MATTHEW WOOD,

Grievant,

v. **DOCKET NO. 94-MBOD-480**

BOARD OF DIRECTORS/WEST VIRGINIA STATE COLLEGE,

Respondent.

DECISION

Grievant Matthew Wood challenges his classification under the "Mercer" reclassification system. (See footnote 1) He was classified as an Uplink Systems Engineer at Pay Grade 17. He seeks a Pay Grade 21 for his job title. Mr. Wood 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 6, 1996. This matter became mature for decision on January 17, 1997, the deadline for filing proposed findings of fact and conclusions of law. Grievant specifically challenges the degree level ratings received in several point factors used to evaluate his position and assign it a Pay Grade under the Mercer Plan. The point factors challenged are: Experience; Complexity and Problem Solving; Scope and Effect/Nature of Action; Breadth of Responsibility; Intrasystems Contacts/Level of Regular, Recurring and Essential Contacts; and External Contacts. Respondent challenged the ratings received in Direct Supervision Exercised.

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 Information Questionnaire (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. Mr. Wood completed a PIQ in 1991. 2 2. Mr. Wood is employed as an Uplink Systems Engineer for the Educational Network (EdNet). EdNet is physically located on the campus of West Virginia State College (WVSC).

3 3. EdNet serves all higher education institutions in West Virginia by providing satellite distance education, video production services, teleconference downlinking services, audio- conferencing and technical support services. EdNet also provides these services to state agencies outside the higher education system and to private businesses. EdNet was created in 1987. It operates 14 hours per day with eight people, and is the only uplink facility in the State higher education system. (See footnote 3)

4 4. Grievant's job duties are essentially the same as they were on January 1, 1994, and include (with approximate percentages of time): operate and maintain all satellite transmission and reception equipment including controls and signal paths (15%); ensure compliance with all Federal Communications Commission (FCC) rules and regulations, and with other State and Federal regulations (10%); design, install and maintain signal paths external to EdNet (10%); design, write and maintain computer systems, networks and software for automation control, scheduling, billing and library functions of EdNet (15%); supervise maintenance on HVAC and electrical utilities and telephone service in EdNet facilities (15%); design, install and maintain telephone conferencingequipment used by all higher education institutions (10%); coordinate installation and maintenance of digital bulk carriers with C&P Telephone and other carriers (10%); provide training and technical supervision of engineering, production and traffic staff (10%); and research, locate and develop specifications on equipment for EdNet, WVSC Communications Department and Finance and Administration Purchasing Division (5%).

5 5. Operation of satellite equipment includes turning transmitters on and off, ensuring proper warm up of the transmitters, coordinating with the satellite provider to ensure proper communication and timing of satellite use, and performing scheduled maintenance according to manufacturer's recommendations and Mr. Wood's experience. In operating and maintaining microwave stations, Mr. Wood works on equipment at the West Virginia Public Radio station in Charleston.

6 6. EdNet has its own minicomputer system used for scheduling, maintaining databases, and billings. Mr. Wood wrote source code for the system, designed the scheduling system and the library functions, and wrote manuals on using the system. Mr. Wood designed, installed, and created some procedures for the telephone conferencing system, including processing related billings. He installed and changed circuits to make them functional in coordinating services with different telephone carriers. Mr. Wood has written several manuals and notebooks addressing how equipment works, how operations are performed, and how to use computer systems. He designed a logging system to meet FCC regulatoryrequirements regarding satellite transmissions, and handbooks on how to use it.
7 7. Mr. Wood identifies needs, or identifies developing technology which may be useful for EdNet systems, and researches availability of software or equipment. He assesses the utility and cost-effectiveness of such technology, and takes part in making purchasing decisions through committees.
8 8. Mr. Wood's troubleshooting of equipment problems involves identifying the problem, such as signal interruption, isolating the location of the problem (either within or outside EdNet's systems), and then identifying how to fix the problem. This may involve reference to manuals or handbooks, a trial and error process, the process of elimination, and/or contacting an equipment manufacturer for assistance.
9 9. Mr. Wood does not have a baccalaureate degree, but took some college courses and has approximately eight years of work- related experience.
10 10. Mr. Wood is the only Uplink Systems Engineer in the West Virginia higher education system. Therefore, his PIQ is also the job description for this job title, and the ratings assigned to his individual job duties and responsibilities are those assigned to the job title.
11 11. The job title Uplink Systems Engineer received 2397 total points under the Plan, which places it in Pay Grade 17. The point range for Pay Grade 17 is from 2255 to 2407 points.

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 Plan's reclassification system is not based upon whole job comparisons. It is largely a "quantitative" system, in which the components of each job are evaluated separately by applying the point factor methodology contained in the Plan. Therefore, the focus in these grievances is upon the point factors the grievant is challenging. 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 position, but to the job title. Burke, supra. In orderto maintain the integrity of the overall classification scheme, the "best fit" must be determined in relation to other similar positions. The individual grievant's case must also be analyzed with reference to where the position fits in the higher education classified employee hierarchy.

In this case, whether Mr. Wood 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., 459 S.E.2d 374 (W. Va. 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, 465 S.E.2d 887 (W. Va. 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 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). 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 simply substitute her judgment for that of the JEC. See generally, Harrison v. Ginsberg, 286 S.E.2d

276, 283 (W.Va. 1982).

In order to determine if Grievant was misclassified, the point factors and ratings disputed must be discussed separately in detail.

II. POINT FACTOR ANALYSIS:

Mr. Wood challenged his ratings in several of the factors analyzed in assigning his job title and Pay Grade. Each point factor which is subject to dispute in this grievance is addressed separately.

A. EXPERIENCE:

The Plan defines Experience as follows:

> This factor measures the amount of prior directly related experience required before entering the job. Previous experience or training should not be credited under this factor if credited under Knowledge.

Joint Exhibit C. (All definitions are taken from this exhibit, with any emphasis in the original, unless otherwise noted.)

Mr. Wood's job title received a level 5 rating in Experience, which is defined as "[o]ver three years and up to four years of experience." Mr. Wood asserts that a level 7 rating is merited. Level 7 is defined as "[o]ver six years and up to eight years of experience." In the related Knowledge factor, this job title received a level 6 rating, which is defined as "[j]ob requires athorough knowledge of a professional discipline or technical specialty as would normally be acquired through a relevant baccalaureate education program. Knowledge of principles, concepts, and methodology of a highly technical, professional, or administrative occupation is indicative of this level."

Mr. Wood had eight years of experience prior to entering this position, but had not obtained a baccalaureate degree or its equivalent. He asserted that six to eight years of experience were necessary, in different subject-matter areas addressed in his PIQ and testimony. See Jt. Ex. A, p. 5.

Dr. Daniel C. Starliper, Director of Human Resources at Shepherd College and JEC member, testified on behalf of Respondent that this factor rating must be considered in conjunction with the rating for Knowledge. He suggested, and Mr. Wood agreed, that computer software design and management might be addressed in baccalaureate degree course work. These two areas accounted for three of the seven years' experience listed in Mr. Wood's PIQ narrative.

Mr. Wood's evidence is essentially that the opinion expressed by the rating he put on the PIQ, which was approved by two levels of supervision above him, should control the outcome. “The degree

level on ...PIQs was marked by the employee, and represents the employee's opinion...Such statements standing alone merely show disagreement with Respondent's conclusion, but offer no reason to accept Grievant's position rather than Respondent's." Riggs v. Bd. of Trustees, Docket No. 94-MBOT-711 (Apr. 29, 1996). It is clearthat Knowledge and Experience are interrelated factors under the Plan, and that extensive experience can be substituted for education. Indeed, Mr. Wood's extensive experience prior to entry into this position apparently was sufficient to compensate for his lack of formal education.

The minimum amount of experience required to perform the essential duties of a position represents a subjective determination upon which reasonable minds may differ. Zara v. Bd. of Trustees, Docket No. 94-MBOT-817 (Dec. 12, 1995). Here, it is clear that one with eight years experience and no baccalaureate degree can perform this work at entry level. Mr. Wood's experience essentially equates, on a year-to-year basis, with the JEC ratings in the Knowledge and Experience factors. The JEC ratings require a baccalaureate degree, which typically would consist of a four- year educational program, plus three to four years' experience. No evidence was presented that the JEC's combination is insufficient for entry-level performance in this job title. "An unsubstantiated difference of opinion [with the JEC's rating] is insufficient to prove that the JEC's opinion was clearly wrong." Payne v. Bd. of Directors, Docket No. 94-MBOD-372 (Jan. 8, 1997). The JEC's ratings cannot be deemed clearly wrong or implausible.

B. 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 identifyingproblems 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."

Mr. Wood's title received a level 4 rating, and he asserts a level 6 rating is merited. Level 4 in this factor is defined 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 in the Plan 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.

Level 6 is defined as:

> Problems encountered are extremely complicated and require considerable resourcefulness and originality. Various strategies are examined to determine most feasible approach to resolution of problems. Long-range planning to resolve extraordinary problems is almost always required of positions at this level to attain desired goals. Advanced analysis which requires the employee to solve unusual and complex problems taking information from many different sources is required. Employee will often use initiative and resourcefulness in deviating from traditional methods, proposing new policies, and researching trends. In his PIQ and testimony, Mr. Wood gave an example of problem- solving when the audio telephone circuits were not working. The two telephone companies involved claimed that the problems were not within their lines, and there was a legal issue regarding responsibility for the circuits under FCC rules. Mr. Wood addressed this by researching and interpreting the legal requirements, and discussing this information with the telephone companies. He gave another example involving adding a second transmitter at EdNet, and claimed accountability for at least part of the long-range planning involved. He testified that he had to anticipate the number of classes to be transmitted in the future, to anticipate the technology needed to address those needs, and to compare costs of different alternatives. He decided to utilize a data carrier rather than 24 individual telephone lines. Mr. Wood stated that long-range planning was involved on his part in mapping transmission paths, anticipating EdNet's equipment or operational needs five years in advance, and in knowing industry trends. He testified that he must be aware of changes in federal and state rules and regulations, as he is responsible for maintaining compliance. He agreed that EdNet policy and procedure, as well as state and federal rules and regulations, apply to his work.

Dr. Starliper testified that while Mr. Wood certainly deals with complex issues, he has recourse to policy, procedure and other guidelines. He noted that Mr. Wood himself had authored many of the guidelines applicable to EdNet technical activities. He testified that Mr. Wood was two levels below the EdNet Director'slevel in the organizational structure of a small unit, and that this indicates that the problems encountered are probably not equivalent in complexity to those at the Director level in a large unit. He further stated that the top person in the unit might get a level 5 or 6 rating, but that lower level employees would typically get lower level ratings in this factor.

The criteria written into the definitions pertaining to this factor do not include comparison of ratings between positions within one work unit. Thus, comparison with higher supervisory levels, without more, is an arbitrary and capricious justification of rating. The fact that Mr. Wood's supervisors, the Operations Manager and the Director of EdNet, received level 4 and 5 ratings, respectively, is not controlling under the Plan language. However, it is still Mr. Wood's burden to

prove clearly that he is entitled to a higher level rating.

"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. The same is true of differences between those and a level 6 rating. Mr. Wood has developed new computer programs, has authored policies and/or procedures, and is somewhat involved in long-range planning for EdNet. However, it is not clear that new programs, policies and procedures are "typical end results" of his work, nor was there clear evidence of the percentage of time Mr. Wood spends in such high level problem-solving. The types of problems characterized in level 5 and 6 may not be the type upon which Mr. Wood spends themajority of his time. Moreover, Mr. Wood's long-range planning does not address "extraordinary problems" nor is it "almost always required." Rather, his planning involves maintenance and expansion of services as needed. It is not clear what degree of skill is involved in his research and analysis. There was no evidence that any determinations were made of the effectiveness of policies and practices.

From this record, then, Mr. Wood clearly does not perform level 6 problem solving, although he clearly does perform at least level 4 problem solving. While some of his problem solving appears to fit that characterized by level 5, it is not clear that it represents the majority, or even a significant portion, of his efforts. This Board is reluctant to second guess the JEC's decisions absent compelling evidence. Such compelling evidence was not presented here. Assignment of a level 4 rating in this factor was not proven to be clearly wrong. See, Bennett v. Bd. of Directors, Docket No. 94-MBOD-451 (Feb. 25, 1997); and Wise v. Bd. of Directors, Docket No. 94-MBOD-401 (Jan. 30, 1997).

C. SCOPE AND EFFECT/NATURE OF ACTION:

> 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 ofwhat 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.

Scope and Effect is analyzed and rated in two parts, Impact of Actions and Nature of Action ("Nature"). Mr. Wood challenges the level 3 rating received in Nature, and asserts level 5 is merited. Level 3 in Nature is defined as "[w]ork 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 of Nature 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 or developing and/or implementing new procedures and concepts. Work also involves extensive and consequentialsupport, development, or recommendation of major objectives, policies, programs or practices. Errors could easily result in major costs, problems and disruptions within the affected area.

Mr. Wood testified that he is responsible for the operation and maintenance of equipment which is expensive and might damage a satellite, thus disrupting communications for part of the world. He noted that he has implemented systems, including procedures for emergency shutdown of transmissions, designed to minimize the possibility of damaging the satellites. He stated that he addresses "critical operational problems" when fixing a major piece of equipment which fails during transmissions. He operates a "major program" in ensuring that the EdNet station meets federal requirements. As an example of a new procedure, he spoke of creating a new procedure for controlling transmitter power "over fiber," rather than by using a "terminal and data path." He also noted his troubleshooting of equipment and transmission problems.

Dr. Starliper testified that normally the director of a unit would have responsibility for planning, developing and operating programs or services. He added that the further down the reporting chain an employee was, the lower level rating that employee was likely to receive. He noted a certain subjectivity in the terminology used, and stated that the sort of "planning" performed by a secretary or clerical person is not the sort of "planning" contemplated in level 5's definition. He opined that

persons in technical positions provide guidance, under level 3, and are not planning or developing under level 5. His written testimony stated that level 3 "is the beginning of the professional level positions"while level 4 "begins with the management levels," and level 5 is "for directors and high level administrators." R. Ex. 1, p. 24.

The JEC's interpretations and applications of the different definitions embodied in the written testimony are not precluded by the language used, nor did Mr. Wood argue that they were not consistently applied. Thus here, as in Jessen v. Bd. of Directors, Docket No. 94-MBOD-1059 (Oct. 26, 1995), the JEC's interpretations are entitled to deference. The differences between the levels involved here are based upon subjective value judgments. As Mr. Wood is clearly not a management level employee, it cannot be said that the JEC was clearly wrong or arbitrary and capricious in rating his title at level 3 in this factor.

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.]

Mr. Wood was assigned level 1, which is defined in the Plan as "[a]ccountable for only immediate work assignments but not for a functional area." He seeks assignment of level 4, which is defined as "[i]n-depth knowledge of and accountability for three or more functional areas as measured by the incumbent's ability to answerdetailed and complex questions relative to policies, procedures, laws and regulations."

It is well established that this factor only gives credit to those who have formal financial accountability for an area. See e.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). Mr. Wood argued that he has partial responsibility to keep costs down. However, it is clear that he has no formal financial accountability for EdNet. Dr. Starliper testified that EdNet was considered the functional area, and his testimony is supported by the fact that the EdNet Director position received a rating showing accountability for one functional area. Mr. Wood is correctly rated in this factor.

E. INTRASYSTEMS CONTACTS/LEVEL:

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.

This factor is analyzed and rated in two parts, Nature of Contact and Level of Regular, Recurring and Essential Contact ("Level"). Mr. Wood challenges the rating in Level. His title received a level 2 rating, and he asserts that level 3 is merited. Level 2 in Level is defined in the Plan as "[s]taff and faculty outside the immediate work unit." Level 3 is defined in the Plan as "[s]upervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office."

Mr. Wood testified that he contacted computer personnel at the Systems' Central Office daily or weekly regarding mainframe computer operation, and "regularly" contacted secretarial staff there about scheduling conferences. He testified that he contacted a WVSC Division Chair weekly regarding technical or equipment matters, and at least one other department Chair monthly. Mr. Wood also stated that he had at least weekly contact with utilities supervisors at other institutions. (See footnote 4) Dr. Starliper did not dispute any of this testimony, nor did he argue that the contact was not essential. He stated that daily contacts were those considered in analyzing this factor.

It is well settled that "regular and recurring" does not mean the contact must occur daily, but can include weekly contact. Riggs, supra at 24. Mr. Wood has proven that he has regular, recurring and essential contacts with supervisors and chairpersons outside his reporting chain, and with persons within the Systems' Central Office. The JEC was clearly wrong, and he is entitled toa level 3 rating in Intrasystems Contacts/Level. This change results in an increase of 18 points.

F. EXTERNAL CONTACTS:

> This factor appraises the responsibility for working with or through other people outside the SCUSWV to get results. Consider the purpose and level of contact encountered on a regular, recurring and essential basis during operations. Consider whether the contacts involve furnishing or obtaining information, influencing others or negotiation.

Like Intrasystems Contacts, this factor is analyzed and rated in two parts, Nature of Contact

("Nature") and Level of Regular, Recurring and Essential Contact ("Level"). Mr. Wood challenges ratings received in both parts.

1. EXTERNAL CONTACTS/NATURE:

In Nature, his title received a level 2 rating, while he asserts a level 3 rating is merited. 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 in Nature is defined in the Plan 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.)"

Mr. Wood testified that substantial sensitivity was required in his contacts with the FCC. In some instances, he would inquireabout EdNet activities which might constitute violations of law. He admitted that these would not be the circumstances on a regular or recurring basis, however. He also stated that substantial sensitivity was required when resolving arguments between telephone company carriers, as he may "step on political toes." Finally, he stated that he had to take care in his contacts with vendors not to let one know another's prices or proposals.

Dr. Starliper testified that nothing suggested that Mr. Wood's external contacts are more controversial than his Intrasystems Contacts, where he received a level 2 rating which is nearly identical to the one involved here. He added that all the information indicates that Mr. Wood's contacts are, in fact, non- controversial.

Mr. Wood's contact with vendors is level 2 contact, if not below that. His contacts with the FCC which arguably require substantial sensitivity cannot be considered as they are neither regular nor recurring. His weekly contact with the telephone companies involves project interactions and resolution of problems at least some part of the time. Unfortunately, there is little or no information in the record regarding how much of his total contact with telephone companies and the FCC is of the higher level, and how much is of a lower level. Further, his contact with students was most frequent and Mr. Wood admitted that contact did not involve substantial sensitivity. Under these circumstances, the JEC's rating is not clearly wrong, arbitrary or capricious. 2. EXTERNAL CONTACTS/LEVEL:

In Level, Mr. Wood's title received a level 2 rating, while he asserts a level 4 is merited. Level 2 is

defined as "[g]eneral public, visitors, and/or service representatives and vendors." Level 3 is defined as "[s]tudents, parents, alumni, faculty of institutions outside the systems, sales engineers, higher-level product representatives, recruiters and/or prospective students." Level 4 is defined in the Plan as "[m]id-level representatives of government agencies, professional contacts with other colleges and universities outside the systems."

Mr. Wood testified to hourly contact with students, monthly contact with the FCC's Common Carrier Division, weekly contact with upper level engineering staff in corporate offices, monthly contact with personnel in the State's IS&C office, and daily contact with vendors. Dr. Starliper testified that daily and weekly contacts were considered here. He essentially admitted that Mr. Wood's contact with students entitled Mr. Wood to a higher level rating.

Mr. Wood presented no evidence regarding "professional contacts with other colleges and universities outside the [State higher education] systems," the second part of the level 4 definition. It has been held previously that staff of government agencies are not mid-level representatives. Hughes v. Bd. of Trustees, Docket No. 94-MBOT-1002 at 20 (Jan. 28, 1997) and Carrere v Bd. of Directors, Docket No. 94-MBOD-1017 (Jan. 16, 1997). There is no indication, other than Mr. Wood's speculation, that the government employees he contacts might be "mid-levelrepresentatives" rather than staff of their respective agencies. Such speculation is insufficient to prove the status within the agencies of those whom Mr. Wood contacts. Thus, he has not proven that he is entitled to a level 4 rating in External Contacts/Level. However, he has proven that the JEC's level 2 rating was clearly wrong, as he is entitled to a level 3 rating. This change results in an increase of 24 points.

G. DIRECT SUPERVISION EXERCISED:

While Mr. Wood did not challenge the ratings he received in either part of this factor, Dr. Starliper testified that Mr. Wood received credit for lead control or direct supervision of one employee when in fact he has no formal supervisory duties. Mr. Wood did not dispute Dr. Starliper's testimony, and his PIQ bears out Dr. Starliper's assertions. Thus, the JEC was clearly wrong in rating this job title at level 2 in Number of Direct Subordinates (Number) and at level 3 in Level of Supervision (Level). This job title is appropriately rated at level 1 in Number, and at level 1 in Level. Correction of this discrepancy would result in a decrease of 60 points.

SUMMARY

Mr. Wood has shown that the JEC was clearly wrong in assigning rating levels under the factors Intrasystems Contacts/Level and External Contacts/Level. Respondent has shown that the JEC was clearly wrong in assigning rating levels under the factor DirectSupervision Exercised. By assigning him the number of points afforded under proper assignment of ratings in these factors, Mr. Wood's job title is entitled to a decrease of 18 points, for a total of 2379 points. This equates to a Pay Grade 17. While no change in Pay Grade results, Mr. Wood is the only employee in the job title Uplink Systems Engineer, and therefore changes in the data line for this job title are warranted.

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 he 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 deferencewhen being reviewed by this Grievance Board. Miller v. Bd. of Directors, Docket No. 94-MBOD-495 (Oct. 29, 1996).

5. The JEC's 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 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, entirely ignores 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).

6. 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).

7. The JEC's assignments of rating levels to the point factors Experience, Complexity and Problem Solving, Scope and Effect/Nature, Breadth of Responsibility, and ExternalContacts/Nature for Grievant's job title are not clearly wrong, arbitrary or capricious.

8. The JEC's assignments of rating levels to the point factors Intrasystems Contacts/Level, External Contacts/Level, and Direct Supervision Exercised for Grievant's job title are clearly wrong, arbitrary or capricious.

Accordingly, this Grievance is GRANTED IN PART and DENIED IN PART. The Respondent Board of Directors is hereby ORDERED to change the data line for Grievant's job title, as he is the only Uplink Systems Engineer. As Grievant's job title is properly allocated to Pay Grade 17, his request to be allocated to Pay Grade 21 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 number so that the record can be prepared and transmitted to the appropri ate court.

Dated: March 11, 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.

Footnote: 3

For additional information regarding EdNet operations, see decisions issued in the following grievances: Payne v. Bd. of Directors, Docket No. 94-MBOD-372 (Jan. 8, 1997); Wise v. Bd. of Directors, Docket No. 94-MBOD-401 (Jan. 30, 1994); and Riley v. Bd. of Directors, Docket No. 94-MBOD-450 (Feb. 21, 1997).

Footnote: 4

While Dr. Starliper stated that these contacts would be considered under External Contacts because they were with persons outside WVSC, the factor definitions make clear that contacts with employees of the State higher education system are to be considered under Intrasystems Contacts. The requirement is not that contacts be with employees of the same institution, but that they be with employees of the system as a whole.