CHARLENE HAWKINS,

Grievant,

v. DOCKET NO. 94-MBOT-882

BOARD OF TRUSTEES/MARSHALL UNIVERSITY,

Respondent.

DECISION

Grievant Charlene Hawkins challenges her classification as a Records Officer at Pay Grade 14 under the "Mercer" reclassification. (See footnote 1) She seeks classification as an Administrative Assistant Senior, at Pay Grade 17, or as an Office Administrator Senior, at Pay Grade 18. Ms. Hawkins 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 theassigned levels to arrive at a numerical total, which determines the job title's Pay Grade.

A Level IV hearing was conducted on January 15, 1997. This matter became mature for decision on February 7, 1997, the due date for proposed findings of fact and conclusions of law.

Ms. Hawkins specifically challenges the degree level ratings received in the following point factors used to evaluate her position and assign it a job title and Pay Grade under the Plan: Experience, Complexity and Problem Solving, Freedom of Action, Scope and Effect, Intrasystems Contacts/Nature of Contact, External Contacts/Nature of Contacts, Direct Supervision Exercised/Number of Direct Subordinates, and Working Conditions. (See footnote 3)

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 answeringa series of questions designed to elicit this information. Ms. Hawkins filled out PIQs in 1991 and 1994. Jt. Ex. A and B.

2 2. Both PIQs describe Ms. Hawkins' job duties and responsibilities. Her job duties have not changed. The 1994 PIQ is simply more accurate as to the percentages of time spent on different job duties and as to the overall description of job duties and responsibilities. The 1991 PIQ overly emphasized and detailed Ms. Hawkins' tasks regarding creation and use of graduation lists as noted in Finding of Fact number six.

3 3. Ms. Hawkins is employed by Marshall University (MU), and was reclassified effective January 1, 1994, as a Records Officer at Pay Grade 14.

4 4. Ms. Hawkins reports directly to the Graduate Dean, who in turn reports directly to the Vice President of Academic Affairs.

5 5. Ms. Hawkins' job duties and responsibilities, and approximate percentages of time, as summarized from her PIQs, are as follows: managing day-to-day functions of the Graduate Dean's office, solving problems, supervising personnel and representing the Graduate Dean at MU functions in his absence; and counseling and advising students, staff and other personnel concerning policies and procedures of MU, the Graduate School and the Board of Trustees, providing documentation as needed (35%); reviewing, evaluating, processing and maintaining records for graduation candidates to ensure that all MU requirements are met (35%); recommending purchases, overseeing and maintaining records of, and managing the eight departmental budgets, including assisting theDean in preparing budget initiatives and end-of-year reports (10%); evaluating, approving, processing and maintaining records for 300 graduate assistants each term (10%); selecting and supervising four graduate assistants and two work-study students (5%); and evaluating, reviewing and processing Board of Trustee waivers awarded to faculty, staff and students (5%).

6 6. In fulfilling her responsibilities regarding graduation candidacy, Ms. Hawkins ensures that policies and procedures are adhered to by: evaluating student files; corresponding with students and/or advisors concerning program requirements; establishing deadlines for faculty and students to return graduation documentation; preparing and overseeing written comprehensive examinations for over

400 students four times per year; evaluating, processing, approving and preparing the final graduation list at the end of each term; submitting the list to the Registrar's Office in a timely manner; informing students in writing of their inclusion on or removal from the graduation list; and processing exit questionnaires from each graduate.

7 7. Ms. Hawkins interviews, hires, trains, establishes work schedules, supervises, disciplines, evaluates and terminates the four graduate assistants and two work-study students who work in the Graduate School Office. She also trained, and assigns and oversees the work of the two full-time employees in the Graduate Dean's Office, a Program Assistant and an Administrative Secretary. Ms. Hawkins neither hires nor fires the two full-time employees, but her input is sought for their evaluations. 8 8. Ms. Hawkins prepares purchase orders and Personnel Action Request forms, and signs the Dean's name to them. Her authority to do this is only limited by having the prior approval of the Dean. 9 9. Various rules, regulations, policies and procedures apply to Ms. Hawkins' work. Some of these are written; others are not. Some interpretation is called for occasionally. The Dean determines interpretations to be given.

10 10. The Records Officer job title is in the Admissions/Records job family and received a total of 1957 points, placing it in Pay Grade 14. The point range for Pay Grade 14 is from 1866 to 1984 points. There are 11 incumbents in this job title. Jt. Ex. G.

11 11. The Administrative Assistant Senior job title is in the Administrative Support job family, and received a total of 2317 points, placing it in Pay Grade 17. The point range for Pay Grade 17 is from 2255 to 2407 points. There are 20 incumbents in this job title. Jt. Ex. G.

12 12. The Office Administrator Senior job title is in the Administrative Support job family, and received a total of 2469 points, placing it in Pay Grade 18. The point range for Pay Grade 18 is from 2408 to 2573 points. There are 17 incumbents in this job title. Jt. Ex. G.

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 sheis 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, but 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. Hawkins 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 Ms. Hawkins 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. (See footnote 4)

The Records Officer job title was given a level 3 rating in the Experience factor, the Administrative Assistant Senior (AAS) job title and the Office Administrator Senior (OAS) job title were both given a level 4 rating, and Ms. Hawkins asserts that her position merits a level 7 rating. Level 3 is defined in the Plan as "[o]ver one year and up to two years of experience." Level 4 is defined as "[o]ver two years and up to three years of experience." Level 7 is defined as "[o]ver six years and up to eight years of experience."

Ms. Hawkins stated that, in order to perform her job duties, one must be familiar with the workings of MU and its departments, and also with rules, regulations, policies and procedures. She testified that some of these are learned through experience. Due to the large amount of responsibility assumed when the Graduate Dean is unavailable, experience is absolutely required, she stated. Ms. Hawkins did not explain what job duties could not be performed without more than one year of experience. She opined that, to come into the position, one would need at least the six years of experience she had, having worked for several years in other departments at MU prior to assuming this position. She testified that, when she applied for the position, a Bachelor's degree and upto three years of experience, or a GED and eight to nine years of experience were required.

Respondents' primary witness was Patricia Hank, Director of Human Resources at Southern West Virginia Community and Technical College, and a JEC member. Ms. Hank noted that this factor evaluates the minimum experience requirement for a new employee, taking into account the Knowledge factor and that every employee has a training period after beginning in the position. The Records Officer job title received a level 6 rating in the Knowledge factor, which requires a Bachelor's degree or equivalent. Jt. Ex. G. Ms. Hank stated that prior academic experience might be desirable, as it would reduce training time, but would not be essential as a new employee could ask questions regarding policy and procedure and obtain necessary information.

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. BOT, Docket

No. 94-MBOT-817 (Dec. 12, 1995). The fact that the experience requirement was once stated to be a certain number of years does not provide a rationale for continuing that practice if it is not supported by the facts. Riggs v. Bd. of Trustees, Docket No. 94-MBOT-711 (Apr. 29, 1996). Greater experience, education or training may be desirable and may facilitate a new employee's ability to perform the required duties, but the criterion measured here is the bare, essential, minimum experience requirement. Ms. Hawkins' difference of opinion with Respondent's conclusion isinsufficient to allow acceptance of Ms. Hawkins' position rather than Respondent's, given the deference to be accorded Respondent's decision-making where subjective value judgments are involved. The JEC's rating of Ms. Hawkins' position at level 3 in Experience cannot be said to be clearly wrong.

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 identifying problems and determining an appropriate course of action. Also considered is the extent to which guidelines, standards and precedents assist or limit the position's ability to solve problems."

The Records Officer job title was given a level 3 rating, the AAS and OAS job titles were given a level 4 rating, and Ms. Hawkins asserts that her position merits a level 5 rating in Complexity and Problem Solving.

Level 3 is defined in the Plan as:

> Problems encountered can be somewhat complex and finding solutions to problems may require some resourcefulness and originality, but guides, methods and precedents are usually available. Diversified guidelines and procedures must be applied to some work assignments. Employee must exercise judgment to locate and select the most appropriate guidelines, references, and procedures for application, and adapt standard methods to fit variations in existing conditions.

Level 4 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 as:

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

Ms. Hawkins testified that she deals with a variety of problems, from the routine to the very unique. For example, she worked with a group of graduate assistants from China, where budgetary guidelines were established and funding was managed for the students by Ms. Hawkins. She also had to deal with the language barrier in communicating expectations to the students. She stated that she had to interpret the MU catalogue's statement that twelve hours of credit could be transferred. However, the Dean determined the Graduate Office's interpretation, not Ms. Hawkins, so this did not involve problem solving on her part. She stated that she developed a method of managing and overseeing the financial accounts for the office. As another example of problem- solving, she explained her efforts resulting in determination that an individual was falsely representing that he had graduated from MU. She had to contact the individual and faculty involved, and research and review documents and information received to addressconflicting and incomplete information. She frequently selects, locates and provides information sought by persons who wish to see the Dean, thus relieving the Dean of many problems. Finally, she stated that she must perform problem-solving similar or identical to that performed by the Dean, when the Dean is unavailable.

Ms. Hank testified that the JEC chose not to consider responsibilities that result from filling in for one's supervisor, as it is typically not regular work. Thus, Ms. Hawkins cannot be "credited" for the responsibility she bears due to the Dean's absence. Ms. Hawkins is able to refer questions to her supervisor, the Dean, and her work is governed by policy and procedure, Ms. Hank pointed out.

As Ms. Hawkins admitted, much of her work is routine and recurring. She must sometimes perform non-routine work, and solve problems or explain policies and procedures. However, guidelines apply to her work, and much of it is strictly governed by established precedent and procedure, such as her preparation of graduation lists. She gave few, if any, examples of tasks which were not solved either by reference to policy, procedure or precedent, or by referral to another person. Her description of tasks pertaining to an individual falsifying his graduation from MU appeared to involve information gathering and comparison, rather than application of professional disciplines or comparison of alternatives. She did not explain what problem-solving was involved,

other than determining whether or not the individual graduated from MU. "Comparison of data is within the definition ofa degree level of 2.0." Hughes v. Bd. of Trustees, Docket No. 94- MBOT-1002 (Jan. 28, 1997).

Ms. Hawkins' description of the special accommodations made for Chinese graduate students appears to consist of applying existing standards to a new group of students, rather than developing new methods altogether. Understanding procedures which must be followed to process various types of documents, performing basic computation work in completing forms, and understanding which procedure applies are within the level 2 definition. Barber v. Bd. of Trustees, Docket No. 94-MBOT-872 (Oct. 31, 1996). Where problems are complex, but solutions available are limited, the same problems occur repeatedly, and there are guides, methods and precedents usually available by which to solve them, Respondents' assignment of level 3 is not arbitrary & capricious. Mitchell v. Bd. of Directors, Docket No. 94-MBOD-348 (May 21, 1996). Ms. Hawkins' work appears to most often fall within the level 2 definition. However, the JEC credited her for significant work at a higher degree of complexity involving more sophisticated problem- solving. Her work does not appear to meet the definitions of higher levels. The JEC rating is not clearly wrong.

C. FREEDOM OF ACTION:

The Plan defines Freedom of Action as:

> This factor measures the degree to which the position is structured as is determined by the types of control placed on work assignments. Controls are exercised in the way assignments are made, how instructions are given to the employee, how work assignments are checked, and how priorities, deadlines and objectives are set. Controls are exercised through established precedents, policies, procedures, laws and regulations which tend to limit the employee's freedom of action.

The Records Officer job title was given a level 3 rating, the AAS job title was given a level 3.5 rating, the OAS job title was given a level 4 rating, and Ms. Hawkins asserts that her position merits a level 4 rating in Freedom of Action. A level 3.5 rating in this factor simply means that the job duties and responsibilities fall somewhere between the level 3 and level 4 definitions.

The definitions in the Plan show that at level 3:

> Tasks are moderately structured with incumbent working from objectives set by the supervisor. At this level, the employee organizes and carries out most of the work assignments in accordance with standard practices, policies, instructions or previous training. The employee deals with some unusual situations independently.

The definitions in the Plan show that at level 4:

> Tasks are minimally structured with incumbent working from broad goals set by the supervisor and established institutional policies. The employee and supervisor work together to establish objectives, deadlines and projects. The employee, having developed expertise in the line of work, is responsible for planning and carrying out the assignment; resolving most of the conflicts which arise; and coordinating the work with others. The employee keeps the supervisor informed of progress and potentially controversial matters. Completed work is checked only to determine feasibility, compatibility with other work, or effectiveness in meeting the objectives of the unit.

Ms. Hawkins testified that she works independently from general directives from the Dean. She stated that she works without direct supervision, as she knows what is expected of her and how to perform her job. She and the Dean jointly suggest goals for the next year during her evaluations. She explained that shesets deadlines for her work, such as establishing a deadline for faculty to submit nominations for awards, so that Ms. Hawkins has sufficient time to process the awards prior to presentation.

As Ms. Hank explained, this factor does not hinge on how closely one's work is overseen by one's supervisor. Precedents, policies and procedures also limit one's freedom to make decisions independently of external controls. "The level of supervision exercised over the employee is not the key issue for measuring this point factor, rather it is whether the employee has the option to make decisions on her own if and when such situations arise." Kretzmer v. Bd. of Directors, Docket No. 94-MBOD-751 (Feb. 6, 1997). In this case, Ms. Hawkins works independently according to objectives set by the Dean. Most of her decisions involve straightforward application of a policy or procedure which dictate the outcome. While her abilities are recognized and relied upon, it does not appear that she frequently exercises independent decision-making authority unless it is within a fairly structured situation, such as choosing appropriate references. In several unusual situations Ms. Hawkins referenced, the Dean is the individual who ultimately exercised discretionary authority in resolving problems or interpreting policy. Although some aspects of Ms. Hawkins' work may meet the level 4 definition, much does not. As was the situation in Perkins v. Bd. of Trustees, Docket No. 94-MBOT-733 (Oct. 31, 1996), "The components of the level 4.0 definition involve more authoritative and policy-making roles than Grievant's job entails." The JEC's determination to assign a level3 rating cannot be deemed clearly wrong, or arbitrary and capricious.

D. SCOPE AND EFFECT:

> This factor measures the scope of responsibility of the position with regard to the overall mission of the institution, and/or the West Virginia higher education systems,

> as well as the magnitude of any potential error. Decisions regarding the nature of action should consider the levels within the systems that could be affected, as well as impact on the following points of institutional mission: instruction, instructional support, research, public relations, administration, support services, revenue generation, financial and/or asset control, and student advisement and development. In making these judgments, consider how far-reaching is the impact and of what importance to the institution and/or the higher education systems is the work product, service 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 in two parts, Impact of Actions (Impact) and Nature of Actions (Nature). Ms. Hawkins challenged both parts.

1. IMPACT OF ACTIONS:

In Impact, the Records Officer job title was given a level 2 rating, and Ms. Hawkins asserts that her position merits a level 3 rating. (See footnote 5) Level 2 of Impact of Actions is defined as "[w]orkaffects either an entire work unit or several major activities within a department." Level 3 of Impact of Actions is defined as

> Work affects the operations of more than one school or division of a specialized school, branch campus, community college or baccalaureate-level institution with an operating budget of <$13M; a school or division of a graduate or baccalaureate-level institution with an operating budget of #13-$18M; several departments within a graduate or baccalaureate-level institution with an operating budget of $19-$25M; a major department within a graduate-level institution with an operating budget of more than $50M; or a moderate-size department within a doctoral-level institution with an operating budget of more than $200M.

Ms. Hawkins testified that her work is shared with and impacts on other departments, such as the Registrar's Office. For example, her graduation list is used by the Registrar's Office and also is provided to students. Errors in the graduation list could result in legal action against MU, she said.

Ms. Hank stated that if Ms. Hawkins erroneously left a student's name off of the graduation list, the error would effect the student, but not other departments at MU. The activities of other departments would not be changed as a result of her error, and delivery of education would not be affected.

Ms. Hawkins clearly has significant responsibility and impact upon Graduate Office activities, as she independently creates the graduation lists, deals with day-to-day office management and assists individuals with questions or problems. However, her impact upon MU as a whole is limited. Ms.

Hawkins' work does not appear to directly and measurably affect the activities of otherdepartments. This sort of impact meets the definition of level 2. See Browning v. Bd. of Directors, Docket No. 94-MBOD-985 (Aug 15, 1996). The JEC's rating in Scope and Effect/Impact is not clearly wrong.

2. NATURE OF ACTIONS:

In Nature, the Records Officer job title was given a level 3 rating, as was the AAS job title. Ms. Hawkins asserts that her position merits a level 4 rating, which was also given to the OAS job title. Level 3 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."

In addition to the information provided in discussing Impact, Ms. Hawkins gave as an example processing paperwork required for payment of graduate assistants. If she errs, an individual may not get paid. Her activity here is one of several steps involved in processing payment for graduate assistant work. Ms. Hank opinedthat substantial costs, inconveniences and disruption of services would not result from Ms. Hawkins' actions.

Even where one's work directly impacts students and is important to one's department, where it is an operation affecting many students, rather than an operation having significant impact within the institution, one is properly rated at level 3. Perkins, supra. This is Ms. Hawkins' situation. Moreover, level 4 under Nature of Action is for higher level management positions where a manager is responsible for an entire unit or department, insuring that the objectives of that department are accomplished. Jessen, supra. Ms. Hawkins is not in a high level management position. Choosing between levels 3 & 4 in Nature involves a subjective value judgment interpreting these similarly-worded provisions, and the JEC's judgment on such points is entitled to deference. Miller, supra, and cases cited therein. The JEC's rating of Ms. Hawkins' position in Scope and Effect is not clearly wrong.

E. INTRASYSTEMS CONTACTS/NATURE OF 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 in two parts, Nature of Contacts (Nature) and Level of Contacts. Ms. Hawkins challenges only the Nature part of Intrasystems Contacts. The Records Officer job title was given a level 1 rating in Nature, the AAS title was given a level 2 rating, and Ms. Hawkins asserts that her position merits a level 3 rating, which was also given to the OAS job title. Level 1 in Nature is defined as "[r]outine information exchange and/or simple service activity; requires common courtesy (e.g., furnishing or obtaining factual information, ordering supplies, describing simple procedures)."

Level 2 in Nature is defined 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.)"

Level 3 in Nature 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.)"

Ms. Hawkins testified that her daily interactions with Chairs and faculty involve problems concerning interpretation and clarification of policies and procedures. However, she did not give examples of such interactions. She deals with personal information which must be kept confidential. As an example of a sensitive issue with which she dealt, Ms. Hawkins investigated anindividual's false claims of having graduated from MU. The individual had submitted information to a third party which did not match the transcript received from MU, and contacted Ms. Hawkins for information. She researched the situation, discussed it with faculty and chairpersons, obtained documents and information from the persons involved, and eventually concluded that the individual had not, in fact, graduated from MU. She noted her contacts with students and advisors regarding course substitutions, when a student is attempting to use a course not formally approved as part of his/her program requirements for graduation. In this situation, she sends a form to the student's advisor and, if the advisor confirms the substitution in writing, she processes the approved substitution. She may also inform a department that it cannot hire a graduate assistant, due to inadequate grade point average (GPA), for example. These communications require substantial sensitivity, she stated.

Dealing with confidential information does not necessarily require substantial sensitivity in one's

contacts. Even where confidential matters are involved, contacts can still be noncontroversial and handled by standard practices and procedures. Mitchell, supra. Few of Ms. Hawkins' contacts could be described as "controversial," in that Ms. Hawkins has little if any control over the end result and most controversy is apparently handled by the Dean. Thus, she does not meet the level 3 definition. Occasional explanation or interpretation of policy may be required, but no evidence was presented to suggest that these go much beyondproviding information on the Dean's interpretation of requirements. No evidence regarding the frequency with which Ms. Hawkins' intrasystems contacts require interpretation or explanation was provided. Ms. Hawkins' contacts within MU are essentially involved with locating and verifying information and transmitting it to others. The JEC was not proven to be clearly wrong, or arbitrary and capricious in rating this position at level 1.

E. EXTERNAL CONTACTS/NATURE OF CONTACTS:

External Contacts is defined in the Plan as:

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

Like Intrasystems Contacts, External Contacts is analyzed in two parts, Nature of Contacts (Nature) and Level of Contacts. Again, Ms. Hawkins challenged only the ratings in Nature.

In Nature, the Records Officer job title was given a level 2 rating, as were the AAS and OAS titles. Ms. Hawkins asserts that her position merits a level 3 rating. The definitions of level 2 and level 3 in the Nature part of External Contacts are nearly identical to those in Intrasystems Contacts, given above, and will not be repeated here.

Ms. Hawkins noted her contacts with students involving confidential information, and that she must inform them about academic problems and consequences which are unpleasant. Sheidentifies options for addressing students' problems. For example, she tells students if they will not be on the graduation list due to inadequate GPA. The students do not want to hear such information, and she must explain in a way they can understand, yet without taking away the students' dignity. She identifies for the student who to contact, and even arranges conferences with faculty or advisors for the student.

Ms. Hanks gave essentially the same explanation here as she did in discussing Intrasystems

Contacts. However, she stated that Ms. Hawkins' contacts with students met the level 2 definition in Nature under this factor, as she must communicate more than simple, routine information to them. Ms. Hawkins must explain the policies and procedures at issue, and assist in solving problems. Still, Ms. Hawkins contacts are not "frequently controversial" as required in the level 3 definition, she stated.

The discomfort with which persons contacted receive the contact is not necessarily determinative here. "Accepting that some individuals may be experiencing stress, be reluctant to divulge some facts, or behave in a hostile manner, Grievant's work is governed by practice and procedure, requiring moderate tact rather than substantial sensitivity." Perkins, supra. Clearly, the fact that confidential information is involved does not dictate that the contact requires substantial sensitivity. Mitchell, supra. No evidence was presented as to the frequency with which Ms. Hawkins' contacts are controversial, and, as noted above, most true controversies appear to be referred to and resolved by theDean. The level 2 definition allows for some controversial contacts, as the contacts are only largely of a non-controversial nature. There also was no evidence regarding the complexity of the policies involved, and it appears that the Dean interprets policy rather than Ms. Hawkins. The assessment of this part of this factor involves a subjective value judgment regarding the qualities one must employ in contacting others. The JEC has not exercised its discretion in making such a subjective judgment in this case in a manner which is implausible, clearly wrong, or arbitrary and capricious.

G. DIRECT SUPERVISION EXERCISED/NUMBER OF DIRECT SUBORDINATES:

> 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 in two parts, Number of Direct Subordinates (Number) and Level of Supervision. Ms. Hawkins challenged the ratings in Number. The Records Officer job title was given a level 2 rating in number. Ms. Hawkins asserts that her position merits a level 3 rating, which was also given to the AASjob title. (See footnote 6) Level 2 in Number is defined as one direct subordinate, while level 3 is defined as two to three direct subordinates.

Ms. Hawkins testified that she supervises the two full-time employees in her office, even though she does not hire or fire them. Her input is sought for evaluation purposes, she said. In adding supervision of the four graduate assistants who work ten hours per week each, she supervises between two and three full-time equivalent employees, she averred.

Ms. Hank testified that a level 1 rating was appropriate, as Ms. Hawkins has no supervisory responsibility for the other two employees, and the graduate assistants are non-essential student workers. She noted that Ms. Hawkins cannot hire or fire the full- time employees. Another witness, Glenna Racer, a Human Resources professional at MU and JEC member, stated that graduate assistants and work-study students were not considered to be essential student workers at MU, and that this judgment was consistently applied by the JEC. Ms. Racer also stated that, based upon her knowledge of MU departments, she did not believe that Ms. Hawkins supervised the full-time employees in the office. She did not explain what knowledge she had, or how she came by it.

Respondent failed to rebut Ms. Hawkins' evidence that she supervised the two full-time employees in her office. While Ms. Racer gave an opinion, there is no factual basis upon which to determine whether it is well-founded. The concept that Ms. Hawkins cannot be found to "supervise" the other employees unless she hiresand fires them contradicts the language found in this factor of the Plan. It is clear, in examining definitions of different levels of supervision that one may "supervise" without having hiring and firing authority. As Ms. Hawkins exercises some supervisory control over the full time employees, such as assigning them work, it is found that she does indeed have some degree (See footnote 7) of supervision over two full-time equivalent employees. It is not necessary to determine whether the graduate assistants are essential student workers, as the outcome would not be altered. A level 3 rating in Direct Supervision Exercised/Number is appropriate.

I. WORKING CONDITIONS:

This is defined in the Plan jointly with Physical Demands, as a two part 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. The Records Officer job title was

given a level 1 rating in this factor, as were most other titles including the AAS and OAS titles. Ms. Hawkins asserts that her position merits a level 3rating. Level 1 of Working Conditions 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." Level 3 of Working Conditions is defined as "[r]outine discomforts from exposure to moderate levels 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."

Ms. Hawkins asserted entitlement to the higher rating because of ventilation problems in her individual office. Her office has poor air flow, and thus is heated or cooled much less and more slowly than other offices. She stated that workmen have inquired how she can stand to work in the extreme heat. She also noted that the Dean's office is only accessible by walking through her office, which results in frequent distractions. This situation existed from about 1984 to about 1995, she said.

Ms. Hank stated that a level 1 rating was appropriate, because temperature variations in an office environment fall within this definition, regardless of the comparatively "extreme" nature of the variation. Level 3 is typically for employees who work outdoors routinely, or deal with dangerous situations such as chemicals.

As has been found in prior cases, this point factor is designed to measure the conditions under which one's job duties<u>must</u> be performed, not the conditions under which they happen to be performed. <u>Hameed v. Bd. Of Trustees</u>, Docket No. 94-MBOT-928 (Jan. 15, 1997). Obviously, this position is performed in an office environment. While Ms. Hawkins' own individual office is less than optimum in its set up and ventilation, that is not a detail which dictates her classification. She is appropriately rated at level 1 in Working Conditions.

III. SUMMARY:

Ms. Hawkins did not prove that the JEC was clearly wrong, arbitrary or capricious in assigning ratings to her position, or to the Records Officer job title, in any of the factors except Direct Supervision Exercised/Number. The JEC was proven to be clearly wrong, and she showed that she supervises two full-time equivalent employees.

By assigning the appropriate number of points for Direct Supervision Exercised/Number, level 3,

Ms. Hawkins is entitled to an increase of 12 points. (See footnote 8) This would give her individual position a total of 1969 points, placing the position in Pay Grade 14. As no change in Pay Grade results, no change in the ratings or job title is ordered.

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 assignment of the Records Officer job title to Ms. Hawkins' position, and its assignment of rating levels to the point factors for that title are not clearly wrong, arbitrary or capricious.

Accordingly, this Grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Cabell 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 notbe 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: April 30, 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

She also challenges inclusion of the factor Breadth of Responsibility, as an inappropriate consideration in analysis and rating of positions, titles and pay grades. However, no explanation was given as to the basis of her challenge, and no evidence was presented regarding her challenge. Therefore, this challenge is deemed abandoned, and will not be ruled upon.

Footnote: 4

This and all subsequent definitions are taken from the Job Evaluation Plan, Jt. Ex. F., with emphasis in the original, unless otherwise noted.

Footnote: 5

The AAS and OAS titles were given level 6 ratings. As Ms. Hawkins did not allege that her position merits a level 6 rating,it is unnecessary to repeat that definition here.

Footnote: 6

The OAS title was given a level 4 rating in number.

Footnote: 7

Neither party challenged the level 3.5 rating assigned to the Records Officer job title for Direct Supervision Exercised/Level of Supervision, so this assignment is not questioned in assessing the Number of Direct Subordinates argument.

Footnote: 8

The Plan's matrix converting ratings in this factor to numbers does not include cells for any number of direct subordinates at level 3.5 of Level of Supervision (the other part of Direct Supervision Exercised, which was not challenged). It is assumed that the number for the cell would fall between numbers 7 and 9, which bracket the cell area. Thus, the formula has been applied translating the numerical value for this cell as 8.