NANCY SKILES, et al.,

Grievant,

v. **Docket No. 02-HHR-111**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/BUREAU FOR CHILD SUPPORT ENFORCEMENT and DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievants, Nancy Skiles, now Nancy Light, and 22 other employees, filed this grievance against their employer, Respondent, the Department of Health and Human Resources ("HHR"), contesting their classification as Accounting Technician 3's. The statement of grievance reads:

> The nature of my work in terms of duties performed and level of knowledge shows significant differences in the duties performed and level of knowledge required by other Accounting Tech III within the various Bureaus housed in WVDHHR.

As relief Grievants sought:

> Reclassification to a “new” specification classification unique to BCSE - taking into consideration the complexity and responsibilities of the work performed - compensation @ a higher, more appropriate pay grade -----back pay compensation from time of original filing of misclassification. (See footnote 1) The following Findings of Fact are made based upon the evidence presented at Levels III and IV.

FINDINGS OF FACT

1. Grievants are, or at the time this grievance was filed were, employed by HHR as Accounting Technician 3's, pay grade 7, in the Financial Services Unit of the Bureau for Child Support Enforcement (“BCSE”). Grievants Garretson and Pack are no longer employed by HHR, Grievant Rollyson is now a supervisor, and Grievant Gillispie is no longer classified as an Accounting Technician 3.

2. On April 17, 2000, Lena Hill, Commissioner of BCSE, sent a memorandum to Virginia Tucker, HHR's Assistant Secretary of Operations, stating she would like to request a desk audit and/or review by the Division of Personnel ("Personnel") of the Child Advocate Legal Assistant classification. Commissioner Hill later requested that the Accounting Technician classifications in BCSE be reviewed. This request was forwarded to Personnel.

3. Personnel suggested that all classifications in BCSE be reviewed, and this suggestion was accepted by BCSE.

4. Personnel conducted a classification study of the Child Advocate Administrative Assistant, Child Advocate Regional Manager, Child Advocate Legal Assistant, and Child Advocate Team Leader classifications in BCSE, as well as numerous positions in the HHR Specialist class series, the Supervisor class series, and the Accounting Technician class series.

5. In January 2001, Personnel recommended that a new classification be approved for the Accounting Technician 3's in BCSE, designated a Child Support Technician 3. This new classification would be in a pay grade 10. The pay graderecommendation was founded upon market pricing. Personnel conducted a salary survey to try to determine the market for this job.

6. Personnel also recommended that other new classifications be created: Child Support Technician 1 and 2, Child Support Paralegal, Child Support Specialist 1, 2, and 3, Child Support Supervisor 1 and 2, and Child Support Regional Manager. Personnel further recommended that HHR consider proposing a special implementation plan which would provide a salary increase to all employees in BCSE who were affected by the classification changes, rather than just increasing salaries for those who were below the minimum salary for the new pay grade.

7. Lowell D. Basford, Personnel's Assistant Director, stated in the memorandum presenting the recommendations that "[w]e believe the recommendations reflect the relative value of the jobs within the Department of Health and Human Resources and provide a better career track to more effectively recruit, reward and retain quality employees for the Bureau."

8. Susan Shelton Perry became Commissioner of BCSE in March 2001. In about May 2001, she received Personnel's recommendation that new classifications be created for BCSE employees. In a memorandum to Commissioner Perry, Mr. Basford noted that the classification specifications were in draft form, and that it was important that Commissioner Perry and her staff review them carefully and offer suggestions. Commissioner Perry then put together a task team comprised of

employees of BCSE to look at the recommendation and all the classifications in BCSE. The task team made additional recommendations which she and other BCSE managers reviewed.

9. When BCSE submitted its budget for the fiscal year beginning July 1, 2002, it included money to implement all the classification changes recommended by Personnel. It was estimated that all the changes would cost $2,730,919, approximately two-thirds of which would be federally funded, leaving a balance of $928,512 to be funded by HHR. This request for funding was denied by HHR Secretary Paul L. Nusbaum. Ms. Shelton was told there was no money to fund the recommended classification changes. This year BCSE's budget is to be decreased by 10%.

10. Personnel has not moved forward with its recommendation to create new classification specifications for BCSE personnel, because it has not received HHR's approval to do so.

11. Most of the Grievants' salaries are already above the minimum level for a pay grade 10. The cost to increase Grievants' salaries, and those of other Accounting Technician 3's in the Financial Services Unit, to the minimum level in pay grade 10 would be less than $19,224 (See footnote 2) per year, approximately two-thirds of which would be funded by federal funds, leaving a balance of less than $6,408 to be picked up by HHR. This amount does not include benefits, or the employer's share of payroll taxes.

12. The Financial Services Unit has five or six vacancies, three of which have been loaned to other units temporarily.

DISCUSSION

This Board has previously held that in the state classification system:

> It is within the jurisdiction of the Grievance Board to determine whether a classification should have been created that would more closely fit the duties and responsibilities of a grievant. Pridemore v. West Va. Bureau of Employ. Programs, Docket No. 92-BEP-435 (Aug. 17, 1993). Compare AFSCME v. Civil Service Comm'n of W.Va., 380 S.E.2d 43 (W.Va. 1989). The standard under which such a case should be decided is whether the Division of Personnel abused its broad discretion in not creating an additional classification.

Nida v. W. Va. Dep't of Health and Human Resources, Docket No. 93-HHR-240 (Aug. 20, 1993). This analysis was reaffirmed in Travis, et al., v. West Virginia Department of Health and Human Resources, Docket No. 95-HHR-359 (March 24, 1997), Blake, et al., v. WestVirginia Department of Health and Human Resources, Docket No. 95-HHR-043 (April 30, 1996), and Johnston v. West Virginia Department of Health and Human Resources, Docket No. 94-HHR-206 (June 15, 1995).

An agency which has acted in an arbitrary and capricious manner has abused its discretion. "In applying the 'arbitrary and capricious' standard, a reviewing body applies a narrow scope of review, limited to determining whether relevant factors were considered in reaching that decision and whether there has been a clear error of judgment. Bowman Transp. v. Arkansas-Best Freight System, 419 U.S. 281, 285 (1974); Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276 (1982). Moreover, a decision of less than ideal clarity may be upheld if the agency's path in reaching that conclusion may reasonably be discerned. Bowman, supra, at 286." Hill and Cyrus v. Kanawha County Bd. of Educ., Docket No. 96-20-362 (Jan. 30, 1997). "Generally, an action is considered arbitrary and capricious if the agency 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 was so implausible that it cannot be ascribed to a difference of opinion. 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)." Trimboli v. Dep't of Health and Human Resources, Docket No. 93-HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. State ex rel. Eads v. Duncil, 196 W. Va. 604, 474 S.E.2d 534 (1996).

In this case, Grievants have demonstrated that Personnel has proposed a new classification for them, which is in a pay grade three levels above their current classification. Mr. Basford stated that the recommendation that the Accounting Technician 3's in BCSE be reclassified to Child Support Technician 3, pay grade 10, remains his recommendation today. He testified that the recommendation that the classification proposed for Grievants be placed in a pay grade 10 was based upon a salary survey whichdetermined the market pricing for that particular job. The reason put forth by Respondents for not presenting this proposal to the State Personnel Board is that HHR has chosen not to fund the pay raises associated with the classification changes, because of budgetary constraints.

Grievants argued that Personnel's deference to HHR is not supported by the applicable statutory provisions or regulations. They pointed out that Personnel is responsible for maintaining the classification and compensation plan for all state classified employees, and that it does not need HHR's approval to implement classification changes. Personnel is only required to consult HHR prior to implementation of classification changes, which it has done. Grievants noted that HHR has shown

no indication that it is willing to fund the necessary salary increases to implement the classification changes at any point in the future, and that HHR presented no witnesses to support the assertion that it could not fund the increases.

HHR noted that Personnel had not received “approval” from HHR Secretary Nusbaum to proceed with the classification changes, and that an agency must certify that funds are available to make classification changes before Personnel can implement them. HHR argued that if it does not have the funds available to meet the salary increases incident to a classification change, the changes cannot be implemented.

Personnel argued the relief Grievants seek is not available because the classification they seek is not available. As noted above, this Grievance Board has previously determined that it has jurisdiction to determine that Personnel should have created a classification for a grievant, if the grievant proves the failure to do so is an abuse of discretion. Personnel further argued it is required to have an agreement from the appointing authority of the agency before it can change the classification plan, and that the agency must provide fiscal verification that it can financially support a change in the classification plan prior to its implementation. W. Va. Code § 29-6-10 authorizes Personnel to establish and maintain a position classification plan for all positions in the classified service. State agencies, such as HHR, which utilize such positions must adhere to that plan in making assignments to their employees. Toney v. W. Va. Dep't of Health & Human Resources, Docket No. 93-HHR- 460 (June 17, 1994). W. Va. Code § 29-6-10 provides, in pertinent part:

> The board shall have the authority to promulgate, amend or repeal rules, according to chapter twenty-nine-a [§§ 29A-1-1 et seq.] of this code, to implement the provisions of this article:
>
> (1) For the preparation, maintenance and revision of a position classification plan for all positions in the classified service and a position classification plan for all positions in the classified-exempt service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class. Except for persons employed by the governing boards of higher education, all persons receiving compensation as a wage or salary, funded either in part or in whole by the state, are included in either the position classification plan for classified service or classified-exempt service. After each such classification plan has been approved by the board, the director shall allocate the position of every employee in the classified service to one of the classes in the classified plan and the position of every employee in the classified-exempt service to one of the positions in the classified-exempt plan. Any employee affected by the allocation of a position to a class shall, after filing with the director of personnel a written request for reconsideration thereof in such manner and form as the director may prescribe, be given a reasonable

> opportunity to be heard thereon by the director. The interested appointing authority shall be given like opportunity to be heard.

> (2) For a pay plan for all employees in the classified service, after consultation with appointing authorities and the state fiscal officers, and after a public hearing held by the board. Such pay plan shall become effective only after it has been approved by the governor after submission to him by the board. Amendments to the pay plan may be made in the same manner. Each employee shall be paid at one of the rates set forth in the pay plan for the class of position in which he is employed. The principle of equal pay for equal work in the several agencies of the state government shall be followed in the pay plan as established hereby.

Pursuant to the authority granted in Code § 29-6-10, Personnel has developed Rules governing the preparation of the classification and pay plans. Rule 4.1, entitled Preparation of Plans, states:

> The [State Personnel] Board, after conferring with the appointing authorities concerned, shall formally adopt and make effective a comprehensiveclassification plan for all positions in the classified and the classified-exempt service. The plan shall be based on an investigation and analysis of the duties and responsibilities of each position, and each position shall be allocated by the Director of Personnel, after consultation with the appointing authority concerned, to its proper class in the classification plan. When complete, the classification plan shall include for each class of positions an appropriate title, a description of the duties and responsibilities, and the minimum requirements of training, experience, and other qualifications.

Rule 4.2, entitled Revision of Plans, provides:

> The Board may abolish or change existing classes of positions, or may add new classes in the same manner as the classification plans were originally adopted.

Rule 4.6, entitled Reclassification, provides:

> (a) Upon its own initiative, or at the request of an appointing authority, the Board may reclassify positions by the creation or abolishment of classes, or the revision of the definition of the work of the classes brought about by changing work methods, new technology or reorganization.

Also of relevance are the Rules regarding the compensation plan and salary administration. Rule 5 provides in this regard as follows:

> Pursuant to the provisions of the W.Va. Code §29-6-10(2), the following salary regulations in this section apply to classified employees .

5.1. Purpose and Intent - To attract qualified employees and retain them in the classified service, the Board shall endeavor to provide through the pay plan adequate compensation based on the principles of equal pay for equal work among the various agencies and on comparability to pay rates established in other public and private agencies and businesses.

5.2. Preparation of the Plan - After consultation with the appointing authorities and State fiscal officers and after a public hearing, the Director and the Board shall prepare and submit to the Governor for his or her approval any revision of the pay plan. The pay plan shall include salary schedules containing multiple pay grades with minimum and maximum rates of pay for each grade and a plan of implementation. The Board may make periodic amendments to the pay plan in the same manner.

5.3. Adoption of the Plan - The plan becomes effective only after it has been approved by the Governor. The approved pay plan constitutes the official schedule of salaries for the classified service.

5.4. Implementation of Plan

(a) Assignment of Classes - The Board shall assign each class of positions to an appropriate pay grade consistent with the duties outlined in the class specification. No salary shall be approved by the Director ofPersonnel unless it conforms to one of the pay rates in the pay grade assigned to the employee's class of position.

. . .

(e) Availability of Funds - Before an agency makes salary adjustments and advancements in accordance with this rule, its fiscal officer shall certify that funds for this purpose are available.

(f) Salary Adjustments

1. New Plan

a. Upon adoption of a new pay plan the Board shall require and may approve or modify a plan of application which assures as nearly as possible that all incumbents in the classified service receive equal treatment in terms of pay.

b. An incumbent whose salary falls below the minimum rate of the new range shall have his or her salary adjusted to the new minimum.

c. An incumbent whose salary falls above the maximum rate of the new range shall maintain his or her current salary and is ineligible for salary advancements.

2. Pay on Reclassification

a. Higher minimum

1. When a class is reassigned by the Board to a salary range having a higher minimum, the salaries of those incumbents below the new minimum shall be adjusted to the new minimum.

2. Where the salary of the incumbent coincides with a pay rate in the new range, the salary shall remain unchanged.

Mr. Basford testified that Personnel had done nothing to implement its recommendations for changes in BCSE classifications, because HHR's appointing authority, Secretary Nusbaum, has not signed off on the recommendation. He stated that Personnel cannot go forward on its own with a recommendation that a new classification be developed, without the approval of the affected agency's appointing authority. He also stated Personnel has to have certification that funds are available before anything can happen in terms of making changes to the classification plan.

It is well established that a government agency's determination regarding matters within its expertise is entitled to substantial weight. Princeton Community Hosp. v. State Health Planning & Dev. Agency, 174 W. Va. 558, 328 S.E.2d 164 (1985). See W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681 (1993); Security Nat'l Bank v. W. Va. Bancorp, 166 W. Va. 775, 277 S.E.2d 613 (1981).

> Additionally, where the plain language of a policy does not compel a different result, deference must be extended to the agency in interpreting its own policies. See Dyer v. Lincoln County Bd. of Educ., Docket No. 95-22-494 (June 28, 1996). Where the language in a policy is either ambiguous or susceptible to varying interpretations, this Grievance Board will give reasonable deference to the agency's interpretation of its own policy. See Dyer, supra; Edwards v. W. Va. Parkways Dev. and Tourism Auth., Docket No. 97-PEDTA- 420 (May 7, 1998). See generally Blankenship, supra; Princeton Community Hosp. v. State Health Planning & Dev. Agency, 174 W. Va. 558, 328 S.E.2d 164 (1985); Jones v. Bd. of Trustees, Docket No. 94-MBOT-978 (Feb. 29, 1996); Foss v. Concord College, Docket No. 91-BOD-351 (Feb. 19, 1993).

Jones v. W. Va. Dep't of Educ., Docket No. 00-DOE-108 (May 23, 2000). Thus, the Division of Personnel's interpretation of the above cited rules is entitled to deference, unless it is contrary to the plain meaning of the language, is inherently unreasonable, or is arbitrary and capricious. Dyer, supra.

Despite Mr. Basford's view of the applicable procedures, nothing in the plain language of W. Va. Code § 29-6-10 or Personnel's Rules requires the approval of an affected agency's appointing authority before a recommendation that a new classification be created is presented to the State Personnel Board for its approval. The Rules state that Personnel must consult with the appointing authority. The words consult and approval are not synonymous. Consultation means communicating Personnel's recommendation to the agency, getting the agency's thoughts on the recommendation, and giving them due consideration before making a final determination. It does not mean that Personnel must accept the agency's views, or that Personnel cannot move forward with developing a new classification if the agency does not agree with Personnel's recommendation. Thus, while Personnel may choose to delay a recommendation which would result in a higher pay grade for several employees when an agency cannot afford such a change, Personnel does not need the agency's approval. Likewise when Rule 5.4(e) states that the fiscal officer must certify that funds are available before an agency makes salary adjustments and advances, this does not mean that Personnel cannot present its proposal for a new classification to the State Personnel Board until it receives such a certification. It says the certification must occur before the agency makes salary adjustments and advances, not before Personnel makes classification changes.

Personnel's stated reason for not going forward with its recommendation that a new classification be created for Grievants is that it must have the approval of HHR's appointing authority. The undersigned concludes that Personnel is mistaken as to this requirement. A decision which is based upon a mistaken belief as to the law is arbitrary and capricious. Blankenship v. Logan County Bd. of Educ., Docket No. 95-23-314 (Dec. 29, 1995). Grievants have met their burden of proving that

Personnel's refusal to move forward to create a new classification for Grievants, Child Support Technician 3, in a pay grade 10, is arbitrary and capricious.

Further, it is clear Personnel's classification study revealed that Grievants are not being paid for the full value of their services. HHR is receiving the benefits of Grievants' services, but is unwilling to pay Grievants the value of the services received. “When one party is given the rewards, without the costs, of another party's efforts, unjust enrichment results. Metzner v. Metzner, 191 W. Va. 378, 446 S.E.2d 165 (1994).” Akers v. Dep't of Health and Human Resources, Docket No. 99-HHR-302 (Dec. 30, 1999). While there is no doubt that money is tight at HHR, it is not fair for HHR to continue to receive the benefits of Grievants' work without paying for the full value of these services.

Finally, the undersigned is not convinced that HHR cannot afford to fund the change in Grievants' classification and pay grade, the cost of which is less than $10,000. Certainly this cost could be made up by eliminating one of the vacancies in the Financial Services Unit. No evidence was presented that changing Grievants' classification and pay gradewould have any particular impact on other classifications within BCSE, and the other classification and pay grade changes recommended by Personnel are not before the undersigned.

Grievants have demonstrated that a new classification should be created for the Accounting Technician 3's in the Financial Services Unit of BCSE: Child Support Technician 3, pay grade 10; and that those Grievants who are still Accounting Technician 3's should be placed in this new classification. While Grievants have requested backpay, Grievants presented no evidence on the cost of this relief, and their focus in their effort to demonstrate that HHR could in fact afford to fund this change was on what it would now cost to place them in the new classification. Accordingly, no backpay will be awarded.

The following Conclusions of Law support the decision reached.

CONCLUSIONS OF LAW

1. This Grievance Board has previously held that in the state classification system:

> It is within the jurisdiction of the Grievance Board to determine whether a classification should have been created that would more closely fit the duties and responsibilities of a grievant. Pridemore v. West Va. Bureau of Employ. Programs, Docket No. 92-BEP-435 (Aug. 17, 1993). Compare AFSCME v. Civil Service Comm'n of W.Va., 380 S.E.2d 43 (W.Va. 1989). The standard under which such a case should be decided is whether the Division of Personnel abused its broad discretion in not creating an additional classification.

Nida v. W. Va. Dep't of Health and Human Resources, Docket No. 93-HHR-240 (Aug. 20, 1993). This analysis was reaffirmed in Travis, et al., v. West Virginia Department of Health and Human Resources, Docket No. 95-HHR-359 (March 24, 1997), Blake, et al., v. West Virginia Department of Health and Human Resources, Docket No. 95-HHR-043 (April 30, 1996), and Johnston v. West Virginia Department of Health and Human Resources, Docket No. 94-HHR-206 (June 15, 1995).

2. An agency which has acted in an arbitrary and capricious manner has abused its discretion. "In applying the 'arbitrary and capricious' standard, a reviewing body appliesa narrow scope of review, limited to determining whether relevant factors were considered in reaching that decision and whether there has been a clear error of judgment. Bowman Transp. v. Arkansas-Best Freight System, 419 U.S. 281, 285 (1974); Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276 (1982). Moreover, a decision of less than ideal clarity may be upheld if the agency's path in reaching that conclusion may reasonably be discerned. Bowman, supra, at 286." Hill and Cyrus v. Kanawha County Bd. of Educ., Docket No. 96-20-362 (Jan. 30, 1997). "Generally, an action is considered arbitrary and capricious if the agency 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 was so implausible that it cannot be ascribed to a difference of opinion. 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)." Trimboli v. Dep't of Health and Human Resources, Docket No. 93-HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. State ex rel. Eads v. Duncil, 196 W. Va. 604, 474 S.E.2d 534 (1996).

3. “It is well established that a government agency's determination regarding matters within its expertise is entitled to substantial weight. Princeton Community Hosp. v. State Health Planning & Dev. Agency, 174 W. Va. 558, 328 S.E.2d 164 (1985). See W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681 (1993); Security Nat'l Bank v. W. Va. Bancorp, 166 W. Va. 775, 277 S.E.2d 613 (1981). Additionally, where the plain language of a policy does not compel a different result, deference must be extended to the agency in interpreting its own policies. See Dyer v. Lincoln County Bd. of Educ., Docket No. 95-22-494 (June 28, 1996). Where the language in a policy is either ambiguous or susceptible to varying interpretations, this Grievance Board will give reasonable

deference to the agency's interpretation of its own policy. See Dyer, supra; Edwards v. W. Va. Parkways Dev. and Tourism Auth., Docket No. 97-PEDTA- 420 (May7, 1998). See generally Blankenship, supra; Princeton Community Hosp. v. State Health Planning & Dev. Agency, 174 W. Va. 558, 328 S.E.2d 164 (1985); Jones v. Bd. of Trustees, Docket No. 94-MBOT-978 (Feb. 29, 1996); Foss v. Concord College, Docket No. 91-BOD-351 (Feb. 19, 1993)." Jones v. W. Va. Dep't of Educ., Docket No. 00-DOE-108 (May 23, 2000). Thus, the Division of Personnel's interpretation of its rules is entitled to deference, unless it is contrary to the plain meaning of the language, is inherently unreasonable, or is arbitrary and capricious. Dyer, supra.

4. Neither W. Va. Code § 29-6-10 nor Personnel's Rules applicable to the development and implementation of its classification and compensation plan require the approval of an affected agency before Personnel can move forward with implementation of a new classification. Personnel is only required to consult with the affected agency.

5. A decision which is based upon a mistaken belief as to the law is arbitrary and capricious. Blankenship v. Logan County Bd. of Educ., Docket No. 95-23-314 (Dec. 29, 1995).

6. Grievants have met their burden of proving that Personnel's refusal to move forward to create a new classification for Grievants, Child Support Technician 3, in a pay grade 10, is arbitrary and capricious.

7. Grievants have demonstrated that a new classification should be created for the Accounting Technician 3's in the Financial Services Unit of BCSE: Child Support Technician 3, pay grade 10; and that HHR can afford to fund this change.

Accordingly, this grievance is **GRANTED**. Personnel is **ORDERED** to create a Child Support Technician 3 classification in a pay grade 10, effective immediately. HHR is **ORDERED** to place those Grievants who are currently classified as Accounting Technician 3's, and are employed in the Financial Services Unit of BCSE, in that classification effective immediately, and to increase the salaries of those Grievants whose salaries are below theminimum level for a pay grade 10, to the minimum level for a pay grade 10. No backpay is awarded.

Any party may appeal this Decision to the circuit court of the county in which the grievance arose, or the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. W. Va. Code § 29-6A-7 (1998). 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

BRENDA L. GOULD

Administrative Law Judge

Dated: April 8, 2003

Footnote: 1

This grievance was filed on February 13, 2002, by Nancy Skiles, Mary Young, Linda Neal, Rita Straight, Kathy Garretson, Arrietta Burgess, Jacqueline Jones, Betty Carter, Carolyn Wilcoxen, Rosemary Catersino, Angela Rollyson, Rita Ball, Christy Allen, Toni Lokey, Valerie Pack, Betty Raines, Patricia McCallister, Terry Burford, Christine Gillespie, Chau Tran, Shanetta McBrayer, and Nona Guevara. Grievants' supervisor responded on July 25, 2002, that the grievance was denied, as she was unable to grant any relief at Level I. Grievants appealed to Level II, where the grievance was denied on August 1, 2002, as the second level supervisor had no authority to grant the relief requested. Grievants appealed to Level III, where the Division of Personnel was joined as a party. A Level III hearing was held on April 4, 2002, and the grievance was denied at Level III on April 11, 2002. Grievants appealed to Level IV on April 18, 2002, where Rhoda Hughes was added as a Grievant. Two days of hearing were held at Level IV hearing on August 20, 2002, and February 7, 2003. Except for Kathy Garretson, Grievants were represented by Brent Wolfingbarger, Ms. Garretson apparently represented herself, although she did not appear at the Level IV hearing, HHR was represented by B. Allen Campbell, Esquire, and Personnel was represented by Robert D. Williams, Esquire, and Karen O'SullivanThornton, Esquire. This matter became mature for decision upon receipt of the parties' written arguments on March 17, 2003.

Footnote: 2

Grievants prepared an exhibit which showed how this cost was calculated. Grievant Light testified that after this exhibit was prepared, Grievants had received an $804 salary increase. It appears that this would decrease the salary cost for the proposed change in pay grade to $11,484, $3,838 of which would be picked up by HHR.