

DANETTE L. MILLER,

Grievant,

v.

Docket No. 94-MBOD-495

BOARD OF DIRECTORS,

SHEPHERD COLLEGE,

Respondent.

DECISION

This is a grievance by Danette L. Miller (Grievant) challenging her classification as an Information Systems Specialist at Pay Grade 17 by Respondent Board of Directors (BOD) under the Job Evaluation Plan (Plan) for the State College and University Systems of West Virginia developed by the Respondent's Job Evaluation Committee (JEC) with assistance from a private consultant, William M. Mercer, Inc. Grievant alleges that she should be classified as a "Financial Aid Information Systems Specialist" at Pay Grade 19. This grievance was initiated on August 9, 1994, in accordance with specific procedures established in § 18 of the Legislative Rule for Personnel Administration promulgated by BOD on March 28, 1994. 131 C.S.R. 62 (1994). In October 1994, BOD waived this grievance to Level IV. [\(See footnote 1\)](#) In accordance with W. Va. Code § 18-29-5(b), this grievance was consolidated with the related grievance of another employee by Order dated March 1, 1996. Thereafter, by Order dated March 28, 1996, the joined grievance was severed and transferred for administrative reasons. [\(See footnote 2\)](#) Subsequently, a Level IV evidentiary hearing was conducted in this Board's office in Morgantown, West Virginia, on April 16, 1996. This matter became mature for decision on May 17, 1996, upon receipt of Grievant's written post-hearing argument. Respondent BOD did not submit a written argument. [\(See footnote 3\)](#) The process under which

Grievant was reclassified, effective January 1, 1994, began with completion of a Position Information Questionnaire (PIQ). PIQs are detailed documents, 17 pages in length, on which individual employees described the duties of their position, as well as certain minimum qualifications required to carry out their duties. [\(See footnote 4\)](#) Employees and their supervisors were also asked to rate various aspects of their position, under ascale set forth in the Plan. The mechanics of the Plan are generally referred to as the "Point Factor Methodology." [\(See footnote 5\)](#)

The JEC is responsible for "review of classification decisions across the system." 131 C.S.R. 62 § 11.5 (1994). Once all PIQs were completed, the JEC met to review the PIQs, assign employees to the appropriate classification, and evaluate each classification factor by factor. In the course of this process, the JEC applied the Point Factor Methodology, interpreting the various factors as required to assign scores for all factors to each classification. After reviewing all PIQs submitted by those employees classified as Information Systems Specialists, the JEC assigned points for each listed category as shown:

Knowledge	6.0	
Experience	4.0	
Complexity and Problem Solving	4.0	
Freedom of Action	4.0	
Scope and Effect - Impact of Actions	6.0	
Scope and Effect - Nature of Actions	3.0	
Breadth of Responsibility	1.0	
Intrasystems Contact - Nature of Contact	2.0	
Intrasystems Contact - Level of Contact	2.0	
External Contacts - Nature of Contact	2.0	
External Contacts - Level of Contact	2.0	
Direct Supervision - Number of Direct Subordinates	1.0	
Direct Supervision - Level of Supervision	1.0	
Indirect Supervision - Number of Indirect Subordinates	1.0	
Indirect Supervision - Level of Supervision	1.0	
Physical Coordination	2.0	

Working Conditions	2.0
Physical Demands	2.0

Using a mathematical formula not at issue, the foregoing levels were calculated to award this job title 2,291 total points, equating to Pay Grade 17. The minimum pay in Pay Grade 17 is \$22,800 per year. 131 C.S.R. 62 (1994). Grievant contends her duties should have been evaluated under the Plan at Pay Grade 19. The minimum pay in Pay Grade 19 is \$26,088 per year. Id.

Grievant was initially reclassified as an Associate Director of Financial Aid in Pay Grade 17 on January 1, 1994. Grievant appealed this classification to the JEC, contending she should have been classified as a "Financial Aid Information Systems Specialist" ([See footnote 6](#)) in Pay Grade 19. The JEC reclassified Grievant as an Information Systems Specialist, a separate job title which likewise falls in Pay Grade 17. Effective October 1, 1994, Grievant was promoted to the position of Data Base Administrator in Pay Grade 19. See R Ex 1. Thus, any backpay to which Grievant might become entitled as a result of this grievance is limited to the period between January 1, 1994 and October 1, 1994, when Grievant began receiving compensation at Pay Grade 19. Moreover, Grievant's claim that she should have been assigned the position of "Financial Aid Information Systems Specialist" involves a moot issue which will not be considered in this decision. ([See footnote 7](#)) Grievant noted that her position was initially classified on the basis of a PIQ submitted in 1991 by her predecessor in the position. Grievant was first employed at Shepherd College in November 1992. Under the previous classification system, she was classified as a "Data Processing Specialist for Financial Aid." Subsequent to November 1992, the duties and responsibilities of that position changed as a new computer system was implemented, and the Director of Financial Aid position was eliminated in late 1993.

In conjunction with her appeal to the JEC in January 1994, Grievant submitted an updated PIQ. See G Ex 1. Dr. Daniel C. Starliper, Director of Human Resources at Shepherd College, reviewed this updated PIQ during the appeal process, recommending that the JEC reclassify Grievant as a Data Base Administrator in Pay Grade 19. See G Ex 1. ([See footnote 8](#)) The JEC considered Grievant's new PIQ and Dr. Starliper's recommendation, nonetheless changing her classification to Information Systems Specialist.

Grievant testified regarding the duties of her position, alleging that many of her duties require

specific knowledge in the field of financial aid. She further explained that a great deal of business accounting and computer knowledge is required to perform the duties of her position. Grievant described the operation of the financial aid function at Shepherd College, noting that, unlike other state schools, they operate as a quality management team without a Director overseeing day-to-day operations. Grievant sees her duties as "similar" to those outlined in the JEC's generic job description for Director of Financial Aid at Pay Grade 20. See G Ex 4. However, she acknowledged that she had never compared the point factor levels assigned to her present classification with the levels required for the job title she is seeking. Grievant further conceded that she does not perform the full range of duties covered by the Director of Financial Aid position description.

Dr. Starliper has been the Director of Human Resources at Shepherd College for over nine years. He is currently a member of the JEC. He explained that no two positions at different institutions are identical. The JEC classified positions based upon commonality among PIQs, with "averaging" employed to arrive at the point factor levels assigned to each position. Dr. Starliper supported Grievant's appeal to the JEC, advocating slotting her position at a higher level. He explained that he took this position as part of a general effort to discourage turnover resulting from positions being under-compensated.

At Level IV, Dr. Starliper testified that he believed Grievant's PIQ supported classification of her duties at Pay Grade 19 under the Point Factor Methodology, but a majority of the voting members of the JEC disagreed. He could not specifically recall if Grievant's financial aid responsibilities were considered by the JEC. According to Dr. Starliper, the JEC considered the PIQ Grievant submitted with her appeal, deciding to classify her as an Information Systems Specialist. Neither he nor the JEC had any quarrel with any of the factual statements contained in her PIQ, as verified by her immediate supervisor, Clinton Davis. See G Ex 1. However, the JEC did not subjectively evaluate Grievant's duties at the same level as Grievant and her supervisor.

For example, Dr. Starliper (and Grievant) argued that her position should require a master's degree. However, both the Director of Financial Aid classification at Pay Grade 20 and Director of Computer Services at Pay Grade 21 were evaluated by the JEC as requiring a bachelor's degree. Thus, Grievant's duties were evaluated at Level 6 under Factor 1 of the Plan, Knowledge, consistent with the minimum requirement of a bachelor's degree. He noted that each position was evaluated based upon the minimum qualifications required to perform the duties of the position, rather than the

qualifications of the employees who presently occupied the positions being classified.

Dr. Starliper further testified that the JEC evaluated Factor 3, Complexity and Problem Solving, at Level 4 rather than Level 5, as proposed by Grievant. He noted that general policies and procedures exist to govern financial aid matters. Grievant contended that she should have been rated under Factor 5, Scope and Effect, at Level 5 for Impact of Actions, and Level 5 for Nature of Actions. The JEC rated Information Systems Specialist at Level 6 for Impact of Actions and Level 3 for Nature of Actions under Factor 5.

Under Factor 7, Intrasystems Contact, Information Systems Specialist was evaluated by the JEC at Level 2 for both Nature of Contact and Level of Contact. Grievant contends she should be rated at Level 3 in both aspects of Factor 7. Likewise, Grievant's position was rated at Level 2 in the same categories under Factor 8, External Contacts. Grievant's PIQ indicates that Level 3 is the appropriate rating for these categories. Dr. Starliper testified that the JEC determined that, based upon the narrative in the PIQ and, in comparison to other PIQs reviewed by the JEC, the Level 2 ratings were more appropriate in each instance.

Grievant's PIQ indicates that she supervises "student workers essential to the operations of the unit." See G Ex 1. In number, these students are equivalent to two to three full-time employees. Based upon this information, Grievant contends she should receive a Level 2 rating under Factor 9 for both "Level of Supervision" and "Number of Direct Subordinates." The JEC assigned Level 1 ratings to both aspects of Factor 9.

Grievant was evaluated at Level 2 under Factor 11, Physical Coordination, Factor 12, Working Conditions, and Factor 13, Physical Demands. [\(See footnote 9\)](#) Grievant indicated in her appeal document that Dr. Starliper correctly rated her PIQ at Level I in each of these factors.

DISCUSSION

Because grievances challenging pay and classification are not disciplinary in nature, Grievant has the burden of proving by a preponderance of the evidence that she has been misclassified. 156 C.S.R. 1 § 4.17 (1989). See W. Va. Code § 18-29-6 ¶ 5; Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). Whether Grievant is properly classified is substantially a factual determination that must be made on a case-by-case basis. Burke, supra. See Snider v. W. Va. Bureau of Env't, Docket No. 95- DEP-306 (Sept. 29, 1995).

Determinations of the JEC regarding application of the Mercer 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, supra. See generally, Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W. Va. 1995). Likewise, subjective determinations of the JEC regarding application of the Mercer Plan's point factor methodology to an employee or group of employees are entitled to deference when being reviewed by this Grievance Board. However, such subjective determinations may nonetheless be found to be arbitrary and capricious if not supported by a rational basis, or found to be clearly wrong if there is no substantial evidence in the record supporting the finding or, a review of the evidence of record makes it clear that a mistake has been made. Jessen v. Bd. of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995). See Frymier-Halloran v. Paige, 458 S.E.2d 780, 788 (W. Va. 1995); Bd. of Educ. v. Wirt, 192 W. Va. 568, 453 S.E.2d 402 (1994); Kyle v. W. Va. State Bd. of Rehabilitation, Docket No. VR-88-006 (Mar. 28, 1989).

Initially, Grievant contends that the decision of the JEC to classify her as an Information Systems Specialist in Pay Grade 17 was arbitrary, given that Dr. Starliper had previously evaluated her PIQ during the appeal process as equating to a Data Base Administrator at Pay Grade 19. However, Dr. Starliper's testimony established that the JEC reviewed her PIQ and determined that the duties and responsibilities she was assigned were similar to those described in other PIQs they had previously reviewed which had been slotted under the Information Systems Specialist job title. Moreover, the JEC had a difference of opinion with both Grievant and Dr. Starliper over the proper classification of this particular position.

Clearly, Dr. Starliper's understanding of the Plan under which Grievant was reclassified is far superior to Grievant's. Although Dr. Starliper was overruled by the JEC, nowhere in his testimony did he indicate that the JEC had generally disregarded the Plan in concluding that Grievant should be classified as an Information Systems Specialist in Pay Grade 17. Comparison of Grievant's PIQ with the Generic Job Description for Information Systems Specialist reveals a poor but plausible match. Cf. G Ex 1 & G Ex 3. However, the arbitrary and capricious standard of review does not allow an administrative law judge to simply substitute his judgment for that of the JEC. Hastings v. Bd. of Trustees, Docket No. 94-MBOT-943 (May 28, 1996). See Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993). See generally, Staton v. Wyoming County Bd. of Educ., 184 W. Va. 369, 400 S.E.2d 613 (1990). Thus, the JEC's decision to slot Grievant's position as an

Information Systems Specialist is not so implausible that it cannot be ascribed to a difference of view. See Bedford County Memorial Hosp. v. Health & Human Serv., 769 F.2d 1017 (4th Cir. 1985); Hastings, supra.

Although Grievant has not demonstrated that the JEC's initial decision to slot her position as an Information Systems Specialist was clearly wrong, further analysis is required to determine if the JEC's application of the Plan in evaluating specific pointfactors challenged by Grievant was appropriate. See Burke, supra. Accordingly, each challenged factor will be discussed, to the extent warranted by the evidence presented, ([See footnote 10](#)) applying the standards discussed above.

Factor 1, Knowledge.

The Plan provides that Factor 1, Knowledge:

measures the minimum level of education equivalency and/or training typically required for an incumbent to reach acceptable occupational competence on the job. The factor considers the technical, theoretical, and/or mechanical skills required, and the complexity and diversity of the required skills.

The JEC determined that Grievant's position required a bachelor's degree, evaluating Factor 1 at Level 6. Grievant attempted to justify a Level 7 rating on her PIQ, stating:

A Masters degree is required in business, accounting or computer science to function in this position. Considerable training and knowledge in the areas of accounting, business and especially computer science are necessary to perform this job. A person without a great deal of computer knowledge and training and considerable knowledge in accounting and business cannot function in this position.

As explained by Dr. Starliper, the JEC determined that a bachelor's degree was adequate to perform the duties of similar positions which were considered more complex than Grievant's, including Director of Financial Aid and Director of Computer Services. Moreover, although knowledge of federal financial aid policies and procedures may be essential, this comes from experience, not formal education. The JEC rated this position under Factor 2, Experience, as requiring over two years and up to three years of prior directly-related experience. Grievant did not show that a person with a bachelor's degree in computer science, information science or a related field and two to three years' experience could not reach acceptable competence in this position, after a reasonable period of on-the-job training. See Zara v. Bd. of Trustees, Docket No. 94-MBOT-817 (Dec. 12, 1995). Moreover, the record in this matter does not indicate that Grievant claims to have a master's degree nor the field

in which such degree was awarded. In any event, it does not appear that the JEC's decision to rate the knowledge requirement for Grievant's position at Level 6 was clearly wrong. See Zara, supra.

Factor 3, Complexity and Problem Solving.

According to the Plan, this factor:

measures the degree of problem-solving required, types of problems encountered, the difficulty involved in identifying problems and determining an appropriate course of action. Also considered is the extent to which guidelines, standards, and precedents assist or limit the position's ability to solve problems.

The JEC rated Grievant's position at Level 4 which states:

Problems encountered are complex and varied due to incomplete and/or conflicting data. General policies, procedures, principles, and theories of specific professional disciplines are available as guidelines; however, these guides may have gaps in specificity or lack complete applicability to work assignments. Employee must utilize analytical skills in order to interpret policies and procedures, research relevant information, and compare alternative solutions.

Grievant submitted that the JEC should have rated her position at Level 5, which states:

Problems encountered involve unusual circumstances, variations in approach, and incomplete or conflicting data. Employees exercise considerable analytical, valiative 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.

In response to the directive on her PIQ to "give an example of the common types of problems faced during the past year and the course of action taken to solve these problems," Grievant stated:

System problems are encountered regularly and must be resolved through manipulation of data within the system. Student[]s packages must be adjusted to account for changes in aid, outside awards, athletic scholar ships, etc. Also, I am constantly adapting [and] changing the system to meet the needs of the financial aid office. This is a continuous problem solving process.

Dr. Starliper pointed out in his testimony that the financial aid function is governed by a number of detailed rules and regulations. Although he previously agreed with Grievant's position that her duties should be evaluated at Level 5, at the Level IV hearing he did not disagree with the JEC's Level 4

rating. The difference between a Level 4 and Level 5 rating on this factor involves a subjective determination. Grievant has provided insufficient information to persuade the undersigned administrative law judge that the JEC's evaluation of this factor was clearly wrong.

Factor 5, Scope and Effect.

According to the Plan,

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 or assignment. Decisions regarding the impact of actions should take into account institutional scope and size as reflected by operating budget, student enrollment and institutional classification. Also, consideration should be given for the possibility that a unit, program or department within a large institution may be equivalent in size to multiple units, programs or departments within a smaller institution. In making these interpretations, assume that the incumbent would have normal knowledge, experience and judgment, and that errors are not due to sabotage, mischief or lack of reasonable attention and care.

Factor 5 involves application of a matrix approach containing two separate elements, Impact of Actions and Nature of Action. The JEC rated Grievant's position at Level 6 for Impact of Actions and Level 3 for Nature of Action. Grievant disagrees with both ratings, contending that she should have been rated at Level 5 under Impact of Actions, consistent with her PIQ, and Level 4 under Nature of Action. The Impact of Actions element is substantially rated on objective facts, primarily the size and budget of the institution. Dr. Starliper testified at hearing that Grievant's position at Shepherd College clearly meets the requirements for Level 6. Therefore, the Impact of Actions element was properly evaluated, and the Nature of Action rating is the only element at issue under this factor.

The Plan defines Level 3 under Nature of Action as:

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

Level 4 is defined as:

Work contributes to or ensures the effectiveness of operations or services having significant impact within the institution or the systems 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.

As noted in previous decisions interpreting the Plan, interpretation of these similarly-worded provisions involves a subjective value judgment, which is an inherent element of the function of position classification. Hastings, supra; Jessen, supra. See Steven W. Hays & T. Zane Reeves, Personnel Management in the Public Sector 101-120 (1984). Neither the information contained in Grievant's PIQ nor her testimony provides a substantial basis to conclude that the rating she received was so inconsistent with the language in the Plan as to constitute an abuse of discretion on the part of the JEC. See Hastings, supra. See also Watts v. W. Va. Dept. of Health & Human Resources, 465 S.E.2d 887 (W. Va. 1995).

Factor 7, Intrasystems Contacts.

In regard to Intrasystems Contacts, the Job Evaluation Plan offers the following guidance:

This factor appraises the responsibility for working with or through other people within the SCUSWV [State College and University System 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.)

The Plan evaluates these contacts under two elements, Level of Contact and Nature of Contact. Grievant contests her ratings on both elements. The JEC evaluated Grievant's position as involving regular, recurring and essential contact at Level 2: "Staff and faculty outside the immediate work area." Grievant argues that her Level of Contact is better reflected by Level 3: "Supervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office." According to Grievant's PIQ, she has daily contact with the Director of the Computer Center involving "coordination of system administration functions, problem solving, coordinating with other departments." G Ex 1. In addition, Grievant listed weekly contact with the Comptroller involving "student accounts, disbursement, payment, etc." G Ex 1. Grievant also listed weekly contact with the Vice President of Student Affairs. However, it is clear from the testimony of Dr. Starliper that this official effectively serves as Grievant's "supervisor" for purposes of applying Factor 7.

As previously noted, Dr. Starliper did not disagree with any of the factual statements contained in Grievant's PIQ. Indeed, Respondent presented no evidence to indicate that Grievant does not communicate with the Director of the Computer Center or the Comptroller concerning the subjects stated, or that she does not engage in such communication as frequently as claimed. Moreover, neither Dr. Starliper nor Respondent advanced an alternative rationale for the JEC's decision to rate Grievant at Level 2, beyond the general assertion that this rating resulted from "averaging" the contacts of all employees classified as Information Systems Specialist. Accordingly, Grievant demonstrated by a preponderance of the evidence that her duties fully fit Level 3 for Level of Contact under Factor 7, and the JEC's decision to assign her a lower rating on this element of Factor 7 was clearly wrong. See Jones v. Bd. of Trustees, Docket No. 94-MBOT-978 (Feb. 29, 1996); Jessen, supra.

Grievant also complains that she was not properly evaluated by the JEC in regard to the second element of Factor 7, Nature of Contact. The JEC rated Grievant's duties under Nature of Contact at Level 2. The Plan defines this level as:

Moderate tact and cooperation required; communication is largely of a non-controversial nature and handled in accordance with standard practices and procedures (e.g., explaining simple policies and procedures, coordinating/scheduling complex meeting or conference arrangements.)

Grievant contends that the proper Nature of Contact for her duties is reflected by Level 3:

Substantial sensitivity and cooperation required; discussions are frequently controversial and require some delicacy (e.g., project interactions, interpretation of complex policies, resolution of somewhat difficult problems.)

Unlike the Level of Contact element, the Nature of Contact element clearly involves a subjective determination regarding the amount of tact and sensitivity required to perform the essential duties of a particular position. Further, Grievant provided no probative examples of her duties to demonstrate that Level 3 is the more appropriate rating under this element. Accordingly, Grievant failed to carry her burden of proving that the JEC's determination on this element of Factor 7 was clearly wrong. See Hastings, supra; Zara, supra.

Factor 8, External Contacts.

According to the Plan:

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 Factor 7, Intrasystems Contacts, this factor has two elements: Nature of Contact and Level of Contact. Grievant disagrees with the Level 2 ratings assigned by the JEC on both elements.

The Plan defines Level 2 under Level of Contact to require regular, recurring and essential contact with the "general public, visitors, and/or service representatives and vendors." Level 3 is similarly defined to involve such contact with "students, parents, alumni, faculty of institutions outside the systems, sales engineers, higher-level product representatives, recruiters and/or prospective students." Grievant's PIQ states that she has daily contact with students and parents regarding financial aid issues. Such contact is fully consistent with the duties and responsibilities of her position and was not contested by Respondent. It is apparent that Grievant's job involves more than pushing buttons to operate a computer system, and these external contacts, as defined by the Plan, are essential to accomplishing her assigned duties. Accordingly, the undersigned finds that the JEC's evaluation of the Level of Contact element of Factor 8 was clearly wrong when contrasted with the uncontradicted evidence of the actual duties Grievant performs. See Jones, supra. Grievant has demonstrated by a preponderance of the evidence that a Level 3 rating under this element is fully consistent with the plain language of the Plan. See Watts, supra.

Levels 2 and 3 for Nature of Contact under External Contacts are defined exactly the same as under Factor 7, Intrasystems Contacts. As previously discussed, neither Grievant's PIQ nor any testimony or evidence presented provides a compelling rationale for rejecting the JEC's determination that Grievant's position involves more than the moderate tact and cooperation defined under Level 2. Accordingly, the JEC's rating on this element is sustained. See Hastings, supra.

Factor 9, Direct Supervision Exercised.

This factor measures the job's degree of direct supervision exercised over others in terms of the level of subordinate jobs in the organization, the nature of the work performed, and the number supervised. Only the formal assignment of such responsibility should be considered; informal work relationships should not be considered. Supervision of student workers may be taken into account if they are essential to the daily operation of the unit. The number of subordinates should be reported in full-time equivalency (FTE) and not head count. (emphasis in original)

Factor 9 is broken down into two elements: (1) Level of Supervision; and (2) Number of Direct Subordinates. Under Level of Supervision, the JEC rated Grievant at Level 1, defined as:

Minimal or no responsibility for the work of others; however, may provide functional guidance to student workers or lower-level employees on a non-essential basis.

Grievant completed her PIQ to reflect a rating at Level 2:

Responsible for directing and monitoring the work of student workers essential to the operations of the unit.

During the appeal process, Dr. Starliper assigned a Level 3 rating to this element:

Lead control over a group of non-exempt employees performing the same work as this job. Lead responsibility includes training assigning tasks, checking the work of others, and insuring supplies and tools are provided at the work site.

Under Number of Direct Subordinates, the JEC rated Grievant at Level 1 for "none," while Grievant represented that she supervises students essential to the operation of her unit representing the full-time equivalent of two to three employees. Application of this factor involves objectively ascertainable facts. Given that Respondent did not present any evidence or testimony to contest the accuracy of the factual statements contained in Grievant's PIQ, the JEC's ratings on this factor are not supported by substantial evidence of record and are clearly wrong. See Frymier-Halloran, supra. Grievant's testimony regarding the "quality team" approach used in the Financial Aid Office at Shepherd College does not support a factual finding that she exercises either lead control or direct supervision over a group of employees performing the same work as she performs. Accordingly, a preponderance of the probative evidence establishes that Grievant should have been rated at Level 2 under Level of Supervision and Level 3 under Number of Direct Subordinates.

Factor 11, Physical Coordination; Factor 12, Working Conditions; and Factor 13, Physical Demands.

The JEC rated Grievant at Level 2 under each of these factors. Grievant contends that she should have been rated at Level 1. These ratings appear to have resulted from the JEC's perspective that an employee in the Information Systems job family would typically encounter a more challenging working

environment than an employee in the Financial Aid job family. Unlike the Impact of Actions element under Factor 5, Respondent presented no evidence to contradict Grievant's assertions that the JEC failed to consider the specific information contained in her PIQ in assigning ratings to these factors. Accordingly, Grievant's position is accepted and Grievant will be rated at Level 1 on each of these factors. Consistent with the foregoing, Grievant must be constructively awarded the appropriate number of points to match the ratings she should have received in accordance with the Plan, in order to determine if she is assigned to the proper pay grade. Zara, supra; Jessen, supra. Therefore, the data line for Grievant's position may be changed to show a Level 3 rating under the Level of Contact element of Factor 7, Intrasystems Contacts. According to the table contained in Respondent's PIQ Summary by Job Family, this will give Grievant an additional 6 points. Similarly, changing Grievant's rating under the Level of Contact element of Factor 8, External Contacts, to Level 3 equates to an additional 8 points under the table. Finally, correcting the data line for Factor 9, Direct Supervision Exercised, to Level 2 for Level of Supervision and Level 3 for Number of Direct Subordinates results in an additional 36 points in accordance with the table.

These additional 50 points must be offset by the corrections to the data line resulting from Grievant's demonstration that the JEC overrated her PIQ under Physical Coordination, Working Conditions and Physical Demands. Changing each of these ratings from Level 2 to Level 1 results in a loss of 62 points. Thus, when the gains and losses are offset, Grievant's point total under the Point Factor Methodology is reduced by 12 to 2279. Under the Plan, positions with point totals between 2255 and 2407 are allocated to Pay Grade 17. [\(See footnote 11\)](#) Accordingly, Grievant has failed to demonstrate that she should be assigned to a higher pay grade in accordance with the Plan. See Zara, supra. Because degree levels are assigned to Job Titles and not individuals, and the pay grade is unaffected, no change need be made to the data line for Information Systems Specialist. See Riggs V. Bd. of Trustees, Docket No. 94-MBOT-711 (Apr. 29, 1996).

In addition to the foregoing discussion, the following findings of fact and conclusions of law are appropriate in this matter.

FINDINGS OF FACT

1. Grievant has been employed by Shepherd College since November 1992. From January 1, 1994, to October 1, 1994, Grievant was classified by the Respondent's Job Evaluation Committee

(JEC) under the Job Evaluation Plan for the State College and University Systems of West Virginia (Plan) as an Information Systems Specialist in Pay Grade 17.

2. Under the Plan, positions are evaluated pursuant to a "point factor methodology" wherein point values are assigned to thirteen "job evaluation factors:" (1) knowledge; (2) experience; (3) complexity and problem solving; (4) freedom of action; (5) scope and effect; (6) breadth of responsibility; (7) intrasystem contacts; (8) external contacts; (9) direct supervision exercised; (10) indirect supervision exercised; (11) physical coordination; (12) working conditions; and (13) physical demands. 131 C.S.R. 62 § 2.27 (1994).

3. At all times relevant to this grievance, Grievant was a member of the management team which operated the financial aid office at Shepherd College. This team reported to the college's Vice President for Student Affairs. R Ex 2.

4. Grievant's primary job duties include responsibility for system administration of the Financial Aid Module of the "Banner" relational database management system which is employed to process virtually all aspects of the financial aid function.

5. Grievant was initially classified by the JEC as an Associate Director of Financial Aid in Pay Grade 17, based upon an out-of-date Position Information Questionnaire (PIQ) submitted in 1991 by Grievant's predecessor.

6. On January 26, 1994, Grievant submitted an updated PIQ in conjunction with her appeal from the initial classification described in Finding of Fact Number 5.

7. Dr. Daniel Starliper, Director of Human Resources at Shepherd College, and a member of the JEC, evaluated Grievant's PIQ under the Plan, recommending Grievant be reclassified as a Data Base Administrator in Pay Grade 19. The JEC disagreed with Dr. Starliper's evaluation, deciding to retroactively classify Grievant as an Information Systems Specialist in Pay Grade 17.

8. The JEC has determined that a bachelor's degree in Business Administration or a related field represents the minimum educational requirement for an employee entering the position of Director/Financial Aid. See G Ex 4. Likewise, the JEC has determined that a bachelor's degree represents the minimum educational requirement for an employee entering the positions of Data Base Administrator, Data Base Administrator - Senior, and Director/Computer Services.

9. The JEC determined that a bachelor's degree in Computer Science, Information Science, or a related field represents the minimum educational requirement for an employee entering the position of Information Systems Specialist. See G Ex 3.

10. In order to perform the essential duties of her

position, Grievant has daily contact with the Director of the Computer Center at Shepherd College and weekly contact with the Comptroller at Shepherd College.

11. In order to perform the essential duties of her position, Grievant has daily contact with students and parents regarding financial aid issues.

12. Grievant is responsible for directing and monitoring the work of student workers essential to the operation of the financial aid office. These students represent the full-time equivalent of at least two employees. Grievant does not have formal supervisory authority or lead control over other full-time employees under the "team management" concept employed at Shepherd College.

13. In order to be assigned to the next higher pay grade under the Plan, Grievant's position would have to be evaluated at levels which would generate a minimum total of 2408 points.

14. Effective October 1, 1994, Grievant was promoted to the position of Data Base Administrator, Pay Grade 19.

CONCLUSIONS OF LAW

1. The governing boards are required by W. Va. Code § 18B-9-4 to establish and maintain an equitable system of job classifications for all classified employees in higher education. Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995).

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 § 4.17; Burke,

supra. 3. Determinations of the JEC regarding application of the Mercer 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,

supra. See generally, Tennant v. Marion Health Care Found., 459 S.E.2d 374 (W. Va. 1995). Likewise, subjective determinations of the JEC regarding application of the Mercer Plan's point factor methodology to an employee or group of employees are entitled to deference when being reviewed by this Grievance Board. However, such subjective 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, review of the evidence of record makes it clear that a mistake has been made. Jessen v. Bd. of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995). See Frymier-Halloran v. Paige, 458 S.E.2d 780, 788 (W. Va. 1995); Bd. of Educ. v. Wirt, 192

W. Va. 568, 453 S.E.2d 402 (1994); Kyle v. W. Va. State Bd. of Rehabilitation, Docket No. VR-88-006 (Mar. 28, 1989).

4. Grievant failed to prove by a preponderance of the evidence that the JEC's interpretation and application of the Plan to her position as regards the evaluations assigned to Factor 1, Knowledge, Factor 3, Complexity and Problem Solving, Factor 5, Scope and Effect, or the Nature of Contact elements under Factor 7, Intrasystems Contacts, and Factor 8, External Contacts, was clearly wrong or otherwise unsupported by the available evidence. See Burke, supra.

5. Grievant demonstrated by a preponderance of the evidence that she has regular, recurring and essential contact with supervisors and managers other than her own in the course of performing her assigned duties, fully meeting the stated requirement in the Plan for a Level 3 rating under the Level of Contact element of Factor 7, Intrasystems Contacts. Based upon the probative evidence of record, the JEC's decision to rate Grievant's position at Level 2 under this element was clearly wrong. See Jones v. Bd. of Trustees, Docket No. 94-MBOT-978 (Feb. 29, 1996); Jessen, supra.

6. Grievant demonstrated by a preponderance of the evidence that she has regular, recurring and essential contact with students and parents in the course of performing her assigned duties, fully meeting the stated requirement in the Plan for a Level 3 rating under the Level of Contact element of Factor 8, External Contacts. Based upon the probative evidence of record, the JEC's decision to rate Grievant's position at Level 2 under this element was clearly wrong, given the uncontradicted evidence regarding the duties which Grievant actually performs. See Jones, supra.

7. Grievant demonstrated by a preponderance of the evidence that she is responsible for directing and monitoring the work of student workers essential to the operations of her unit, and that these students represent the equivalent of at least two full-time employees, fully meeting the stated requirements in the Plan for a Level 2 rating under the Level of Supervision element and a Level 3 rating under the Number of Direct Subordinates element of Factor 9, Direct Supervision Exercised. Based upon the probative evidence of record, the JEC's decision to rate the duties of Grievant's position at Level 1 under each of these elements is not supported by substantial evidence of record and is clearly wrong. See Frymier-Halloran v. Paige, 458 S.E.2d 780, 788 (W. Va. 1995).

8. Grievant's claim that the duties of her position should have been rated by the JEC at Level 1 rather than Level 2 under Factor 11, Physical Coordination, Factor 12, Working Conditions, and Factor 13, Physical Demands, consistent with the initial rating of her PIQ on appeal by Dr. Daniel Starliper,

Director of Human Resources at Shepherd College, was not challenged by Respondent and is supported by a preponderance of the evidence.

9. Awarding the correct number of points to the duties of Grievant's position, consistent with the proper ratings which should have been awarded under the Plan as determined in Conclusions of Law Numbers 5, 6, 7 and 8, above, does not increase the total points awarded to her position to the minimum of 2408 points required to be assigned to the next higher pay grade. See Zara, supra. Therefore, Grievant has not demonstrated that the duties of her position were misclassified.

Accordingly, this Grievance is **DENIED** .

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Jefferson County and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

LEWIS G. BREWER

ADMINISTRATIVE LAW JUDGE

Dated: October 29, 1996

[Footnote: 1](#)

This grievance was among over 540 grievances waived to Level IV at the same time by BOD and the Board of Trustees for the University System of West Virginia. For a more detailed recitation of the procedural history involving these grievances, see the "background" section of this Board's decision in *Burke v. Bd. of Directors*, Docket No. 94-MBOD-349 (Aug. 8, 1995).

[Footnote: 2](#)

This matter was previously styled *Merry J. Brown, et al., v. Bd. of Trustees/Bd. of Directors*, Docket No. 94-MBOT-973.

[Footnote: 3](#)

Due to personnel turnover, this matter was subsequently reassigned to the undersigned administrative law judge for decision.

[Footnote: 4](#)

PIQs are essentially position descriptions developed to facilitate the job evaluation process.

[Footnote: 5](#)

Curiously, neither party offered either the Plan or the PIQ Summary by Job Family (compiled to evidence the overall result of the Plan's application) into evidence at Level IV. As these documents are contained in the records of numerous other cases before this Grievance Board, and neither party should be prejudiced by consideration of these essential documents, the undersigned administrative law judge will take administrative notice of these records.

[Footnote: 6](#)

The job title which Grievant seeks does not presently exist under the Plan.

[Footnote: 7](#)

The Grievance Board does not issue advisory opinions, limiting decisions to issues directly raised in a grievance. Procedural Rules, W. Va. Educ. & State Employees Grievance Bd., 156 C.S.R. 1 § 4.20 (1996). Because Grievant has obtained a new position since this grievance was filed, there is no "meaningful controversy" regarding the title assigned to her previous classification. See Harrison v. Cabell County Bd. of Educ., 351 S.E.2d 604 (W. Va. 1986); Pridemore v. W. Va. Dept. of Health & Human Resources, Docket No. 95-HHR-561 (Sept. 30, 1996); Maxey v. W. Va. Dept. of Health & Human Resources, Docket No. 92-HHR-504 (Feb. 4, 1993).

[Footnote: 8](#)

Dr. Starliper did not explain the basis for these ratings in great detail. It is noted that, although these ratings result in this position being included in Pay Grade 19, several point factors were rated differently from other employees assigned to the Data Base Administrator job title. See State College & University Systems of West Virginia PIQ Summary by Job Family, Aug. 11, 1994, at 12.

[Footnote: 9](#)

It is noted that the Legislative Rule under which the JEC operates contains 13 factors while the Plan contains 12 factors, the twelfth factor being labeled as "Working Conditions and Physical Demands." Cf. 131 C.S.R. 62 § 2.27 (1994). It appears that the Legislative Rule controls this minor detail and the Plan will be considered as containing 13 factors. See Jessen v. Bd. of Trustees, Docket No. 94-MBOT-1059 (Oct. 26, 1995), at F.N. 3.

[Footnote: 10](#)

Because Grievant's primary contention is that the JEC arbitrarily and capriciously disregarded Dr. Starliper's recommendation without evaluating her PIQ factor by factor in accordance with the Point Factor Methodology in the Plan, she generally adopted Dr. Starliper's evaluation of her PIQ at the time her initial appeal was submitted as the basis for her contention that she was improperly evaluated on certain point factors.

[Footnote: 11](#)

It should be noted that even had Grievant accepted the JEC's ratings on Factors 11-13, her position would still have only a total of 2341 points assigned, well short of the 2408 total points required to advance to the next pay grade.