Riggs v. Bd. of Trustees, Marshall Univ., Docket No. 94-MBOT-711 (Apr. 29, 1996).

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. The governing boards are required by W. Va. Code § 18B-9- 4 to establish and maintain an equitable system of job classifi cations for all classified employees in higher education.

2. The burden of proof in a misclassification grievance is on the grievant to prove by a preponderance of the evidence that he is not properly classified. 156 C.S.R. 1 § 4.17. The grievant asserting misclassification must identify the job he feels he is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991).

3. The Job Evaluation Committee's interpretation and explanation of point factors will be given great weight unless clearly wrong, where the proper classification of a grievant is almost entirely a factual determination. See Tennant v. Marion Health Care Found., 194 W. Va. 97, 459 S.E.2d 374

(1995); Burke, et al., v. Bd. of Directors, Fairmont State College, Docket No. 94- MBOD-349 (Aug. 8, 1995).

4. The Job Evaluation Committee's decision that each Grievant is an Executive Secretary to the President is not clearly wrong or arbitrary and capricious.

5. The Job Evaluation Committee's assignment of degree levels to the point factors for the Job Title Executive Secretary to the President is neither clearly wrong nor arbitrary and capricious.

Accordingly, the grievances of Debra Richards and Charlotte Fuller are **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 arose, 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 ap propriate court.

BRENDA L. GOULD

Administrative Law Judge

Dated: June 24, 1997

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 Pay Grade for this Job Title was a 15 on January 1, 1994, but was corrected to a 16, effective August 16, 1996, when a mistake was discovered in the degree level assigned in Direct Supervision Exercised/Level of Supervision. The degree level was changed to 3.5 from 3.0. Rather than make this change retroactive to January 1, 1994, all persons in the Job Title received a five percent increase in salary.

Footnote: 3

Level IV hearings were held on August 8, 1996, and March 5, 1997. This matter became mature for decision on April 29, 1997, upon receipt of Grievant Richards' post-hearing written submission.

Footnote: 4

Grievant Richards' PIQ's showed that all duties comprised only 80% of her time. The undersigned assigned the remaining 20% of her time to all her duties on an approximately pro rata basis.

Footnote: 5

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: 6

A grievant may challenge any combination of point factor degree levels, so long as he clearly identifies the point factor degree levels he is challenging, and this challenge is consistent with the relief sought. See Jessen, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-1059 (Oct. 26, 1995); and Zara, et al., v. Bd. of Trustees, W. Va. Univ., Docket No. 94-MBOT-817 (Dec. 12, 1995).

Footnote: 7

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: 8

These headings are shorthand for the following point factors: KN is Knowledge; EX is Experience; CPS is Complexity and Problem Solving; FA is Freedom of Action; SE/IA is Scope and Effect/Impact of Actions; SE/NA is Scope and Effect/Nature of Actions; IC/NC is Intrasystems Contacts/Nature of Contact; EC/NC is External Contacts/Nature of Contact; EC/LVL is External Contact/Level of Contact; DSE/NUM is Direct Supervision Exercised/Number of Subordinates; and, DSE/LVL is Direct Supervision Exercised/Level of Supervision.