THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

VICKIE JO MARCUM,
Grievant,

v. **Docket No. 2009-0463-DOR**

WEST VIRGINIA INSURANCE COMMISSION
and DIVISION OF PERSONNEL,
Respondents.

DECISION

Grievant Vickie Jo Marcum is employed by the West Virginia Insurance Commission. She was originally employed by the Office of the Insurance Commission ("OIC") in the classification of Procurement Office. Grievant has applied to have her position reallocated and the Division of Personnel ("DOP") determined that the best fit for her position is the classification of Administrative Services Assistant 2 ("ASA 2"). Grievant believes that her position should be reallocated to a higher classification, such as an Administrative Services Assistant 3 ("ASA 3"), and exhausted the DOP appeal process before filing a grievance.

On October 6, 2008, Ms. Marcum filed a grievance challenging the DOP Director's determination[1] that the DOP placement of her position in the ASA 2 classification was proper. As relief, Grievant stated that she wanted her position to be reallocated to an ASA 3 classification, Supervisor 3 classification or some other classification that better reflects the duties and responsibilities she performs. Grievant seeks a higher pay grade, commensurate with these higher classifications and back pay with interest to September

---

[1] Then DOP Director Otis Cox denied Grievant's appeal of the DOP reallocation decision by letter dated September 11, 2008.

2007, for the difference between her present pay grade and the pay grade she seeks.[2] A level one decision was issued on October 9, 2008, stating that the OIC lacked authority to decide the grievance and the parties agreed to waive the grievance to level two.

A level two mediation was conducted on January 16, 2009. The DOP had been joined as a party by that time. At the request of the parties, the grievance was held in abeyance for a period of time while the parties explored a settlement. On May 19, 2009, an Order was entered bringing a conclusion to the mediation process and Grievant appealed to level three on May 29, 2009.

A level three hearing was held in the Charleston office of the West Virginia Public Employees Grievance Board on December 21, 2009.[3] Grievant was present at the hearing and was represented by Fred F. Holroyd, Esquire. Respondent OIC was represented by Gregory A. Elam, Esquire of the OIC Legal Division and Respondent DOP was represented by Karen O'Sullivan Thornton, Esquire, Senior Assistant Attorney General. At the conclusion of the hearing, the parties agreed to submit Proposed Findings of Fact and Conclusions of Law, the last of which was received by the Grievance Board on February 1, 2010. This grievance became mature for decision on that date.

---

[2] At the level three hearing, Grievant stated that she seeks to have her position reallocated to the ASA 3 classification at Pay Grade 13.

[3] Prior to the level three hearing the OIC filed a motion to be dismissed from the grievance. The thrust of the motion was that the decision regarding the reallocation request rested solely with the DOP. OIC opined that it should be dismissed for lack of jurisdiction since Grievant's claim was not against her employer, the OIC. That motion was held in abeyance until the beginning of the level three hearing at which time it was denied.

Synopsis

Grievant, an employee of the Insurance Commission, seeks to have her position reallocated from the classification of Procurement Officer at Pay Grade 10 to the classification of an Administrative Services Assistant 3 at Pay Grade 13. The Division of Personnel is charged with making classifications. After reviewing the documents related to Grievant's position and performing an on-site audit the Division of Personnel determined that the Grievant's position best fit into the classification of Administrative Services Assistant 2 at Pay Grade 11. Grievant did not prove that the Division of Personnel's classification decision was clearly wrong. Grievant did prove that her position should be reallocated from the Procurement Officer classification to the Administrative Assistant 2 classification.

After a thorough review of the entire record in this matter, the following facts are found to have been proven by a preponderance of the evidence.

Findings of Fact

1. Grievant Vickie Jo Marcum has been employed by the State of West Virginia continuously since 1987.

2. When the Workers Compensation Commission was discontinued in 2006, Grievant was employed by the OIC as a Procurement Officer. She commenced her duties in that position on September 1, 2006. The Procurement Officer classification is compensated at Pay Grade 10.

3. When Grievant was initially employed by the OIC as a Procurement Officer, the position vacancy posting included the following duties:

- Oversee the purchasing section in administration;
- Assist in the Development and Implementation of operating procedures, division policy work processes and regulatory requirements;
- Draft and actively participate in the awarding of contracted goods and services for the commission;
- Audit invoices, review travel reimbursements, and maintain an understanding of the changes in their corresponding rules and regulations.
- Oversee the conducting of fixed asset inventory and maintenance of accurate records related to property;
- Supervise staff and create and establish performance measures for the administrative division;
- May be assigned duties related to fleet management, purchase card programs, budgeting for the commission;
- May serve as back-up for the approval of accounts payable in the absence of the director of administration.

4. Since Grievant was initially employed by the OIC her position has evolved and she has taken on different duties and responsibilities. Some of the specific changes include the following:

- In July 2007, the previous director left the department and Grievant took over supervision of the mail room and management of the fleet of vehicles.
- Grievant has been given responsibilities related to facilities.
- Grievant supervises an employee classified as a WC Systems Specialist 1, in the oversight of the Training and Travel for all OIC employees. Ths involves ensuring that staff have received appropriate training for their positions and oversight of the audit of travel reimbursements.

5. Grievant now has duties involving six areas:

- Procurement: in which she supervises a Purchasing Assistant and an Accounting Technician 3;
- Travel and Training: in which she supervises a WC Systems Specialist 2;[4]

[4] The "WC" designation indicates that this classification is left over from the Workers Compensation Commission and the position has not yet been reclassified by the DOP in conjunction with the OIC.

- Fleet Management: in which she oversees maintenance of the vehicles among other things;
- Mail Room: in which she supervises three full-time employees, one additional employee of whom is classified as a Supervisor 3, and one temporary employee;
- Fixed Assets and Surplus Property: and;
- Facilities.

6. On June 5, 2008, Grievant completed a Position Description Form[5] ("PDF") which was forwarded to the DOP for a classification. The DOP is the State agency with classifying positions in the West Virginia Classified Service. W. VA. CODE § 29-6-1 *et seq.* Grievant listed all of her duties and responsibilities on the PDF and signed the form indicating that it was accurate and complete. Respondent DOP Exhibit 1.

7. On July 17, 2008, DOP made a determination that Grievant's position should be reallocated from the classification of Procurement Officer, at Pay Grade 10, to the classification of ASA 2, at Pay Grade 11. Respondent DOP Exhibit 1.

8. Debbie Anderson, DOP Senior Personnel Specialist, sent a memorandum to Kathy Damron, OIC Human Resources Manager, regarding the decision to reallocate Grievant's position. The memorandum was dated July 18, 2008. Ms. Anderson stated that the reallocation was the result of the addition of supervisory duties and signature authority to Grievant's position in the following OIC functions: procurement - mail room - maintenance - fleet - surplus property. Respondent DOP Exhibit 3.

9. Grievant Marcum appealed the reallocation decision of the DOP to the DOP Director on August 1, 2008. The DOP Director was Otis Cox. Grievant Exhibit 1.

---

[5] The Position Description Form is a document which describes the officially assigned duties, responsibilities, supervisory relationships and other pertinent information relative to a position. This document is the basic source of official information utilized by the DOP to allocate the position to the proper classification. *See* 143 C.S.R. 1 § 3.70.

10. By memorandum dated September 11, 2008, DOP Director Otis Cox[6] denied Grievant's classification appeal and affirmed the DOP classification determination. He noted that the reallocation of Grievant's position to an ASA 2 recognized the addition of supervisory duties to her position in the areas specified by Ms. Anderson. FOF 8 *supra.*

11. Ms. Marcum filed a grievance contesting the DOP classification determination on October 6, 2008.

12. During the course of the grievance procedure, Grievant Marcum submitted a second PDF with an attachment entitled "Position Description Form Supplemental." This attachment was a ten page document that described Grievant's duties and responsibilities in precise detail. Grievant and her supervisor, Kathy Damron, signed the PDF and certified that the entries were accurate and complete on March 3, 2009. Respondent DOP Exhibit 2.

13. Following receipt of the second and supplemented PDF, the DOP performed an on-site audit of Grievant's position. The audit was conducted by Debbie Anderson and Lowell Basford[7] from the DOP Classification and Compensation section. During the audit, Grievant stated that approximately 50 percent of her duties consisted of procurement duties which Grievant performs personally. The remainder of her time was spent in a supervisory role.

---

[6] Otis Cox has since left the position of DOP Director.

[7] Mr. Basford is the former Assistant Director of the DOP Classification and Compensation section and retired from that position after being employed in personnel for the State of West Virginia for 35 years. He now works as a part-time employee and consultant for the DOP related to Classification and Compensation issues. Mr. Basford oversaw the development and drafting of the ASA series in 1993.

14. The employee who was transferred to the position of Supervisor 3 in the mail room was placed in that position without going through the DOP process and it is unlikely that the position is properly classified.

15. WC Systems Specialist 1 position Grievant supervises was transferred from the Workers Compensation Commission when that agency was terminated. The position has not been reclassified but the functions would most likely fit into the Office Assistant classification or the Purchasing Assistant classification. Neither of these classifications are considered professional personnel.

16. Based upon the audit and the supplemental PDF, DOP concluded that the additional responsibilities added to Grievant's position "do not represent significantly more complex or difficult work than that found in [Grievant's] predominant duty" of procurement. DOP further noted that the additional supervisory duties had been recognized in the reallocation of Grievant's position to the ASA 2 classification. The DOP concluded that Grievant's position was properly classified as an ASA 2. Respondent DOP Exhibit 4.[8]

17. The OIC has not processed the reallocation of Grievant's position from a Procurement Officer to an ASA 2.

18. The Classification Specifications adopted by the DOP for the ASA 2 classification state in part the following:

---

[8] Respondent DOP Exhibit 4 is a memorandum from Lisa Dalporto, DOP Assistant Director of Classification and Compensation, to Kathy Damron, OIC Manager of Administrative Services and Grievant's supervisor. The purpose of the memorandum was to report the results of the review of Grievant's revised PDF and the on-site audit conducted by DOP representatives.

ADMINISTRATIVE SERVICES ASSISTANT 2

Nature of Work
Under limited supervision performs administrative and supervisory work in providing support services such as fiscal, personnel, payroll or procurement in a state agency or facility or serves as the assistant supervisor in a major administrative support unit of a large state agency. Develops policies and procedures for resolving operational problems and for improving administrative services. Supervises the work of office support staff in rendering required services. Work is typically varied and includes extensive inter- and intra governmental and public contact. Has some authority to vary work methods and policy applications and to commit the agency to alternative course of action. Performs related work as required.

Distinguishing Characteristics
Positions in this class are distinguished from the Administrative Services Assistant 1 by the supervisory nature of the work performed, by the size of the unit served and by the independence of action granted. Positions in this class are responsible for a significant administrative component in a medium size agency or state facility or serves as an Assistant Director of a major administrative support component of a large state agency. Authority to vary work methods and to commit the agency to alternative course of action is granted.

Examples of Work
Confers with inter- and intra-agency personnel to transact business, gather information, or discuss information; may be in a position with public or federal government contact.
Conducts performance surveys and reviews agency methods of operation; devises flowcharts and graphs; may conduct cost analysis studies.
Gathers and compiles information for state records; writes reports, balances tally sheets, and monitors inventories, purchases, and sales.
Updates records and contacts employees to gather information; represents the agency in the area of assignment in both internal and external meetings.
Maintains files of information in hard copy files or electronic format; runs reports for regular or intermittent review.
Determines the need for changes in procedures, guidelines and formats; devises a solution; monitors the success of solutions by devising quantitative/qualitative measures to document the improvement of services.
Writes manuals in the area of assignment; clarifies the wording and describes new procedures accurately.
Supervises the work of Office Assistants, Accounting Assistants or other support staff.

19. The Classification Specifications adopted by the DOP for the ASA 3 classification state in part the following:

ADMINISTRATIVE SERVICES ASSISTANT 3

Nature of Work

Under general direction, performs complex administrative and/or supervisory work in providing support services such as fiscal, personnel, payroll or procurement on a statewide basis or serves in a specialty role of a complex support program with extensive federal oversight. Responsible for the development and implementation of policies and procedures for the work unit; for the monitoring and evaluation of the specialized functional area. Works within general statute and regulatory parameters, but has considerable latitude to vary work methods, policy applications to achieve desired results. The work includes supervision of subordinate professional, technical or office support staff. The work is typically complex, varied and requires considerable interaction with local, state and federal agencies and the general public. Performs related work as required.

Distinguishing Characteristics

Positions in this class are distinguished from the Administrative Services Assistant 2 by the responsibility for unit operation and results obtained. Positions in this class are typically responsible for a complex, statewide administrative support program or function in a specialized role of considerable difficulty and complexity involving sensitive and controversial issues and the lack of standard procedures and/or precedent for programmatic guidance. Has considerable authority to vary work methods and may be assigned responsibility to commit the agency to alternative courses of action.

Examples of Work

Develops technical procedures for the effective implementation of the work of the unit, to include forms, operating procedures, and proposed policies; confers with unit management and other staff regarding revisions to budgetary, purchasing, and other administrative services, policies, and procedures.

Develops operating manuals necessary for the instruction and training of unit staff, agency officials, and other state officials; conducts periodic training sessions for new initiatives and procedures in the area of responsibility.

Analyzes the budget document and appropriate enabling legislation to determine the need for revised operational procedures for the budgetary cycle.

Prepares or supervises the preparation of required fiscal and budgetary reports in the area of responsibility.

Monitors the expenditures of state agencies and higher education systems to ensure compliance with budgeted appropriations; confers with state officials and budget specialists in the resolution of expenditure level problems; advises on the transfer and reallocation of funds to resolve such problems; briefs management on potential areas of appropriation level difficulties.

Prepares or assists in the appropriation of grant proposals and budgetary recommendations for the agency; monitors the execution of appropriations throughout the fiscal year.

Develops procedures, forms, and controls necessary for the effective operation of the unit.

Within State Purchasing Rules and Regulations, examines purchasing requests for conformity to specifications and budgeted amounts; may negotiate contracts and

agreements for the procurement of equipment, supplies and services.
Supervises other professional, technical and clerical employees in the unit.

Discussion

Grievant bears the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not. *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievant avers that her position has changed dramatically since she first took it because she now supervises a large number of employees in various areas for Respondent. At least two of the employees Grievant supervises are paid at a higher pay grade than she. These two employees are classified as a WC Systems Specialist 1 at Pay Grade 12 and a Supervisor 3 at Pay Grade 13. Grievant argues that the added supervisory responsibilities place her position in the ASA 3 classification and that she should not be in a pay grade lower than the employees whom she supervises.

Respondent DOP counters that Grievant's position was originally classified as a Procurement Officer at Pay Grade 10. When Grievant submitted a new PDF she demonstrated that her position had significantly changed with the addition of specific supervisory duties. DOP points out that the agency recognized those changes and reallocated Grievant's position to the ASA 2 classification at Pay Grade 11. DOP opines that the ASA 2 classification recognizes Grievant's supervisory role while noting that the employees she supervised are support staff and not professional personnel.

Mr. Basford testified that DOP has consistently viewed one of the main differences between the ASA 2 classification and the ASA 3 classification is the nature of the work supervised. ASA 2 positions supervise support personnel and ASA 3 positions supervise professional personnel. This interpretation is reflected in the classification specifications for each of these positions. The last sentence in the "Examples of Work" section of the specifications for the ASA 2 position states: "Supervises the work of Office Assistants, Accounting Assistants or other support staff." Grievant Exhibit 8. The last sentence of the same section for the ASA 3 classification states: "Supervises other professional, technical and clerical employees in the unit." Grievant Exhibit 9. The ASA 3 position is paid at a higher pay grade (13 versus 11) in recognition of the more complex and technical work that the position supervises. After reviewing the PDFs submitted by Grievant and performing an on-site audit of the position, the DOP personnel determined that the positions supervised by Grievant were no more complex than those she performed as a Procurement Officer and fit into the support staff category. Consequently, they concluded that the ASA 2 classification was the best fit for Grievant's position.

The DOP Glossary of Classification Terms contains the following definitions:

> **Administrative Support** - support services such as personnel, budget, purchasing, data processing which support or facilitate the service programs of the agency; also means work assisting an administrator through office management, clerical supervision, data collection and reporting, workflow/project tracking, etc.
>
> **Professional** - work which requires the application of theories, principles and methods typically acquired through completion of a baccalaureate degree or higher or comparable experience; requires the consistent exercise of discretion and judgment in the research, analysis, interpretation and application of acquired theories, principles and methods to work product.
>
> **Technical** - work requiring the practical application of scientific, engineering, mathematical or design principles.

None of the positions which are supervised by Grievant require the application of complex theories or scientific principles which are contemplated by the definitions of professional or technical classifications. After reviewing the Supervisor 3 position for the mail room, Mr. Basford pointed out that the position did not go through the DOP classification process and did not likely meet the criteria for that classification. He concluded that the position did not fit into the definition of professional or technical work. With regard to the WC Systems Specialist 1 position, Basford noted that position had been transferred from the Workers Compensation Commission and had not been reclassified to fit the duties performed for the OIC. He stated that the duties for that position would most likely fit into the Office Assistant series or the Purchasing Assistant series. In any case, the position was an administrative support position and not professional or technical.

W. VA. CODE § 29-6-10 authorizes the Division of Personnel to establish and maintain a position classification plan for all positions in the classified service. State agencies, such as the Insurance Commission, which utilize such positions, must adhere to that plan in making their employees' assignments. *Toney v. W. Va. Dep't of Health & Human Res.*, Docket No. 93-HHR-460 (June 17, 1994). When an employee believes she is performing the duties of a classification other than the one to which she is assigned, DOP must determine whether reallocation is appropriate. *Hart v. Dep't of Health & Human Res.*, Docket No. 2008-0641-DHHR (Feb. 19, 2009). The key to the analysis is whether a grievant's current classification constitutes the "best fit" for the duties the grievant performs. *Simmons v. W. Va. Dep't of Health and Human Res./Div. of Personnel*, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of the position are class-controlling.

Broaddus v. W. Va. Div. of Human Serv., Docket Nos. 89-DHS-606 through 609 (Aug. 31, 1990). DOP's interpretation and application of the classification specifications at issue are given great weight unless clearly erroneous. *W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993) *per curiam*; *See also* Syllabus Point 4, *Security National Bank & Trust Co. v. First W. Va. Bancorp., Inc.,* 166 W. Va. 775, 277 S.E.2d 613 (1981), *appeal dismissed,* 454 U.S. 1131, 102 S. Ct. 986, 71 L.Ed.2d 284. Syllabus Point 1, *Dillon v. Bd. of Ed. of County of Mingo,* 171 W. Va. 631, 301 S.E.2d 588(1983).

Grievances contesting a grievant's current classification are therefore decided under rules of law which give DOP's interpretation of classification specifications great weight unless that interpretation is shown to be clearly erroneous. The "clearly wrong" and the "arbitrary and capricious" standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. *Adkins v. W. Va. Dep't of Educ.*, 210 W. Va. 105; 556 S.E.2d 72 (2001)(*citing In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996)). It is fair to say that a grievant challenging her classification has an uphill battle. *Bennett v. Insurance Comm'n and Div. of Pers.* Docket No. 07-INS-299 (June 27, 2008).

Grievant asserts her position is misclassified. She has requested her position be reallocated to an Administrative Assistant 3 and placed in a higher pay grade. The DOP Legislative Rule defines "Reallocation" as "[r]eassignment by the Director of Personnel of a position from one classification to a different classification on the basis of a significant change in the kind or level of duties and responsibilities assigned to the position." 143 C.S.R. 1 § 3.75. To receive a reallocation, an employee must demonstrate "a significant

change in the kind or level of duties and responsibilities." Additionally, Grievant must prove by a preponderance of the evidence that her duties more closely match another cited Division of Personnel classification specification than the one under which she is currently assigned. *See generally, Hayes v W. Va. Dep't of Natural Res.*, Docket No. NR-88-038 (Mar. 28, 1989). *See Campbell v. Dep't of Transp./Div. of Highways,* Docket No. 05-DOH-385 (May 26, 2009).

Grievant's duties have changed significantly since she was originally employed as a Procurement Officer. Grievant's position absorbed supervisory responsibilities over a number of personnel in her agency. The DOP determined that Grievant's position needed to be reallocated to recognize the addition of the supervisory duties and determined that the best fit was the ASA 2 classification. The DOP relied upon the Classification Specifications, and long-standing interpretations of the DOP, in deciding that the position did not fit the ASA 3 classification. Grievant's predominate duties were administrative support duties, as were the duties of the positions she supervised. No one is asserting that these duties and responsibilities are not essential to the success of the agency. However, they do not fit into the definition of professional or technical positions. Grievant did not prove that the DOP classification was clearly wrong and the grievance is denied. However, Grievant did prove that her position should be reallocated from the Procurement Officer classification to the ASA 2 classification. Therefore, the grievance is granted to the extent that Grievant's position must be reallocated to the ASA 2 classification effective fifteen working days prior to the date she initially filed her grievance seeking reallocation.[9]

---

[9] The grievance was initially filed October 6, 2008.

Grievant is also entitled to backpay and benefits equal to the difference in the pay she received during that period and the pay should would have received in the ASA 2 classification.

Conclusions of Law

1. Grievant bears the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not. *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. The key to the reallocation analysis is whether a grievant's current classification constitutes the "best fit" for the duties the grievant performs. *Simmons v. W. Va. Dep't of Health and Human Res./Div. of Personnel*, Docket No. 90-H-433 (Mar. 28, 1991). The predominant duties of the position are class-controlling. *Broaddus v. W. Va. Div. of Human Serv.*, Docket Nos. 89-DHS-606 through 609 (Aug. 31, 1990).

3. DOP's interpretation and application of the classification specifications at issue are given great weight unless clearly erroneous. *W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993) *per curiam*; *See also* Syllabus Point 4, *Security National Bank & Trust Co. v. First W. Va. Bancorp., Inc.,* 166 W. Va. 775, 277 S.E.2d 613 (1981), *appeal dismissed,* 454 U.S. 1131, 102 S. Ct. 986, 71 L.Ed.2d 284. Syllabus Point 1, *Dillon v. Bd. of Ed. of County of Mingo,* 171 W. Va. 631, 301 S.E.2d 588(1983).

4. The "clearly wrong" and the "arbitrary and capricious" standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. *Adkins v. W. Va. Dep't of Educ.*, 210 W. Va. 105; 556 S.E.2d 72 (2001)(*citing In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996)).

5. Grievant did not prove by a preponderance of the evidence that the DOP's classification determination regarding her position was clearly wrong.

6. Grievant proved by a preponderance of the evidence that her position should be reallocated from the Procurement classification to the ASA 2 classification.

Accordingly, the grievance is GRANTED in part and DENIED in part. Respondent Insurance Commission is Ordered to place Grievant's position in the ASA 2 classification effective September 15, 2008 (fifteen working days prior to October 6, 2008, the date her grievance was originally filed). Respondent Insurance Commission is further Ordered to pay to Grievant the difference in pay and benefits between what she actually received and what she would have received if she had been in the ASA 2 classification, from September 15, 2008, until the present. In all other respects the grievance is DENIED.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. 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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (2008).

DATE: MAY 24, 2010

_____
WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE