TIMOTHY BEARDSLEY,

Grievant,

v. DOCKET NO. 94-MBOT-929

BOARD OF TRUSTEES/WEST VIRGINIA UNIVERSITY-PARKERSBURG,

Respondent.

DECISION

Grievant Timothy Beardsley challenges his classification under the "Mercer" reclassification system. (See footnote 1) He was classified as a Counselor II at Pay Grade 17. He seeks creation of a new, institution-specific title at Pay Grade 19 or 20. Mr. Beardsley 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 19, 1996. This matterbecame 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 title and Pay Grade under the Mercer Plan. The point factors challenged are: Scope and Effect/Impact of Actions; Breadth of Responsibility; Intrasystems Contacts; External Contacts/Level of Regular, Recurring and Essential Contacts; Direct Supervision Exercised; and Working Conditions.

In his testimony, Mr. Beardsley used varying terms for the persons and programs with which he works, which made it difficult to determine precisely the duties and responsibilities of his position. However, after careful review of the documents and hearing tapes, 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 dutiesand responsibilities and other aspects of their jobs by answering a series of questions designed to elicit this information. Mr. Beardsley completed a PIQ in 1991.

2 2. Mr. Beardsley is employed by the Respondent at West Virginia University-Parkersburg (WVU-P), currently as a Counselor II. Prior to the reclassification, Mr. Beardsley's job title was Director of Educational Success.

3 3. Mr. Beardsley's job duties are essentially the same as they were on January 1, 1994, and include (with approximate percentages of time): participating in student services activities, including attending meetings and participating on committees, and assisting, conducting and participating in orientation, testing, and health- related informational programs (16%); providing educational success services (See footnote 3) including coordinating and teaching student development courses and workshops (16%); counseling students regarding adjustment issues, career counseling, and academic advising (15%); providing placement testing services (10%); implementing a program to ensure the advising of "undecided" or "undeclared" students (See footnote 4) (10%); tracking student progress (10%); coordinating career development activities (10%); providing assistance to faculty (5%);coordinating student leadership development activities, including teaching workshops (See footnote 5) (7%); and projecting and monitoring expenditures from the monies allotted to the Student Assistance Center (See footnote 6) , and projecting and monitoring equipment and space needs for the Center (1%).

4 4. In coordinating the student development program (See footnote 7) , Mr. Beardsley chooses and trains course instructors to teach Student Development Courses. The instructors provide their services under a contract arrangement. They are part-time adjunct professors, and full-time professors who teach these courses in addition to their regularly assigned courses. During the relevant time period, there were five to eleven individuals involved in teaching the courses each semester. Mr. Beardsley schedules the number of courses, decides which instructors will teach each

course, and arranges the locations for each course. He discusses scheduling with the Dean of Students. He also teaches these courses, as well as other workshops. The courses pertain to student orientation, college study skills, and career planning and decision-making. The numberof courses offered is determined largely by the number of students required to take them. (E.g., freshmen must take orientation courses, students on academic probation must take study skills courses.)

5 5. In providing testing services, Mr. Beardsley procures test instruments chosen by the different academic departments, ensures security for those documents, hires proctors, administers or oversees administration of the tests, and ensures the confidentiality of completed test results. Mr. Beardsley also maintains information regarding the tests and scores, and creates reports regarding such information. He informs the departments of any significant changes in average test results, discusses what these changes mean, and whether a change in the test instrument is indicated.

6 6. In coordinating the career development program, Mr. Beardsley worked from the premise that many students need assistance in choosing career goals, and that students with career goals are more likely to continue attending WVU-P. Mr. Beardsley determined that computerization of services was necessary, due to lack of staff. He developed a computerized student interest identification test, and a survey given to students which revealed that students with advisors stayed in school longer. He determined that all students should be assigned advisors, and that there should be regular, recurring contact between students and advisors. Mr. Beardsley and a team of other employees created forms andfiling systems for the academic advising center (See footnote 8), and advisors are now spending twice as much time with each student as they were before.

7 7. In coordinating student leadership development activities, Mr. Beardsley has spending authority over $3,000 to $5,000. The Student Leadership Council (apparently a group of students and one advisor) proposes a schedule of activities to be funded. While Mr. Beardsley played a key role in obtaining funding for these activities (See footnote 9), it is not clear what his ongoing involvement is.

8 8. In monitoring expenditures from Student Assistance Center monies, Mr. Beardsley reviews all proposed purchases, and determines whether the purchase has been planned for and approved, and whether funds are available. If not, a group of employees are called together to discuss the proposed purchase, and to decide whether the plans and associated funding should be altered. The Dean of Student Services has ultimate accountability for the budget assigned to the Student Assistance Center.

9 9. In partnership with a student group, Mr. Beardsley conducted a survey of West Virginia institutions' student activities fees, and discovered that WVU-P had a lower fee. As aresult of a proposal and presentation, the student activity fees were increased. (See footnote 10)

10 10. Mr. Beardsley's supervisor is the Dean of Student Services. He has contact with the Dean of Academic Affairs several times per week about student development courses, instructors for those courses, course requirements, and other matters of curriculum. He contacts the Assistant Dean of Academic Affairs about the same matters even more often.

11 11. Mr. Beardsley has daily contact with students, contact with parents several times per week, and contact with representatives from testing companies several times per month.

12 12. WVU-P has two-, three-, and four-year degree programs. WVU-P is also a "regional campus", a location where WVU-Morgantown and West Virginia Graduate College offer Masters degree programs to students in the area. WVU-P has an operating budget of approximately six million dollars.

13 13. The Counselor II job title received a total of 2402 points, which places it in Pay Grade 17. There are 40 employees in this job title. Jt. Ex. 7.

14 14. 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 order to maintain the integrity of the overall classification scheme, the "best fit" is determined in relation to other similar positions. The individual grievant's case is also analyzed with reference to where the position fits in the higher education classified employee hierarchy.

In this case, whether Mr. Beardsley 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. SCOPE AND EFFECT/IMPACT OF ACTIONS:

> 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.

This factor is analyzed and rated in two parts, Impact of Actions (Impact) and Nature of Actions. Mr. Beardsley challenges the rating received in Impact.

The Counselor II job title received a level 6 rating in Impact, which is defined as:

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

Mr. Beardsley asserts that his position merits a level 8 rating, which is defined as "[w]ork affects the entire operations of a doctoral-level institution with an operating budget of more than $200M; or several institutions within the West Virginia higher education systems."

Mr. Beardsley argues that his activities impact WVU-P and the other institutions associated with it. WVU-P is a regional institution, allowing WVU-Morgantown and WVGC to offer masters degree programs using the WVU-P facilities. Thus, he asserts, to the extent his work impacts students and activities in the masters programs, it impacts two additional higher education institutions. However, he provided no evidence that any students he impacts have enrolled in the masters programs.

He also noted his work in providing student advisement and counseling services, and with student development courses. He discussed his budgetary responsibilities in the areas of student development courses, student leadership programs, and the Student Assistance Center. He stated that, by keeping more students enrolled, his work affects WVU-P by requiring more courses, services, and instructors.

Respondent's primary witness was Ms. Brenda Nutter, Director of Human Resources at WVU Institute of Technology and member of the JEC. Ms. Nutter's direct written testimony states that at level 8in Impact, "the primary purpose of the position's work product affects the entire operations of West Virginia University or several institutions within the West Virginia higher education systems." Jt. Ex. 8, p. 25. She opined that Mr. Beardsley benefitted from conceptual averaging of the impact of all

Counselor II's, as his individual work merits only a level 3 or 4 rating. In other words, the higher rating of the other 39 Counselor II positions outweighed his individual, lower rating in this factor, when he was determined to fall within this job title. Presumably, Mr. Beardsley would merit a level 3 or 4 rating because those definitions include institutions with operating budgets of less than thirteen million dollars, and WVU-P has a six million dollar operating budget.

While continued enrollment of a student may have some small impact upon WVU-P, it is difficult to see any direct impact on WVU- Morgantown or WVGC. Mr. Beardsley did not prove a specific number of students who would have dropped out of school but for his work, nor did he prove that any of these students were enrolled in a masters degree program offered by the other two institutions. Mr. Beardsley's work was not shown to measurably affect the number of classes or instructors required.

Mr. Beardsley's individual activity is not the same as that of the different programs in which he is involved. His activities in "student advisement and development," are specifically noted in the factor definition as a point of institutional mission. However, his work impacts directly upon individual students, not theinstitutions as a whole. In Mr. Beardsley's own words, his goal is "to turn freshmen into sophomores." Obviously, this goal impacts upon individuals enrolled at WVU-P, not those enrolled in graduate programs.

The impact of Mr. Beardsley's personal activity on the institutions is indirect. His duties are an important part of the student services offered by WVU-P, but they are only part of the service, and he is not accountable for the results on an institutional level. The services do not affect the entire operations of WVU-P. See Wilson v. Bd. of Trustees, Docket No. 94- MBOT-835 (Feb. 6, 1997). This factor cannot have been intended to be applied in a "For Want of A Nail" fashion, where the war is lost and the kingdom falls due to one missing nail in a horse's shoe. Mr. Beardsley's work was not shown to affect WVU-Morgantown or WVGC. His work was not shown to affect the entire operations of WVU-P. WVU-P individually falls within the level 3 or level 4 definitions of Scope and Effect/Impact. Mr. Beardsley was rated higher in this factor than his individual position warrants. Mr. Beardsley has not proven that he is entitled to a level 8 rating in this part of the factor. If individually rated, Mr. Beardsley would be entitled to a level 3 rating in this part of the factor, which would result in a decrease of 90 points.

B. 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 theincumbent'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. Beardsley 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 answer detailed 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. Beardsley argued that he has some financial responsibility in the areas of student development programs, student leadership programs, and student activities programs. Several of Grievant's Exhibits make reference to Grievant's "resource management" or "budget management," assessment of funding needs, and finding ways to increase funding for different programs or parts thereof. See, e.g., Gr. Ex. A, and Gr. Ex. G. Ms. Nutter countered that having a key role in managing a functional area does not equate to the formal accountability measured by this factor.

It appears that the "programs" with which Mr. Beardsley is involved do not equate to "functional areas." The definition givesexamples of functional areas under the Student Services division, which suggest that Mr. Beardsley would have to have full accountability for the entire Counseling budget in order to get credit for one functional area. The programs involved here are apparently at some lower level of the organizational structure than "Counseling." They are more in the nature of individual work assignment areas, rather than functional areas. This is supported by Mr. Beardsley's failure to consistently identify by title the programs which he claims constitute functional areas. Moreover, budgetary responsibility takes only 1% of his time, which suggests that budgetary issues are a minor part of his duties. Jt. Ex. 1.

Mr. Beardsley also objected generally to the fact that the Plan does not account for a team management style of organization, implying that, had it done so, his position would have received higher ratings. While Mr. Beardsley is correct in stating that the Plan does not address team management, there is no language in the statute which required the Respondent to adopt a Plan

which addressed any specific organizational structures or management approaches. Thus, the JEC's ratings cannot be deemed clearly wrong simply because the methodology does not accommodate every possible managerial scenario in a specific fashion. Mr. Beardsley has no formal financial accountability for a functional area, as those terms are used in the definitions. See Miller v. Bd. of Directors, Docket No. 94-MBOD-495 (Oct. 29, 1996). Mr. Beardsley is correctly rated in this factor.

C. INTRASYSTEMS CONTACTS:

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 (Nature) and Level of Regular, Recurring and Essential Contact (Level). Mr. Beardsley challenged ratings in both parts.

Mr. Beardsley's contact with his supervisor, the Dean of Student Services, is not considered under this factor, as it is specifically excluded by the factor definition. However, he also has contact with the Dean of Academic Affairs several times per week, about the Student Development Courses and Mr. Beardsley's oversight of the instructors for those courses. He stated that these contacts required substantial sensitivity because of the financial impact of implementing proposals, and because of discussions about instructor performance and not renewing instructor's contracts.

Ms. Nutter testified that, because the Dean of Academic Affairs oversees Mr. Beardsley's work with student development courses, he is essentially Mr. Beardsley's supervisor for that limited purpose. She stated that Mr. Beardsley would not get credit for this contact, as a supervisor is within one's "workarea." She further testified that an Assistant Dean fits within the level 3 definition, "supervisors, managers and/or chairpersons" of Intrasystems Contacts/Level. Respondent also argued that nothing suggested that the contacts were inherently controversial.

1. LEVEL OF CONTACTS:

The Counselor II title received a level 3 rating in Intrasystems Contacts/Level, which 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. Beardsley asserts that his position merits a level 4 rating, which is defined in the Plan as "[d]eans or Directors in an institution or Assistant

Directors in the Systems' Central Office."

Ms. Nutter's assertion that the Dean of Academic Affairs should be considered a direct supervisor is rejected. The level 1 definition in Intrasystems Contacts/Level speaks of one's "own supervisor," in the singular. Moreover, as noted in the discussion of Direct Supervision Exercised, the Plan contemplates that each individual employee has one formal supervisor to whom he or she reports. Just as Mr. Beardsley cannot be given "credit" for supervising the Program Assistant formally assigned to another Counselor II, the Dean of Academic Affairs and the Dean of Student Affairs cannot both be given "credit" for direct supervision of Mr. Beardsley under the Plan. Therefore, it is arbitrary and capricious to require Mr. Beardsley to claim both as his direct supervisors. Mr. Beardsley has regular, recurring and essential contacts with a Dean who is not his supervisor. He has proven that his individual position merits a level 4 rating in Intrasystems Contacts/Level. An increase of 18 points results from individual rating in this part of the factor.

2. NATURE OF CONTACTS:

The Counselor II title received a level 2 rating in Intrasystems Contacts/Nature, which is defined in the Plan as "[m]oderate 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.)" Mr. Beardsley asserts that his position merits a level 3 rating, which is defined as "[s]ubstantial 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.)"

Financial matters can be quite sensitive. However, one's contacts may touch on financial matters without being controversial, such as when one is simply providing information on costs or expenditures. The fact that his proposals may sometimes have financial components does not mean that Mr. Beardsley's proposals are always inherently controversial or require delicacy. Indeed, there was no evidence presented that his proposals include financial issues on any regular basis. He did not present anyevidence regarding how often he engages in contact regarding controversial financial issues, as opposed to information exchange. His contacts regarding instructor performance and retention may sometimes require delicacy, but his testimony indicated that only once has an instructor's contract not been renewed. Thus, there appears to be only a tiny proportion of time in

which controversial or sensitive matters must be discussed.

In addition, Mr. Beardsley's contacts appear to often consist of information exchange, regarding statistics and their implications, or proposed changes to programs and the reasons therefor. Mr. Beardsley provided no information regarding the percentage of his time spent in the few sensitive discussions he appears to have, as compared to the discussions of a more routine nature.

The differences between the definitions hinge on the proportions of time in which one's contacts are controversial or non-controversial. The evidence presented suggests that Mr. Beardsley's contacts may be "largely of a non-controversial nature," which allows for some controversial contacts. The evidence falls short of proving that his contacts are "frequently controversial." The JEC's rating in Nature cannot be said to be clearly wrong, based upon this record.

D. EXTERNAL CONTACTS/LEVEL:

External Contacts is defined in the Plan as:

> This factor appraises the responsibility for working with or through other people outside the SCUSWV to getresults. 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 also analyzed and rated in two parts, Nature and Level. Mr. Beardsley challenged only the rating in Level.

The Counselor II title received a level 3 rating in External Contacts/Level, which is defined as "[s]tudents, parents, alumni, faculty of institutions outside the systems, sales engineers, higher-level product representatives, recruiters and/or prospective students." Mr. Beardsley asserted that his position merits a level 4 rating, which is defined in the Plan as "[m]id-level representatives of government agencies, professional contacts with other colleges and universities outside the systems."

Mr. Beardsley noted his contact three to four times per month with representatives from national testing companies. He stated that these are not "vendors" as they do not sell a product. Rather, they provide the testing instruments, and inform Mr. Beardsley of requirements regarding security and administration of the tests. He agreed that the individuals with whom he speaks are not "high level government representatives," stating that they are premier testing authorities. He also testified that he has daily contact with students, and continuing contact with parents.

Ms. Nutter stated that testing company representatives are vendors, or higher level product representatives. While the undersigned agrees that testing company representatives who do notsell anything are not "vendors," nothing in the Plan suggests that they cannot be considered "higher-level product representatives." They fall under the level 3 definition, as do students and parents. Mr. Beardsley is correctly rated in this factor.

E. 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). Mr. Beardsley challenged ratings in both parts.

1. DIRECT SUPERVISION EXERCISED/NUMBER:

The Counselor II title received a level 2 rating in Number, which is defined as one direct subordinate. Mr. Beardsley asserted that his position merits either a level 3 rating, which is defined as "2-3" direct subordinates, or a level 4 rating, which is defined as "4-6" direct subordinates. He pointed to the oversight of the Student Development Course instructors, and to his supervision of a Program Assistant I who administers tests approximately 30% of her work time.

Ms. Nutter testified that the JEC consistently refused to consider supervision of part-time, temporary or contract workers inassessing this factor. See Jt. Ex. 8, p. 29. She stated that the supervision of part-time adjunct professors falls into this category. She further stated that Mr. Beardsley's supervision of full-time faculty who also teach these courses amounts to supervision of part-time temporary workers, as he is not their supervisor for their full-time positions. Moreover, she testified that "no credit [is] given for temporarily supervising people assigned from other departments." Jt. Ex. 8. Thus, the JEC would not give "credit" for his supervision of faculty, or for his supervision of the Program Assistant I. Formal supervision of the Program Assistant I position was credited to another Counselor II, as shown on the organizational chart. Jt. Ex. 3.

While some may argue the merits of considering supervision of part-time, temporary, contract, or student workers, this only indicates that there is a difference of opinion regarding the optimum

criterion. It does not prove that the JEC was clearly wrong in its choice of interpretations. Certainly, there was no evidence presented that the JEC did not apply this factor consistently. There is no language in the Plan which contradicts the interpretation given by Ms. Nutter, and indeed the language supports her statements.

Mr. Beardsley presented no evidence to show that he had formal supervisory responsibility over regular employees, or that the JEC's rating in this factor was clearly wrong. Indeed, as Ms. Nutter noted, Mr. Beardsley directly supervises only individuals who do not meet the criteria of the Plan. Thus, he would beentitled to only a level 1 rating (no direct subordinates) in Direct Supervision Exercised/Number.

2. DIRECT SUPERVISION EXERCISED/LEVEL:

The Counselor II title received a level 3.5 rating in Level, which is between the defined levels of 3 and 4. This level 3.5 rating was developed for those who directly supervise one employee. Jt. Ex. 8, p. 29. Mr. Beardsley asserts that his position merits a level 4 rating in Level, which is defined as

> Direct supervision over a unit of non-exempt employees or lead responsibility over a group of exempt employees. Most of the time is spent assigning, reviewing, and checking work or eliminating normal difficulties involving standard policies, procedures, or work practices. Input would be significant in subordinate employees' performance appraisal, hire or fire decisions.

He points to his supervision of instructors of the student development courses in support of his assertion. Respondent notes that the evidence does not show that Mr. Beardsley spends the majority of his time assigning, reviewing or checking the work of those he supervises. (See footnote 11)

Although Mr. Beardsley's supervision over part-time instructors for these courses is quite involved, it is unnecessary to determine whether it meets the level 4 definition. When it isremembered that the only individuals he supervises are not counted under this factor's analysis, it is clear that Mr. Beardsley cannot be given even a level 3 rating. He can only receive a level 1 rating, as he has no formal supervisory responsibility over anyone other than part-time, temporary contract employees, or those temporarily assigned from other departments. The Plan does not allow for one in this supervisory situation to receive higher than a level 1 rating. Jt. Ex. 6. Mr. Beardsley's individual rating in this factor would result in a decrease of 60 points.

F. WORKING CONDITIONS:

Working Conditions is defined in conjunction with the Physical Demands factor as a single factor which:

> considers the physical demands of the job as measured by the exertion placed on the skeletal, muscular and cardiovascular systems of the incumbent. It also takes into account the quality of the physical working conditions in which the job is normally performed such as lighting adequacy, temperature extremes and variations, noise pollution, exposure to fumes, chemicals, radiation, contagious diseases, heights and/or other related hazardous conditions.

The Working Conditions part of this factor consists of four levels. Level 1 of Working Conditions, which was assigned to the Counselor II title, is defined as "[n]o major sources of discomfort, i.e., standard work environment with possible minor inconveniences due to occasional noise, crowded working conditions and/or minor heating, cooling or ventilation problems." Mr. Beardsley asserts that his position merits a level 3 rating, which is defined as "[r]outine discomforts from exposure to moderatelevels of heat, cold, moisture/wetness, noise and air pollution. May involve routine exposure to light chemical substances such as cleaning solutions or occasional exposure to hazardous conditions such as radiation, chemicals, diseased laboratory animals, contagious diseases, heights, and moving parts." Level 2 of Working Conditions is defined as "[o]ccasional minor discomforts from exposure to less-than-optimal temperature and air conditions. May involve dealing with modestly unpleasant situations, as with occasional exposure to dust, fumes, outside weather conditions, and/or near-continuous use of a video display terminal."

Mr. Beardsley testified that he works within a few feet of a video display terminal (VDT) constantly, the office temperature fluctuates, and a ventilation system expels sooty matter. However, he admitted that he does not personally use the VDT even a large part of the time, much less on a "near-continuous" basis. He gave no measure, either in terms of amount or frequency, of particulates emitted by the ventilation system, but stated that papers left on one's desk over night would be covered with sooty material the next morning. He did not state if this was a constant state of affairs, or if it occurred sporadically.

Fluctuating temperatures in an office environment clearly do not entitle one to more than a level 1 rating in this factor, nor does sporadic use of a VDT. Hameed v. Bd. Of Trustees, 94-MBOT-928 (Jan. 15, 1997). Although the particulate matter emissions are certainly not desirable, and should be addressed by Respondent, it is not evident that the emissions constitute more than a minorventilation problem. Clearly, Mr. Beardsley's job can be performed in a standard office environment, as was the

case in Hameed, supra. He is correctly rated at level 1 in Working Conditions.

SUMMARY

Mr. Beardsley has failed to show that the JEC ratings, applied to him individually, were clearly wrong, arbitrary or capricious under the factors Breadth of Responsibility, Intrasystems Contacts/Nature, External Contacts/Level or Working Conditions. However, the ratings were clearly wrong, arbitrary or capricious under the factors Scope and Effect/Impact, Intrasystems Contacts/Level, and Direct Supervision Exercised. By assigning the proper ratings in each of these factors, Mr. Beardsley's position would receive a decrease of 144 points, for a total of 2258 points. This is in the point range for Pay Grade 17.

The point factor analysis shows that Mr. Beardsley is appropriately assigned to the Pay Grade of the Counselor II job title. Mr. Beardsley's general duties and responsibilities seem to fit within those found on the Counselor II job description. See Jt. Ex. 9. Consequently, the point factor analysis confirms that Mr. Beardsley is correctly placed in the Counselor II job title.

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 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). 6. The JEC's assignment of Grievant to the job title Counselor II at Pay Grade 17 is not clearly wrong, arbitrary or capricious.

Accordingly, this Grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or Wood 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 appropriate court.

Dated: March 18, 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

Mr. Beardsley explained in his testimony that "educational success services" are the same as or include presenting student development courses, so the percentages given in the PIQ for these two separately listed items have been added together here. It is assumed that this area of responsibility also constitutes the "student development program" referred to by Mr. Beardsley.

Footnote: 4

This phrase was used repeatedly in the testimony and documents, and refers to students who have not decided upon nor formally declared an area of academic concentration or a specific degree which they plan to pursue while attending the institution.

Footnote: 5

From the testimony as a whole, student leadership development appears to be a separate area from the student development program, the latter of which requires attendance in courses for credit, at least for some students.

Footnote: 6

The acronym "SAC" found in the PIQ is assumed to be the Student Assistance Center, based upon general testimony regarding financial responsibility. There was also testimony which discussed monies for the Student Activities Council, the Student Development Center, and the Student Center.

Footnote: 7

As Mr. Beardsley most often referred to this area of activity as the student development program, that term, rather than "educational success services" will be utilized.

Footnote: 8

Although the testimony was confusing on this point, it appears that the "academic advising center" consists of several cubicles in the "Student Assistance Center." R. Ex. 1.

Footnote: 9

Mr. Beardsley put together a team of students to brainstorm program goals, and activities designed to reach those goals. A proposal and presentation was developed by the team. The funding required was apparently granted to the Council by the institution.

Footnote: 10

Because of the different terminology used, it is assumed that this is a different funding issue than that addressed in Finding of Fact No. 7.

Footnote: 11

Mr. Beardsley also noted that he sometimes fills in for his supervisor, and states that he should get credit for having this responsibility. However, Mr. Beardsley did not point to a part of the Plan where such credit might be assigned. The Plan apparently does not allow consideration of temporary and voluntary assumption of supervisory duties in a supervisor's absence. See Jackson v. Bd. of Trustees, Docket No. 94-MBOT-843 (Aug. 22, 1996). Such temporary, voluntary work is performed occasionally in most work units. The JEC's determination that such work is not a classification consideration will not be questioned here.