THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

MARY ROSSANA, et al.,

Grievants,

v. **Docket No. 05-HHR-460(B)**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/BUREAU FOR CHILDREN AND FAMILIES and DIVISION OF PERSONNEL,

Respondents.

DECISION

Grievants[1] filed grievances at level one on or about April 4, 2005.[2] A prehearing conference was held, and the grievances were bifurcated, splitting the grievances into separate hearings, one focusing on the issue of discrimination based on Child Protective Service Workers ("CPSW") receiving a salary increase[3] and the other on the issue of misclassification.[4] This grievance addresses Grievants' contention that they are

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[1]Mary Rossana, Jean Faulkner, Jennifer Hogue, Melinda Barnett, Beth Anderson, Becky McIntyre, Taunja Hutchinson, Regina Cummins, Sara Jones, Nicola May, Jenny Moore, Melissa Duncan, Andrea Salatino, Patricia Plyler, and Cindy Holt.

[2]In 2007, the Legislature, 2007 Acts ch. 207, abolished the West Virginia Education and State Employees Grievance Board, replacing it with the Public Employees Grievance Board. W. VA. CODE §§ 18-29-1 to 18-29-11 and W. VA. CODE §§ 29-6A-1 to 29-6A-12 were repealed and replaced by W. VA. CODE §§ 6C-2-1 to 6C-2-7 and W. VA. CODE §§ 6C-3-1 to 6C-3-6 (2007). Grievances which were pending prior to July 1, 2007 are decided under the former statutes, W. VA. CODE §§ 18-29-1 to 18-29-11, for education employees, and W. VA. CODE §§ 29-6A-1 to 29-6A-12, for other state and higher education employees. *See* Executive Order No. 2-07, May 8, 2007. References in this decision are to the former statutes, which continue to control the proceedings in this case.

[3]For resolution of this issue, please see *Rossana et al. v. W. Va. DHHR/BCF and DOP*, Docket No. 05-HHR-460 (September 28, 2007).

[4]At one pretrial conference, Grievants stated the issue was not misclassification, but instead was equal work for equal pay.

misclassified.[5] For relief, Grievants seek reallocation from Social Service Worker 3 ("SSW 3") to "being in the nature of a CPSW." However, as explained during the hearing, that relief would be impossible to grant, as there is no such classification within the state system. Therefore, the relief sought is interpreted as desiring reallocation to the CPSW classification.

Procedural History

A level three hearing was held before the Department of Health and Human Resources ("DHHR") hearing examiner on June 7, 2006. A decision denying the grievance was issued on August 4, 2006.

Grievants appealed to level four. On October 1, 2007, a telephone conference was conducted. At that time, Respondents indicated they would be filing a Motion to Dismiss based on the earlier decision in *Rossana, et al. v. DHHR/BCF and DOP*, Docket No. 05-HHR-460 (Sept. 28, 2007). Also on that date, the grievance was placed in abeyance pending disposition of the Motion to Dismiss.

Respondents filed the Motion to Dismiss on October 19, 2007. On November 8, 2007, Grievants filed a Response to Respondent's Motion to Dismiss. On December 14, 2007, an Order Denying Motion to Dismiss was entered. The Order limited Grievants to a presentation of evidence only as related to misclassification.

A level four hearing was held on February 12, 2010, at the Grievance Board's Charleston office. Grievants were represented by Joseph Albright, Jr., Esq. Respondent Department of Health and Human Resources ("DHHR") was represented by Jennifer Akers, Assistant Attorney General, and Respondent Division of Personnel ("DOP") was

[5]The original statements of grievance are not in Grievants' files.

represented by Karen O'Sullivan Thornton, Assistant Attorney General. This case became mature on March 12, 2010, upon receipt of the parties' submissions of findings of fact and conclusions of law.[6]

BACKGROUND[7]

In 2002, a federal review was conducted in which Bureau for Children and Families were examined with regard to safety, permanency and well-being of children in the State. According to the federal findings, West Virginia failed this review. In 2004, DHHR received additional Protective Service positions and funding from the State Legislature. These resources were specifically directed toward obtaining qualified persons to perform child protective services work. Despite these additional resources, DHHR still had difficulty with recruiting and retaining workers in these positions.

In December 2004, the Berkeley County Circuit Court issued a ruling finding the DHHR Secretary, the BCF Commissioner and Deputy Commissioner in contempt of its obligations under West Virginia Law to provide sufficient resources to allow the Martinsburg CPS unit to fulfill its obligations to assure the safety of children in its custody, as well as in the Eastern Panhandle of the State. The Court determined that the staffing situation created a crisis because the CPS unit in Berkeley County was or could potentially put at risk children in DHHR's custody. The court additionally ordered that DHHR take immediate action to fill CPS vacancies and to immediately implement signing incentives, retention

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[6]Respondent DOP was the only party to submit proposed findings of fact and conclusions of law.

[7] The "BACKGROUND" comes generally from the Findings of Fact included in the Level Three Decision made by DHHR's Acting Chief Grievance Evaluator, Christopher B. Amos, Esquire.

incentives and geographical pay differentials for CPS workers in the county. In 2005, the State Legislature approved a special appropriation of $3.3 million for salary increases for CPS positions in DHHR. The Legislature did not approve funding for similar salary increases for the classifications occupied by the Grievants in this case.

In a March 9, 2005, memorandum from Martha Yeager Walker, Secretary, Department of Health and Human Resources, to Mr. Willard M. Farley, Acting Director, West Virginia Division of Personnel, approval was requested to recommend to the Personnel Board several proposals to address critical manpower needs in Child Protective Services. The recommendations were presented to the State Personnel Board by Mr. Lowell D. Basford, Assistant Director, DOP.

On March 17, 2005, the State Personnel Board established two separate and distinct classifications from the Protective Service Worker classification: Adult Protective Service Worker and Child Protective Service Worker. Additionally, the classifications of Adult Protective Service Worker Trainee and Child Protective Service Worker Trainee were established.

On March 22, 2005, Secretary Walker sent a department-wide email outlining changes the State Personnel Board made to the CPSW classification. Grievants subsequently filed this grievance alleging both discrimination and misclassification.

Findings of Fact

1. Grievants are employed by DHHR as adoption workers, in the classification of Social Service Worker 3 ("SSW 3").

2. The SSW 3 classification specification ("class spec") states:

Nature of Work

Under general supervision, performs advanced level professional social service work in providing services to the public in one or multiple program areas. Work requires the use of a personal automobile for local travel. Employee is subject to on-call status during non-business hours. May be required to deal with situations which are potentially dangerous to client and worker. Performs related work as required.

Distinguishing Characteristics

All three levels of Social Service Worker provide professional social services to the public. The Social Service Worker 3 provides these services in one or more of the following areas: foster care, emergency shelter care, youth services, community juvenile delinquency, single adolescent parent, adoption, Hartley program, Medley program, Medical Waiver Project, licensing specialist or other services at this level. This class may also be used for positions in certain geographic areas performing professional social work in a variety of program areas such as day care, generic social services, foster care and protective services, and differs from the generic Social Service Worker 2 in that the positions involve a significant, but not predominant, amount of protective services work.

Examples of Work

Maintains a caseload for programs and services at this level.

Prepares social assessment of client circumstances.

Interacts with a variety of professional practitioners in the areas of social work, mental health, developmental disabilities, education, juvenile delinquency, and counseling and guidance to assess client's needs and provide appropriate services.

Develops client service plan designed to accomplish habilitation and rehabilitation of the client and to provide social services to assist client in attaining social, educational and vocational goals.

Cooperates with the court system for foster care, adoption, juvenile delinquency and Medley program services by preparing social assessments and recommending actions to accomplish goals.

Locates and evaluates providers for foster care, adoption, emergency shelter care and Medley home services; counsels and trains providers in effectively providing required services; conducts periodic evaluations of facilities and services.

Counsels clients/families in achieving goals of client service plan.

Counsels youth to correct delinquent and socially unacceptable behavior; prepares probation plans for juvenile offenders; monitors progress of probationers under the court supervision. Speaks before educational and community organizations and groups regarding services available and to develop community resources.

Writes reports on case findings and summaries of client social and financial circumstances.

Knowledge, Skills and Abilities
Knowledge of theories and practices in social work.
Knowledge of federal and state laws, regulations and programs in social services.
Knowledge of emotional states and their behavioral indicators.
Ability to assess social, educational and economic circumstances of clients to determine need for social services.
Ability to develop client service plan to habilitate and rehabilitate client and assist client in attaining social, educational and vocational goals.
Ability to evaluate social service providers according to established guidelines.
Ability to work effectively with other professionals and social service agencies in providing social services.
Ability to counsel people in favor of specific actions, changes in attitude or insights.
Ability to maintain records, prepare reports and correspondence related to the work.
Ability to communicate with others, both orally and in writing.

Minimum Qualifications/Training:
Bachelor's degree in Social Work from an accredited college or university.

Substitution:
Bachelor's degree in Sociology, Psychology, Counseling, Criminal Justice, Behavioral Science, Interpersonal Communications, Human Services, Education, Special Education, Elementary Education, or Secondary Education from an accredited college or university may be substituted for the degree in Social Work.

OR

Current West Virginia Social Work License

Special Requirement:
Eligible for Temporary Social Work License **OR** Licensed as a Social Worker, Graduate Social Worker, or Certified Social Worker by the West Virginia Board of Social Work Examiners.

Promotion Only: In addition to the Special Requirement, four years of full-time or equivalent part-time paid experience as a Social Service Worker or three years of full-time or equivalent part-time paid experience as a Protective Service Worker, Protective Service Worker Trainee, Family Support Specialist or Family Support Supervisor.

3. Grievants submitted Position Description Forms ("PDFs") to DOP. Only some of the PDFs went through the entire process. However, all of the Grievants' PDFs were virtually identical. Grievants were requesting to be reallocated to CPSW.

4. The class spec for CPSW is as follows:

> **Nature of Work**
> Under general supervision, performs advanced and complex social casework in the area of Child Protective Services. Work is characterized by cases involving abuse/neglect/exploitation of children. The nature of the situations requires expertise and judgment to deal with problems that are potentially dangerous to the client and the worker. Work requires the use of personal automobile for extensive travel. Employee is subject to being on-call during non-business hours and must be available and have access to a telephone. Requires ongoing training to be fully accountable for a high volume of demanding and time-restricted cases. Performs related work as required.
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> **Examples of Work**
> Works within a caseload that crosses program lines into adoption, foster care, legal guardianship, and others.
> Conducts investigations concerning allegations of abuse by talking with and visually observing affected individual; talks with immediate family, relatives, neighbors, teachers, doctors, and relevant others and reviews any pertinent records.
> Makes initial assessment of validity of the allegation and the degree of danger that the child is in; documents the results of the investigation of the parent and/or caretaker.
> Completes family assessment to determine dynamics and problems that may be precipitating an abusive situation.
> Develops effective interventions to strengthen family that address safety, well being, and permanency of children.
> Prepares safety, service, and/or treatment plans to remedy contributing problems and stop behavior patterns of abuse/neglect/exploitation and solicits family cooperation.
> Engages family in counseling to solve problems, refers them to other available resources, and monitors safety and risk of further abuse to prevent a reoccurrence of abuse.
> Files petition with the court as needed to ensure safety of the child, testifies before the court, and makes appropriate placement of child, including but not limited to staying with relatives, in foster homes, residential treatment facilities, or in an emergency shelter.
> Evaluates the progress of the family or living environment towards meeting objectives of the safety/service/treatment plans, the need to modify the plans, and the eventual disposition of the case.

Maintains detailed case records and extensive documentation, prepares specialized reports, and composes correspondence.
Attends extensive, ongoing training to develop comprehensive knowledge of State and Federal social welfare laws, rules, regulations, and evolving protocols regarding child abuse and neglect.
Conduct and facilitate Multi-Disciplinary Team Meetings.
Conducts validating interview of sexual abuse investigations.

Knowledge, Skills and Abilities
Knowledge of State and Federal social welfare laws, rules, and regulations, particularly those concerning child abuse and neglect policy (i.e. Gibson, ASO, ASFA, Title IV-E, Chapter 49, Chapter 9000).
Knowledge of social work theory, casework methods, and community organization.
Knowledge of human behavior and the behavioral sciences, particularly concerning child development, family dynamics, and interpersonal relationships.
Ability to assess emotional states, behavioral indicators, family dynamics, and overt signs of abuse in order to evaluate safety and risk and determine whether an abusive situation exists.
Ability to formulate client safety, service, and treatment plans.
Ability to influence people to engage in problem-solving activities and to change attitudes and behavior.
Ability to work effectively with judges, law enforcement officials, and other professionals.
Ability to communicate with individuals who have emotional or mental problems, substance abuse issues, and/or domestic violence situations.
Ability to communicate both orally and in writing.
Ability to maintain detailed case records and extensive documentation, prepare specialized reports, and compose correspondence both in written and database format.
Ability to operate a computer.
Ability to pass competency testing.

Minimum Qualifications
Training:
Bachelor's degree in Social Work from an accredited four-year college or university.
Substitution:
Bachelor's degree in Sociology, Psychology, Counseling, Criminal Justice, Behavioral Science, Interpersonal Communications, Human Services, Education, Special Education, Elementary Education, or Secondary Education from an accredited four-year college or university may be substituted for the degree in Social Work.
OR
Current West Virginia Social Work License

Experience:
Two years of full-time or equivalent part-time paid experience in adult or children's services in a public or private health and human services agency.

Substitution:
A Master's degree in Social Work may substitute for the required experience.

Special Requirement:
Eligible for Temporary Social Worker License **OR** Licensed as a Social Worker, Graduate Social Worker, or Certified Social Worker by the West Virginia Board of Social Work Examiners.
NOTE: Applicants may be appointed for a period not to exceed sixty (60) days from date of hire pending verification of licensure. Applicants must agree in writing to verify licensure within sixty days or be terminated. Employees working under this restriction shall not perform any social work duties until license is verified.

Promotion Only: In addition to the Special Requirement, one year of full-time or equivalent part-time paid experience as a Protective Service Worker Trainee OR five years of full time or equivalent part-time paid experience as a Social Service Worker, Social Services Supervisor, Family Support Specialist, or Family Support Supervisor.

5. DOP reviewed the PDFs and made a classification determination that the Grievants' positions were properly allocated to the SSW 3 classification.

6. DOP classifies positions based on the predominant duties of the positions. The predominant duties listed on the PDFs were almost exclusively adoption work.

7. DOP also reviewed the PDFs to determine if there was there was a significant change in Grievants' duties. DOP did not find a significant change.

8. The goals of adoption workers and CPSWs are different. For adoption workers, the goal is adoption. For CPSWs, the goal is to investigate and correct abuse, neglect, and exploitation of children. The two classifications do cooperate, as there is a point at which a child under CPS moves over the adoption side of DHHR and the supervisors and workers must cooperate to facilitate the transfer.

9. The SSW 3 positions are in the adoption unit which is separate and distinct from the CPS unit.

10. Grievants, as adoption workers, get involved with what starts as a CPS case once reunification of the original family is determined an impossibility.

11. Adoption workers do not conduct sexual abuse investigations.

12. Adoption workers are frequently required to collect documentation to put in a child's case file that should have been in the file before the case was transferred to the adoption unit from the CPS unit.

13. Adoption workers are not on call for intake referrals, whereas CPSWs are.

14. Safety evaluations done by adoption workers are different than those conducted by CPSWs.

15. CPSWs conduct a safety assessment. Adoption workers do not.

16. CPSWs do the safety plan in abuse and neglect cases, whereas adoption workers do not.

17. CPSWs are the employees who go out and remove children from homes in abuse and neglect cases. They do not consult with adoption workers before this is done, but they do consult with the home finding unit after they have removed the child from the home.

Discussion

In a grievance which does not involve a disciplinary matter, the Grievants have the burden of proving their grievance by a preponderance of the evidence. W. Va. Code R. § 156-1-4.19 (1996); *Payne v. W. Va. Dept. of Energy*, Docket No. ENGY-88-015 (Nov. 2, 1988); *Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996).

In order to prevail upon a claim of misclassification, Grievants must prove by a preponderance of the evidence that their duties for the relevant period of time more closely

match those of another cited classification specification than the classification to which they are currently assigned. *See generally*, *Hayes v. W. Va. Department of Natural Resources*, Docket No. NR-88-038 (Mar. 28, 1989). The key to the analysis is to ascertain whether Grievants' current classification constitutes the "best fit" for their required duties. *Simmons v. W. Va. Dep't of Health and Human Res./Div. of Personnel*, Docket No. 90-H-433 (Mar. 28, 1991). In this analysis, the predominate duties of the position in question are class controlling. *Broaddus v. W. Va. Div. of Human Services*, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

Grievants assert they should be reallocated "in the nature of a CPSW." Through the testimony, they explained that it was their contention that their positions as SSW 3, adoption workers, are a continuation of the duties of CPSWs. Grievants argue that federal law requires concurrent planning from the moment a child is removed from the home. The purpose is to ensure proper placement of the child. However, adoption workers are not invited to participate in the process until it appears that reunification of the biological family is not possible. At that point, adoption workers are invited to attend Multi-disciplinary Team Meetings ("MDT"). During this process, Grievants argue they obtain a child's file only to find the CPSW has not obtained all the required documentation. Grievants, at that point, then must spend time doing the work they perceive to be CPS in nature.

However, Grievants do not carry a beeper, like CPSWs do. CPSWs also are responsible for investigating and correcting abuse, neglect and exploitation of children. Adoption Workers' goal, however, is adoption. While it is clear the two classifications must cooperate and work together, it is also clear that these two job classifications have very specific duties.

DOP has determined Grievants' duties are best suited for the SSW 3 classification. DOP's interpretation and explanation of the classification specifications at issue, if the language is determined to be ambiguous, should be given great weight unless clearly erroneous. *See W. Va. Dept. of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

Personnel job specifications generally contain five sections as follows: first is the "Nature of Work" section; second, "Distinguishing Characteristics"; third, the "Examples of Work" section; fourth, the "Knowledge, Skills and Abilities" section; and finally, the "Minimum Qualifications" section. These specifications are to be read in "pyramid fashion", i.e., from top to bottom, with the different section 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. *See generally*, *Dollison v. W. Va. Dep't of Employment Security*, Docket No. 89-ES-101 (Nov. 3, 1989). Employees who simply perform some duties normally associated with a higher classification may not be considered misclassified *per se*. *Hatfield v. Mingo County Bd. of Educ.*, Docket No. 91-29-077 (April 15, 1996). Incidental duties which require an inconsequential amount of employees' time will not warrant a higher classification, if the remainder of their duties are accurately described by their current classification. *Graham v. Nicholas County Bd. of Educ.*, Docket No. 93-34-224 (Jan. 6, 1994). The key in seeking reallocation is to demonstrate a significant change in the kind or level of duties and responsibilities. *Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96- HHR-301 (Mar. 26, 1997). Classification determinations are not made based upon comparison to other employees, but

upon which classification description is the best fit for that employee's duties. *Baldwin v. Dep't Health and Human Resources*, Docket No. 99-HHR-142 (Oct. 28, 1999).

Given Grievants' requested relief to be classified "in the nature of a CPSW," the undersigned believes Grievants ultimately do not seek to be reallocated inasmuch as to be paid more in accordance with the CPSW classification. When questioned during the level four hearing, Grievants did not seem to want to take on the duties of CPSWs.

Grievants' duties are predominately those of adoption workers. While it is clear that there has to be cooperation between the two classifications, SSW 3 and CPSW are two distinct classifications with their own specifications. Grievants have not met their burden of proving they should be reallocated to the position of CPSW.

Conclusions of Law

1. In a grievance which does not involve a disciplinary matter, the Grievants have the burden of proving their grievance by a preponderance of the evidence. W. Va. Code R. § 156-1-4.19 (1996); *Payne v. W. Va. Dept. of Energy*, Docket No. ENGY-88-015 (Nov. 2, 1988); *Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996).

2. In order to prevail upon a claim of misclassification, Grievants must prove by a preponderance of the evidence that their duties for the relevant period of time more closely match those of another cited classification specification than the classification to which they are currently assigned. *See generally*, *Hayes v. W. Va. Department of Natural Resources*, Docket No. NR-88-038 (Mar. 28, 1989).

3. The Grievance Board's role is not to act as an expert on matters of classification of positions. *Moore v. W. Va. Dep't of Health & Human Resources*, 94-HHR-126.

4. Employees have a substantial obstacle to overcome when contesting their classification, as the Grievance Board's review is supposed to be limited to determining whether or not the agency's actions in classifying the position were arbitrary and capricious. *W. Va. Dept. of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

5. The State Personnel Board and the Director of DOP have wide discretion in performing their duties although they cannot exercise their discretion in an arbitrary or capricious manner. *See, Bonnett v. West Virginia Dep't of Tax and Revenue and Div. of Personnel*, Docket No. 99-T&R-118 (Aug 30, 1999), *Aff'd* Kan. Co. Cir. Ct. Docket No. 99-AA-151 (Mar. 1, 2001).

6. 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).

7. 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).

8. In a misclassification grievance, the focus is upon whether the Grievants' duties for the relevant period of time more closely match those of another cited classification specification than the classification to which they are currently assigned. See

generally, *Hayes v. W. Va. Dep't of Natural Resources*, Docket No. NR-88-038 (Mar. 28, 1989).

9. The key to the analysis is to ascertain whether Grievants' current classification constitutes the "best fit" for their required duties. *Simmons v. W. Va. Dep't of Health and Human Res./Div. of Personnel*, Docket No. 90-H-433 (Mar. 28, 1991).

10. The predominate duties of the position in question are class controlling. *Broaddus v. W. Va. Div. of Human Services*, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990).

11. DOP's interpretation and explanation of the classification specifications at issue, if the language is determined to be ambiguous, should be given great weight unless clearly erroneous. *See W. Va. Dept. of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

12. Personnel job specifications generally contain five sections as follows: first is the "Nature of Work" section; second, "Distinguishing Characteristics"; third, the "Examples of Work" section; fourth, the "Knowledge, Skills and Abilities" section; and finally, the "Minimum Qualifications" section. These specifications are to be read in "pyramid fashion", i.e., from top to bottom, with the different section 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. *See generally*, *Dollison v. W. Va. Dep't of Employment Security*, Docket No. 89-ES-101 (Nov. 3, 1989).

13. Employees who simply perform some duties normally associated with a higher classification may not be considered misclassified *per se*. *Hatfield v. Mingo County Bd. of Educ.*, Docket No. 91-29-077 (April 15, 1996).

14. Incidental duties which require an inconsequential amount of employees' time will not warrant a higher classification, if the remainder of their duties are accurately described by their current classification. *Graham v. Nicholas County Bd. of Educ.*, Docket No. 93-34-224 (Jan. 6, 1994).

15. The key in seeking reallocation is to demonstrate a significant change in the kind or level of duties and responsibilities. *Kuntz/Wilford v. Dep't of Health and Human Res.*, Docket No. 96- HHR-301 (Mar. 26, 1997).

16. Classification determinations are not made based upon comparison to other employees, but upon which classification description is the best fit for that employee's duties. *Baldwin v. Dep't Health and Human Resources*, Docket No. 99-HHR-142 (Oct. 28, 1999).

17. Interpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous, and an agency's determination of matters within its expertise is entitled to substantial weight. Syl. pt. 3, *W. Va. Dep't. of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681 (1993); *Princeton Community Hosp. v. State Health Planning*, 174 W. Va. 558, 328 S.E.2d 164 (1985); *Dillon v. Bd. of Ed. of County of Mingo*, 171 W. Va. 631, 301 S.E.2d 588 (1983).

18. The Grievants have not shown by a preponderance of the evidence that the duties and responsibilities of their positions fall more closely within the CPSW classification than the SSW 3 classification.

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. *See* W. VA. CODE § 29-6A-7 (*See Footnote 2)*. Neither the West Virginia Public 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.

DATE: May 14, 2010

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Wendy A. Elswick
Administrative Law Judge