CAROL SKAGGS, and

DEBORAH DAMRON-WATSON,

Grievants,

v. DOCKET NO. 94-MBOT-809

BOARD OF TRUSTEES/MARSHALL UNIVERSITY,

Respondent.

DECISION

Carol Skaggs and Deborah Watson (See footnote 1) (Grievants) filed grievances challenging their classification as Supervisors/Central Receiving at Pay Grade 14 under the "Mercer" reclassification. (See footnote 2) They seek classification at Pay Grade 19. Grievants were 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 3) , assigning a rating or "degree level" within each factor, and applying a weighted equation to the assigned levels to arrive at a numerical total, which determines the job title's Pay Grade.

A Level IV hearing was conducted on March 21, 1997. This matter became mature for decision on April 21, 1997, the due date for post-hearing submissions. In this grievance, the degree level ratings received in the following point factors are specifically challenged: Experience, Freedom of Action, Breadth of Responsibility, Intrasystems Contacts/Nature of Contacts and Level of Contacts, Physical Coordination, Working Conditions and Physical Demands. (See footnote 4)

FINDINGS OF FACT

1 1. Prior to the reclassification, all higher education classified employees were asked to complete a Position Information Questionnaire (PIQ) in which employees described their job duties and responsibilities and other aspects of their jobs by answering a series of questions designed to elicit this information. Grievants filled out PIQs in 1991.

2 2. Grievants are employed at Marshall University (MU), and were classified as Supervisors/Central Receiving on January 1, 1994, as a result of the Mercer reclassification.

3 3. Grievant Skaggs is the supervisor at the main receivingarea at MU, and has three subordinates and three student assistants. Grievant Watson is the supervisor at the medical school receiving area of MU, and has one subordinate. Grievant Skaggs oversees the biennial yard sale for MU.

4 4. Grievant Skaggs' job duties, with amounts of time spent in each, are as follows: supervision and maintenance of inventory for the main campus, tagging equipment as appropriate, inputting the identifying information into the computer, reconciling information, and computer tracking (25%); supervising receiving functions, including assisting in receiving deliveries of equipment and supplies for MU, checking them against purchase orders, processing the purchase orders on the computer, and delivering them to on- campus sites, opening and checking packages, preparing documents, and addressing problems (20%); yard sale preparation (20%); preparing billings for UPS and Federal Express shipments, including reconciling of charges and accounts, and billings (10%); filing requisitions and drafting reports and purchase orders (10%); answering telephones, including answering questions for callers (10%); and maintaining radioactive material files and safety records, attending seminars, interviewing and hiring subordinates, evaluating subordinates' performance, and other duties (5%). She spends about 20% of her day on the telephone, about 5% running equipment, and about 35% working on the computer.

5 5. Grievant Watson's job duties, and approximate time spent in each, are as follows: supervising receiving functions for the medical school, including receiving, unpacking, checking orders,verifying invoices, storing, delivering and billing for shipments (30%); supervising inventory for the medical school, including assigning and affixing tags to furniture and equipment and conducting physical inventories (30%); supervising the Veterans' Administration (VA) inventory by conducting physical inventories of equipment purchased by the VA for the medical school and completing paperwork and resolving inventory problems (10%); developing and maintaining the scientific stockroom which provides laboratory, glassware, chemical and gas supplies, including establishing and maintaining minimum and maximum stock levels, tracking receipts and disbursements, conducting inventories, and ensuring proper handling and storing of hazardous materials or otherwise unusual items(5%); maintaining and upgrading the computerized inventory system data (10%); and assisting with yard sale functions, including preparation and tracking of items for sale, and answering questions from the

public regarding items, while maintaining normal receiving functions for the medical school (10%).

(See footnote 5)

6 6. Overseeing the yard sales involves two days of set up and take down. Items of state equipment sent for the yard sale are tagged (to identify which department receives credit for the sale), organized, and documented. Safety issues are addressed, including the set up and security of the merchandise displayed. If prices are put on items, the price is determined by the departmentsupplying the item. The sale itself lasts two days, and the public bids on the items, which are displayed in the receiving area and the parking area just outside.

7 7. Grievants address problems with vendors, such as filing claims with trucking companies. In ensuring payment for shipping, the shipping charges are documented, and tracked back to the initiating department whose account is then charged. Ms. Skaggs signs purchase orders for shipping.

8 8. Both Grievants handle shipments of chemicals, animals, and radioactive or infectious materials on a daily basis. Shipments of chemicals and other items are packaged. However, packages leak with some frequency, approximately once a week. Ms. Watson makes deliveries to medical school laboratories three times per week. Both Grievants check inventory in place throughout the MU campus, which involves bending, stooping, kneeling, and otherwise contorting to find and verify inventory tag numbers.

9 9. Overseeing the scientific stockroom requires Ms. Watson to track incoming and outgoing items, and determine when to reorder supplies. Certain chemicals and items can only be ordered by her. She creates purchase orders, and tracks the paperwork and the items to ensure proper receipt and billing.

10 10. Grievants lift 25 pound items once a day, and Ms. Watson lifts items weighing up to 80 pounds once a week, often to put them on a cart or dolly. Grievants can have subordinates perform the lifting, and they can get help.

11 11. Grievants wrote some parts of MU's purchasing handbook,and wrote procedures for inventory control and receiving. These publications were formally approved by the MU president.

12 12. Grievants are contacted by supervisors, Chairs, Deans and Associate Deans on a daily or weekly basis. These persons call to discuss ordering or receipt of items, shipping requirements, yard sale information, and other matters.

13. The Supervisor/Central Receiving job title is in the Warehousing job family, and received a total of 1889 points, placing it in Pay Grade 14. There are five persons holding this title throughout the state higher education system. Jt. Ex. 11.

14. The point range for Pay Grade 14 is from 1866 to 1984 points. The point range for Pay Grade 19 is from 2574 to 2755 points.

DISCUSSION

I. BURDEN OF PROOF AND STANDARD OF REVIEW:

The burden of proof in misclassification grievances is on the grievant to prove by a preponderance of the evidence that he or she is not properly classified. 156 C.S.R. 1 §4.19; W. Va. Code § 18- 29-6. Burke v. Bd. of Directors, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant must identify the job he or she feels is being done. Elkins v. Southern W. Va. Community College, Docket No. 90-BOD-124 (Mar. 4, 1991). The grievant must also identify which point factor degree levels are challenged. This is because the Plan's reclassification system is not based upon whole job comparisons, but is largely a "quantitative" system, in which the components of each job are evaluated separately by applying thepoint 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 Grievants are properly classified is almost entirely a factual determination. As such, the JEC's interpretation and explanation of the point factors at issue must 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 orreached 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 Grievants were misclassified, the point factors and ratings disputed must be discussed separately in detail.

II. POINT FACTOR ANALYSIS:

A. EXPERIENCE:

The Plan defines Experience as "the amount of prior directly related experience required before entering the job. Previous experience or training should not be credited under this factor if credited under Knowledge."

The job title received a level 4 rating, which is defined as "[o]ver two years and up to three years of experience." Grievant Skaggs requested a level 5 or 6 rating, while Grievant Watson requested a level 5 rating. Level 5 is defined as "[o]ver three years and up to four years of experience." Level 6 is defined as "[o]ver four years and up to six years of experience."

Ms. Skaggs stated that it would take four to six years ofexperience to get to her level efficiency in dealing with the many departments and people served by her area. She stated that, to enter this position as a new employee, one would need four years of experience as a supervisor, and at least two years of experience in handling inventories. One must know how to deal with people and coordinate work schedules and duties, what items to tag and how to keep track of equipment. She herself had three years of experience as an assistant supervisor before taking the position.

Ms. Watson noted that her supervisor had indicated four to six years' experience was required for her job, which she argued confirmed the necessity for greater experience than the JEC rating recognized. (See footnote 6) She has worked in her position for 18 years, and Ms. Skaggs has been in

her position even longer. She opined that one needs this experience because of the various requirements for inventory, budget, shipping, and handling hazardous materials.

Respondent's primary witness was Teresa Crawford, a Senior Compensation Analyst in the Department of Human Resources at WestVirginia University and non-voting member of the JEC. She explained that this factor assesses not the incumbent's own experience, but the absolute minimum experience required for a new employee to qualify for the position. She stated that this position is an entry level supervisory position, and therefore previous supervisory experience cannot be required.

The minimum amount of experience required to perform the essential duties of a position represents a subjective determination upon which reasonable minds may differ. Zara v. Bd. of Trustees, Docket No. 94-MBOT-817 (Dec. 12, 1995). 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. Grievants' difference of opinion with Respondent's conclusion is insufficient to allow acceptance of Grievants' 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 these positions at level 4 in Experience cannot be said to be clearly wrong.

B. 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 job title received a level 2.5 rating, which gives credit for some work performed at both the defined levels of 2 and 3. Grievants assert their job duties merit level 5 ratings. The definitions in the Plan show that at level 2:
>
> Tasks are structured to the extent that standard operating procedures serve as a gauge to guide the employee's work. The employee can occasionally function autonomously with the immediate supervisor available to answer questions. Questionable items are referred to the immediate supervisor.

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.

At level 5:

> Virtually all tasks are unstructured; assignments are in terms of setting objectives within strategic planning goals. At this level, the employee has responsibility for planning, designing and carrying out programs, projects and studies; employee sets goals and objectives for a major unit, program, or department. Approval from higher supervision may be necessary only in terms of financial impact and availability of funds, but little reference to detail is discussed with the next level supervisor. Work review concerns matters such as fulfillment of goals and objectives.

Ms. Skaggs testified that she has full control of the main receiving area, and Ms. Watson has full control of the medical school receiving area. This was confirmed by their supervisor's memorandum dated May 24, 1988. Ms. Skaggs estimates line item budgets each fiscal year, and turns this in to her supervisor. Her supervisor does not review or approve her assignments to her subordinates, or her approval of leave. Her supervisor, Mr.Shondel, is generally available to answer questions. She stated that she sets long-term goals for her department, such as establishing a computer system to house easily retrievable information about inventory, and training employees in computer usage. However, she admitted that implementing the computer system was not her decision, but was made by the president for all of MU. She admitted that standard practices and procedures apply to her work.

Ms. Watson affirmed that Grievants' supervisor, Mr. Shondel, requires them to submit goals and objectives for their areas of responsibility, and to report back on whether those were achieved. Ms. Watson stated that Mr. Shondel never checks any of her work, and she makes her own decisions. He gives her guidance by telephone a few times per year, and she only sees him once a month at most. He is available to answer questions, she said. She stated that there were manuals and procedures available, and that Grievants had helped write them. Mr. Shondel had instructed them to write the receiving and inventory control policies and procedures, and MU's president approved them.

Ms. Crawford testified that the majority of the work is performed within existing guidelines and procedures. The majority of supervisory positions received level 2.5 ratings, she said, which gives credit for some work at level 2 and some at level 3. She explained that level 3 is a high level technical position or a low level professional position, level 4 is for senior level professional positions, and level 5 is for directors and high levelmanagers.

Respondent's other witness, Glenna Racer, a Human Resources professional at Marshall University and JEC member, added that Mr. Shondel has a participatory style of management. He asks for Grievants' input on goal setting, but still sets the goals himself. She also noted that postal regulations, purchasing regulations and standard procedures restrict Grievants' freedom to act. She

opined that the level 2.5 rating for Grievants is appropriate.

"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). Thus, the fact that Mr. Shondel does not check Grievants' assignments daily is not determinative. Level 2.5 ratings have been found assigned appropriately where journeyman-level craftsmen performed duties under limited supervision, even where the supervisor deferred to the grievants regarding specific methods and means by which projects were completed, because the grievants' decision-making options were inherently narrowed by established methods of their craft. Hardee v. Bd. of Directors, Docket No. 94-MBOD-373 (Jan. 10, 97); Jones v. Bd. of Trustees, Docket No. 94-MBOT-978 (Feb. 29, 1996). However, level 3 has been deemed an appropriate rating, where the grievant testified to "discussing" goal and objectives with the supervisor, without specifically stating she had input in developing them. Perkins v. Bd. of Trustees, Docket No. 94-MBOT-474 (Mar. 12, 1997). Thus, the fact that Grievants must formulate and submit proposed goals weighs heavily in their favor, even if Mr. Shondel himself ultimately decides what the goals will be. However, levels 4 and 5 involve more authoritative and policy-making roles than Grievants' jobs entail, and generally would be assigned to positions in the top administrative group of managers and directors. Burke, supra.

Established policies and procedures govern Grievants' work, and they are also guided by precedent. Grievants clearly have little day-to-day oversight from their supervisor. They operate autonomously most of the time, even if little in the way of creative decision-making regularly required. They organize and carry out most of the work for their areas, within the confines of standard practices, policies and precedents. They deal with unusual situations occasionally, and make decisions in such instances, simply reporting back to Mr. Shondel after the fact. The job duties as described merit level 3 ratings. Individually rating Grievants at level 3 of Freedom of Action results in a net increase of 50 points.

C. BREADTH OF RESPONSIBILITY:

Breadth of Responsibility is defined in the Plan as:

> This factor describes the variety of specific functional areas in which the job may have formal and ongoing accountability. In reviewing this factor, consider the level of in-depth knowledge required as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations. [Examples of some functional areas within the following divisions would include: (1)

> Student Services--Housing, Admissions, Financial Aid, Counseling; (2) Business and Finance--Purchasing, Auditing, Grantsand Contracts, Bursar.]

Grievants' job title, like most, received a level 1 rating, which is defined in the Plan as "[a]ccountable for only immediate work assignments but not for a functional area." Grievant Watson asserts her duties merit a level 3 rating, which is defined as "[i]n-depth knowledge of and accountability for two functional areas as measured by the incumbent's ability to answer detailed and complex questions relative to policies, procedures, laws and regulations." Grievant Skaggs asserts her job duties merit a level 5 rating, which is defined as "[i]n-depth knowledge of and accountability for four 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). Ms. Crawford explained that formal authority and responsibility for budget is with the manager of the Department of Purchasing and Materials. Grievants did not dispute that, although they are permitted to order merchandise and handle line item moneys, they have no formal financial responsibility for a separate budget within their departments. Grievants were correctly rated in this factor.

D. INTRASYSTEMS CONTACTS:

Intrasystems Contacts is defined in the Plan as a factorwhich:

> 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 a matrix having two parts, Nature of Contacts (Nature) and Level of Regular, Recurring and Essential Contacts (Level). Grievants challenged ratings in both parts.

The job title received level 2 ratings in both Nature and Level. Grievant Watson asserted her job duties merit level 3 ratings in both parts, while Grievant Skaggs asserted her job duties merit a level 4 rating in Nature and a level 3 rating in Level.

In Nature, level 2 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.)" Level 3 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.)" Level 4 is defined as "[d]iplomatic/negotiative interactions on complex and important issues; tact, diplomacy and persuasion usually required (e.g.,problem-solving discussions about key issues which have substantial impact of the organization.)"

In Level, level 2 is defined as "[s]taff and faculty outside the immediate work unit," while level 3 is defined as "[s]upervisors, managers and/or chairpersons, other than own, within an institution, or coordinators within the Systems' Central Office."

Grievant Skaggs testified that she speaks with supervisors, Deans, Chairs and higher level persons on a daily basis, when they call to inquire about equipment and orders. She must explain and answer questions regarding the yard sale, packaging, ordering and inventory matters (e.g., can equipment or furniture be traded in, taken apart, or ordered). She talks directly to these people, not to their secretaries. She stated that some people require diplomacy to explain why items cannot be cannibalized or thrown away. She stated that she must be careful not to offend people sometimes, and must confront rude people about their dealings with her staff.

Grievant Watson speaks with faculty, staff, and Associate Deans weekly. She discusses handling of medical school items for the yard sale, and also inventory for the VA, including the different paperwork requirements for a federal program. She asserts ubstantial sensitivity is required because the medical school inventory is different, and she and the people with whom she talks must be very precise.

Ms. Crawford testified that Grievants' contacts with higherlevel persons should not be counted, because those who call are not contacting Grievants in their capacity as Chairs or Deans. The contact could as well be with their secretaries, she said. She opined that the contacts are merely standard inquiries, which do not require resolving problems, but only providing information. She stated that Grievants primarily are coordinating things, so level 2 ratings are appropriate.

Obtaining bids or quotes from vendors and ordering supplies require routine information exchange. Carrere v. Bd. of Directors, Docket No. 94-MBOD-1017 (Jan. 16, 1997). The character of the person contacted is not measured here, but the nature of the topic itself, and the extent to which the outcome of the contact is dictated by established procedure. Perkins v. Bd. of Trustees, Docket

No. 94-MBOT-733 (Oct. 31, 1996). The topics addressed by Grievants are primarily information exchange about orders. They also explain policy and procedure on a regular basis, and coordinate of movements of equipment and supplies, for which a level 2 rating is appropriate. The level 2 rating in Nature also allows for some contacts of a controversial nature, as it encompasses contacts which are only "largely of a non-controversial nature." The JEC's rating in Nature is appropriate.

In Level, Grievants' situation is not like those of the grievants in Wilkinson v. Bd. of Trustees, Docket No. 94-MBOT-765 (Aug. 26, 1996) or Barber v. Bd of Trustees, Docket No. 94-MBOT-872 (Oct. 31, 1996). Those grievants sought out high ranking persons to obtain information which they could have gotten from lower levelemployees, and the contacts with high level employees were thus deemed non-essential. Here, Grievants must contact the supervisors, faculty, Chairs, and Deans. Grievants are sought out by the higher ranking persons, not vice versa. They must respond.

Grievants' contacts with supervisors, chairs and higher level persons were not challenged on frequency, and they are deemed essential. Grievants proved their individual positions merit a level 3 rating in Intrasystems Contacts/Level. This results in a net increase of 18 points.

E. PHYSICAL COORDINATION:

"This factor assesses the amount of psychomotor skill involved in performing the job. Consider the complexity of body movements, speed/timing of movements, precision of movements, and need for close visual attention regularly required by the job in performing the work." The Supervisor job title received a level 2 rating, which is defined as "[w]ork requires simple hand/eye operations and some accuracy and regularity of motions, such as set-up and operation of basic instruments or equipment, and/or the occasional use of standard hand or power tools with minimal speed requirements."

Grievant Watson asserts her job duties merit a level 3 rating, which is defined as "[w]ork requires some speed and accuracy of hand/eye coordination in the use of somewhat complicated instruments, equipment or hand or power tools requiring some speed and adeptness." Grievant Skaggs asserts her job duties merit a level 4 rating, which is defined as "[w]ork requires skill andaccuracy or other manual actions involving rapid physical motions and closely coordinated performance on or with office equipment; or a high degree of manual skill and exactness in the use of hand instruments or equipment."

Grievant Skaggs runs the floor jack once a week. She unloads trucks and moves items about one hour each day. She also spends approximately 35% of her day working on the computer. Grievant

Watson stated that coordination is required daily when unloading bulky items, to avoid injury in moving them. She uses pallet jacks on a daily basis, she said. A certain amount of speed is required, in order to maintain momentum for physically moving heavy items.

Ms. Crawford testified that these positions are supervisory, which are generally considered to work in an office environment because of the amount of time spent in paperwork, planning, and advising employees. She explained that the JEC gave level 2 ratings to positions which got information from a computer, where speed was not of the essence, as here. Data entry positions, which require speed of computer keying, got higher levels.

Ms. Crawford's testimony on this point is convincing, as well as entitled to deference. While Grievants are working supervisors, the majority of their time is spent in tasks which have few externally imposed speed or accuracy requirements in the sense measured by this factor. While Grievants conscientiously require themselves to conduct their business efficiently, their work is not such that precise movements are necessary. This factor measures skill and precision, while Physical Demands measures physicaleffort and exertion. R. Ex. A, pp. 32-35. There was no evidence regarding the complexity of equipment and tools used, nor were Grievants shown to use tools such as jacks a significant portion of time. Grievants are correctly rated in this factor.

F. WORKING CONDITIONS AND PHYSICAL DEMANDS:

These two factors are defined jointly in a matrix, 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 Supervisor job title received level 2 ratings in both Working Conditions and Physical Demands. Grievant Skaggs asserts her job duties merit level 3 ratings in both, while Grievant Watson asserts her job duties merit a level 4 rating in Working Conditions and a level 3 rating in Physical Demands.

In Working Conditions, level 2 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." Level 3 is "[r]outine discomforts from exposure to moderate levels of heat, cold, moisture/wetness, noise and airpollution. 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 4 is "[f]requent or prolonged exposure to extreme levels of temperature, air pollution, noise, radiation, chemicals, contagious diseases, gases and substances, heights, and moving parts."

Grievant Skaggs estimated that she spends an average of an hour a day outdoors, although much more time is spent outdoors during the eight days per year of the yard sale. She believed that the discomforts she experiences are routine, not occasional. Her subordinates leave the huge doors to the receiving area open, there is a lot of traffic in and out, deliveries are made frequently, and there are chemicals, medical wastes, and animals shipped in and out. She admitted that the receiving area doors can be shut.

Grievant Watson added that she must deliver items daily to laboratories, and is thus exposed to other hazards during delivery. Also, the work area is noisy. She handles chemicals and infectious materials in containers, which leak on at least a weekly basis, she said. Deliveries are frequently refused because she can see that the packaging has leaked.

Again Ms. Crawford noted that supervisory duties would keep a person in this position in the office environment, and that exposures are not of the same sort as a laborer experiences. Further, hazardous materials are specially packaged to avoidexposure during shipping, and Grievants' exposure is not the same as that of persons handling the materials directly, as opposed to the packaged materials.

This factor is designed to measure the conditions under which the duties MUST be performed, not those under which they HAPPEN to be performed. Hameed v. Bd. Of Trustees, 94-MBOT-928 (Jan. 15, 1997). Thus, the fact that subordinates leave doors open is not determinative.

However, Grievant Watson showed that she is exposed weekly to hazards such as broken containers of chemicals. A grievant who regularly hung lights and wired sound equipment, which exposed him to heights and electricity, was deemed to merit a level 3 rating. Helmick v. Bd. of Trustees, Docket No. 94-MBOT-948 (Jan. 28, 1997). However, Mr. Helmick spent 75% of his time on stage-related work which involved the height and electrical hazards. Here, there is a weekly

occurrence, which may or may not actually expose Grievants to chemical hazards. The evidence suggested that Grievants only occasionally handle hazardous items whose containers have been breached, as they sometimes can see the problem and refuse the shipment. This evidence is insufficient to show that Grievants are actually **exposed** to hazardous materials frequently enough or for a duration sufficient to deem it **routine**. Overall, Grievants did not show the JEC was clearly wrong in assessing the positions as involving occasional exposure to minor discomforts.

In Physical Demands, level 2 is defined as "[l]ight physical effort required involving stooping and bending; individual haslimited discretion about walking, standing, etc.; occasional lifting of lightweight objects (up to 25 pounds.)" Level 3 is defined as "[m]oderate physical effort required involving long periods of standing, walking on rough surfaces, bending and/or stooping; periodic lifting of moderately heavy items (over 25 and up to 50 pounds.)"

Grievant Skaggs runs the floor jack about once a week. She does not lift items weighing more than 50 pounds, but does lift items weighing between 25 and 50 pounds once daily, and items weighing less than 25 pounds at least once daily. She walks a lot, and she can have a subordinate lift things, but she must do it herself when others are not available. She would be the only person available about 3-4 times per year. Grievant Watson lifts 25 pound items daily, and handles 50-75 pound items weekly, although she agreed that her subordinates can move items and she can get assistance.

Ms. Crawford stated that, since these positions are supervisory, the positions would typically not be rated for performing the work of positions it supervises, which would be the more physically demanding tasks. While these are working supervisors, the supervision duties result in lower ratings in Physical Demands, because a significant portion of time is spent in supervisory tasks, rather than in physically demanding tasks.

Ms. Crawford's testimony, that the JEC looked at the majority of tasks and work time in applying this factor, is entitled to deference. As Grievant Skaggs noted, 35% of her day is spent onthe computer, and 20% on the telephone. Thus, the majority of her time is spent in sedentary tasks. Both Grievants confirmed that they spend significant time on inventory tasks, some of which require standing, walking, bending and contorting in order to affix and check inventory tags. However, neither Grievant clarified the amount of time spent in these activities, as opposed to those more sedentary inventory tasks such as record keeping. Therefore, this evidence is insufficient to show the JEC was

clearly wrong in its assessment. See Saulton v. Bd. of Directors, Docket No. 94-MBOD- 800 (Dec. 5, 1996), where a Bookstore Clerk who had to bend, stoop, lift and walk, and had to stand for long periods of time was appropriately rated at level 2.

It has been held that the JEC was not arbitrary or capricious in rating PRT Electronics Technicians at level 3, even where 50-72 pound components had to be removed, lifted and carried three times per shift. Hastings v. Bd. of Trustees, Docket No. 94-MBOT-943 (May 28, 1996). Grievants' lifting daily and weekly is not so frequent as the grievants in Hastings, and may be considered "occasional" rather than "periodic." This activity does not require a higher rating.

On this evidence, the somewhat subjective terms of the definitions require deference be given to the JEC's rating. The rating takes into account the available evidence, and does not represent a clear mistake of fact or an arbitrary and capricious determination. The JEC cannot be said to have been clearly wrong, or arbitrary and capricious in rating Grievants at level 2 ofPhysical Demands.

III. SUMMARY:

Grievants failed to prove they should have received higher ratings in the factors Experience, Breadth of Responsibility, Intrasystems Contacts/Nature, Physical Coordination, Working Conditions, or Physical Demands. Both positions, if individually rated, merit different ratings in the factors Freedom of Action and Intrasystems Contacts/Level. Individual ratings in these factors results in a net increase of 68 points, for a total of 1957 points. This is not sufficient to place Grievants' positions in a Pay Grade different from the Pay Grade 14 assigned to the Supervisor job title.

Because the point factor ratings are assigned to the job title and not to individual employees, and the point factor analysis does not result in a change in Pay Grade here, Grievants have not proven the ratings assigned to the Supervisor job title were clearly wrong, or that they were misclassified. See Brown v. Bd. of Trustees, Docket No. 94-MBOT-973 (Feb. 26, 1997); Jordan v. Bd. of Trustees, Docket No. 94-MBOT-983 (Nov. 25, 1996); Riggs v. Bd. of Trustees, Docket No. 94-MBOT-711 (Apr. 29, 1996).

JOB COMPARISONS

Grievants submitted several exhibits pertaining to other positions within the Mercer reclassification system, which they argued showed that their positions merit a higher pay grade. They also referred to other positions in their testimony. Ms. Crawford opined that many of Grievants' duties for handling

materials andequipment could be classified in lower level positions, such as Shipping/Receiving Clerk or Materials Handlers. Ms. Crawford admitted that the Supervisor at West Virginia University does not have any inventory responsibilities, unlike Grievants.

While it is understandable that Grievants believe their positions to be more demanding and valuable than some of those referenced, this belief cannot substitute for the point factor methodology selected by the JEC for evaluating positions. To rest a decision on such a belief would be to resort to whole job comparison, which the Plan methodology specifically rejected. Grievants' evidence regarding other positions is insufficient to show that Grievants were misclassified under the Plan, because there are differences in the specific job duties and responsibilities between each of the positions referenced. Even a minor difference in job duties and responsibilities can result in substantial differences in the factor ratings, and in the total number of points assigned to a position. Martin v. Bd. of Trustees, Docket No. 94-MBOT-658 (Mar. 28, 1997); Wilson v. Bd. of Trustees, Docket No. 94-MBOT-835 (Feb. 6, 1997). Whole job comparison of positions will not be substituted for the point factor methodology analysis performed above. Grievants have not shown that the JEC's assignment of the Supervisor job title, or ratings for that job title, was clearly wrong.

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 classificationfor 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. While a searching inquiry into the facts is required, an administrative law judge may not simply substitute her judgment forthat 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 Supervisor/Central Receiving job title to Grievants' positions, and its assignment of rating levels to the point factors for that job title are not clearly wrong, arbitrary or capricious.

Accordingly, this Grievance is **DENIED.**

Any party may appeal this decision to the Circuit Courts of either Kanawha or 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 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: June 27, 1997

JENNIFER J. MEEKS **Administrative Law Judge**

Footnote: 1

Grievant Damron-Watson indicated a preference of surname, so "Watson" is used herein.

Footnote: 2

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: 3

The point factors are set forth in 128 C.S.R. 62 §2.27 and in 131 C.S.R. 62 §2.27.

Footnote: 4

Respondent asserts Grievants are correctly classified as Supervisors at Pay Grade 14. However, as this grievance looks at the individual positions in determining this issue, Respondent asserts that the analysis must take into account factors where Grievants' individual job duties merit lower ratings than the job title was given. Thus, any increases in some factors should be balanced by decreases in others, as appropriate. This approach has been accepted in prior grievances, as the ratings are assigned to job titles, not to individuals, and averaging among all incumbents in a given job title was used to rate factors and assign titles and pay grades. See Black v. Bd. of Directors, Docket No. 94-MBOD-967 (Apr. 17, 1997); Gregg v. Bd. of Trustees, Docket No. 94-MBOT-863 (Dec. 18, 1996). However, as the point factor analysis of the factors challenged by Grievants does not result in any change in Pay Grade, Respondent's arguments regarding the factor Direct Supervision Exercised need not be addressed.

Footnote: 5

Grievant Watson's PIQ provides this information, but the percentages provided only total 95% of her time. R. Ex. B. It is deemed more appropriate to describe these percentages as approximate, rather than to attempt to allocate the remaining 5% of her time.

Footnote: 6

Grievant and Respondent submitted different copies of the 1991 PIQ. Grievant's copy was submitted with her grievance, and was admitted as Jt. Ex. 8. Respondent's copy was admitted as R. Ex. B. The copies differed in that Respondent's noted Grievant's intervening name change, had percentages next to the listing of job duties in Part III, had different handwritten notations from the supervisor throughout, particularly regarding Experience (Part V), Breadth of Responsibility, Intrasystems Contacts, Physical Coordination and Physical Demands. Notably, there is not an absence of supervisor comment on Jt. Ex. 8. The comments are simply different. Because the typewritten material, presumably Grievant's statements, appears to be identical on the two copies, it appears as if Grievant's PIQ had been retyped and written on again. Neither party explained this. R. Ex. B is signed by all appropriate persons, while Jt. Ex. 8 is not. Therefore, R. Ex. B is deemed the more reliable of the two, as the supervisor signed it.