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March 28, 2014

The Honorable Robert Plymale
Co-Chair, Legislative Oversight Commission on Education Accountability
Chair, Senate Education Committee
State Capitol Complex
Room 417-M, Building 1
Charleston, West Virginia 25305

Dear Senator Plymale:

Thank you for the opportunity to provide additional information regarding the status of the study requirements of Senate Bill 330.

As you are aware, the studies required by Senate Bill 330 are outlined in *West Virginia Code* §18B-7-16 and are four in number: (1) a fair and rational policy for reductions in force; (2) the advantages and disadvantages to continuing what is known as the "internal hiring preference;" (3) recommendations regarding outsourcing of certain functions on our institutions' campuses, and; (4) a rational and uniform policy to address grant-funded employees. There remains the outstanding salary survey that was to have been conducted by consultant Fox Lawson & Associates. An update on the status of each study is provided on the attached pages.

During the next six months, we intend to continue the work of the Common Grounds work group under the leadership of the Vice Chancellor for Human Resources to address the four outstanding studies of employment practices. It is likely we can complete work on the reduction-in-force study and the internal hiring preference study within the next half year. It is also likely that the outsourcing study (due to the volume and complexity of the data it involves) and the grant-funded employee study (due to the need to draft proposed legislation) will not be completed within the next six months.

We are actively working on a new Request for Proposals (RFP) for a salary survey. With three years of study of Senate Bill 330 now under our belts, it is anticipated we can provide more detailed guidance and direction in an updated RFP for this project than what was provided over two years ago.

Finally, we expect to have an outline of proposals from Mercer Consulting within the next six months suggesting amendments to the definition of relative market equity that will retain the original legislative intent. This work was side-lined for a short time while we attempted to have Mercer

validate the classified salary survey conducted by Fox Lawson; they could not do so under the existing contract and we have now refocused Mercer back to the original intent of the contract, fixing the definition of relative market equity.

Thank you for your continued interest and ongoing efforts on behalf of the human resources functions in West Virginia public higher education.

Sincerely,

Paul L. Hill
Chancellor

James L. Skidmore
Chancellor

Attachments
cc: Mr. Rob Anderson, Executive Vice Chancellor for Administration
Mr. Mark Toor, Vice Chancellor for Human Resources

Senate Bill 330
Update on Status of Studies
March 2014

Reduction-in-Force Study

The study of reductions-in-force (RIF) is primarily based on the work of three earlier efforts to study the same topic: 2008, 2010 and 2011. Attached is the work-product of those first two efforts. Our research conducted on this topic has been limited to these earlier studies together with a close review of the statutory and case law addressing the issue. Most of our consultation on this topic has been within the Common Grounds work group that consists of about 6-8 Advisory Council of Classified Employee (ACCE) representatives, 6 Chief Human Resources Officers (CHROs) and about 3 faculty members. The only relevant notes and correspondence are simply the various drafts of a proposed procedural rule, that have circulated within the Common Grounds group. Please let us know whether you would like to see the earlier drafts.

With respect to reductions-in-force, we are informed that the reason none of the earlier efforts resulted in conclusive findings or recommendations is the inability of the prior working groups to reach consensus on the difficult question of how to treat grant-funded employees. We resolved this issue in our work with Common Grounds by gaining universal recognition of the fact that there is currently no statutory justification that would permit any different treatment or rights for any particular class of classified employees. Under current law, a classified employee is a classified employee and anyone receiving that designation is equally entitled to all of the rights and privileges of that class, regardless of the source of funding for the classified position. Common Grounds arrived at this realization and consolidated the work of the earlier committees into the proposed rule document we provided to you.

In addition to the draft rule, however, the statute also requires a study of the issue of reductions-in-force and the Common Grounds work group is also working on this. Specifically, we have identified certain elements of that statute for which our study may recommend legislative corrections. One such element is the fact that the statute directs that both permanent reductions-in-force and temporary furloughs be conducted according to the very same rules. While we have yet to reach a conclusion on how best to address this issue, the general feeling among members of the Common Grounds work group is that permanent RIFs and temporary furloughs are usually conducted for different reasons and with different goals so it may be appropriate to revise the statute to account for these differences. We will continue working on this study within Common Grounds work group over the next six months and provide you with updates and our progress.

Internal Hiring Preference Study

The study of the internal hiring preference is also progressing under the guidance of the Common Grounds work group. The primary source of research for this study has been the case law from the West Virginia Supreme Court of Appeals that has developed over the years regarding how and to whom this preference is to be applied. The ACCE representatives on this working group offer a

particularly valuable historical perspective on this topic because several of them have benefitted from this preference in the past. There are no correspondence or document drafts relating to this study other than the two page document we provided to your staff at the meeting. That document was intended only to provide a starting point for a broader discussion of the issue. From our limited study of the issue to date, we can advise that there seems to be general agreement that the preference should continue as an important means of providing classified employees promotional opportunities while at the same time benefiting the institutions by promoting a stable and well-qualified workforce. There also seems to be general agreement that the extension of that preference to any employee who meets the bare minimum qualifications of the position creates some efficiency and job security problems both for institutions and for employees (for example, what happens to that minimally qualified employee who accepts an internal hiring promotion only to find that he/she is not capable of performing at acceptable levels?). We will be addressing these hurdles in upcoming Common Grounds meetings and hope to be able to provide a full study together with some recommendations within the next six months.

Outsourcing Study

The study of outsourcing has been slower to progress than the other study issues. Although we began gathering data for this study almost five months ago, we have still not received full responses from each institution to the baseline question of what services are being outsourced. Part of this problem stems from the difficulty of creating a definition for "outsourcing" that is not provided by Senate Bill 330. In gathering information from the individual institutions, we have attempted to settle on an appropriate definition that can best be described as follows:

- If it was a function that was traditionally performed on the campus by institution employees but is now being performed by an outside entity, it qualifies as outsourcing (e.g., food service, bookstore, custodial services, etc.).
- If it is a function not traditionally associated with the central mission of higher education or one that has never been performed primarily by institution employees, it would not be outsourcing (e.g., large construction projects put out for bid, local area bus service that also serves the campus, etc.). Also excluded would be on-line tutoring because even though this may have been a function traditionally performed on the college campus, it is now being delivered in a format that is inconsistent with the traditional means of providing that service on campus (e.g., once upon a time, horseshoeing was an essential part of a transportation system but changes in that system now render horseshoeing unrelated to the essential mission of transportation).
- Truly independent contractor services (such as copiers we lease and on which the lessor performs all maintenance) would not fall within the definition of outsourcing.
- Another question arises from institutions' use of research corporations or internal temp agencies to perform certain jobs or entire functions on a campus. The same two rules listed above are applied for these positions: if it is a job or function otherwise performed on campus but now being performed by an outsider or temp employee, it is being outsourced. If it is work independent of what the college would be performing on its own or unrelated to its central mission, it is not outsourcing.

- We view all of Pierpont's administrative services performed by Fairmont State as "internally" outsourced. We would not list these functions individually since this is the model Pierpont was set up on (in other words, none of these functions were ever performed internally by Pierpont). Instead, we would simply report that all Pierpont administrative services are outsourced to Fairmont State…any other services performed by true outsiders to Pierpont should be reported as true outsourcing.
- Any service outsourced on January 1, 2014 or prospective to that date should be reported. Anything done prior to that date can be omitted unless it relates to an on-going relationship that will extend beyond January 1, 2014.
- Another factor that will make this difficult is the issue of how to attach a true cost estimate to the savings associated with outsourcing. If, for example, an institution has contracted out its food service for the past ten years, who's to say how much that outsourcing decision is now saving the institution? Is it just the cost of having all of those outsourced employees on the campus payroll plus benefits or do we have to capture legacy costs and other less tangible amounts? Rather than trying to make this an in-depth financial study, we are inclined to simply do an apples-to-apples comparison of the wage rates: if an institution's food service contractor employees 30 people at $7.50/hour but the institution would pay those same 30 positions $8.50/hour, we're saving $30/hour by outsourcing the function or $58,500 over the course of the year.

We will continue to gather data from the institutions using this definition. We will ultimately sort that data by institution and category of services outsourced and prepare a report addressing the three specific elements required by the statute.

<u>Grant-Funded Employees Study</u>

The study of a policy to address grant-funded employees has only just begun. A document proposing a new category of quasi-classified, grant-funded employee has been circulated but not yet discussed within the Common Grounds work group. The proposal as presently submitted would relieve grant-funded classified employees of the limitations of the classified salary schedule in exchange for the loss of internal bumping and "for cause" termination protections while still allowing them access to the internal hiring preference. In other words, future grant-funded positions that would otherwise be defined as "classified" would fall into a new category of grant-funded employee. Employees in that new category would be (1) notified during the interview phase of the time or funding limitations of the position; (2) additional notification of those limitations would come in the offer letter that would also disclose the fact that the grant-funded employee does not enjoy certain, classified employee rights; (3) the institution would not be bound by the classified salary schedule for a grant-funded employee so he/she could be paid whatever the grant allows for that position; (4) grant-funded employees would be permitted to exercise the internal hiring preference rights at any time during their employment as would any other classified employee and the selection would, as always, go to the most senior, minimally qualified applicant; (5) unless the grant-funded employee bids into or obtains another position prior to the expiration of the grant/funding source, that employee will not be permitted to bump nor would the employer be required to demonstrate just cause for the termination of the employment relationship at the conclusion of the grant.

Although this proposal seemed to gain some traction upon its introduction to the Common Grounds work group, there are significant issues that would need to be worked out before we could propose legislation to accomplish the change. First, we would need to settle on an appropriate definition for which positions would be considered "grant-funded." How do we address those positions in which there is split-funding? Second, incumbent classified grant-funded employees—even those who were provided with letters saying their positions were time and funding limited at their date of hire—would need to be grandfathered into all of the classified rights and limitations that currently exist: all of those individuals were hired into classified positions at a time when the law permits no distinction between grant-funded and other classified employees so the new conditions could not be applied retroactively. Finally, as mentioned above, such a change in the treatment of currently classified employees would require legislation to accomplish the change.

The Salary Survey

The most involved study required by Senate Bill 330 is the salary survey, the contract for which was awarded to Fox Lawson in early 2012. By early 2013, that study had stalled due to turnover in the Vice Chancellor for Human Resources position. By the fall of 2013, however, it became apparent that Fox Lawson would not produce the survey in a format that the Commission and Council believed was faithful to the law. Specifically, the RFP awarded to Fox Lawson called for them to build unique peer groups for each of our 20 institutions and use survey information from each of these peers as the comparison group for individualized institutional surveys. Fox Lawson, on the other hand, insisted they had not agreed to build 20 separate peer listings but rather proposed to use two amalgamated lists, one consisting of all four-year peers and the other of all two-year peers for comparisons to our institutions. This proposal would have compared West Virginia University to Glenville State College's peers and vice-versa. Although Fox Lawson claimed the difference in peer listings would not yield statistically significant variances, they were unable to demonstrate this claim and instead proposed to charge an additional $800,000 to complete the work they initially agreed to do for $88,500. We rejected this proposal and stood fast to our demand that they produce the individualized results. This is where the contract presently stands.

Your letter requests copies of correspondence and the Fox Lawson study is really the only study in which there is any correspondence to disclose. Attached are copies of the most relevant e-mails about the Fox Lawson work.