

IN THE
WEST VIRGINIA SUPREME COURT OF APPEALS

NO. 33208

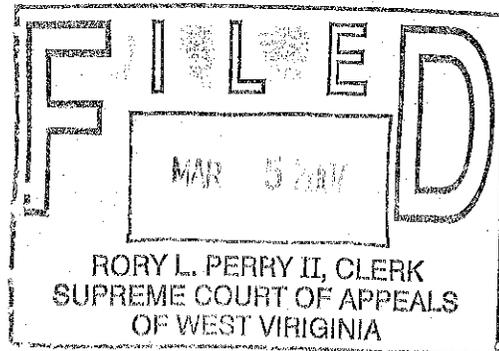
THE WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS,
THE STAFF COUNCIL OF WEST VIRGINIA UNIVERSITY,
TERRY NEBEL, and CHARLES L. MILLER, JR.,

Petitioners,

V.

THE WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION,

Respondent.



APPELLANTS' REPLY BRIEF

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THE LEGISLATURE HAS EMPOWERED THE WVU BOARD OF GOVERNORS TO ESTABLISH AN EQUITABLE SALARY PLAN, AND THE APPELLEE CANNOT OVERRIDE THAT PLAN WITHOUT SECURING A PROPERLY ENACTED LEGISLATIVE RULE, WHICH THE APPELLEE HAS NOT DONE.

There is no question that the Legislature has given the Commission the authority to establish and maintain a personnel classification system. W. Va. Code §§ 18B-9-1 & 18B-9-4(a). Throughout its brief, however, the Commission asserts – or assumes – that the power to control job classifications embraces the power to set and control compensation. The Commission fails to grasp that those are two completely different decisional inquiries.

Setting salaries and developing an equitable compensation scheme require consideration of a wide range of factors, including supply and demand, contribution costs, opportunity costs, competing demands on funds, individual contingencies (experience, performance, merit, etc.), and variations in job content. *E.g.*, Thomas A. Mahoney, *Employment Compensation Planning and Strategy*, in COMPENSATION AND BENEFITS 3-2 to 3-15 (Luis R. Gomez-Mejia, ed. 1989). As this Court has noted, public employers may and do “consider a broad range of factors when setting the salary of a new employee.” *Largent v. West Virginia Division of Health*, Syl. Pt. 1, 192 W.Va. 239, 452 S.E.2d 42 (1994); *accord, id.*, 192 W.Va. at 247, 452 S.E.2d at 50 (McHugh, J., concurring and dissenting). Job classification systems, on the other hand, focus only on job content, on the skill, effort, and responsibility ordinarily involved in performing a particular job. *E.g.*, J.M. MARTOCCHIO, STRATEGIC COMPENSATION: A HUMAN RESOURCE MANAGEMENT APPROACH 231-239 (4th Ed. 2006).

As petitioners explained in their earlier brief, the Legislature recognized the difference between the two systems and incorporated it into §§ 18B-9-1, *et seq.*, the article dealing with

classified staff's salary and classification. The distinction is made in the definitions section, §18B-9-2,¹ and in the § 18B-9-4(b) directive that staff salaries shall be set "in accordance with the uniform classification system *and* a uniform and equitable salary policy adopted by each individual board of governors. (Emphasis added.) West Virginia University ("WVU") recognizes that its salary plan must comply with the Commission's classification system,² and there is no question in this case that the University is in compliance. It also adheres to the "uniform and equitable salary policy" that § 18B-9-4(b) clearly required it to develop.

The Commission attempts to dismiss that provision's lucid language by contending it only applies to salary "increases" and, because new hires cannot get raises, the section therefore does not apply to starting salaries. The reference in the section to "salary increases," however, obviously refers to raising salaries across the spectrum of job classifications and years of performance, including for new hires. As appellants previously explained in footnote 11 of their Brief:

The Board of Governors does not set individual salaries; rather, it creates "a uniform and equitable salary policy" that provides for compensation based on years of service and pay grade. When the Board increases salaries, it does so on a uniform basis for all levels, *including* the zero or entry level. That is what § 4(b) refers to as "classified salary increases"

¹Subsection (g) defines "personnel classification system" as "the process of job categorization adopted by the commission . . . by which job title, job description, pay grade and placement on the salary schedule are determined," and subsection (h) separately defines "salary" as "the amount of compensation paid through the state treasury per annum to a classified employee." *Id.* at (h).

²The Commission states at page 14 of its brief: "If, as [appellants] claim, the Commission under its statutory framework, has no say with compensation or salary increase policies for classified employees, then each institution would have the authority to ignore any practical effect of the uniform classification system and pay employees under any scheme they [sic] concoct." The statement is a complete *non sequitur*. An institution can have the power and discretion to set compensation and salary increases but still be required to adhere to a higher authority's classification system in arriving at its salary numbers. That is the point of § 18B-9-4(b).

– increases made on a systemic basis across all pay grades and across all tenure levels.³

It is also undisputed that the Legislature in 2000 directed that the all of the rules from the previously existing higher education boards were to be transferred to the new Higher Education Policy Commission. W. Va. Code § 18B-1-3(h)(1). That made sense; there was no reason to reinvent the wheel on matters that had previously been addressed, especially those that had gone through the detailed rule making process set forth in West Virginia Code §§ 29A-3A-1, *et seq.* Hence, the regulation dealing with classified staff salaries, Series 62, was to be continued under the Commission when it became official on July 1, 2001, and that regulation's § 12.1 provided that the "entry rate of a classified position is the published minimum rate of pay associated with each pay grade. No covered employee shall be appointed below the established minimum of the pay grade to which the position is assigned." The ensuing legislature, however, qualified that regulation in 2001 by amending West Virginia Code § 18B-9-4(b) to insert the language that assigned to each institutional board of governors the responsibility for developing an "equitable salary policy" to determine salaries of classified staff.

Despite that clear legislative directive, the Commission relies on its October, 2001, attempt to amend Series 62, § 12. Series 62 became Series 8, which was recorded in the Code of State Regulations as 133-8-1, *et seq.* The attempted amendment of § 12, however, was futile. The Commission could not by administrative directive override the intervening statutory command. Furthermore, Series 8 was not a validly enacted rule. Section 18B-1-6 (entitled Commission "Rulemaking") authorizes the Commission to "amend" rules but requires it to do so in "accordance

³If WVU did pay all new hires at the zero step level stated in § 18B-9-3, then it would have to "increase" its zero step salaries. Hence, even under the Commission's interpretation, that would be a decision controlled by the Board of Governors and its equitable salary policy.

with the provisions of [§§ 29A-3A-1, *et seq.*], subject to the provisions of [§ 18B-1-3].” The latter section carried forth previously enacted legislative rules, without the need to go back through the elaborate rule making procedure of the Higher Education Rule Making Act. But nowhere does that provision excuse the Commission from adhering to the requirements of §§ 29A-3A-1, *et seq.*, when it “amend[s]” any previously existing rule. W. Va. Code § 18B-1-6(a). The Commission acknowledges that Series 8, adopted in October of 2001, attempted to “amend” the previously existing Series 62. *E.g.*, Appellee’s Brief at _____. Because that attempt did not comply with the Higher Education Rule Making Act, it was therefore a complete nullity.

In an apparent attempt to avoid the hurdles of adopting a legislative rule, the Commission characterized Series 8 as a “procedural rule.” It clearly is not a “procedural rule,” which West Virginia Code § 29A-1-2(g)⁴ defines as a measure that “fixes rules of procedure, practice or evidence for dealings with or proceedings before an agency, including forms prescribed by the agency.” Rather, Series 8, §12’s edict that the “entry rate for any classified employee appointed after July 1, 2005, shall not be below the entry (zero) step set out in W. Va. Code § 18B-9-3 for the pay grade assigned” is an attempt to establish a rule that “has (1) the force of law, . . . (2) supplies a basis for the imposition of civil . . . liability, [and] (3) grants or denies a specific benefit.” W. Va. Code § 29A-1-2(d). That is the definition of a “legislative rule”. *Id.* To accomplish those ends, however, the Commission would have to adhere to the requirements in §§ 29A-3A-1, *et seq.*, for enacting a legislative rule, and that the Commission has not done.

In an effort to salvage its position, the Commission contends that, if Series 8 is invalid, then

⁴Section 29A-1-2 defines terms for all of Chapter 29A and would therefore govern the terms used in 29A-3A-1, *et seq.*

that means Series 62 remains in effect. Putting aside that the 2001 *legislative* amendment to § 18B-9-4(b) superseded Series 62 and admitting, for the sake of argument, that Series 62 was still effective, that fact would not change the result in this case. As noted above, § 12.1 of Series 62 did say that “entry rate of a classified position is the published minimum rate of pay associated with each pay grade. No covered employee shall be appointed below the established minimum of the pay grade to which the position is assigned.” That rule also had appended to it what was the “the published minimum rate of pay” for each pay grade.⁵ The rule is attached to this brief.⁶ WVU met those minima in 2000, and it still does. In addition, § 20.1 of that rule rendered § 18B-9-3 “null and void,” which means that the zero step in that section would have no effect. Thus, even if Series 62 were still controlling, it would not require WVU to stray from its commitment to its equitable salary policy.

The Commission also repeatedly cites to its power under § 18B-1B-4(a)(33) to promulgate rules “as necessary or expedient to fulfill the purposes” of the statute and to standardize “the administration of personnel matters among the institutions of higher education.” And the Commission emphasizes that the grant of power to the governing boards in § 18B-2A-4(a)(j) over “the management of personnel matters, including . . . compensation” is subject “to rules adopted by the Commission.” The short answer to the Commission is, “So what?” The Commission has not exercised its admitted authority to “promulgate rules” regarding personnel, at least not in the manner

⁵That is, Series 62 set out its own distinct equity step. That equity step was subsequently adopted by the Legislature in the 2001 amendment to § 18B-9-3 as the starting point to determine whether an employee is equitably compensated as to other employees with the same paygrade. § 18B-9-3(a)(1). As stated in the text, WVU has been in compliance with the 2001 statutory amendment since its enactment.

⁶The rule was retrieved from <http://hepc.wvnet.edu/UnivSys/TITLE128/T128S62.HTM>.

required by §§ 18B-1-6 and 29A-1-1, *et seq.* Instead, it has attempted to impose a substantive obligation on WVU by the expedience of labeling Series 8 a “procedural rule.” That effort has no legal effect.

Contrary to the Commission’s contentions, the WVU salary policy is uniform and equitable, as required by § 18B-9-3(a). That provision states that “a classified employee is equitably compensated in relation to other classified employees in the same paygrade” if two conditions are met: (1) the employee’s annual salary is at least the minimum required on July 1, 2000, under the old salary schedule, and (2) the institution is making progress toward meeting the new salary schedule. WVU has satisfied both conditions, and the Commission’s attempt to amend § 133-8-12 and to impose that amendment on WVU contravenes what the Legislature did in § 18B-9-3(a).

Finally, the Commission maintains that the “[a]ppellants never really explain why negating the uniformity in starting minimum salaries mandated by the Commission would not lead to the injustice and absurdity asserted by the circuit court.” Appellee’s Brief at 14. There is no “absurdity” or “injustice” that could result from the University respecting seniority and adhering to its equitable salary policy. Moreover, the “uniformity in starting salaries” promoted by the Commission could actually have the effect of defeating *both* the seniority basis of § 18B-9-3 *and* the uniform classification system because new hires could receive a higher pay than workers with more seniority and could make more than previously hired workers in a higher classification.

CONCLUSION

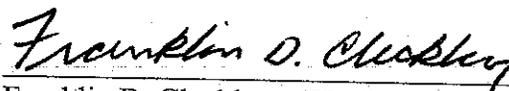
West Virginia Code § 18B-9-4(b) confers on WVU the authority and the duty to establish an equitable salary policy and § 18B-9-3 requires that its policy respect seniority. WVU has met its responsibilities under both of those provisions. Nothing in the Code empowers the Commission to

override WVU's salary policy except through a duly enacted legislative rule. Series 8's § 12 is not a duly enacted legislative rule; it has never been subjected to the rigorous requirements of West Virginia Code 29A-3A-1, *et seq.* Section 12 therefore has no force or effect.

Consequently, this Court should reverse the circuit court and enter a holding that the West Virginia University Board of Governors has the discretion and authority to create for its classified staff an equitable salary policy and to set salaries pursuant to that policy. Further, the Court should hold that § 12 of Series 8 (W.V.C.S.R. § 133-8-12) cannot be enforced against the University.



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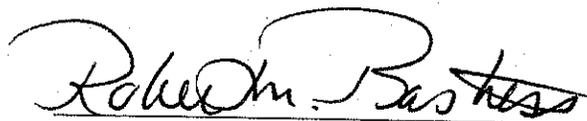


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CERTIFICATE OF SERVICE

I have on this the 5th day of March, 2006, mailed a copy of the foregoing Reply Brief to defendant's counsel, Bruce Ray Walker, West Virginia Higher Education Policy Commission, 1018 Kanawha Blvd., East, Suite 700, Charleston, W. Va. 25301.



Obtained at:
<http://hepc.wvnet.edu/UnivSys/TITLE128/T128S62.HTM>

TITLE 128

1. LEGISLATIVE RULE

UNIVERSITY SYSTEM OF WEST VIRGINIA

BOARD OF TRUSTEES

SERIES 62

PERSONNEL ADMINISTRATION

§128-62-1. General.

1.1. Scope. -- This rule establishes policy in a number of areas regarding personnel administration for the University System of West Virginia employees.

1.2. Authority. -- W. Va. Code

§§18B-1-6, 18B-1-8, 18B-9-4.

1.3. Filing Date. -- May 3, 1994.

1.4. Effective Date. -- May 5, 1994.

§128-62-2. Definitions.

2.1. This subsection defines the different types of employment that institutions may use and the status under the classification program and for benefits.

2.1.1. Full-Time Regular Employee (FTR). Any employee in a classified position created to last a minimum of nine months of a twelve month period and in which such employee is expected to work no less than 1,040 hours during said period. The full-time equivalent (FTE) of such a position must be reported at no less than .53 FTE. Such an employee is covered under the classification program set out by this rule and is eligible for all applicable benefits of a full-time regular classified employee, subject to the qualifying conditions of each benefit. Such benefits shall be prorated in relation to a 1.00 FTE. Length of service as a full-time regular employee with the State of West Virginia shall be credited toward initial placement on the salary schedule which may be subsequently enacted by the Legislature or adopted by the governing boards.

2.1.2. Part-Time Regular Employee (PTR). An employee in a position created to last less than 1,040 hours during a twelve-month period. An employee in a PTR position is not eligible for benefits, but is covered under the classification program.

2.1.3. Temporary Employee. An employee hired into a position expected to last fewer than nine months of a twelve month period regardless of hours worked per week. A temporary employee is not eligible for benefits, but is covered by the classification program.

2.1.4. Casual Employee. A casual employee position is a position created to meet specific operational needs at an institution for no more than 225 hours in a 12-month period. Individuals in a casual employee position are not eligible

for benefits and are not covered by the classification program.

2.1.5. Student Employee. An employee enrolled at the institution as a student and whose primary purpose for being at the institution is to obtain an education. A student employee is not eligible for benefits and is not covered by the classification program.

2.1.6. Full-Time Faculty. Employment as a faculty member for a full academic year (at least a nine-month contract basis) for at least six (6) semester credit hours teaching per semester or the equivalent in teaching, research, public service, and/or administrative responsibilities. Faculty are not considered classified employees or subject to the classification program.

2.1.7. Non-Classified Employee. An employee who is responsible for institutional policy formation and reports directly to the president of the institution, or other positions designated by the president. Non-classified employees are not subject to the classification program but are eligible for benefits. Non-classified shall not exceed four percent of the total number of employees at the institution who are eligible for membership in any state retirement system.

2.1.8. Change In Status. The president or his/her designee will review and make a final determination as to the status or change in status of any employee under this subsection. When the president or his/her designee determines that a part-time regular employee becomes a full-time regular employee, he/she shall credit that employee's previous service toward any calculation of length of service for purposes of this rule and benefit eligibility based upon a prorated comparison against a 1.00 FTE. Previous length of service as temporary, casual, and student employees shall not be credited toward seniority calculations under other sections of this rule or statute.

2.2. Position. A set of duties and responsibilities performed by a specific employee at a particular institution.

2.3. Job. A collection of duties and responsibilities performed by one or more employees at one or more institutions whose work is substantially of the same nature and which requires the same skill and responsibility level. For jobs occupied by only one employee, the terms "position" and "job" shall be considered the same.

2.4. Job Title. The label that uniquely identifies and generally describes a job. The same descriptive job title shall be given to a group of jobs, regardless of institutional location, which are substantially the same in duties and responsibilities, and which require substantially the same knowledge, skills and abilities performed under similar working conditions.

2.5. Position description form. The document which describes the set of essential and non-essential functions of a position at a particular institution.

2.6. Generic Job description. A summary of the essential functions of a job, including the general nature of the work performed, a characteristic listing of duties and responsibilities, and the specifications necessary to perform the work. Generic job descriptions shall be prepared for systems-wide and institution-specific titles occupied by more than one employee. For a job occupied by only one employee, the position description becomes the job description.

2.7. Pay Grade. A range of compensation values for a job defined by a series of step values. Positions which occupy the same job title shall be assigned to the same pay grade. Job titles having similar factor levels, shall be classified within the same pay grade.

2.8. Promotion. Movement from a position requiring a certain level of skill, effort and authority to a vacant or newly created position assigned to a different job title and higher pay grade requiring a greater degree of skill, effort, and authority.

2.9. Interim Responsibilities. A significant change in duties and responsibilities of an employee on a temporary basis justifying an interim promotion or upgrade for salary purposes. Such a temporary reassignment shall normally be for no less than four (4) consecutive weeks and no more than twelve (12) consecutive months and shall only occur when the responsibilities being undertaken by the employee are those of another position that is vacant because of the incumbent's

illness or resignation or because of temporary sufficient change in the duties and responsibilities of a filled position. If the temporary reassignment of responsibilities meets the test for a temporary upgrade or promotion under Sections 13 and 14 of this rule, the affected employee shall have his/her base salary adjusted upwards consistent with a promotion or upgrade under this rule. At the end of the temporary reassignment, the affected employee shall have his/her salary reduced to its original level including any salary increase which the employee would have received in his/her regular position.

2.10. Upgrade. An advancement of the employee's current position to a higher pay grade as a result of a significant change in the position's existing duties and responsibilities. When a position is upgraded, the employee does not move to a different position in a higher pay grade. Rather, it is the employee's position that is moved to a higher pay grade because of a significant increase in the position's existing responsibilities, as determined by job evaluation. When an upgrade occurs to an employee occupying a title held by more than one individual, the position's current title shall be changed to a different title in the higher pay grade. When an upgrade occurs to an employee occupying a title exclusively assigned to that position, the current title may or may not be revised depending upon how relevantly the current title describes the position.

2.11. Demotion. Movement from a position requiring a certain level of skill, effort and responsibility to a vacant or newly created position assigned to a different job title and lower pay grade requiring a significantly lesser degree of skill, effort and responsibility.

2.12. Downgrade. A reassignment of the employee's current position to a job title assigned to a lower pay grade as a result of a significant reduction in the existing position's duties and responsibilities. When a position is downgraded, the employee does not move to a different position in a lower pay grade. Rather, it is the employee's position that is moved to a lower pay grade because of a significant decrease in the position's existing responsibilities as determined by job evaluation. When a downgrade occurs to an employee occupying a title held by more than one individual, the position's current title will be changed to a different title in the lower pay grade. When a downgrade occurs to an employee occupying a title exclusively assigned to that position, the current title may or may not be revised depending upon how relevantly the current title describes the position.

2.13. Transfer. Movement from one position or job title to another position or job title requiring the same degree of skill, effort and authority. Both positions are in the same pay grade.

2.14. Base salary. The amount of salary paid annually to an employee, excluding any annual increment earned pursuant to W. Va. Code §§18B-9-5 or 5-5-2. Total salary is base salary plus any increment earned.

2.15. Base salary adjustment. The amount that a base salary increases within the pay grade to reward performance, to rectify inequities, or to accommodate competitive market conditions.

2.16. Longevity. The total number of years employed at state institutions of higher education and other agencies of state government in West Virginia for purposes of determining placement on any salary schedule which may be subsequently enacted by the Legislature or adopted by the governing boards at time of implementation of the classification program authorized by this rule.

2.17. Institution. The following are each considered separate institutions for the purpose of this rule only - West Virginia University, Potomac State College of West Virginia University, West Virginia University at Parkersburg, Marshall University, West Virginia Graduate College, West Virginia School of Osteopathic Medicine, Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty State College, West Virginia Institute of Technology, West Virginia State University, Southern West Virginia Community College, West Virginia Northern Community College, the offices of each of the chancellors, the central office of the governing boards, and the West Virginia Network for Educational Telecomputing.

2.18. President. In addition to the sixteen (16) college and university presidents, this term shall be used in this rule to refer to the senior administrator of the central office and the director of the West Virginia network for educational telecomputing, and the chancellors for those individuals employed in the offices of the chancellors.

- 2.19. Chancellors. The chancellor of the State College System of West Virginia and the chancellor of the University System of West Virginia.
- 2.20. Salary schedule. A schedule consisting of a series of pay grades, which may be subsequently enacted by the Legislature or adopted by the governing boards.
- 2.21. Recall. An employee terminated under the provisions of 18B-7-1 and recalled to work at his/her previous institution under the same provisions. Salary for a recalled employee will be consistent with the entry rates described in Section 12 of this rule.
- 2.22. Rehire. An employee who leaves the service of an institution by resignation and later applies for and accepts a position at the same institution. Salary for a rehired employee will be consistent with the entry rates described in Section 12 of this rule.
- 2.23. FTE. Full time equivalency is the percentage of time for which a position is established, with a full-time position working 1950 hours per year being 1.00 FTE.
- 2.24. Classified Employee. An employee who is covered by the provisions of the classification program outlined in this rule.
- 2.25. Exempt. Employees not covered by the Fair Labor Standards Act (FLSA) for overtime purposes.
- 2.26. Non-Exempt. An employee who is entitled to overtime benefits as outlined in federal and state law.
- 2.27. Factor. One of the thirteen (13) items used to evaluate jobs. The items are knowledge, experience, complexity and problem solving, freedom of action, breadth of responsibility, scope and effect, intrasystems contacts, external contacts, direct supervision exercised, indirect supervision exercised, working conditions, physical coordination, and physical demands.
- 2.28. Point factor methodology. The instrument used to assign weights to the factors. The total of the weights determines the pay grade to which a job title is assigned.
- 2.29. Job Family. A series of job titles in an occupational area or group.

§128-62-3. Compensation Review Committee.

3.1. The compensation review committee shall be responsible for annually reviewing the salary schedule and recommending revisions based on existing economic, budgetary, and financial conditions to the chancellors, who will make a final proposal to the governing boards. The composition of the compensation review committee shall consist of the central office human resources director, the central office finance director, the chair or chair's designee from each state-wide advisory council of classified employees, four human resource administrators from the University System (which shall be deemed to include West Virginia Network for Educational Telecomputing), three human resource administrators from the State College System, and a president from each of the two systems. The human resource administrators and presidents shall be appointed by the appropriate chancellor and shall serve staggered terms of two years. In addition, the chancellors may appoint, to the committee, as they deem appropriate, representatives of major groups which represent classified employees.

3.2. Recommendations of the compensation review committee approved by the governing boards are subject to the availability of funds and shall only be implemented when new funds are specifically appropriated by the Legislature for funding of the salary schedule.

§128-62-4. Compensation; Pay Calculations.

4.1. Base salary is calculated on a thirty-seven and one-half (37 1/2) hour workweek.

4.2. When base salary increases are calculated and rounding is involved, the policy is to round up to the nearest even dollar amount.

4.3. Overtime pay for nonexempt employees is calculated at the rate of one and one-half (1 1/2) times the regular hourly rate, which is the total base salary, plus any incremental pay, divided by 1,950 hours. Overtime does not commence until forty (40) hours have actually been worked within one (1) workweek. Regular hourly pay, also known as "straight time," is paid for work time between thirty-seven and one-half (37 1/2) hours and forty (40) hours in a work week.

4.4. Only actual hours worked are included in calculating overtime. Pay which is received for holidays, annual leave, sick leave, or work release time, as authorized by Series 35, is not counted as working hours for purposes of overtime.

4.5. Annual leave, sick leave and longevity do not accumulate in any part of a month for which an employee is off the payroll on a leave without pay or during a terminal leave period. A terminal leave period is that time between the employee's last day of work and his/her last day on the payroll.

§128-62-5. Compensatory and Holiday Premium Time Off.

5.1. Compensatory time off shall be allowed only to the extent authorized by federal and state law.

5.2. When a full-time or part-time classified non-exempt employee is required to work on any designated board or institution holiday, that employee at his/her option shall receive regular pay for that holiday plus substitute time off or additional pay at the rate of one and one-half (1 1/2) times the number of hours actually worked. The time off must be used within a six-month period following the holiday.

5.3. When an exempt employee is required to work on any designated board or institution holiday, that employee shall be given substitute time off on an hour-for-hour worked basis.

§128-62-6. Workweek.

6.1. The workweek is a regularly recurring period of one hundred sixty-eight (168) hours in the form of seven (7) consecutive twenty-four (24) hour periods. It begins at 12:01 a.m. on Sunday and ends at 12 midnight the following Saturday. The institutional president or the president's designee may establish a workweek different from this provided that record keeping requirements are met as set forth in relevant law. A work schedule of thirty-seven and one-half (37 1/2) hours will be established within a workweek.

§128-62-7. Appointment.

7.1. A classified employee appointment letter shall be completed for each classified employee at the time of initial employment.

§128-62-8. Access to Personnel File.

8.1. An employee may have access to his/her personnel file when the employing institution is normally open for business. An employee may examine his/her own file and the contents therein with the following exception:

8.1.1. Materials which were gathered with the employee's prior agreement to forfeit his/her right of access, such as some references.

8.2. A representative of the custodian of records shall be present with the employee during the review. The date, time and location of each review shall be recorded in the personnel file.

8.3. A copy of any material in the personnel file, except as noted above, shall be provided to an employee upon request. A small copy fee may be charged. Positive identification of the employee must be established prior to providing access to the personnel file. Documents may not be removed from a personnel file by the employee. An employee may petition

at any time for either the removal or addition of documents to his/her own personnel file. The employer may require that employees schedule an appointment to see the personnel file.

§128-62-9. Changes in Name, Address, Number of Dependents and Related Matters.

9.1. It is the exclusive responsibility of each employee to notify all appropriate persons, agencies and parties when record changes occur, including emergency information. This must be done in writing and a copy of such notification will be placed in the employee's personnel file as a permanent record that he/she notified appropriate persons, agencies and parties.

§128-62-10. Classification Review Request.

10.1. When significant changes occur in the principal duties and responsibilities of a classified position, it is the responsibility of the supervisor to recommend through established procedures that the position be reviewed. Requests for position reviews also may be initiated by an employee after discussion with the immediate supervisor. Within thirty (30) days from the date of request for review of a job, the department of human resources shall report to the requestor, in writing, whether the reclassification has been denied or approved. The immediate supervisor must prepare a complete and accurate position description form of the duties of the position, but the description may be written by the employee at the supervisor's request. The responsibility for assigning tasks and duties to a position belongs to the supervisor. It is the supervisor's responsibility to document and submit the position description form for classification review when significant changes occur in the principal duties and responsibilities of a position. It is also the responsibility of a supervisor to ensure completion of required forms. The institutional president or the president's designee may also initiate action to review positions. The institutional president or the president's designee has authority on the campus to make classification determinations for institution-specific titles or the slotting of employees under existing systems-wide titles. The president may delegate authority to the human resource administrator for day to day management of the classification program. Management of the program requires adherence to written rules which ensure a uniform system of personnel classification. All classified positions shall be placed on any salary schedule which may be subsequently enacted by the Legislature or adopted by the governing boards.

10.2. A position description form shall exist for every classified position. It shall be reviewed by the supervisor and/or the president or the president's designee on a formal basis at least every three years as part of the position audit procedures established by each institution. The date of each review shall be recorded on the description.

§128-62-11. Job Evaluation Process.

11.1. The review of individual positions occupying systems-wide titles shall be carried out by the institution's president or president's designee provided that the action involves the reclassification or the reslotting of the employee into an existing systems-wide title.

11.2. The review of institution-specific job titles, as well as the reslotting of employees into an existing institution-specific title, shall be carried out by the president or the president's designee of each respective institution.

11.3. If an institution initiates an action to establish a job which exists exclusively at another institution the institution's president or the president's designee shall submit a request for the use of the title to the chancellors or the Chancellors' designee. A review shall then be conducted, a determination made, and notification given to the institution's president or the president's designee as to whether the request is approved or denied. If a request is denied, reasons for the denial will be provided to the president or president's designee. Once two or more institutions utilize a job title, that title shall automatically become a systems-wide title.

11.4. All actions taken by a president or president's designee under this section are subject to audits and reviews by the job evaluation committee.

11.5. On-going responsibility for overseeing and administering the job evaluation program and ensuring that it is administered equitably and uniformly across the institutions rests with the chancellors or the chancellors' designee. The

evaluation of all systems-wide job titles and the review of classification decisions across the system shall be under the purview of the job evaluation committee. The composition of the job evaluation committee shall consist of nine human resource representatives and two classified staff representatives. Of the nine human resource representatives, one shall be from the central office and shall serve as chair, four shall be from the University System (which shall be deemed to include West Virginia network for educational telecomputing), and four shall be from the State College System. The nine human resource representatives shall be appointed by the appropriate chancellors to staggered terms of no more than two years. The classified staff representatives shall consist of one from each state-wide advisory council of classified employees and shall be appointed by the appropriate chair of the state-wide advisory council of classified employees to staggered terms of no more than two years. In addition, the chancellors may appoint, to the committee, as they deem appropriate, representatives of major groups which represent classified employees.

11.6. The job evaluation committee shall be convened by its chair at least quarterly, or more often if deemed necessary, to review classification decisions made or those being proposed by the institutions. To ensure the integrity of the program, random and/or complete reviews of classification decisions made or proposed by the institutions shall be conducted by the committee. Each institution shall be responsible, however, for submitting to the central office on a monthly basis, a computer diskette of any classification decisions actualized, along with appropriate documentation where requested by the committee. The chancellors or the chancellors' designee shall review the classification actions of each institution for appropriateness and consistency of application. Pending this review, the job evaluation committee shall be convened as needed to review those actions regarded as potentially out of conformance with the compensation and classification program. The committee shall subsequently provide a report to the appropriate governing board concerning its findings relative to each institutional review. In those cases where the committee finds an institutional classification decision to be in error, the committee shall recommend to the chancellor or chancellor's designee whether the pay grade assignment should be changed to the appropriate level.

11.6.1. Salary reversals shall be made in accordance with the procedures for upgrades and downgrades specified in this rule. During the course of its reviews, should the job evaluation committee discover the systematic misapplication of the program by an institution or institutions, it shall notify the chancellors, who will take the appropriate action warranted. Whenever the chancellors or their designee find that employees have been misclassified at the institutional level, they shall order that these classifications and salaries be immediately adjusted to the proper level. Absent fraud on the behalf of the employee, any overpayment to the employee because of an erroneous classification decision by an institution shall not be collected from the employee. However, any erroneous overpayment to such an employee, once corrected, shall not be deemed as evidence in claims by other employees that the classification and compensation program is not equitable or uniform.

§128-62-12. Entry Rates.

12.1. The entry rate of a classified position is the published minimum rate of pay associated with each pay grade. No covered employee shall be appointed below the established minimum of the pay grade to which the position is assigned.

12.2. Offers of employment at rates which exceed the entry rate are invalid unless the policy for exceptions is followed. Criteria to consider in determining whether exceptions shall be made shall include the following:

- 12.2.1. Qualifications of the candidate;
- 12.2.2. Number of applicants for a position;
- 12.2.3. Number of interviews;
- 12.2.4. Number of qualified applicants identified;
- 12.2.5. Number of offers of employment;
- 12.2.6. Length of the recruiting campaign;

- 12.2.7. Cost of the recruiting campaign;
 - 12.2.8. Length of time the position was vacant;
 - 12.2.9. Urgency to fill the position;
 - 12.2.10. Market conditions for that job;
 - 12.2.11. The rationale underlying the difference between the entry rate and the base salary the institution wants to offer; and,
 - 12.2.12. Compression problems relative to other employees within the job title who possess similar qualifications.
- 12.3. When employment above the entry rate occurs, the institution shall provide justification based on the appropriate and applicable criteria from the above list.
- 12.4. Offers for employment above the entry rate of the respective pay range shall be determined by each institution based on the above criteria. Requests for hiring exceptions shall be submitted by the requesting supervisor to the human resources department for review and approval by the president or president's designee. The institutional president or president's designee will notify the chancellor or chancellor's designee within fifteen (15) days of making an offer of employment at a salary level above the entry rate along with the written justification.
- 12.5. Review of exceptions shall be made by the Job Evaluation Committee under the procedures set out in Section 11 of this rule. The procedures and guidelines for salary reversals contained in that section shall apply to those instances where the chancellors determine a misapplication.

§128-62-13. Promotion.

- 13.1. Promotions result from an employee moving from his/her current position to a vacant or newly created position assigned to a different job title and higher pay grade and which requires a significantly greater degree of skill, effort and responsibility than that of the employee's current position.
- 13.2. Upon promotion from a position in one pay grade to a different position in a higher pay grade, the employee will receive an increase of five percent (5%) per pay grade rounded to the next highest step in the new pay grade based upon the employee's base salary, or the entry rate of the new pay grade, whichever is greater. However, under adverse recruiting conditions in which an institution experiences great difficulty in filling a position, an increase which brings the employee up to a point no greater than the maximum of the grade may be given. Promotional increases which exceed the standard formula must meet the same criteria which appears in the section on entry rates of this rule and must be approved in accordance with the process outlined in that section. The new base salary may not exceed the maximum of the new pay grade.

§128-62-14. Upgrade.

- 14.1. Upgrades result from the process of job evaluation where a determination is made that a significantly higher level of skill, effort, and responsibility exists in the employee's current position. A new pay grade value shall then be established based on the application of the job evaluation plan and the calculation of a revised total point value for the position. Upon determination of the pay grade, job descriptions shall be reviewed of other titles having the same pay grade and whose duties, responsibilities and requirements closely match the work of the position as it is now described. The position shall then be slotted into the classification whose grade is consistent with the point value calculated and whose duties and requirements most appropriately characterize the position. For unique and specialized positions where no current job title exists at the needed grade, the creation of a new title shall be established so that the position is properly classified and graded within the system. This work must be done by the human resource administrator or the human resource administrator's designee.

14.2. When an employee occupies a position at the time that a position upgrade is to be placed into effect, the method of calculating the employee's base salary increase is the same as that specified for a promotion. In the absence of funds to support an upgrade, work at the higher level shall not be performed.

§128-62-15. Demotion.

15.1. Demotions result from an employee moving from his/her current position to a vacant or newly created position assigned to a different job title and lower pay grade, and which requires a significantly lesser degree of skill, effort and responsibility than that of the employee's current position.

15.2. Upon demotion, the employee's base salary is decreased five percent (5%) per pay grade rounded to the nearest step in the new pay grade.

§128-62-16. Downgrade.

16.1. Downgrades result from the process of job evaluation where a determination is made that a significantly lower level of skill, effort and responsibility exists in the employee's current position. A new pay grade shall then be established based on the application of the job evaluation plan and the calculation of a revised total point value for the position. Upon determination of the pay grade, job descriptions shall be reviewed of the other titles having the same pay grade and whose duties, responsibilities and requirements closely match the work of the position as it is now described. The position shall then be slotted into the classification whose grade is consistent with the point value calculated and whose duties and requirements most appropriately characterize the position. For unique and specialized positions where no current titles exist at the needed grade, the creation of a new title shall be established so that the position can be properly classified and graded within the system. This work must be done by the human resource administrator or the human resource administrator's designee.

16.2. The method of calculating the employee's new base salary after a downgrade is the same as that specified for a demotion.

§128-62-17. Transfer.

17.1. No change of base salary as a function of a transfer may occur.

§128-62-18. Reviews and Appeals.

18.1. An employee may seek a review of his/her initial classification under the new program implemented pursuant to this rule and may appeal such initial classification through the procedures of W. Va. Code §18-29 after completing such review. Such review or appeal shall be governed by the provisions of this rule and to the extent these provisions are inconsistent with W. Va. Code §18B-9-7 or W. Va. Code §18B-9-4, those code provisions are deemed null and void pursuant to the authorization contained in W. Va. Code 18B-9-4 (c). If an employee does not first seek a review of his/her initial classification through the internal procedures set out herein, they shall be prohibited from grieving that classification under W. Va. Code 18-29.

18.2. An employee may seek a review of his/her initial classification, job title or pay grade by filing a request for review form after formal notification of his/her title and pay grade under the new program, but no later than January 31, 1994. Request for review forms shall be available at each institution and shall be in a form prescribed by the governing boards.

18.3. The request for review form shall be filed with the president or president's designee for this purpose, and that individual shall forward copies to the employee's immediate supervisor and appropriate dean, department head or director for comment.

18.4. The president or president's designee shall make a recommendation to the job evaluation committee regarding the

request for review by March 31, 1994, and shall notify the employee of such recommendation.

18.5. Upon receipt of the institutional recommendation, the employee may file supplemental information with the job evaluation committee within ten (10) days. The job evaluation committee shall make a final determination regarding the request for review based solely upon the documentation provided above and any other material or information it may seek from the institution or employee. Such final determinations by the job evaluation committee shall be completed on or before June 30, 1994, and communicated simultaneously to all affected employees. If not made or communicated by June 30, 1994, an employee may immediately proceed through the grievance procedure of W. Va. Code §18-29 within thirty (30) work days of July 1, 1994, under the procedures set out in this rule.

18.6. Each institution shall make available for examination to all employees the position description forms, job descriptions, and other materials used in making the initial classifications under this program.

18.7. If an employee is dissatisfied with the determination of the job evaluation committee the employee may grieve his/her initial classification under this program, including the job or position description and assignment to pay grade or salary schedule, within thirty (30) work days from receipt of the notification set out in Section 18.5 of this rule, by filing a grievance pursuant to the procedures of W. Va. Code §18-29. Any employee not filing a grievance under the provisions of this rule within those thirty (30) work days, or not seeking a review timely pursuant to this rule, shall be deemed to be equitably and uniformly classified and compensated for the purposes of Article 9, Chapter 18B of the state code and shall also be deemed to have expressly waived his/her right to grieve such initial classification, absent intervening and countervailing circumstances that effect that initial classification.

18.8. An immediate supervisor or president of an institution does not have the authority to change the initial classification of an employee under the new program and does not have the authority to grant any such relief requested in a grievance relating to such initial classification. The governing boards are hereby designated as the lowest level at which such relief may be granted and employees seeking to appeal their initial classification under the provisions of W. Va. Code §18B-9 shall file any such grievance at that level. When filing such a grievance with the appropriate governing board, an employee shall expressly state whether or not he/she agrees to an extension of the statutory period for a hearing before the governing board.

§128-62-19. Salary Schedule and Implementation Strategy.

19.1. The new compensation and classification program and accompanying pay structure will be implemented on January 1, 1994.

19.2. Any classified employee whose current base salary is below the equity step for his/her pay grade on January 1, 1994, will be increased to at least the equity step set out in this rule.

19.3. For those employees whose salaries as of January 1, 1994 are below the step in any salary schedule which may be subsequently enacted by the Legislature or adopted by the governing boards that equates to their appropriate years of state service, the difference in salary shall be phased in over a three-year period if sufficient additional state funds are appropriated from the Legislature.

19.3.1. Nothing in this rule shall be interpreted as prohibiting the governing boards from allocating funds in any fiscal year for across-the-board raises for all classified employees, unrelated to equity or market issues, if the Legislature specifically appropriates funds for such purpose.

19.4. Any classified employee who is slotted into the appropriate pay grade for his/her job title and whose base salary is at least the equity step for that pay grade, shall be deemed to be equitably and uniformly compensated in relation to other classified employees within the pay grade for the purposes of Article 9, Chapter 18B of the state code.

19.5. After full implementation of the classification program, pay increases may occur in one of the following ways:

19.5.1. Upon recommendation of the Compensation Review Committee and approval by the governing boards, the salary

schedule may be adjusted upward by the Legislature to reflect cost of living or market increase. Any new additional state funds appropriated for classified staff salaries would be applied to any salary schedule which may be subsequently enacted by the Legislature or adopted by the governing boards.

19.5.2. Should additional new funds be appropriated by the Legislature, application of such new funds shall be determined by the governing boards and may result in movement of employees to the next step in any salary schedule which may be subsequently enacted by the Legislature or adopted by the governing boards.

§128-62-20. Miscellaneous.

20.1. Pursuant to the authorization contained in W. Va. Code §18B-9-4(c), the following provisions of Article 9, Chapter 18B of the state code are deemed inconsistent with this rule and are ruled null and void.

20.1.1. W. Va. Code §18B-9-2(c), (d), (e), (f), (h), (k), (l).

20.1.2. W. Va. Code §18B-9-5(c), (d).

20.1.3. W. Va. Code §18B-9-6.

20.1.4. W. Va. Code §18B-9-3.

20.2. Any other rule, regulation, or policy of this board or its institutions, inconsistent with the provisions of this rule is deemed superseded by the provisions of this rule.

STATE COLLEGE AND UNIVERSITY SYSTEMS

CLASSIFIED STAFF MINIMUM EQUITY STEP AND ENTRY RATES

EFFECTIVE JANUARY 1, 1994

Pay Grade	Minimum Equity Step
1	10,092
2	10,392
3	10,716
4	11,040
5	11,376
6	11,736
7	12,396
8	13,116
9	13,884
10	14,712
11	15,612
12	16,596
13	17,640
14	18,780
15	20,004
16	21,348
17	22,800
18	24,372
19	26,088
20	27,948
21	29,964
22	32,172
23	34,584
24	37,212
25	40,080