JANIS A. BENNETT,

Grievant,

v. DOCKET NO. 94-MBOD-451

BOARD OF DIRECTORS/WEST VIRGINIA STATE COLLEGE,

Respondent.

DECISION

Grievant Janis Bennett challenges her classification under the "Mercer" reclassification system. (See footnote 1) She was classified as Manager of Auxiliary Services, in Pay Grade 18. She seeks classification at Pay Grade 21. Ms. Bennett was classified under the Job Evaluation Plan ("Plan") for the State College and University Systems of West Virginia, which was developed by the Respondent's Job Evaluation Committee ("JEC"). The Plan employs a "point factor methodology" which evaluates each job title by analyzing specific characteristics termed "factors" (See footnote 2) , assigning a rating or "degree level" within each factor, and applying a weighted equation to the assigned levels to arrive at a numerical total. This total then determines the job title's Pay Grade.

A Level IV hearing was conducted in this Board's office in Charleston, West Virginia, on December 9, 1996. This matter became mature for decision on January 10, 1997, following the receipt of timely post-hearing submissions from Respondent. Ms. Bennett chosenot to make any post-hearing submission. Although the record was held open for submission of a complete organizational chart and accurate salary history, to supplement or replace Joint Exhibit F (Exhibits will be referred to herein as "Jt. Ex. _"), neither was submitted.

Grievant specifically challenges the degree level ratings received in several point factors used to evaluate her position and assign it a Pay Grade under the Mercer Plan. The point factors challenged are: Complexity and Problem Solving; Freedom of Action; Scope and Effect; Breadth of Responsibility; Intrasystems Contacts/Level of Contact; External Contacts/Nature of Contact; Direct Supervision Exercised/Level of Supervision; and Indirect Supervision Exercised/Level of Supervision.

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

FINDINGS OF FACT

1 1. Prior to the reclassification, all higher education classified employees were asked to complete a Position InformationQuestionnaire (PIQ) in which employees described their job duties and responsibilities and other aspects of their jobs by answering a series of questions designed to elicit this information. Ms. Bennett completed a PIQ in 1991.

2 2. Grievant's job duties are essentially the same as they were on January 1, 1994, and include (with approximate percentages of time): managing and supervising the Cashier's Office, Bookstore, and Mailroom of West Virginia State College ("WVSC") (50%); controlling and maintaining records of revenues and revenue flow for all of WVSC, including reconciling of funds and accounts (20%); managing and maintaining records of billings and collections for WVSC (10%); internal auditing of bookstore and Cashier's Office records (10%); and correspondence and special projects (10%).

3 3. Ms. Bennett is the only Manager of Auxiliary Services in the West Virginia higher education system at this time. Therefore, her PIQ is also the job description for this job title, and the ratings assigned to her individual job duties and responsibilities are those assigned to the job title.

4 4. In managing the Bookstore, Ms. Bennett has daily contact with the Bookstore Manager, Ms. Luikart. Ms. Bennett does not manage day-to-day functions of the Bookstore, but gets involved if there is some problem, such as resolution of vendor disputes or a need for policy development. She also reviews disciplinary actions which Ms. Luikart takes or proposes to take, and reviews Ms. Luikart's fiscal operations and budget proposals. Ms. Bennett has authority to veto or overrule Ms. Luikart's decisions on thesematters. Ms. Bennett is ultimately responsible for the Bookstore budget. In addition to Ms. Luikart, three other full-time positions and several student workers are employed in the Bookstore. Ms. Bennett hired Ms. Luikart, and signed the forms required to place Ms. Luikart in the manager's position.

5 5. Activities in the Bookstore are generally governed by existing policy and procedures, including a procedure handbook for the Bookstore, revenue collection procedures, and purchasing regulations, as well as past precedent. Ms. Bennett has instituted many of these policies and procedures. She set limits on how much books can be marked up, to keep book costs to students to $90 per book or less. Ms. Bennett has authority to set such markups without approval of anyone else. Ms. Bennett

determined that the Bookstore needed to be renovated, and carried out that renovation working through others, such as the maintenance department of WVSC. Although she had to obtain approval to renovate the Bookstore, the approval was needed only because changes to a physical structure were involved.

6 6. In managing the Mailroom, Ms. Bennett does not manage day- to-day functions for the two postal workers unless there is some problem, such as the absence of one of the two workers or a problem in mail delivery. She hires the persons working in the Mailroom, signs leave slips, and disciplines the postal workers. Mailroom activities are routine, and are governed by set procedures.

7 7. Ms. Bennett is involved in the day-to-day operations of the Cashier's Office, although an Accounting Assistant I is informallyin charge of and responsible for that Office and monitors the work of the two Accounting Clerks who work there. Ms. Bennett determines work to be done on a daily and weekly basis for each employee, resolves problems among employees, and signs their leave slips.

8 8. Ms. Bennett chose a computer software program for WVSC's own in-house use, and designed a means of tracking fund transfers and obtaining other financial information for the Office. Ms. Bennett has authored and established standard policies and procedures used by the Cashier's Office. She has written an interpretation of Respondent's Policy Bulletin 22, determining that students are entitled to refunds only upon withdrawing from all WVSC classes. She also created forms and procedures for handling student payment plans. Ms. Bennett performs her own audits and reconciliations of accounts for the Cashier's Office to ensure that records are correct and accounts balanced.

9 9. In addition to her managerial duties, Ms. Bennett provides assistance in handling all or most WVSC financial accounts. She maintains budgetary and financial information for the institution. She prepares and/or monitors outside billings for all WVSC departments. She utilizes her knowledge and experience in making recommendations to the Director of Fiscal Affairs (her supervisor) and to the Vice President of Administration (her second level supervisor) regarding budget projections, revenue collection, and expenditures. For example, Ms. Bennett informs them if another part of the institution is in danger of exceeding its budget, or ifits projections are inaccurate. She discusses with her supervisor how much funding for other parts of the department or institution can be provided by the Bookstore, as it is a revenue generating operation.

10 10. Ms. Bennett handles student accounts, financial arrangements with students and parents, and financial aid account matters. She maintains revenue account information, and creates revenue

reports and projections. Ms. Bennett works with several state-wide computer software programs, such as the Banner system, and the College and University Financial Systems (CUFS, which is the main accounting system used for higher education systems). She must know the types of information to enter, procedures for entering information into the system, how to evaluate and review information entered, and the kinds of reports which can be generated.

11 11. Ms. Bennett has monthly contact with the Vice President of Student Affairs or his staff, and weekly contact with her Director and with WVSC Coordinators about revenues and expenditures.

12 12. Ms. Bennett has daily contact with students and weekly contact with parents regarding financial aid and payment matters. She explains eligibility requirements, and how information given on financial aid forms relates to the amount of money received. She also discusses other private financial information.

13 13. Dr. Brimhall, Vice President of Administration, is responsible for strategic planning for the department. Mr. Wounaris, Director of Fiscal Affairs and Ms. Bennett's supervisor,is responsible for developing goals, objectives and strategies for Fiscal Affairs. He also provides input to the strategic planning process, and requests information from Ms. Bennett for that purpose.

DISCUSSION

I. BURDEN OF PROOF AND STANDARD OF REVIEW:

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that he or she is not properly classified. 156 C.S.R. 1 §4.19; W. Va. Code § 18- 29-6. Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant must identify the job he or she feels is being done. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991). The grievant must also identify which point factor degree levels are challenged. This is because the Mercer reclassification system is not based upon whole job comparisons, but rather is a quantitative system in which the components of each job are analyzed separately. The components are then evaluated using the point factor methodology contained in the Plan. Burke, supra. A grievant may challenge any combination of point factor degree levels, so long as he or she clearly identifies the ones being challenged, and this challenge is consistent with the relief sought. See Zara v. Bd. Of Trustees, Docket No. 94- MBOT-817 (Dec. 12, 1995); and Jessen v. Bd. Of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995). Some "best fit" analysis is involved

in determining which degree level of a point factor should be assigned. However, this system must by statute be uniform across all higher education institutions. Therefore, the point factors are not assigned to the individual, but to the job title. Burke, supra. In order to maintain the integrity of the overall classification scheme, the individual grievant's case must be analyzed with reference to where the position fits in the higher education classified employee hierarchy, and the "best fit" must be determined in relation to other similar positions.

In this case, whether Ms. Bennett is properly classified is almost entirely a factual determination. As such, the JEC's interpretation and explanation of the point factors 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. Of course, no interpretation or construction of a term is necessary where the language is clear and unambiguous. See Watts v. Dept. Of Health & Human Resources, 195 W.Va. 430, 465 S.E.2d 887 (1995). A grievant may prevail by demonstrating his or her reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehab., Docket No. VR-88- 006 (Mar. 28, 1989). Generally, action is arbitrary and capricious if it did not rely on criteria intended to be considered, entirely ignored important aspects of the problem, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to adifference of view. See Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); Yokum v. W. Va. Schools for the Deaf and the Blind, Docket No. 96-DOE-081 (Oct. 16, 1996). While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not substitute her judgment for that of the JEC. See generally, Harrison v. Ginsberg, 169 W.Va. 162, 286 S.E. 2d 276 (1982).

Ms. Bennett challenged her ratings in several of the factors analyzed in assigning her Pay Grade. Each point factor which is subject to dispute in this grievance will be addressed separately.

II. POINT FACTOR ANALYSIS:

A. COMPLEXITY AND PROBLEM SOLVING:

The Plan defines Complexity and Problem Solving as a factor which "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." (Jt. Ex.

D. All subsequent definitions are taken from this Exhibit unless otherwise noted.)

Ms. Bennett's job title was assigned a level 4 rating in this factor, and she asserts that a level 5 rating is appropriate. A level 4 rating 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.

Level 5 is defined as:

> Problems encountered involve unusual circumstances, variations in approach, and incomplete or conflicting data. Employees exercise considerable analytical, valuative and reasoning skill in researching information and developing new methods to perform work assignments or optimum solutions to problems. The development of new programs, procedures or methods are typical end results of the problem-solving process. Determination of the effectiveness of a policy or practice may be involved at this level.

Ms. Bennett explained that there were no set standards when she started managing the Cashier's Office in 1985, but that there are now guidelines and standards which she has written and established. She testified that she is always coming up with new methods and procedures for collecting monies due WVSC. She agreed that Bookstore operations are governed by policies, procedure and past precedent for the most part, although she has either set or revised many such policies and procedures. She stated that the Mailroom is governed by set procedures. She also stated that there are no standards or guidelines for creating budget or revenue projections, or for establishing amounts of future expenditures and receipts. However, she makes such projections regularly, and it seems that past experience and practice, and perhaps general accounting principles, would certainly apply.

Respondent's witness was Ms. Brenda Nutter, Director of Human Resources at West Virginia Institute of Technology and member ofthe JEC. Ms. Nutter noted that the JEC had reconsidered its original 3.5 rating in Complexity and Problem Solving, and had given this job title a level 4 rating during the internal appeals process. She noted that, even without formal written standards, much of the work involved with this position is covered by precedent. She stated that "unusual circumstances" are only rarely involved, and that the examples Ms. Bennett gave of developing new procedures and methods were infrequent occurrences.

Throughout her testimony, Ms. Bennett gave examples of "problem solving" for the Bookstore

which consisted of explaining set policy and procedure to WVSC instructors or to vendors. In the Cashier's Office, Ms. Bennett described explaining to students and parents the financial aid results, although her office does not make determinations on financial aid eligibility. In the Mailroom, she helps determine where certain mail is to be delivered if it is without a departmental code, or whether mail is of a personal nature. These examples represent the most common problems, and the problem solving involved is not very complex. It consists of applying, explaining and sometimes interpreting policies and procedures; or following a logical progression of steps in determining a solution. When problems arise of a policy nature, Ms. Bennett clearly addresses them in a professional fashion, using analytical skills to interpret any existing guidelines, and determining the best solution for WVSC's needs. While Ms. Bennett certainly performs such problem solving and policy making, it doesnot appear that such problems are the ones most frequently encountered in this position.

"The difference between a Level 4 and Level 5 rating on this factor involves a subjective determination." Miller v. Bd. of Directors, Docket No. 94-MBOD-495 (Oct. 29, 1996) at 13. Where a subjective determination is involved, this Board is hesitant to second guess the JEC's action in the absence of compelling evidence. While the undersigned may have chosen a higher rating had she been the initial evaluator, the JEC's rationale for its choice has been explained in a manner which is not in conflict with the Plan. Grievant has not proven that the JEC's evaluation of this factor was clearly wrong, arbitrary or capricious.

B. 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.

Ms. Bennett's job title was assigned level 4, while she asserts that level 5 is appropriate. Level 4 is defined as:

> Tasks are minimally structured with incumbent working from broad goals set by the supervisor and established institutional policies. The employee and supervisor work together to establish objectives, deadlines and projects. The employee, 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 employeekeeps 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.

Level 5 is defined as:

> Virtually all tasks are unstructured; assignments are in terms of setting objectives within strategic planning goals. At this level, the employee has responsibility for planning, designing and carrying out programs, projects and studies; employee sets goals and objectives for a major unit, program, or department. Approval from higher supervision may be necessary only in terms of financial impact and availability of funds, but little reference to detail is discussed with the next level supervisor. Work review concerns matters such as fulfillment of goals and objectives.

Ms. Bennett testified that she has a broad range of freedom in setting her work schedule, and in making plans and policy for the areas under her control. She stated that she is independently responsible for developing and carrying out plans for her three areas. She also stated that she negotiates with her supervisor regarding financial matters. The Bookstore, as a revenue generating entity, often provides funds used for projects which benefit other parts of WVSC, or provides funds for joint projects in excess of its proportionate share. Ms. Bennett advises her supervisor regarding the amount of money which can be raised in a given amount of time, and the amount of money the Bookstore revenues can provide for projects.

Ms. Nutter testified that this factor looks at the structure provided for a position through supervision and through applicability of precedents, policies, procedures and laws. She also testified that it considers the position's ability to perform high level problem solving. See R. Ex. 1, p. 23. She furtherstated that, under the JEC's interpretation, the level 5 rating applies to positions involved in strategic planning.

It is difficult to assess Ms. Bennett's rating in this factor. She clearly meets the level 4 definition which she was assigned. She also clearly performs high level problem solving, in setting written policy and procedure for several areas, and in taking action to prevent fiscal problems for her own areas and for other parts of WVSC. On the other hand, level 5 is the highest rating available in this factor, which implies that it is reserved for positions functioning at the highest administrative levels.

The differences between the level 4 and level 5 ratings in Freedom of Action are subjective and based on value judgments. As noted in the discussion above, where a subjective value judgment is involved, this Board is reluctant to second guess the JEC absent compelling evidence. Ms. Bennett has not shown that the JEC's rating in Freedom of Action was so implausible that it cannot be ascribed to a difference of view.

C. SCOPE AND EFFECT:

> 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 the higher education systems is the work product, service orassignment. 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 factor is analyzed in two parts: Nature of Action ("Nature") and Impact of Actions ("Impact"). Ms. Bennett asserted that her title should appropriately be rated at level 5, but it was somewhat unclear which of the two parts she was contesting as she discussed elements of both. As Ms. Bennett was clear in contesting the overall factor, and as the Respondent presented evidence pertaining to both parts of the factor, the challenge is not so vague as to defy an adequate rebuttal or analysis. Cf. Elkins, supra. Therefore, analysis of both parts of this factor is appropriate.

1. NATURE OF ACTIONS:

Ms. Bennett was assigned a level 4 rating in Nature, which is defined as "[w]ork 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." Level 5 of Nature is defined as:

> Work involves planning, developing, and operating a major program or service having a broad impact within the institution by solving critical operational problems ordeveloping and/or implementing new procedures and concepts. Work also involves extensive and consequential support, development, or recommendation of major objectives, policies, programs or practices. Errors could easily result in major costs, problems and disruptions within the affected area.

Ms. Nutter explained that the JEC interpreted level 5 in Nature as being reserved for "directors and high level administrators." R. Ex. 1, p. 24. This interpretation is not clearly erroneous given the value-laden terms used in the definitions. Therefore, it must be concluded that Ms. Bennett, being below the "Director" level in the organizational structure, cannot be assigned the highest level rating

in the Nature part of Scope and Effect.

2. IMPACT OF ACTIONS:

Ms. Bennett's title was assigned level 3 in Impact. Level 3 of Scope and Effect/Impact is defined 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 <$13M; a school or division of a graduate or baccalaureate-level institution with an operating budget of #13-$18M; several departments within a graduate or baccalaureate-level institution with an operating budget of $19-$25M; a major department within a graduate-level institution with an operating budget of more than $50M; or a moderate-size department within a doctoral-level institution with an operating budget of more than $200M.

Level 4 of Impact is defined as:

> Work affects the entire operations of a specialized school, branch campus, community college or baccalaureate-level institution with an operating budget of <$13M; more than one school of (sic) 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 withina 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.

Level 5 of Impact is defined as:

> Work affects the entire operations of a graduate or baccalaureate-institution with an operating budget of $13-$18M; more than one school or division of a graduate or baccalaureate-level institution with an operating budget of $19-$25M; a school or division of a graduate- level institution with an operating budget of more than $50M; or several departments within a doctoral-level institution with an operating budget of more than $200M.

The Impact of Actions factor "is substantially rated on objective facts, primarily the size and budget of the institution." Miller, supra. Neither Ms. Bennett nor Ms. Nutter provided information regarding the budget of WVSC, which is the primary determinant of which rating is the highest possible for positions at a given institution. (See footnote 3) Notice is taken that WVSC is at least a baccalaureate-level institution. Ms. Bennett's work with financial accounts and projections for all or most of WVSC suggests that this job title may potentially meet the level 4 requirements, as that definition encompasses effects on "the entire operations of a...baccalaureate-level institution with an operating budget of <$13M;" the lowest budgetary figure provided in the definitions. However, Ms.

Nutter's testimony showed that the JEC assessed the "primary purpose of the position's work product" (R. Ex. 1, p. 24- 25), an interpretation which is not contrary to any language in thePlan. The majority of Ms. Bennett's work (50-70%) is involved with management and supervision of the Bookstore, Cashier's Office and Mailroom. Less time (30-40%) is spent on institution-wide matters. Consequently, given the evidence and lack thereof in this record, it cannot be found that the JEC was clearly wrong in assigning a level 3 rating in Scope and Effect/Impact.

D. BREADTH OF RESPONSIBILITY:

> This factor describes the variety of specific functional areas in which the job may have formal and ongoing accountability. In reviewing this factor, consider the level of in-depth knowledge required as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations. [Examples of some functional areas within the following divisions would include: (1) Student Services--Housing, Admissions, Financial Aid, Counseling; (2) Business and Finance--Purchasing, Auditing, Grants and Contracts, Bursar.]

Ms. Bennett's job title received a level 3 rating, while she asserts that a level 4 rating is appropriate. Level 3 is defined as "[i]n-depth knowledge of and accountability for two functional areas as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations." (Emphasis in original.) Level 4 is defined as "[i]n-depth knowledge of and accountability for three functional areas as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations." (Emphasis in original.)

It is well established that this factor only gives credit to those who have formal financial accountability for an area. Seee.g., Riggs v. Bd. of Trustees, Docket No. 94-MBOT-711 (Apr. 29, 1996); and Mitchell v. Bd. of Directors, Docket No. 94-MBOD-348 (May 21, 1996). Ms. Nutter asserted that, as the only area with its own budget is the Bookstore, and Ms. Luikart "got credit" for Bookstore financial accountability, Ms. Bennett should have been assigned a level 1 rating. However, Ms. Bennett testified that "the Cashier's Office budget was assigned out of college funds," which suggests that there is in fact a separate budget for the Cashier's Office. She also testified that she was ultimately accountable for the Bookstore budget, although Ms. Luikart also had budgetary responsibility. As Ms. Nutter did not rebut this testimony, Ms. Nutter's assertion is contrary to the evidence regarding accountability for the Bookstore's budget. (See footnote 4) Ms. Bennett did not clearly address her accountability for the Cashier's Office budget. Thus, while Ms. Bennett has

financial accountability for at least one functional area, it cannot be determined whether or not she has more.

Given the JEC interpretation of this factor and the lack of evidence regarding budgets other than the Bookstore's, Ms. Bennett is not clearly entitled to a rating recognizing three different functional areas of financial accountability. Thus, no change in the rating for this factor is warranted.

E. INTRASYSTEMS CONTACTS/LEVEL OF CONTACT:

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

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

(Emphasis in original.) This factor is analyzed in two parts, Nature of Contact ("Nature") and Level of Contact ("Level"). Ms. Bennett challenges the rating in Level. Her job title was assigned a level 4 rating, and she asserts that level 5 is appropriate. Level 4 consists of contact with "Deans or Directors in an institution or Assistant Directors in the Systems' Central Office." Level 5 consists of contact with "Associate/Assistant Vice Presidents or Systems' Central Office Directors that report to the Senior Administrator."

Ms. Bennett's contact with the Vice President of Administration is within her own reporting chain, and thus cannot be credited under the terms of the definition. She stated that she had monthly contact with a WVSC Vice President, weekly contact with Coordinators (who are personnel on at least an equivalent level with Ms. Bennett), and at least occasional contact with others at the Director level about budgets and financial matters. However, Ms. Bennett admitted that her contact was with the Vice President "or somebody under him." This suggests that her regular, recurringand essential contacts often may be at the staff level rather than the Vice Presidential level. Such evidence is insufficient to show that the JEC was clearly wrong in assigning a level 4 rating in Intrasystems Contacts/Level. See Wilkinson v. Bd. of Trustees, Docket No. 94-MBOT-765 (Aug. 26, 1996).

F. EXTERNAL CONTACTS/NATURE OF CONTACT:

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.

(Emphasis in original.)

Like Intrasystems Contacts, above, this factor is analyzed in two parts, Nature of Contact ("Nature") and Level of Contact ("Level"). Ms. Bennett challenges the rating received in Nature. Her job title was assigned level 2, while she asserts that level 3 is appropriate. Level 2 in Nature is defined as "[m]oderate tact and cooperation required; communication is largely of a noncontroversial nature and handled in accordance with standard practices and procedures (e.g., explaining simple policies and procedures, coordinating/scheduling complex meeting or conference arrangements.)" Level 3 is defined as "[s]ubstantial sensitivity and cooperation required; discussions are frequently controversial and require some delicacy (e.g., project interactions, interpretation of policies, resolution of problems.)" Ms. Bennett deals with students and parents regarding personal financial information. Such information is obviously of a confidential nature. She discusses how the financial information provided on a financial aid application relates to the amount of money which can be given, and she explains eligibility requirements. She also discusses student payment plans.

Ms. Nutter explained that the facts that students and parents regard the information exchanged as sensitive, and that they often are hostile or upset, do not mean that the nature of the contact is controversial or that the contact requires substantial sensitivity and cooperation. The contact does not require substantial sensitivity, she asserted, because the results are non-negotiable. The subject matter is governed by policy and procedure, and is not subject to discussion beyond presenting facts and explaining how the policy applies.

No direct evidence was presented as to whether financial aid policies can be considered "complex" under the level 3 definition. However, Ms. Nutter's explanation is persuasive, as Ms. Bennett herself explained that she and her staff do not make any determinations regarding eligibility for financial aid. Obviously, then, Ms. Bennett cannot do more than explain a result over which she has no control. Although the undersigned may have chosen a different result, had she been the initial evaluator, such was not the case. On review, the JEC's rationale has been adequately explained, and its choice cannot be disturbed without a finding that it was clearly wrong, arbitrary or capricious. Here, therating choice could be attributed to subjective value judgments and a difference of view

between reasonable minds. Ms. Bennett has failed to show that the JEC was clearly wrong in its rating.

G. DIRECT SUPERVISION EXERCISED/LEVEL OF SUPERVISION:

> 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.

(Emphasis in original.)

Direct Supervision Exercised is also a two-part factor, consisting of Number of Direct Subordinates ("Number") and Level of Supervision ("Level"). Ms. Bennett challenges the JEC's rating in Level, asserting that level 7 is more appropriate than level 6. Level 6 in Level of Supervision is defined as "[m]anages the operation of a unit, including general supervision over first-line supervisors (and non-supervisors, if applicable)." Level 7 is defined as "[d]irects and coordinates the work of at least two or more units performing different functions within the same department. The work of these units is coordinated through subordinate managers who exercise full supervision over each unit. This position reports to the head of the department."

Ms. Bennett asserts that Ms. Luikart manages the Bookstore, and that an Accounting Assistant is informally in charge of theCashier's Office. Ms. Nutter argues that level 6 was an appropriate assignment, because Ms. Bennett manages two areas herself, and only one through a first-line supervisor. Thus, she supervises one first-line supervisor and several non-supervisors.

Ms. Bennett's argument turns on whether management of the Cashier's Office is performed through a subordinate manager. The clear language of the level 7 definition requires that the work of at least two **units** be coordinated through subordinate **managers** who exercise **full supervision over each unit**. These requirements are in the plural, and the factor definition makes clear that **formal** assignment of supervisory duties is required. While the Bookstore arrangement qualifies, neither of the other two units overseen by Ms. Bennett employ a first-line supervisor with formal authority to manage the unit. Thus, level 6 is the appropriate rating for Direct Supervision Exercised/Level.

H. INDIRECT SUPERVISION EXERCISED/LEVEL OF SUPERVISION:

Indirect Supervision Exercised is defined in the Plan as:

> This factor measures the job's responsibility for the indirect supervision of subordinates. Only the formal assignment of such responsibility to a job should be considered; informal work relationships should not be considered. Indirect supervision takes into account the number of subordinates under the position's line of authority but who do not directly report to it. The number of subordinates should be reported in full-time equivalents (FTEs).

(Emphasis in original.)

Like Direct Supervision Exercised, this factor is analyzed in two parts, Number and Level of Supervision. Ms. Bennett challengesthe JEC's rating in Level. The JEC assigned her job title a level 2 rating in Level, while she asserts that level 3 is more appropriate. Level 2 is defined as "[d]irects and coordinates the work of a unit or department, including direct supervision over first-line supervisors and indirect supervision over non- supervisors who are under the position's line of authority." Level 3 is defined as "[d]irects and coordinates the work of a unit or department, including direct supervision over manager-level personnel and indirect supervision over first-line supervisors and non-supervisors who are under the position's line of authority."

Her arguments and evidence are the same as those advanced for a rating change in Direct Supervision Exercised, above. For the same reasons as given above, Ms. Bennett was correctly assigned level 2 in Indirect Supervision Exercised/Level.

SUMMARY

The JEC was neither clearly wrong nor arbitrary and capricious in assigning point factor ratings to the factors challenged by Ms. Bennett. While her position is clearly very important, and she performs her duties in an exceptional manner, the undersigned cannot substitute her judgment for that of the JEC where clear error, or arbitrary and capricious action, has not been shown. No change in Pay Grade can be granted.

CONCLUSIONS OF LAW

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

2. The burden of proof in a misclassification grievance is on the grievant to prove by a

preponderance of the evidence that she is not properly classified. 156 C.S.R. 1 § 4.19.

3. Determinations of the Job Evaluation Committee("JEC") regarding application of the Plan's point factor methodology are essentially questions of fact. In that regard, the JEC's interpretation and explanation of the point factors and PIQs at issue will be given great weight unless clearly erroneous. Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). See generally, Tennant v. Marion Health Care Found., 194 W.Va. 97, 459 S.E.2d 374 (1995).

4. Subjective determinations of the JEC regarding application of the Plan's point factor methodology are entitled to deference when being reviewed by this Grievance Board. Such determinations may nonetheless be found to be arbitrary and capricious if not supported by a rational basis, or to be clearly wrong if there is no substantial evidence in the record supporting the finding or if review of the evidence makes it clear that a mistake has been made. Burke, supra. See Frymier-Halloran v. Paige, 193 W.Va. 687, 458 S.E.2d 780 (1995); Bd. of Educ. v. Wirt, 192 W. Va. 568, 453 S.E.2d 402 (1994); Kyle v. W. Va. State Bd. of Rehab., Docket No. VR-88- 006 (Mar. 28, 1989). An action is arbitrary and capricious if it does not rely on criteria intended to be considered, entirelyignores important aspects of the problem, explains or reaches the decisions in a manner contrary to the evidence before it, or reaches a decision that is so implausible that it cannot be ascribed to a difference of view. See Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); Yokum v. W.Va. Schools for the Deaf and the Blind, Docket No. 96-DOE-081 (Oct. 16, 1996).

5. While a searching inquiry into the facts is required, an administrative law judge may not simply substitute her judgment for that of the JEC. See generally, Harrison v. Ginsberg, 169 W.Va. 162, 286 S.E.2d 276 (1982).

6. The JEC's assignments of rating levels to the point factors Complexity and Problem Solving, Freedom of Action, Scope and Effect, Breadth of Responsibility, Intrasystems Contacts/Level, External Contacts/Nature, Direct Supervision Exercised/Level and Indirect Supervision Exercised/Level for Grievant's job title are not clearly wrong, arbitrary or capricious.

Accordingly, this Grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County. 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 numberso that the record can be prepared and transmitted to the appropri ate court.

Dated: February 25, 1997

JENNIFER J. MEEKS **Administrative Law Judge**

Footnote: 1

The reader is referred to Burke, et al. v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995), for the background of the reclassification project, the procedural history of the grievances arising therefrom, and definitions of some terms of art specific to the reclassification.

Footnote: 2

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

Footnote: 3

Respondent's proposed findings of fact and conclusions of law contained a reference to WVSC's operating budget. However, information contained in that document cannot be taken as evidence unless it was also presented at the hearing.

Footnote: 4

Even if Ms. Nutter's assertions were correct, the resulting change in points would not change the Pay Grade to which this job title is currently assigned. Thus, no change in the rating would be warranted.