ALICE NABORS,

Grievant,

v. DOCKET NO. 94-MBOD-814

BOARD OF DIRECTORS/WEST VIRGINIA STATE COLLEGE,

Respondent.

DECISION

Grievant Alice Nabors, appearing pro se, challenges her classification under the "Mercer" reclassification system. (See footnote 1) She was classified as a Student Health Nurse I at Pay Grade 15. She seeks classification as a Student Health Nurse II, at Pay Grade 17. Ms. Nabors 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, which determines the job title's Pay Grade.

A Level IV hearing was conducted in this Board's office in Charleston, West Virginia, on January 3, 1997. This matter becamemature for decision on February 3, 1997, the due date for proposed findings of fact and conclusions of law.

Grievant specifically challenges the degree level ratings received in two point factors used to evaluate her position and assign it a job title and Pay Grade under the Plan. The point factors challenged are: Experience and 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. Ms. Nabors filled out a PIQ in 1992. Jt. Ex. 1.

2 2. Ms. Nabors was employed by West Virginia State College (WVSC) at the Student Health Center for more than 23 years, untilshe was made the supervisor of the Health Center in 1992. She recently retired.

3 3. Ms. Nabors' job duties and responsibilities, and approximate percentages of time, as summarized from her PIQ, are as follows: nursing and Health Center supervisory duties, including supervision of the staff nurse and receptionist, screening students and performing emergency evaluations, maintaining drug and supply inventories and ordering of such items, administering medications and tests, including drawing blood and giving injections, and sterilizing instruments (75%); clerical duties, including creating and maintaining medical files for individuals seen in the clinic, answering the telephone, typing reports, correspondence and orders, copying, mail pick up and delivery, and issuing excuses for students (15%); custodial duties, including replenishing supplies such as soap and paper towels, mopping or cleaning, defrosting refrigerators, and emptying trash cans (5%); and other duties, including serving on committees, attending meetings, conducting tours and giving informational talks (5%).

4 4. Ms. Nabors and one staff nurse worked full-time at the Health Center. A physician worked at the Health Center six hours per week, a pharmacist worked one to three hours per week, and a receptionist worked 19.5 hours per week. The physician and the pharmacist were not on call when not physically at the Health Center.

5 5. As the Health Center supervisor, Ms. Nabors maintained and was responsible for all areas of the Center. She attended WVSCstaff meetings and other meetings. The part-time physician was not required to attend. Ms. Nabors ordered all supplies and medicines for the Center. She helped the pharmacist fill out license applications. She maintained documents and records for the pharmacist, as well as for the Center as a whole. She was responsible for "working up" and submitting a budget for the Center to the Vice President of Administrative Affairs. She signed purchase orders for the Center, on behalf of the physician. If anyone at WVSC had questions pertaining to the Health Center, they contacted Ms. Nabors for information.

6 6. Throughout the time she worked at the Center, Ms. Nabors took care of students by examining

them and giving them medications, under the direction of the part-time physician. She and the other nurse were "on call" alternately. Emergencies were handled either over the telephone, at the Center, or by referral to the hospital. She made assessments based upon verbal descriptions, and then determined whether a student needed to be seen in the Center by the physician at the next clinic date, whether the student could be self-treated based upon her advice, or whether the student needed to be referred for emergency treatment.

7 7. She supervised the staff nurse who worked at the Center. Ms. Nabors performed initial interviews and made recommendations regarding the hiring of staff nurses. The Vice President of Administrative Affairs performed the final interviews and approved the individuals hired. Ms. Nabors completed and signed the paperwork which moved the staff nurse from probationary topermanent employment status. She assigned duties to the staff nurse, approved her leave and signed time sheets, and trained her regarding her responsibilities in the Center. (See footnote 3)

8 8. Ms. Nabors supervised the Health Center receptionist, an hourly employee who worked 19.5 hours per week. Ms. Nabors was responsible for submitting her payroll information and keeping her time, and other such tasks. She also determined what hours the pharmacist would work each week.

9 9. Ms. Nabors is required to perform medical assessments of students, and to be knowledgeable of medications and of procedures performed at the Health Center.

10 10. The job title Student Health Nurse I received 2080 total points. There are 9 persons in this job title, which is in Pay Grade 15. The job title Student Health Nurse II received 2324 total points. There are two persons in this job title, which is in Pay Grade 17. The point factor ratings for the two job titles are identical, except for the point factor ratings in Experience and Direct Supervision Exercised. Jt. Ex. 7.

11 11. The point range for Pay Grade 15 is from 1985 to 2113 points. The point range for Pay Grade 16 is from 2114 to 2254 points. The point range for Pay Grade 17 is from 2255 to 2407 points. Jt. Ex. 7.

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 this case, whether Ms. Nabors 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, 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 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:**

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.

The Student Health Nurse I job title received a level 1 rating in this factor, while the Student Health Nurse II job title received a level 3 rating. Level 1 is defined as "[n]o experience or up to six months of experience." Level 2 is defined in the Plan as "[o]ver six and up to twelve months of experience." Level 3 is defined in the Plan as "[o]ver one year and up to two years of experience."

Ms. Nabors asserted that over one year of experience was necessary due to the independence with which one in her position must work. She noted that the Health Center is a clinical setting, where a physician was only available six hours each week, and that she had to be able to address anything which came up on her own. She noted her handling of "emergencies" by assessing whether a true emergency exists, or whether the student can wait to see the physician at the next opportunity. She stated that she must exercise more judgment and make more decisions than a staff nurse at a hospital, due to the absence of on-site physicians. There is no close, frequent contact with physicians at the Health Center, unlike the situation in a hospital setting.

Respondent's witness was Margaret Robinson Buttrick, Human Resources Administrator for the State College and UniversitySystems, and Chair of the JEC since its inception. She noted that Ms. Nabors had indicated that more than a year's experience was her preference, but that she had not stated that a person with six months' experience would be unable to perform the work. Indeed, Ms. Nabors stated that her office management and clerical duties could be performed by someone with three to six months of experience.

Ms. Nabors' statements regarding a minimum experience requirement were qualified. She stated at one point that "some [new employees] may require less [experience], some more." She later said "I'd like for them to have really about a year's experience, but I'm not saying they couldn't do it" with less experience. She agreed that the minimum experience needed to learn to perform the job would depend on the competence of the individual, and that people have difference competence levels.

While I am inclined to think that the job described by Ms. Nabors would, in fact, require at least one year of experience rather than "no experience to six months of experience," particularly as she

must run the health center without the luxury of physician availability, I am not allowed to simply substitute my judgment for that of the JEC. Ms. Nabors' testimony regarding experience merely showed that Ms. Nabors' opinion differed somewhat with that of the JEC, depending on how competent the individual applicant might be. While she may have intended to say that the staff nurse position and/or clerical duties could be performed bysomeone with less than six months' experience (See footnote 4) , she did not so limit her statements. Certainly, she did not clearly explain why a new employee in her own position would have to have over one years' experience. Ms. Nabors presented no facts upon which I can rely to reverse the JEC's decision.

B. 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.

This factor is analyzed and rated in two parts, Number of Direct Subordinates (Number) and Level of Supervision (Level). The Student Health Nurse I job title received level 1 ratings in both parts of the factor. The Student Health Nurse II job title received a level 4 rating in Number and a level 5 rating in Level. In Number, level 1 is defined as no direct subordinates, while level 2 is one direct subordinate, level 3 is two to three direct subordinates, and level 4 is four to six direct subordinates. In Level, level 1 is defined as "[m]inimal 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." Level 5 of Level of Supervision is defined as "[d]irect supervision over exempt employees (and non-exempt employees, if applicable). Responsible for results in terms of costs, methods, and personnel. In a position to hire/fire or strongly recommend such personnel actions."

Ms. Nabors asserted that she supervises the staff nurse, the receptionist, and the pharmacist who work at the Health Center. Of these, only the staff nurse is a full-time employee. As Ms. Buttrick stated, one full-time equivalent means 37.5 hours per week for 52 weeks, and the JEC chose not to "round up" on the number of employees. R. Ex. A, p. 30. Thus, Ms. Nabors' supervision of more than one, but less than two, full-time equivalent employees means that she can only be assigned a level 2 rating in Number. She is, however, clearly entitled to that level 2 rating. The JEC's level 1 rating is

simply wrong as applied to Ms. Nabors individually. Ms. Buttrick testified that no other Student Health Nurse I's supervised anyone, to her knowledge. She stated that the ratings in this factor resulted from numerical averaging of the supervisory situations of all nine incumbents in the Student Health Nurse I job title. However, such "averaging" resulted in an individual getting a lower level rating than individually merited "only if it did not impact on the incumbents' pay grade," according to her written testimony. R. Ex. A, p. 15. As the individual rating in this case does, in fact, impact Ms. Nabors' pay grade, averaging cannot justify the JEC's ratings in this point factor. Ms. Nabors hasproven that the JEC was clearly wrong, and that she is entitled to a level 2 rating in Number.

On her PIQ, Ms. Nabors claimed level 3, or "lead control" for her Level of supervision. Her choices on the PIQ did not include definitions for supervising one employee. Rather, the next higher levels on the PIQ referred to supervision of "a unit" or "a group." Based on the definitions in the Plan, it appears that levels 4 and 5 are generally applied to those who supervise a group of employees, either exempt or non-exempt. See Blake v. Bd. of Trustees, Docket No. 94-MBOT-475 (Oct. 16, 1996) and Aronhalt v. Bd. Of Trustees, Docket No. 94-MBOT-1013 (May 2, 1996). (See footnote 5) Subsequent to the development of the PIQs and apparently the Plan itself, the JEC added a subdivision "to account for those positions which directly supervise one individual." Level 3.5 "is applied only where there is direct supervision of one employee." R. Ex. A, pp. 29-30.

Ms. Nabors has proven that she directly supervises one employee. She has thus proven that she is entitled to at least a level 3.5 rating in Level.

SUMMARY

Ms. Nabors did not prove that the JEC was clearly wrong, arbitrary or capricious in assigning a level 1 rating in the Experience factor to her position, or to the Student Health Nurse I job title. She did prove that her position was responsible for direct supervision of one full-time employee. The JEC's ratings in Direct Supervision Exercised were proven to be clearly wrong.

By assigning the appropriate number of points for level 2 in Number and level 3.5 in Level of Direct Supervision Exercised, Ms. Nabors is entitled to an increase of 72 points. This would give her individual position a total of 2152 points, placing the position in Pay Grade 16. This Pay Grade is below that of the Student Health Nurse II job title. Therefore, I cannot assign her to the Student Health Nurse II job title in the context of this grievance. (See footnote 6) The Respondent must assign an appropriate job title at Pay Grade 16 or above.

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. 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 factor Direct Supervision Exercised for Grievant's individual position are clearly wrong, arbitrary or capricious. Correctly rating both parts of this factor results in an increase of points which results in allocation to a Pay Grade 16.

Accordingly, this Grievance is **GRANTED IN PART and DENIED IN PART.** The Respondent Board of Directors is hereby **ORDERED** to allocate the Grievant to at least Pay Grade 16, and to pay her the difference, if any, between the compensation to which she was entitled under that higher Pay Grade and that which she received while improperly allocated to Pay Grade 15 between January 1, 1994 and the date she retired. Grievant's request to be assigned the Student Health Nurse II job title must be **DENIED,** and theRespondent is authorized to assign the job title which it believes appropriate, in accordance with the requirements of this decision. Respondent is encouraged to consider allocating the position to the Student Health Nurse II job title.

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 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.

Footnote: 3

The job title assigned to the staff nurse during reclassification is not clear. Ms. Nabors' appeal documents state that it was made a Health Educator position at Pay Grade 17. The Health Sciences job family has a Health Educator title at Pay Grade 16, and Health Educator Sr. at Pay Grade 17. Jt. Ex. 7.

Footnote: 4

The two Health Educator titles require six to twelve months of experience. Jt. Ex. 7.

Footnote: 5

The matrix for this point factor does, however, include entries allowing for level 4 and level 5 supervision of one employee, which at least implies that Ms. Nabors could be assigned such ratings. It is not necessary to decide this point, as Ms. Nabors' points under any of these rating levels still results in a Pay Grade 16 range.

Footnote: 6

Ms. Buttrick testified that there are no formally adopted Generic Job Descriptions for either of the Student Health Nurse job titles. The lack of valid descriptions, or PIQs for those in the Student Health Nurse II title, makes it impossible to compare Ms. Nabors' position with the title, nor would it be sensible to revert to such "whole job comparison." However, I note that there was no explanation given as to why a Student Health Nurse II would need significantly more experience than a Student Health Nurse I, nor how Ms. Nabors' job duties differed from those of a Student Health Nurse II. It is particularly worrisome that a position with supervisory and management duties in the nursing field would be rated as requiring no prior experience, particularly where a physician is not readily available for consultation or referral. Such is the situation with Ms. Nabors' position, of course. Respondent is encouraged to reconsider whether Ms. Nabors' position could be properly allocated to the title Student Health Nurse II.