THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

MARILEA ELIZABETH BUTCHER,
Grievant,

v. **Docket No. 2010-0968-OSTEO**

WEST VIRGINIA SCHOOL OF OSTEOPATHIC MEDICINE,
Respondent.

DECISION

This grievance was filed by Grievant, Marilea Elizabeth Butcher, on January 11, 2010, against her employer, the West Virginia School of Osteopathic Medicine. The statement of grievance reads:

> I believe the position of Administrative Assistant (Paygrade 15) is improperly classified based on the evaluation of responsibilities and duties in the following categories: Knowledge; Complexity & Problem Solving; Freedom of Action; Scope & Effect; Intrasystem Contacts; External Contacts. I believe the classification more securely depicting these duties and responsibilities to be an Administrative Assistant Senior (Paygrade 17) or an Executive Administrative Assistant (Paygrade 18).

As relief, Grievant seeks:

> Reclassifiicaion of position more appropriately with the level of responsibilities required and salary raised with back pay and interest.

Parties submitted a Joint Motion to proceed directly to level three, dated February 1, 2010. A level three hearing was conducted on March 18, 2010, before Administrative Law Judge Landon R. Brown[1] at the Public Employees Grievance Board in Charleston, WV. Grievant was represented by Dr. Michael Adelman, Vice President for Academic

[1]This matter was transferred to the undersigned ALJ for administrative reasons.

Affairs and Dean, West Virginia School of Osteopathic Medicine. Respondent was represented by counsel, James Wegman, Esq., Assistant Attorney General. This matter became mature for decision on April 12, 2010, upon receipt of the parties' written Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant argues that her current position of Administrative Assistant (Paygrade 15) is misclassified. Grievant believes she should be reclassified as an Administrative Assistant Senior (Paygrade 17) or an Executive Administrative Assistant (Paygrade 18). Grievant disputes the calculation performed by the Job Evaluation Committee ("JEC") determining Grievant's position as properly classified as Administrative Assistant (Paygrade 15). Respondent argues that the JEC's calculation is correct, based upon the information provided at the time Grievant requested reclassification. Grievant has not met her burden of proof in this matter. This grievance is DENIED.

The following Findings of Fact and Conclusions of law are properly made from the record developed at level three.

Findings of Fact

1. Marilea Butcher is classified as an Administrative Assistant (Paygrade 15) for Respondent.

2. On July 20, 2009, Grievant submitted a Position Information Questionnaire ("PIQ") upon request of her supervisor, Michael Adelman, D.O., Vice President for Academic Affairs and Dean, to the West Virginia School of Osteopathic Medicine

("WVSOM").[2]

3. WVSOM is a doctorate level institution with a budget of around $40 million.

4. Dr. Adelman's position as Vice President of Academic Affairs and Dean has expanded in responsibilities and duties over the past 2 years. As a result, Dr. Adelman delegated additional duties to Grievant.

5. Leslie Bicksler, Director of Human Resources at WVSOM, evaluated the PIQ and recommended that the position be reclassified as Administrative Assistant Senior (Paygrade 17).

6. Ms. Bicksler submitted Grievant's PIQ to the Job Evaluation Committee ("JEC").

7. The JEC is charged with job evaluation and classification decisions following an evaluation system, known as Mercer, established by the West Virginia Higher Education Policy Commission.

8. The Mercer evaluation system assigns points in the following categories for the JEC evaluation: knowledge; experience; complexity & problem solving; freedom of action; breadth of responsibility; scope and effect; intrasystems contacts; external contacts; direct supervision exercised; indirect supervision exercised; working conditions; physical coordination; and, physical demands. The thirteen point factors and the degree levels under each point factor are defined in the Job Evaluation Plan[3] ("JEP").

9. The employee completes a PIQ answering a series of questions designed to

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[2]Grievant's Exhibit No. 1.

[3]Grievant's Exhibit No. 4.

elicit information describing her job duties and responsibilities, along with the minimum qualifications for her position, "data lines" of particular degree levels for each point factor are determined and the employee is "slotted" into the job title which most closely fits his or her duties. The degree levels for each point factor in a job title are weighted and combined, creating a numerical point total, which in turn determines each job's pay grade.

10. The Paygrade 15 point range is 1985-2113.[4]

11. The Paygrade 17 point range is 2255-2407.[5]

12. The Paygrade 18 point range is 2408-2573.[6]

13. Ms. Bicksler calculated Grievant's point total to be 2365, which is classified as a Paygrade 17.[7]

14. The JEC calculated Grievant's point total to be 2018, which is classified as a Paygrade 15.[8]

15. Grievant challenges the point factors calculated by the JEC in the following categories: Knowledge; Complexity & Problem Solving; Freedom of Action; Scope & Effect; Intrasystem Contacts.

Discussion

Grievant seeks as relief that she be reclassified as an Administrative Assistant Senior

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[4]Grievant's Exhibit No. 3.

[5]Id.

[6]Id.

[7]Id.

[8]Grievant's Exhibit No. 2.

(Paygrade 17) or an Executive Administrative Assistant (Paygrade 18). In order to achieve this, Grievant must demonstrate she is not properly classified. The burden of proof in a misclassification grievance is on the grievant to prove by a preponderance of the evidence that she is not properly classified. *Burke, et al., v. Board of Directors*, Docket No. 94-MBOD-349 (Aug. 8, 1995). The grievant asserting misclassification must identify the job she feels she is performing. Otherwise the complaint becomes so vague as to defy an adequate rebuttal or analysis. *Elkins v. Southern W.Va. Community College*, Docket No. 90-BOD-124 (March 4, 1991).

A grievant is not likely to meet her burden of proof in a higher education classification grievance merely by showing that the grievant's job duties better fit one job description than another, because the Mercer classification system used by higher education does not use "whole job comparison." The Mercer classification system is largely a "quantitative" system, in which the components of each job are evaluated using a point factor methodology. The point factors and the degree levels under each point factor are defined in the Job Evaluation Plan ("JEP").[9] Therefore, the focus is upon the point factors the grievant is challenging. A grievant may challenge any combination of point factor degree levels, so long as she clearly identifies the point factor degree levels she is challenging, and this challenge is consistent with the relief sought. *See Jessen, et al., v. Board of Trustees*, Docket No. 94-MBOT-1059 (October 26, 1995); and *Zara, et al., v. Board of Trustees, W.Va. University*, Docket No. 94-MBOT-817 (Dec. 12, 1995). While some "best fit" analysis of the definitions of the degree levels is involved in determining which degree level of a point factor should be assigned,

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[9]Grievant's Exhibit No. 4.

where the position fits in the higher education classification employee hierarchy must also be evaluated. In addition, this system must by statute be uniform across all higher education institutions; therefore, the point factor degree levels are not assigned to the individual, but to the Job Title. *Burke, supra*. A higher education grievant may prevail by demonstrating the decision on her classification was made in an arbitrary and capricious manner. *See Kyle v. W.Va. State Board of Rehabilitation, Div. of Rehabilitation Services*, Docket No. VR-88-006 (March 28, 1989).

Finally, whether a grievant is properly classified is almost entirely a factual determination. As such, the Respondent's interpretation and explanation of the point factors and Generic Job Descriptions or PIQs at issue will be given great weight unless clearly erroneous. *See Tennant v. Marion Health Care Foundation*, 194 W.Va. 97, 459 S.E.2d 374 (1995); *Burke, supra*. However, no interpretation or construction of a term used in the Mercer classification system is necessary where the language is clear and unambiguous. *Watts v. Dep't of Health and Human Res.*, 195 W.Va. 430, 465 S.E.2d 887 (1995). The higher education employee challenging his classification has to overcome a substantial obstacle to establish that he is misclassified.

Grievant argues that the degree levels in numerous point factors assigned by the JEC were incorrect, and that had the proper credit been given, she would have been placed in Paygrade 17 or Paygrade 18. The following table shows the differences between the degree levels assigned by the JEC and the degree levels assigned by Ms. Bicksler, Director of Human Resources at WVSOM.

JEC	Bicksler	
5	6	Knowledge
4	5	Experience
3	4	Complexity & Problem Solving
3	4	Freedom of Action
2	4	Scope & Effect - Impact of Actions
2	3	Scope & Effect - Nature of Actions
2	3	Intrasystem Contacts - Nature of Contact
4	3	Intrasystem Contacts - Level of Contact
2	2	External Contacts - Nature of Contact
3	3	External Contacts - Level of Contact
2	2	Direct Supervision - Number
3.5	3.5	Direct Supervision - Level of Supervision
1	1	Indirect Supervision - Number
1	1	Indirect Supervision -Level of Supervision
2	1	Physical Coordination
2	1	Working Conditions
2	1	Physical Demands

Grievant's burden is to prove by a preponderance of the evidence that the JEC's decision regarding her classification was clearly wrong or was made in an arbitrary and capricious manner. "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so

implausible that it cannot be ascribed to a difference of opinion. *See Bedford County Memorial Hosp. v. Health and Human Serv.,* 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind,* Docket No. 96-DOE-081 (Oct. 16, 1996)." *Trimboli v. Dep't of Health and Human Res.,* Docket No. 93-HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *Eads, supra* (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). "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 a board of education. *See generally, Harrison v. Ginsberg*, [169 W. Va. 162], 286 S.E.2d 276, 283 (1982)." *Trimboli, supra, Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001).

Grievant made the following arguments to challenge the point factor degree levels:

Knowledge

Grievant received a degree level “5" from the JEC for Knowledge.[10] Grievant contends that she should have received a “6". The JEP defines Knowledge degree level “5" as:

> Job requires broad trade knowledge or specific technical or business knowledge received from a formal registered apprentice or vocational training program or obtained through an associate’s degree of over 18 months and up to 3 years beyond high school.

[10]Grievant’s Exhibit No. 2.

The JEP defines Knowledge degree level “6" as:

> Job requires a thorough knowledge of a professional discipline or technical specialty as would normally be acquired through a relevant baccalaureate education program. Knowledge of principles, concepts, and methodology of a highly technical, professional, or administrative occupation is indicative of this level.

Grievant argues that the overall management and complex responsibilities for this position require a bachelor’s degree as a minimum requirement. Because Grievant has a bachelor’s degree, she contends the degree level should be a “6". At the level three hearing, Glenna Racer, Manager of Human Resources at Marshall University, and JEC member, testified that when evaluating Knowledge, the JEC is evaluating the minimum level of education required for the position. Ms. Racer testified that the JEC considers the amount of knowledge that would be needed for a new employee to enter the position and learn how to do the job in a minimum amount of time. For this position, the JEC determined that a bachelor’s degree would not be required, and instead, an associate’s degree would be sufficient educational background for someone to be trained for this position.

The Mercer point factors measure the minimum level of ability necessary to enter the job, taking into consideration that there is a “learning curve” for any individual entering a new position. *Perkins v. Board of Trustees*, Docket No. 94-MBOT-733 (Oct. 31, 1996). Accordingly, the JEC assigned the point factor degree level according to the minimum degree required to perform the duties of the position, not to the individual holding the position. Grievant failed to prove that the position requires the minimum of a bachelor’s degree. The JEC’s allocation of degree level “5" for Knowledge cannot be found clearly wrong or arbitrary and capricious.

Complexity & Problem Solving

Grievant received a degree level “3" from the JEC for Complexity and Problem Solving.[11] Grievant contends that she should have received a “4". The JEP defines Complexity and Problem Solving degree level “3" as:

> Problems encountered can be somewhat complex and finding solutions to problems may require some resourcefulness and originality, but guides, methods and precedents are usually available. Diversified guidelines and procedures must be applied to some work assignments. Employee must exercise judgement to locate and select the most appropriate guidelines, references, and procedures for application, and adapt standard methods to fit variations in existing conditions.

The JEP defines Complexity and Problem Solving degree level “4" as:

> Problems encountered are complex and varied due to incomplete and/or conflicting data. General policies, procedures, principles, and theories of specific professional disciplines are available as guidelines; however, these guides may have gaps in specificity or lack complete applicability to work assignments. Employee must utilize analytical skills in order to interpret policies and procedures, research relevant information, and compare alternative solutions.

Grievant argues that the duties and responsibilities of her position are not always guided by set policies. Grievant testified that she must make decisions when the guidelines do not clearly indicate or address the individual matter or concern. At the level three hearing, Grievant gave examples of complex situations she is responsible for handling, including policy interpretation in determining whether third or fourth year students should stop rotations before meeting with the Student Promotions Committee regarding a class failure[12]. Grievant’s PIQ did not describe the depth of her involvement in problem solving

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[11] Id.

[12] Grievant’s Exhibits No.5 & 6.

as detailed at the level three hearing. Ms. Racer testified that the JEC rated Grievant as a degree level “3" because there are guidelines, procedures, references, and standard methods that Grievant can utilize to resolve issues.

Examples of complex situations Grievant is responsible for handling provided at the level three hearing cannot be considered by the undersigned in determining the accuracy of an institution’s decision at the time it was made. Based solely upon the data contained within the PIQ provided for review by the JEC, Grievant has failed to prove that the JEC’s allocation of a degree level “3" for Complexity and Problem Solving was clearly wrong or arbitrary and capricious.

Freedom of Action

Grievant received a degree level “3" from the JEC for Freedom of Action.[13] Grievant contends that she should have received a “4". The JEP defines Freedom of Action degree level “3" as:

> Tasks are moderately structured with incumbent working from objectives set by the supervisor. At this level, the employee organizes and carries out most of the work assignments in accordance with standard practices, policies, instructions or previous training. The employee deals with some unusual situations independently.

The JEP defines Freedom of Action degree level “4" as:

> Tasks are minimally structured with incumbent working from broad goals set by the supervisor and established institutional policies. The employee and supervisor work together to establish objectives, deadlines and projects. The employee, having developed expertise in the line of work, is responsible for planning and carrying out the assignment; resolving most of the conflicts which arise; and coordinating the work with others. The employee keeps the supervisor informed of progress and potentially controversial matters. Completed work is checked only to determine feasibility, compatibility with

[13]Grievant’s Exhibit No. 2

other work, or effectiveness in meeting the objectives of the unit.

Grievant argues that due to Dr. Adelman's busy schedule, she has the power to make decisions and compose/sign correspondence on his behalf. At the level three hearing, Grievant gave examples of instances when she had to make and implement decisions when Dr. Adelman was out of town. The examples included interpreting policy and counseling students with the Student Promotion Committee Chairperson and resolving conflicts such as an evacuation of the Clinical Evaluation Center[14]. None of the examples of independent decision making provided at the level three hearing were included in Grievant's PIQ under Freedom of Action.

Ms. Racer testified that Grievant received a level "3" on the JEC's evaluation because tasks are moderately structured for the position in question and Grievant works from objectives set by her supervisor. When assigning a degree level, the JEC believed the position organizes and carries out most of the work assignments in accordance with standard practices, policies, instructions or previous training.

Examples provided at the level three hearing of instances when the Grievant is responsible for making and implementing decisions when Dr. Adelman is out of town, cannot be considered by the undersigned in determining the accuracy of the JEC's decision at the time it was made. Based solely upon the data contained within the PIQ provided for review by the JEC, Grievant has failed to prove that the JEC's allocation of a degree level "3" for Freedom of Action was clearly wrong or arbitrary and capricious.

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[14]Grievant's Exhibits No. 5, 9 and 10.

Scope & Effect - Impact of Actions

Grievant received a degree level “2" from the JEC for Scope & Effect - Impact of Actions.[15] Grievant contends that she should have received a “4". The JEP defines Scope & Effect - Impact of Actions degree level “2" as:

> Work affects either an entire work unit or several major activities within a department.

The JEP defines Scope & Effect - Impact of Actions degree level “4" as:

> Work affects the entire operations of a specialized school, branch campus, community college or baccalaureate-level institution with an operating budget of < $13M; more than one school of division of a graduate or baccalaureate-level institution with an operating budget of $13 - $18M; a school or division of a graduate or baccalaureate-level institution with an operating budget of $19 - $25M; several departments within a graduate-level institution with an operating budget of more than $50M; or a major department within a doctorate-level institution with an operating budget of more than $200M.

Grievant argues that the decisions made from the Vice President for Academic Affairs & Dean’s office affect the entire institution because the WVSOM offers only one degree program. WVSOM is a doctorate level institution with a budget of around $40 million. When assigning a degree level, the JEC did not believe the position had an institutional impact but merely a work unit departmental impact. Ms. Racer testified that Dr. Adelman’s position (if he were a classified employee) would be assigned a degree level “4".

It is unclear whether the WVSOM falls within the class of institutions qualifying for a degree level “4". Grievant may make decisions on Dr. Adelman’s behalf, however, Dr. Adelman is ultimately responsible. Therefore, Grievant has not demonstrated that the JEC was clearly wrong or acted in an arbitrary and capricious manner in assigning a degree level

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[15]Grievant’s Exhibit No. 2

“2" for Scope & Effect - Impact of Actions.

Scope & Effect - Nature of Actions

Grievant received a degree level “2" from the JEC for Scope & Effect - Nature of Actions.[16] Grievant contends that she should have received a “4". The JEP defines Scope & Effect - Nature of Actions degree level “2" as:

> Work contributes to the accuracy, reliability, and acceptability of processes, services, or functions. Decisions are limited to the application of standardized or accepted practices and errors could result in some costs and inconveniences within the affected area.

The JEP defines Scope & Effect - Nature of Actions degree level “3" as:

> Work provides guidance to an operation, program, function or service that affects many employees, students or individuals. Decisions and recommendations made involve non-routine situations within established protocol, guidelines, and/or policies. Errors could easily result in moderate costs and inconveniences within the affected area.

At the level three hearing, Grievant detailed her active role on several institutional committees. Grievant’s participation on the committees includes giving her opinion and voting on recommendations and decisions. Grievant’s role as an active member of several institutional committees, including Dean’s Council, Dean’s Advisory, Academic Policy, and Marketing & Communication, was listed but not thoroughly detailed in her PIQ.

Ms. Racer testified that the JEC evaluated the Grievant’s Nature of Action as a level “2" because her work contributes to the accuracy, reliability and acceptability of processes. The JEC believes the Grievant’s decisions are limited to standardized or accepted practices.

Based solely upon the data contained within the PIQ provided for review by the JEC,

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[16] Id.

Grievant has failed to prove that the JEC's allocation of a degree level "2" for Scope & Effect - Nature of Actions was clearly wrong or arbitrary and capricious.

Intrasystems Contacts - Nature of Contacts

Grievant received a degree level "2" from the JEC for Intrasystem Contacts - Nature of Contact.[17] Grievant contends that she should have received a "3". The JEP defines Intrasystem Contacts - Nature of Contact degree level "2" as:

> Moderate tact and cooperation required; communication is largely of a non-controversial nature and handled in accordance with standard practices and procedures (e.g., explaining simple policies and procedures, coordinating/scheduling complex meeting or conference arrangements.)

The JEP defines Intrasystem Contacts - Nature of Contact degree level "3" as:

> Substantial sensitivity and cooperation required; discussions are frequently controversial and require some delicacy (e.g., project interactions, interpretation of complex policies, resolution of somewhat difficult problems.)

Grievant gave examples at the level three hearing of working with faculty and administration regarding sensitive issues and concerning disputes. Grievant introduced exhibits of notarized statements by faculty and administration regarding their contact and/or reliance on Grievant. All of the notarized statements are dated in March 2010. Dr. Adelman testified that Grievant's PIQ was submitted without other supportive documents. Relying upon the information provided at the time of filing the PIQ, the JEC evaluated this position as a level "2" in Intrasystem Contacts - Nature of Contact because communication was viewed as largely of a non-controversial nature and handled in accordance with standard practices and procedures.

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[17] Id.

The notarized statements provided at the level three hearing cannot be considered by the undersigned in determining the accuracy of the JEC's decision at the time it was made. The notarized statements provided to support Grievant's contention that faculty and administration rely upon Grievant in situations involving sensitivity and disputes were not submitted with the PIQ. Based solely upon the data contained within the PIQ provided for review by the JEC, Grievant has failed to prove that the JEC's allocation of a degree level "2" was clearly wrong or arbitrary and capricious.

Summary

In summary, Grievant did not prove by a preponderance of the evidence that the JEC's allocation of degree levels on the point factors of Knowledge; Complexity & Problem Solving; Freedom of Action; Scope & Effect; and, Intrasystem Contacts, was clearly wrong or arbitrary and capricious. Grievant's PIQ does not accurately reflect the extent of Grievant's job duties. Ms. Racer testified that the information provided within Grievant's PIQ read like an outline instead of a detailed description. Dr. Adelman testified that Grievant's PIQ does not accurately reflect the extent of Grievant's job duties. However, Grievant did provide additional support for her request for reclassification, at the level three hearing. An employee may submit a PIQ in request for reclassification at any time. Therefore, nothing prohibits Grievant from submitting another PIQ for JEC review that includes the detailed data she tried to bring to light at the level three hearing. Ms. Racer stated that had the details presented at the level three hearing been presented in the PIQ, the outcome may have been different. The JEC cannot be expected to read minds. They are equipped with the knowledge provided to them through the PIQ. If the PIQ does not explicitly explain the

extent of Grievant's duties, the JEC review cannot be expected to know and understand the breadth of the position's responsibilities.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. The burden of proof in a misclassification grievance is on the grievant to prove by a preponderance of the evidence that she is not properly classified. *Burke, et al., v. Board of Directors*, Docket No. 94-MBOD-349 (Aug. 8, 1995).

2. Whether a grievant is properly classified is almost entirely a factual determination. As such, the Respondent's interpretation and explanation of the point factors and Generic Job Descriptions or PIQs at issue will be given great weight unless clearly erroneous. *See Tennant v. Marion Health Care Foundation*, 194 W.Va. 97, 459 S.E.2d 374 (1995); *Burke, supra*.

3. The JEC holds the authority to review PIQs and assign degree levels under each point factor.

4. A higher education grievant may prevail by demonstrating the decision on her classification was made in an arbitrary and capricious manner. *See Kyle v. W.Va. State Board of Rehabilitation, Div. of Rehabilitation Services*, Docket No. VR-88-006 (March 28, 1989).

5. "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. *See Bedford County Memorial Hosp.*

v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind,* Docket No. 96-DOE-081 (Oct. 16, 1996)." *Trimboli v. Dep't of Health and Human Res.,* Docket No. 93-HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *Eads, supra* (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)).

6. "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 a board of education. *See generally, Harrison v. Ginsberg*, [169 W. Va. 162], 286 S.E.2d 276, 283 (1982)." *Trimboli, supra, Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001).

7. The Mercer point factors measure the minimum level of ability necessary to enter the job, taking into consideration that there is a “learning curve” for any individual entering a new position. *Perkins v. Board of Trustees*, Docket No. 94-MBOT-733 (Oct. 31, 1996).

8. The JEC assigned the degree levels according to the minimum degree level required to perform the duties of the position, not to the individual holding the position.

9. The undersigned Administrative Law Judge’s review is limited to determining whether the JEC was clearly wrong or acted in an arbitrary and capricious manner. Inasmuch as the JEC’s decision was properly based on the information provided by

Grievant in her PIQ, the undersigned ALJ cannot consider new information provided by Grievant which is different from what she placed on her PIQ.

10. After review of Grievant's PIQ, the JEC's determination that the position was appropriately classified at the level of Administrative Assistant (paygrade 15) was not clearly erroneous or arbitrary and capricious.

Accordingly, this 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: JANUARY 13, 2011

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Jennifer Lea Stollings-Parr

Administrative Law Judge