BRENDA DELAUDER, et al.,

Grievants,

v. DOCKET NO. 01-HHR-152

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 (See footnote 1) are employed throughout the State of West Virginia by the Department of Health and Human Resources/Bureau for Child Support Enforcement ("DHHR"), and contest their classifications as Child Advocate Legal Assistants, pay grade 10, and Child Advocate Team Leaders, pay grade 13. Numerous grievances were consolidated for hearing at level four. At the level four hearing, the undersigned denied Respondents' motion to sever the grievances of the Child Advocate Team Leaders from those filed by the Child Advocate Legal Assistants. The grievances were denied at the lower levels of the grievance process, and proceeded to level four, where a hearing was conducted on September 23, October 27, and October 30, 2003. This matter became mature for decision on January 9, 2004, the deadline for the last of the parties' post-hearing written submissions. A substantial number of Grievants were represented by William D. Turner,Crandall, Pyles, Haviland & Turner, Esq.; the Raleigh County Grievants were represented by Sherry Tyree and Carol Bradley; the Region 9 Grievants were represented by Sonja Davis; DHHR was represented by Robert Miller, Esq., Assistant Attorney General; and the Division of Personnel ("DOP") was represented by Karen O'Sullivan Thornton, Esq., Assistant Attorney General.

SUMMARY OF EVIDENCE

Level Three Grievants' Exhibits

Ex. A - Outline of Field Legal Assistant Duties and Job Responsibilities.

Ex. B - Organization Flow Chart.

Ex. C - Legal Forms Most Frequently Used by the Child Advocate Legal Assistant (CALA).

Ex. D - Health and Human Resources Specialist classification specifications and responses from Grievants.

Level Four Represented Grievants' Exhibits

Ex. 1 -

April 3, 1996 memorandum from Mike McCabe to Lowell D. Basford.

Ex. 2 -

July 26, 1996 memorandum from Lowell D. Basford to Mike McCabe.

Ex. 3 -

February 26, 1999 memorandum from Karen Basham, Saundra Daugherty, Donna Fields, Jackie Page, and Sharon Skull to Sue A. Grimes.

Ex. 4 -

March 5, 1999 memorandum from Sue A. Grimes to Sallie H. Hunt.

Ex. 5 -

May 26, 1999 memorandum from Robert T. Deitz to Whom It May Concern.

Ex. 6 -

May 27, 1999 memorandum from Sue A. Grimes to Michael F. McCabe.

Ex. 7 -

September 1, 1999 memorandum from Lowell D. Basford to Michael F. McCabe.

Ex. 8 -

November 29, 1999 memorandum from Lowell D. Basford to Lena S. Hill.

Ex. 9 -

Position Description Form for Sharon Skull Daugherty.

Ex. 10 - February 23, 2001 memorandum from Robert T. Deitz to Sue A. Grimes.

Ex. 11 - Not admitted (sealed).

Ex. 12 - December 6,1999 memorandum from Lena S. Hill to Lowell D. Basford.

Ex. 13 - April 17, 2000 memorandum from Lena S. Hill to Virginia Tucker.

Ex. 14 - January 24, 2001 memorandum from Lowell D. Basford to Virginia Tucker.

Ex. 15 - Customer Service Unit Calls from 6/1/2003 through 8/8/2003.

Ex. 16 - Child Advocate Team Leader classification specification.

Ex. 17 - Child Support Supervisor I classification specification.

Ex. 18 - Child Support Supervisor II classification specification.

Ex. 19 - Health and Human Resources Specialist, Senior classification specification.

Ex. 20 - July 16, 2003 email from Susan Perry to multiple recipients.Ex. 21 - Webpage for DHHR Bureau for Child Support Enforcement.

Ex. 22 -

July 17, 2003 letter from Susan Shelton Perry to Brenda DeLauder with attachments.

Ex. 23 -

February 8, 2000 Order from Level Three Grievance Evaluator in level three grievance of Sharon Skull.

Ex. 24 - Position Description Form, Child Advocate Legal Assistant Classification.

Ex. 25 -

July 12, 2000 memorandum from Lowell D. Basford to Jo Ellen Holtzworth, with attachments.

Ex. 26 - July 17, 2003 Minutes of the State Personnel Board.

Ex. 27 - Child Support Specialist 1 classification specification.

Ex. 28 - Child Support Specialist 2 classification specification.

Ex. 29 - Child Support Specialist 3 classification specification.

Level Four Grievant Davis Exhibits

Ex. 1 -

Child Support Specialist 2 classification specification.

Ex. 2 -

Health and Human Resources Specialist classification specification.

Ex. 3 -

July 30, 2003 email from DHHR Information to DHHR multiple recipients.

Ex. 4 -

March, June, July 2003 receivables reports.

Level Four Grievant Bradley Exhibits

Ex. 1 -

Customer Service Unit Requests/Referrals.

Level Four DHHR Exhibits

Ex. 1 -

July 21, 2003 letter from Nichelle D. Perkins to Paul L. Nusbaum.

Ex. 2 -

Chart summary of grievants per county.

Ex. 3 -

Bureau for Child Support Enforcement organization chart, effective March 1, 2001.

Ex. 4 -

DHHR and Bureau for Child Support Enforcement organization charts, effective September 1, 2003.

Ex. 5 -

Customer Service in Self-Assessment (October 1, 2001 to September 30, 2002).

Ex. 6 -

March 26, 2003 memorandum from Shirley Kitchen to Betty Justice.

Ex. 7 -

September 22, 1999 memorandum from Lena S. Hill to Lowell D. Basford.

Ex. 8 -

December 6, 1999 memorandum from Lena S. Hill to Lowell D. Basford.

Ex. 9 -

Customer Service Unit calls from March 1, 2001 to August 31, 2003.

Ex. 10 - December 16, 1997 memorandum from Betty Justice to Sue Grimes.

Level Four DOP Exhibits

Ex. 1 -

Child Advocate Legal Assistant classification specification.

Ex. 2 -

June 4, 2001 posting for Health and Human Resources Specialist.

Ex. 3 -

March 28, 2002 posting for Health and Human Resources Specialist.Ex. 4 - Position Description form for Melinda Ellen Bender.

Ex. 5 -

November 24, 1997 memorandum from Sue Smith to Tim Basford with attached Position Description form.

Ex. 6 -

Position Description Form for Kenneth Flippin.

Ex. 7 -

Position Description Form for Natalie Ann Barton.

Ex. 8 -

January 18, 2002 posting for Health and Human Resources Specialist.

Ex. 9 -

May 24, 2002 posting for Health and Human Resources Specialist.

Ex. 10 - September 1996 posting for Health and Human Resources Specialist.

Testimony (LIII and LIV)

Grievants presented the testimony of Stacy Floyd, Lori Jones, Beverly Kitchen, Frances Shaffer-Hughes, Sandra Tierney, Jeannie Lee, Timothy Salmons, Susan McComas, Darlene Cremeans, Brenda DeLauder, Charlene Litteral, Sonja Davis, Aline Workman, Charlotte Stalnaker, Larry Lefevre, John Longfellow, and Shirley Kitchen. DHHR presented the testimony of Susan Shelton Perry, Michelle Malatt, and Charles Burgoyne. DOP presented the testimony of Lowell D. Basford.

Based upon a review of the testimony and evidence in its entirety, I find the following material facts have been proven by a preponderance of the evidence.

FINDINGS OF FACT

1. Grievants are, or at the time this grievance was filed were, employed by HHR as Child Advocate Legal Assistants, pay grade 10 (“CALA”), and Child Advocate Team Leaders, pay grade 13 (“CATL”), in the Bureau for Child Support Enforcement (“BCSE”).

2. Since as far back as 1996, Lowell D. Basford, DOP's Assistant Director of Classification and Compensation, has advocated that the CALA's work is at least as (if not more) complex and difficult as other, higher-paid classifications in BCSE (such as the OSCAR unit), and that the CALA classification should be amended to Child Support Specialist (which ultimately was done in 2003).

3. BCSE maintains a Customer Service Unit in its central office location in Charleston, West Virginia (“CSU”). The idea behind the CSU is to have a first and last stop for customer inquiries, as well as a central “voice” of the Governor when Congressionalmembers make inquiries on behalf of their constituents. The goal was to enhance the role of CSU employees so they would be able to field inquiries themselves, rather than have to refer inquiries to the field offices.

4. Employees in CSU were originally classified as CALA's and CATL's.

5. In early 2000, employees in the CSU who had been classified as CALA's were reclassified to Health & Human Resources Specialists (“HHRS”). Mid-level supervisors in the CSU were reclassified as Health & Human Resources Specialist Seniors (HHRSS”) at the same time. OSCAR unit

employees had previously been reclassified as HHRS's. This grievance was filed in the wake of the reclassifications in the CSU in 2000.

6. 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 DOP of the Child Advocate Legal Assistant classification. This request was forwarded to DOP.

7. DOP suggested to DHHR that all classifications in BCSE be reviewed, and this suggestion was accepted.

8. DOP 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 other positions in the HHR Specialist class series, the Supervisor class series, and the Accounting Technician class series.

9. On January 24, 2001, DOP recommended that new classifications be approved for the positions of Child Advocate Legal Assistant, pay grade 10, and ChildAdvocate Team Leader, pay grade 13. Specifically, DOP recommended that the CALA's be reclassified and paid as follows:

Child Support Specialist I Pay Grade 11

Child Support Specialist II Pay Grade 12

Child Support Specialist III

Pay Grade 13

DOP also recommended that the CATL's be reclassified and paid as follows:

Child Support Supervisor I Pay Grade 13

Child Support Supervisor II Pay Grade 15.

The pay grade recommendations were based on market pricing. DOP conducted a salary survey to try to determine the market for these jobs.

10. DOP also recommended that other new classifications be created in BCSE. DOP 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.

11. Mr. Basford stated in the memorandum presenting the recommendation 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.” G. Ex. 14.

12. The study phase of the BCSE reclassification was completed by May, 2001. Consultations between DOP and HHR/BCSE relating to the study likewise were completed by that point.

13. Susan Shelton Perry became Commissioner of BCSE in March, 2001. In or about May of 2001, she received DOP's recommendation that new classifications becreated for BCSE employees, including the CALA's and CALT's. In a memorandum to Commissioner Perry, Mr. Basford noted the classification specifications were in draft form, and that Commissioner Perry and her staff should review them carefully and offer suggestions. Commissioner Perry 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.

14. BCSE submitted a budget for the 2002-2003 fiscal year that included money to implement all the classification changes recommended by DOP. This request for funding was denied by HHR Secretary Paul L. Nusbaum.

15. During the 2003-2004 fiscal year, BCSE implemented a “partial reclassification plan” affecting the classifications of a majority of BCSE employees. Effective September 1, 2003, Grievants' classifications were revised in conformity with DOP's recommendations outlined in the foregoing Findings of Fact.

16. The CALA Grievants were reclassified to Child Support Specialist II or IIIs, and the CATL Grievants were reclassified to Child Support Supervisor I or IIs.

17. From 2001 to September of 2003, DOP had not moved forward with its recommendation to create new classification specifications for the CALA's and CATL's, because HHR Secretary Nusbaum had not signed off on the recommendations, nor had a certificate been prepared for the State Personnel Board that HHR had the necessary funds available to implement the classification changes.

18. Had it opted to do so, DOP could have moved forward with its recommendation to create and implement new classification specifications for BCSE before September,
2003. 19. Grievants are employed in BCSE Field Offices throughout the State. They are

responsible for assisting customers in all aspects of child support collection and enforcement activities. They interview customers, handle complaints, prepare all legal documentation necessary for the collection of child support, appear in court, prepare and execute liens, prepare and execute garnishments, do legal research, prepare their attorneys for court hearings, and any and all other duties associated with efforts to collect child support payments. Grievants' jobs are complex, involve large case loads, and require a broad knowledge of legal and administrative rules and regulations, as well as financial skills.

20. When CSU was set up, it was originally intended to be the front-line communication center for customers calling about child support and other related matters. Part of the goal of CSU was to have employees with sufficient skills and knowledge to be able to field those calls, thereby freeing up the Field Offices from having to answer telephone inquiries. In addition, CSU was intended to handle all correspondence from the Governor's office, in response to inquiries made by congressional members on behalf of their constituents.

21. CSU employees were originally CALA's and CALT's. CSU has experienced recruitment and retention problems, and as the focus became greater on expanding the role of CSU, it was decided it was necessary to change those classifications. Therefore, the classifications were changed to HHRS's and HHRSS's, with higher pay grades.

22. Despite the intended goals of CSU, it has not realized its full potential, and employees of the unit are not doing anything more or different than they were when classified as CALA's and CATL's. DISCUSSION

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Howell v. W. Va. Dept. of Health & Human Resources, Docket No. 89-DHS-72 (Nov. 29, 1990). See W. Va. Code § 29-6A-6. Grievants rely on three bases of liability in this matter. First, Grievants contend they were misclassified as CALA's and CATL's, and should have been classified (prior to implementation of the reclassification plan), as HHRS's and HHRSS's, respectively. Alternatively, Grievants contend that, if they were not misclassified, *per se*, DOP's refusal, for some 2-1/2 years, to move forward with new classifications and pay grades, was arbitrary and capricious. Third, Grievants allege that HHR's treatment of them, in terms of the CALA and CATL classifications and pay grades, resulted from favoritism and/or

discrimination.

DOP and DHHR deny that Grievants were ever misclassified as CALA's and CATL's. Further, they deny that DOP could have unilaterally moved forward on the reclassification plan for BCSE employees without Secretary Nusbaum's approval, and without the certification of funding. Finally, Respondents' deny Grievants' were the victims of favoritism and/or discrimination with respect to their classifications and pay grades.

Grievants allege they were misclassified as CALA's and CATL's, even before the September 1, 2003, “partial reclassification” took place, and are entitled to back pay for the period they worked out of classification. Grievants contend they should have been classified as HHRS's and HHRSS's, respectively, and compare the work they perform withthat performed by the CSU employees who were at one time CALA's and CATL's, but later reclassified to HHRS's and HHRSS's.

in order for Grievants to prevail upon a claim of misclassification, they must prove by a preponderance of the evidence that their duties for the relevant period more closely match another cited Personnel classification specification than the one under which they are currently assigned. See generally, Hayes v. W. Va. Dept. of Natural Resources, Docket No. NR-88-038 (Mar. 28, 1989). Personnel specifications are to be read in "pyramid fashion," i.e., from top to bottom, with the different sections to be considered as going from the more general/more critical to the more specific/less critical, Captain v. W. Va. Div. of Health, Docket No. 90-H-471 (Apr. 4, 1991); for these purposes, the "Nature of Work" section of a classification specification is its most critical section. Atchison v. W. Va. Div. of Health, Docket No. 90-H-444 (Apr. 22, 1991). See generally, Dollison v. W. Va. Dept. of Employment Security, Docket No. 89-ES-101 (Nov. 3, 1989). The key to the analysis is to ascertain whether the Grievants' current classification constitutes the "best fit" for their required duties. Simmons v. W. Va. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of the position in question are class-controlling. Broaddus v. W. Va. Div. of Human Serv., Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). Finally, Personnel's interpretation and explanation of the classification specifications at issue should be given great weight unless clearly erroneous. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681, 687 (W. Va. 1993).

Under the forgoing legal analysis, the West Virginia Supreme Court of Appeals' holding in Blankenship presents employees contesting their current classification with asubstantial obstacle to

overcome in attempting to establish that they are currently misclassified. Further DOP Rule 4.4 states:

The Director shall consider the class specification in allocating positions and shall interpret it as follows:

> (a) Class specifications are descriptive only and are not restrictive. The use of a particular expression of duties, qualifications, requirements, or other attributes shall not be held to exclude others not mentioned.
>
> (b) In determining the class to which any position shall be allocated, the specifications for each class shall be considered as a whole. The Director shall give consideration to the general duties, specific tasks, responsibilities required, qualifications and relationships to other classes as affording together a picture of the positions that the class intended to include.
>
> (c) A class specification is a general description of the kinds of work characteristics of positions properly allocated to that class and not as prescribing what the duties of any position are nor as limiting the expressed or implied authority of the appointing authority to prescribe or alter the duties of any position.
>
> (d) The fact that all of the actual tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class.

Bolar, et al. v. Dept. of Health and Human Res., Docket No. 02-HHR-330 (Sept. 30, 2003).

In a case such as this, it is necessary to compare the relevant classification specifications, which are restated below:

CHILD ADVOCATE LEGAL ASSISTANT

Nature of Work

Under general supervision, assists an attorney in the rendition of professional services in connection with the establishment and enforcement of paternity and support.Assists the attorney with research of legal resource material, including reported decisions and opinions, statutes, rules and regulations, with the preparation and drafting of pleadings or other documents, and with the review

and assessment of case files by preparing summaries and reports of pertinent facts, and by compiling information as directed. Develops necessary information to implement methods of child support enforcement. Supports and assists in publicizing the Child Advocate program throughout communities to which assigned, and may assist in delivering services on an as-needed basis in more than one regional office. Performs related work as required.

Examples of Work

Completes applications, explains agency regulations as they relate to provision of services of the Child Advocate Office.

Locates obligors and employers of absent parents by all appropriate means available.

Investigates absent parent resources to determine ability to pay.

Reviews child support cases for the purpose of making referrals to state and federal tax agencies for interception of tax returns for the purpose of offsetting arrearages owed for child support.

Prepares and maintains proper documentation on cases.

Writes abstracts of evidence presented to the Family Law Master or Circuit Court hearings and summaries of information on hearings or claims.

May direct clerical personnel in the typing and preparation of briefs, pleadings, and other documents.

Maintains records of all cases before counsel including briefs submitted, rulings and opinions, and all cases appealed to the Supreme Court of Appeals.

Attends hearings before the Family Law Master, Circuit Court, or the Supreme Court of Appeals, with attorney, to assist as appropriate.

Keeps abreast of changes in agency or departmental laws, rules and regulations as well as state, federal and local laws relating to the area of assignment.

Reviews and assesses case files, under the guidance of an attorney, to assist in determining the legal remedies, if any, appropriate for that case and to assist in preparing the case for legal action.

Compiles such information as may be needed to develop the case, by inquiries and referrals to appropriate agency personnel, interviews, conferences with obligees, obligors, or others, review of public records, or development of other sources.

Prepares summaries and reports of pertinent facts and information.

Utilizes the public records of the Circuit Court, the county commission, and other sources.

Files legal documents at the direction of an attorney, including abstracts of judgments.

Composes routine correspondence.

Knowledge, Skills and Abilities

Knowledge of Child Support Enforcement Program guidelines and procedures and state and federal laws governing the program. Knowledge of the broad principles and application of law, evidence, pleadings, and judicial procedures in West Virginia.

Skill in the preparation of legal documents.

Ability to complete required forms and documents needed to establish and enforce child support.

Ability to maintain financial records and other necessary documentation for resolution of nonsupport cases.

Ability to investigate social and financial background of clients and to locate absent parents.

Ability to perform fundamental mathematical calculations.

Ability to gather and interpret pertinent statutory and regulatory provisions and case law, and present findings in a logical and persuasive written form.

Ability to communicate well with others and to compile and assess information from many sources.

Ability to analyze and organize facts and present such materials in a clear and logical form.

Ability to supervise personnel engaged in clerical duties.

Ability to understand and follow government organizational and operational policies.

CHILD ADVOCATE TEAM LEADER

Nature of Work

Under the general supervision of the Child Advocate Regional Manager supervises the staff and operation of a child advocate regional office. Office staff usually includes paralegal assistants, accounting assistants and office assistants. The purpose of the services provided by the office is to establish paternity and enforce child support. The employee may assist in special projects and initiatives and delivery of services in more than one office. Performs related work as required.

Examples of Work

Organizes available resources and equipment to ensure compliance with state and federal mandates.

Assigns work and provides daily supervision and guidance to the Legal Assistants and support staff within the office.

Assures the timely completion of work.

May assist in formulating policy and procedures in the Child Advocate Office.

Analyzes statistical data to insure compliance with Federal and State deadlines for case processing.

Assesses staff training needs, development and professional growth and reports to the manager.

Trains employees in methods, procedures and policies of the Child Advocate Office. In coordination with the attorney, evaluates employee's work performance as specified by personnel policies.

Assists in conducting research in preparation of case summaries and reports of pertinent fact.

Responds to inquiries from staff and clients regarding CAO policy and procedures.

Interacts with the attorney and manager in planning and reviewing the staff activities and in conducting case staffing conferences.

Plans and conducts unit meetings and individual staff conferences in order to promote staff development and professional growth.

Participates in the interview and employee selection process.

Reviews and assesses case files under the guidance of an attorney to assist in determining the administrative or legal remedies appropriate for that case.

Maintains records, data and furnishes necessary reports to the manager.

Approves attendance reports, leave and travel requests and flex time schedules according to personnel policy.

Establishes procedures for the safeguarding of files and confidential information in accordance with the federal and state mandates and Department policy.

May respond to Level I grievance issues within the mandated time frames.

Monitors and may represent the Child Advocate Office in administrative hearings, including "Fair Hearings" and Tax Offset hearings.

May attend meetings with other team leaders in the region or represent the Child Advocate Office

on local management teams as deemed appropriate by the manager.

May address both private and public organizations or interest groups concerning the services available through the Child Advocate Office as approved by manager.

Learns on-line Child Advocate policy manual and how to navigate OSCAR.

Knowledge, Skills and Abilities

Knowledge of federal and state law relating to the establishing paternity and enforcement child support.

Knowledge of the Department's rules, regulations and policies relating to the provision of child support services.

Ability to supervise, manage and evaluate performance of subordinates.

Ability to exercise tact in dealing with people and rendering assistance to others.

Ability to conduct interviews, communicate clearly both orally and in writing.

Ability to plan and organize work independently and efficiently.

HEALTH AND HUMAN RESOURCES SPECIALIST

Nature of Work

Under general supervision, performs work at the full-performance level by providing development of program, as well as associated policy and procedures based on standards and regulation, administrative oversight of and complex technical assistance with a program or a particular major component of a statewide program, or major technical areaspecific to or characteristic of the Department of Health and Human Resources. Assures compliance with federal, state, and local regulations governing the program or technical area. Uses independent judgement to determine appropriate action taken to achieve desired results. Has responsibility for providing consultation on highly complex individual problem situations. Develops and delivers training programs related to assigned program or component. Monitors and evaluates the operation of the assigned program or program component. Exercises considerable latitude in determining approaches to problem solving. Work may be performed independently and/or in conjunction with other program or technical area staff. Performs related work as required.

Distinguishing Characteristics

The Health and Human Resources Specialist is distinguished from the Health and Human Resources Associate by the responsibility for development and management of a statewide program or operational area or a significant segment of a major statewide program or operational area. This class is distinguished from the Health and Human Resources Specialist, Senior, by the fact that although the Specialist may oversee clerical or support staff in relation to the completion of his/her own work, this class does not function in a regularly assigned lead or supervisory capacity over professional classes as a significant segment of their total assignment nor does he/she have responsibility related to entire programmatic or operational systems.

Examples of Work

Analyzes laws and regulations governing program or technical area and applies them appropriately to resolve problems and assure compliance.

Interprets laws and regulations governing program or technical area for participants and staff.

Monitors changes in laws and regulations and advises participants and other staff.

Confers with inter- and intra-agency personnel to transact business or discuss information.

Collaborates on determining need for changes in procedures, guidelines, and formats; devises resolutions and changes, and monitors success.

Drafts program manuals, clarifying the wording and describing new procedures, etc., accurately.

Represents the program in the area of assignment with the agency and outside entities.

Has contact with federal, state, local program representatives and participants, or technical area personnel.

Completes related reports; may compile special and/or statistical reports, analyzing data and interpreting results.

May oversee the work of support staff or other specialists in relation to the completion of specific assignments.

Knowledge, Skills and Abilities

Knowledge of the rules, regulations, policies, and procedures of the Department of Health and Human Resources.

Knowledge of the federal and state regulations, laws and statutes governing program or technical area.

Knowledge of the objective of the program or technical area, its procedures, policies, and guidelines, and its relationship to the rest of the Department and other user entities.

Ability to analyze situations, problems and information and develop appropriate responses and resolutions.

Ability to communicate well, both orally and in writing.

Ability to represent area of assignment and to provide consultation on program or Department concerns.

Ability to synthesize information and provide interpretation.

HEALTH AND HUMAN RESOURCES SPECIALIST, SENIOR

Nature of Work

Under general supervision, performs work at the advanced level by providing administrative coordination of and complex technical assistance in a component of a major statewide program, a statewide program in its entirety, or a major technical area specific to or characteristic of the Department of Health and Human Resources. Acts as liaison to facilitate problem resolution and assure compliance with federal, state, and local regulations, laws, policies, and procedures governing the program or technical area. Has primary responsibility for developing standards for major systems and for monitoring and/or evaluation of major complex systems or multi program operations. May consult on highly complex individual situations that potentially have significant impact on systems or involve sensitive legal issues. Has responsibility for development and issuance of comprehensive training programs to insure basic competency and continued development of skills, knowledge and abilities relevant to the systems for which she/he are assigned responsibility. Uses independent judgement in determining action taken in both the administrative and operational aspects of the area of assignment. Exercises considerable latitude in varying methods and procedures to achieve desired results. May supervise or act as lead worker for other professional staff. Performs related work as required.

Distinguishing Characteristics

The Health and Human Resources Specialist, Senior, is distinguished from the Health and Human Resources Specialist by the broader scope of administrative oversight and responsibility for planning

and operational aspects of a system of program or technical areas. This level may function in a regularly assigned lead or supervisory capacity over professional, paraprofessional and clerical classes and, if not, must have responsibility for the conceptualization and development of major complex program and/or operational systems.

Examples of Work

Interprets federal and state laws, regulations, and guidelines for staff which provides services; guides others in developing and utilizing plans and recommends methods of improvement.

Effects or recommends operational changes to facilitate efficient and effective accomplishment of goals or delivery of service.Informs director of technical area, program, or service deficiencies and recommends improvements.

Consults with other program or technical area staff, supervisors, or managers concerning projects and priorities.

Develops rules, policies, and legislation regarding specific work projects.

Reads, reviews, and responds to correspondence or distributes to appropriate staff.

Develops research, information, or training programs.

Evaluates program or technical area effectiveness.

Writes, edits, or contributes to policy and procedure manuals.

Has contact with federal, state, local program representatives and officials, Department of Health and Human Resources management and staff, and legislature.

Plans and develops budget requests and short-and-long-range work plans.

May lead or supervise professional and support staff.

Knowledge, Skills and Abilities

Knowledge of the rules, regulations, policies, and procedures of the Department of Health and Human Resources.

Knowledge of the federal and state regulations, laws and statutes governing program or technical area.

Knowledge of the objective of the program or technical area its procedures, policies, and guidelines, and its relation ship to the rest of the Department and other user entities.

Ability to plan and coordinate work, plan and project budgeting needs, and organize work and projects.

Ability to analyze situations, problems and information and develop appropriate responses and resolutions.

Ability to communicate well, both orally and in writing.

Ability to assign, direct, and review the work of others.

The HHRS and HHRSS classification specifications were designed using broad descriptive terms so they could be applied to various jobs within DHHR that do not neatly fit into more specific classification categories of employment. If there were no specific classification specifications written for those employees in the Field Offices performing the child support collection and enforcement work, perhaps the HHRS and HHRSSspecifications would be appropriate. But there can be little doubt that the CALA and CALT classification specifications constitute the “best fit” for Grievants' duties. Those classification specifications set forth in detail the expected tasks to be performed, and there is no doubt Grievants perform all of them. Therefore, Grievants' claims of misclassification must fail.

However, a review of the HHRS and HHRSS classifications as applied to CSU indicates that perhaps the CSU employees are the ones who are misclassified, at least at this time. Clearly DHHR had an intended mission for CSU, but that has not been realized. Testimony from current CSU employees indicates that they see themselves as nothing more than glorified receptionists. They take the calls, answer them if they can, have limited ability to access and/or make changes to the OSCAR system, and often end up consulting with or referring the calls to the Field Offices for handling. Unfortunately for Grievants, even if the employees in CSU are misclassified, the remedy is not reclassify the Grievants, but to correct the CSU classifications.

Part and parcel of Grievants' claims of misclassification is the argument that the work they perform is much more complex, demanding, and stressful than that performed by CSU, and therefore, even if they are properly classified, it is arbitrary and capricious to pay them less than those individuals.

Pursuant to W. Va. Code § 29-6-10(1), the State Personnel Board has been delegated the discretionary authority to promulgate, amend, or appeal legislative rules governing the preparation, maintenance and review of a position classification plan for all positions within the classified service based upon a similarity of duties performed andresponsibilities 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.

The Personnel Board has the same authority and responsibility to establish a pay plan for all positions within the classified service, guided by the principle of equal pay for equal work. W. Va. Code § 29-6-10(2). The Personnel Board has wide discretion in performing its duties, although it cannot exercise its discretion in an arbitrary or capricious manner. Also, the rules promulgated by the Personnel Board are given the force and effect of law and are presumed valid unless shown to be unreasonable or not to conform with the authorizing legislation. Fike v. W. Va. Dept. of Health and Human Resources, Docket No. 95-HHR-155 (Aug. 28, 1998); Trimboli v. W. Va. Dept. of Health and Human Resources, Docket No. 93-HHR-322 (June 27, 1997); Moore v. W. Va. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 94-HHR-126 (Aug. 26, 1994). See, State ex. rel Callaghan v. W. Va. Civil Serv. Comm'n, 166 W. Va. 117, 273 S.E.2d 72 (1980). Finally, and in general, an agency's determination of matters within its expertise is entitled to substantial weight. Princeton Community Hosp. v. State Health Planning, 174 W. Va. 558, 328 S.E.2d 164 (1985).

This standard of entitlement to substantial weight applies when a grievant attempts to review Personnel's interpretation of its own regulations and classification specifications to determine if Personnel's decision was arbitrary and capricious or an abuse of discretion. Farber v. W. Va. Dept. of Health and Human Resources, Docket No. 95-HHR-052 (July 10, 1995). "There is no question DOP has the authority to establish pay grades within a pay plan." Stephenson v. W. Va. Bureau of Employment Programs, Docket No. 92-DOP-447 (Aug. 12, 1993). Generally, an action is considered arbitrary and capricious is 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). 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 Personnel. See generally, Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276 (1982).

An employee who challenges the pay grade to which his or her position is assigned, bears the burden of proving the claim by a preponderance of the evidence. This is a difficult undertaking. W. Va. Dept. of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681 (1995); Bennett v. Dept. of

Health and Human Resources, Docket No. 93-HHR-518 (June 23, 1995); Johnston v. Dept. of Health and Human Resources, Docket No. 94-HHR- 206 (June 15, 1995); Thibault v. Div. of Rehabilitation Serv., Docket No. 94-RS-061 (May 31, 1995); Frome v. Dept. of Health and Human Resources, Docket No. 94-HHR-140 (Nov. 29, 1994). See O'Connell v. W. Va. Dept. of Health and Human Resources, Docket No. 95-HHR-251 (Oct. 13, 1995).

Unless a grievant presents sufficient evidence to demonstrate Personnel's interpretation of pay grade is clearly wrong, or the result of an abuse of discretion, an administrative law judge must give deference to Personnel and find that the pay grade assignment was correct. Farber, supra; O'Connell, supra. This Board has treated arguments such as Grievants' to be one for a higher pay scale based on "comparative worth" (a.k.a. "comparable worth") and not one of equal pay for equal work. Grievants are not comparing themselves to employees within their own classification, but to employees in another classification who perform similar work utilizing a similar skill level within a similar working environment. See Moore, supra; Fike, supra.

Most comparative worth litigation concerning an employer's establishment of pay scales has been handled by federal courts in cases brought by employees within the context of discrimination claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2a. See IUE v. Westinghouse Electric Corp., 631 F.2d 1094 (3rd Cir. 1980), *cert. denied*, 452 U.S. 967 (1981); Gunther v. County of Washington, 602 F.2d 882 (9th Circ. 1979), *reh'g denied with supplemental opinion*, 623 F.2d 1303 (9th Cir. 1980), *aff'd* 452 U.S. 161 (1981); Gerlach v. Michigan Bell Tel. Co., 501 F. Supp. 1300 (E. D. Mich. 1980); Taylor v. Charley Brothers Co., 25 F.E.P. 602 (W. D. Pa. 1981).

Most federal courts have expressly rejected claims brought under a pure comparative worth theory absent a showing of intentional discrimination. See Pleme v. Parsons-Gilbane, 713 F.2d 1127 (5th Cir. 1983); Power v. Berry County, 539 F.Supp. 721 (W. D. Mich. 1982). In 1987, the Ninth Circuit overruled the district court's decision in American Federation of State, County and Municipal Employees (AFSCME) v. Washington, 578 F. Supp. 846 (W. D. Wash. 1983), which ruled that the State of Washington discriminated against females in its compensation plan.

The concept of "equal pay for equal work" is embraced by W. Va. Code § 29-6-10. See AFSCME v. Civil Serv. Comm'n, 181 W. Va. 8, 380 S.E.2d 43 (1989). Previous decisions interpreting that provision have established that employees performing similarwork need not receive identical pay, so long as they are paid in accordance with the pay scale for their proper employment classification.

Largent v. W. Va. Div. of Health, 192 W. Va. 239, 452 S.E.2d 42 (1994); Salmons v. W. Va. Dept. of Transp., Docket No. 94-DOH- 555 (Mar. 20, 1995); Hickman v. W. Va. Dept. of Transp., Docket No. 94-DOH-435 (Feb. 28, 1995); Tennant v. W. Va. Dept. of Health & Human Resources, Docket No. 92-HHR- 453 (Apr. 13, 1993); Acord v. W. Va. Dept. of Health & Human Resources, Docket No. 91-H-177 (May 29, 1992).

This Grievance Board has followed the direction taken by the federal courts, and others, in refusing to decide misclassification cases on the basis of comparative worth. While it certainly is apparent that the CSU employees perform some similar duties as Grievants, and that Grievants' positions are much more demanding and complex than the CSU employees, the fact remains that Grievants are properly classified as CALA's and CALT's, and are paid within the pay scale for that classification.

Grievants' also argue that DOP delayed processing the BCSE classification plan for 2-1/2 years, thus delaying them proper compensation, and that this action was arbitrary and capricious as a matter of law. Grievants' rely on this Grievance Board's decision in Skiles v. W. Va. Dept. of Health and Human Resources, Docket No. 02-HHR-111 (Apr. 8, 2003) in support of their position.

Respondents argue DOP 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. Mr. Basford testified that DOP had done nothing to implement its recommendations for changes in BCSE classifications, because HHR's appointing authority, Secretary Nusbaum, had not signed off on the recommendation. He stated DOP 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 DOP has to have certification that funds are available before anything can happen in terms of making changes to the classification plan.

The Administrative Law Judge in Skiles, supra, found that “nothing in the plain language of W. Va. Code Section 29-6-10 or DOP'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 ALJ further found that DOP's belief that it had to have the appointing authority's approval before going forward with its recommendation that a new classification be created was “based upon a mistaken belief as to the law, and therefore, was arbitrary and

capricious." Skiles, supra.

This Grievance Board adheres to the doctrine of stare decisis (See footnote 2) in adjudicating grievances that come before it. Chafin v. W. Va. Dept. of Health & Human Resources, Docket No. 92-HHR-132 (July 24, 1992), citing Dailey v. Bechtel Corp., 157 W. Va. 1023, 207 S.E.2d 169 (1974). See also Belcher v. W. Va. Dept. of Transp./Div. of Highways, Docket No. 94-DOH-341 (Apr. 27, 1995). This adherence is founded upon a determinationthat the employees and employers whose relationships are regulated by this agency are best guided in their actions by a system that provides for predictability, while retaining the discretion necessary to effectuate the purposes of the statutes applied. Consistent with this approach, this Grievance Board follows precedents established by the Supreme Court of Appeals of West Virginia as the law of this jurisdiction. Likewise, prior decisions of this Grievance Board are followed unless a reasoned determination is made that the prior decision was clearly in error.

Therefore, adhering to the holding in Skiles, DOP, in this instance, did not have to wait for DHHR's approval of its classification recommendations, nor did it have to have certification that funding was available, before presenting its recommendations for reclassification of BCSE to the State Personnel Board.

In Skiles, the ALJ concluded the grievants had demonstrated by a preponderance of the evidence that DHHR could afford the classification and pay grade changes recommended by DOP, and, important to this case, that "no evidence was presented that changing Grievants' classification and pay grade would have any particular impact on other classifications within BCSE." Skiles, supra. Of course, those remaining classifications which were not going to be affected by the Skiles changes in classification are the ones presented in this grievance.

Unlike Skiles, Grievants did not present evidence to demonstrate DHHR could afford the recommended changes in classification and pay grade prior to their implementation in September 2003. Indeed, Secretary Nusbaum refused to certify that funds were available the year before. What the ALJ in Skiles did not need to address because she found the funds were available to make the changes in that case, was what would happen if DOPwent forward with its recommendations and presented them to the State Personnel Board without having the necessary certification from the agency that funds were available to implement the recommendations.

That is the situation presented here. There is simply no evidence that, had DOP gone ahead and

presented its recommendations to the State Personnel Board in 2001 or 2002, as it could have done under the reasoning in Skiles, that the recommendations would have been approved by the State Personnel Board without the requisite funding certification. There is no showing that Secretary Nusbaum would have certified funding was available. Without that certification, it must be concluded that DOP's recommendations would have been denied by the State Personnel Board, and the Grievants would be in the same position as they found themselves prior to the 2003 implementation of the plan. Thus, without evidence to demonstrate otherwise, the undersigned must conclude that, even had DOP presented its recommendations to the State Personnel Board, the result would have been the same, i.e., the recommendations would have been denied due to the lack of funding certification from the appointing authority.

Finally, Grievants contend they were the victims of favoritism and/or discrimination when the CSU was reclassified, but they were not. W. Va. Code § 29-6A-2(d) defines “discrimination” as “any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees.” In order to establish a claim of discrimination, an employee must establish a prima facie case of discrimination by a preponderance of the evidence. In order to meet this burden, Grievants must show:

(a) that they are similarly situated, in a pertinent way, to one or more other employee(s);

(b) that they have, to their detriment, been treated by their employer in a manner that the other employee(s) has/have not, in a significant particular; and

(c) that such differences were unrelated to actual job responsibilities of the Grievants and/or the other employee(s) and were not agreed to by Grievants in writing.

Smith v. W. Va. Bureau of Employment Programs, Docket No. 94-BEP-099 (Dec. 18, 1996); Hendricks v. W. Va. Dept. of Tax and Revenue, Docket No. 96-T&R-215 (Sept. 24, 1996). Once the grievant establishes a prima facie case of discrimination, the burden shifts to the employer to demonstrate a legitimate, non-discriminatory reason for the employment decision. Smith, supra; see

Tex. Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981).

Grievants have established a prima facie case of discrimination and favoritism. They were in the same classifications and pay grades as CSU employees, performing similar work, yet the CSU's were reclassified and given salary increases.

However, Respondents have articulated a legitimate non-discriminatory reason for the decision to reclassify the CSU employees in 2000, while not extending that benefit to Grievants. DHHR has explained its intended goal for the CSU, and DOP confirmed there were recruitment problems with the CSU positions. At the time the decision was made, it was fully expected the CSU would operate as the front-line center of communications for BCSE, be able to research and answer inquiries without referring to the Field Offices, and prepare correspondence for the Governor's office on issues relating to child support and enforcement. Unfortunately, this goal has not been reached, and the undersigned finds it is the CSU employees who are now misclassified as HHRS's and HHRSS's. However,this finding does not result in a finding that Grievants were somehow misclassified, discriminated against, or in any other way treated in an arbitrary and capricious manner. The reality is that agencies in State government are under a mandate to reduce their budgets and are operating on budgets already stretched to the limits. It is simply not feasible without sufficient funding to increase the pay grades of a large number of employees. At the time the decisions were made relevant to this grievance, DHHR did not have the available funding to reclassify and increase the salaries of the entire BCSE.

The above Findings of Fact and discussion are supplemented by the following Conclusions of Law.

CONCLUSIONS OF LAW

1. An employee who challenges the pay grade to which his or her position was assigned bears the burden of proving the claim by a preponderance of the evidence. This is a difficult undertaking. Blankenship, supra; Bennett, supra; Johnston, supra; Thibault v. Div. of Rehabilitation Services, Docket No. 94-RS-0061 (May 31, 1995); Frome, supra; See O'Connell v. W. Va. Dept. of Health and Human Resources, Docket No. 95-HHR-251 (Oct. 13, 1995).

2. An action is arbitrary and capricious if the agency making the decision 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 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). 3. 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 DOP. See generally, Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276 (1982).

4. Unless a grievant presents sufficient evidence to demonstrate DOP's determination of pay grade is clearly wrong, or the result of an abuse of discretion, an administrative law judge must give deference to DOP and find that the pay grade assignment was correct. Farber, supra; O'Connell, supra.

5. In order for Grievants to prevail they must show that DHHR and DOP acted in an arbitrary and capricious manner in reclassifying the CSU in 2000. To meet this burden, Grievants must show DHHR and DOP had no rational basis for keeping Grievants in their current pay grade, or that Respondents acted in bad faith by reclassifying the CSU, despite overwhelming evidence indicating the classification should be otherwise placed.

6. Grievants have failed to carry their burden in this matter.

7. Neither W. Va. Code § 29-6-10 nor DOP's Rules applicable to the development and implementation of its classification and compensation plan require the approval of an affected agency before DOP can move forward with implementation of a new classification. DOP is only required to consult with the affected agency. Skiles v. W. Va. Dept. of Health and Human Res., Docket No. 02-HHR-111 (Apr. 8, 2003).

8. W. Va. Code § 29-6A-2(d) defines “discrimination” as “any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees.” In order to establish a claim of discrimination, an employee must establish a prima facie case ofdiscrimination by a preponderance of the evidence. In order to meet this burden, Grievants must show:

(a)

that they are similarly situated, in a pertinent way, to one or more other employee(s);

(b)

that they have, to their detriment, been treated by their employer in a manner that the other employee(s) has/have not, in a significant particular; and

(c)

that such differences were unrelated to actual job responsibilities of Grievants and/or the other employee(s) and were not agreed to by Grievants in writing.

Smith v. W. Va. Bureau of Employment Programs, Docket No. 94-BEP-099 (Dec. 18, 1996); Hendricks v. W. Va. Dept. of Tax and Revenue, Docket No. 96-T&R-215 (Sept. 24, 1996). Once the grievant establishes a prima facie case of discrimination, the burden shifts to the employer to demonstrate a legitimate, non-discriminatory reason for the employment decision. Smith, supra; see Tex. Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981).

9. Grievants established a prima facie case of discrimination, but Respondents articulated a legitimate, non-discriminatory reason for reclassifying CSU employees, while not affording Grievants the same benefit.

Accordingly, this grievance is **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Kanawha County or to the circuit court of the county in which the grievance occurred. 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 Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

_____

MARY JO SWARTZ

Administrative Law Judge

Dated: January 27, 2004

APPENDIX A

Represented Grievants

Mary Adkins, Jose Almonte, Thomas Arnett, Carolyn Avers, Sherry Ball, Anita Barnhart, Jewell Blackburn, Deborah Bland, Marsha Boggs, Larry Dean Brannon, Belinda Burks, Nancy Burnett, Bobbie Calvert, Juanita Calvert, David Cantrell, Linda Carr, Terry Carpenter, Judith Clark, Carolyn Clifton, Kimberly Cline, Sharon Corathers, Bethann Cornett, Douglas Craig, Karen Craw, Tawana Creed, Elizabeth Criddle, Darleen Cremeans, Judy Davis, Ramona Davis, Brenda DeLauder, Michael DeMark, Holly Dennison, Rose Ann Determan, Cecilia Dolin, Marian Donham, Joyce Donofrio, Nora Dunn, Linda Edwards, Stacy Floyd, LaCora Ford, Carol Gibbs, Pamela Griffith, Carol Hale, Sandra Hamon, Gary Harki, Lori Jones Hatfield, Patricia Hauldren, Nancy Helmick, Betty Hissam, Patricia Hopkins, Cynthia Howerton, Jeannette Huffman, Frances Shaffer Hughes, Earlene Johnson, Angie Jones

Winifred Kallmyer, Beverly Koerber, Sherry Koerber, Dana Kulp, Carolyn Lafferty, Ryan Lantz, Virginia (Jeannie) Lee, Charlene Litteral, John Longfellow, Arden Loomas, Vicky Lough, Sharon Malcom, Ginger Marshall, Marva Martin, Gladys Mayo, Susan McComas, Angela McCue, John Merritt, Becky Moore, Deborah Moore, Donna Moore, Linda Mullins, Emma Muncy, Nancy Najmulski, Carol Nunley, Sandra Odom, Elizabeth Parks, Belva Parsons, Betty Porter, Sarah Price, Curtis Reed

Timothy Salmons, Melissa Sexton, (Eloise) Fanny Shannon, Brenda Sheppard, Linda S. Smith, Luwanna Smith, Thomas B. Smith, (Christine) Virginia Starcher, Forest Stone, Mary Stover, April Styga, Billie Summers, Kathi Summers, Donna Suppa, Billie Sutherland, Dottie Trimboli, Rochelle Whitt, Michael Woodward, Aline Workman, Henrietta Webb, Mary Helen Whipkey, Christopher Wolford, Patricia Woods, Cynthia Young.

APPENDIX B

Un-represented Grievants

Sue Arnold, Thomas Bailey, Carole Bradley, Cindy Brooks, Erin Cain, Barbara Coe, Keith Coffman, Jerry Cox, Sonja Davis, Larry Dillon, Julia Donahew, Joseph Earnest, Sallie Elmer, Gary Farnsworth, Sgt. Jerrold Friend, Tony George, Mark Graeber, Barbara Gunnoe, Timothy Gunter, Roger Harris, Adeline Hathaway, Roger Dale Hayes, Gaynelle Heslep (Jarvis), Georgia Hess, Sheila Hutton, Karen Kerns

Elizabeth Linkenhoker, Deborah Mathis, James Muncey, Mary Randolph, Fred Ranson, Angela Shaffer, Linda Stackpole, Angela Sutherland-Shorter, Jason Thames, Diana Townsend, Sheri Tyree, Sharon Warick, Kristen Watson, Gladys White, Elaine Whitten, Donna L. Williams.

Footnote: 1

The represented Grievants are attached as Appendix A. The non-represented Grievants are attached as Appendix B.

Footnote: 2

Literally, "to stand by things decided." This is the doctrine that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases, where the facts are substantially the same. Black's Law Dictionary 1577 (Revised 4th Ed. 1968). See W. Va. Dept. of Admin. V. W. Va. Dept. of Health & Human Resources, 451 S.E.2d 768, 771 (W. Va. 1994).