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**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**

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**BARBARA GILLESPIE**

v.

**Docket No. 89-20-684**

**KANAWHA COUNTY BOARD OF EDUCATION**

**D E C I S I O N**

**I. INTRODUCTION**

Barbara Gillespie is employed as a buyer for Respondent Kanawha County Board of Education. On September 8, 1989, she filed the following complaint at Level I:

Grievance is filed based on violation of. .  
.[W.Va. Code §] 18A-4-8b(b), [Kanawha County]  
Board [of Education] policy on Affirmative Action,  
Series 19.00. I applied for the position of  
Coordinator in the Department of Purchasing and  
Supply Management, and was turned down although I  
have the most seniority and I am the most quali-  
fied.

The position of Coordinator of Supply Management  
is a Professional Position. According to Mr.  
William Courtney, Director of Employer/Employee  
Relations, this position is paid by the Kanawha  
County Board of Education and is not funded by the  
state or service personnel.

I wish to have my grievance heard due to the fact  
that "Board Policy" and "Service Personnel Guide-  
lines" have totally been ignored thus[]far. I  
have been employed by the Board of Education for a  
total of 17 years. Mr. Scott Beane has been  
employed for a total of 16 years. So [whether the  
job is]. . .Professional or Service, I have the

most seniority.<sup>1</sup> As for qualifications, I have 14 years of experience in warehousing and office procedures. Mr. Beane has had 2½ years of warehousing experience according to Mr. Courtney. This may account for the total chaos in the filling and delivery of school orders.

Colleagues wish to speak on my behalf, both service and personnel [sic].

This situation can be remedied by placing me in the Coordinator's position with back pay to the effective date of the job.

The grievance was denied at Level I with the explanation, "the most qualified person was recommended," and again at Level II, after hearing, for reasons including, "A county board of education is obligated to fill a vacant professional position with the most qualified applicant therefor. Dillon v. Board of Education, 351 S.E.2d 58 (W.Va. 1986)." Level II Decision, Conc. Law 1. Grievant, represented by the West Virginia School Service Personnel Association (WVSSPA), advanced her case to Level III, where it was waived per W.Va. Code §18-29-4(c), and finally to Level IV on November 27, 1989.<sup>2</sup>

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<sup>1</sup> This statement must be understood to refer to the job in question as opposed to anything else, since the evidence is uncontroverted that Grievant and the successful applicant, Mr. Beane, both were service employees at the time of their candidacy.

<sup>2</sup> After Grievant's statement of her case, as reproduced supra, was received and docketed by this Grievance Board, Kimberly Levy, Esq., of the WVSSPA, hand-delivered another version of Grievant's complaint, which has been considered an in-essence duplicate filing.

A hearing was scheduled for January 8, 1990; however, in early December, the undersigned reviewed the record as it was then assembled at Level IV, and discerned a notable lack of clarity surrounding the parties' postures on a crucial issue, i.e., whether the position in question was professional or service. In particular, Grievant's theory was confusingly posed, in that she, in the same document, cited Code §18A-4-8b(b), which relates only to service personnel; characterized the sought position as "professional;" claimed "Service Personnel Guidelines" had been violated; indicated she believed herself entitled to the job whether it was professional or service; advised both service and professional colleagues wished to provide her with references; and reported she was represented by WVSSPA.<sup>3</sup>

Accordingly, a status conference, limited in purpose to the framing of this issue, was conducted December 15, 1989.<sup>4</sup> John Everett Roush, Esq., of WVSSPA appeared on Grievant's behalf, and Gregory W. Bailey, Esq., and Director of Personnel Cy Faris were present for Respondent. Pre-meeting, counsel requested and were allowed the option not only to discuss the matter but also to present evidence thereon,

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<sup>3</sup> Grievant's association with WVSSPA, without more, would not have created confusion, since she is currently a buyer and thus clearly a service employee per Code §18A-4-8.

<sup>4</sup> Despite invitation to do so, neither party objected to this conference or its purpose; to the contrary, both were supportive thereof.

which both exercised. In addition, both were given the opportunity to submit written argument or evidence post-meeting, which was declined save that Messrs. Roush and Bailey expressed intention to submit separate Kanawha County, West Virginia, Circuit Court decisions.<sup>5</sup>

It was stipulated on December 15 that Respondent had, throughout the posting, selection and grievance process, assumed the job in question to be professional in nature, and Grievant had considered such to at least probably be the case for much of that time. However, her counsel, on that date, crystallized her primary current perspective as being that the job was a service personnel position.<sup>6</sup> While Mr. Bailey maintained that the position had "always" been deemed professional by Respondent, and that such remained

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<sup>5</sup> Respondent presented Bd. of Educ. v. McNeel, C.A.# 85-Misc-403 (May 4, 1988), as authority that a "most qualified" standard was appropriate for service personnel selections. Although the successful applicant in that case, who was allowed to retain his position thereby, earned a higher score than the complainant on the qualifying examination, the complainant was not qualified in the first instance. Therefore, McNeel does not stand for the proposition posed; even if it did, the outcome herein would remain unchanged due to the flawed posting. See this Decision, infra.

Grievant offered Hyre v. Upshur Co. Bd. of Educ., C.A.# 88-AA-303 (Oct. 2, 1989). Hyre's focus is on how one "meet[s]...the definition of...a [Code §18A-4-8] job title," see Code §18A-4-8b(b), and thus the case is not directly applicable to the one at bar.

<sup>6</sup> Counsel expressed, in the alternative, that if the job were ultimately considered professional, Grievant was the most qualified applicant.

Respondent's official view, he qualified his remarks somewhat, see this Decision at p. 13.

Messrs. Roush and Bailey had been counsel in a very recent Grievance Board matter, Basham v. Kanawha Co. Bd. of Educ., Docket No. 89-20-581 (Nov. 21, 1989),<sup>7</sup> which dealt with somewhat similar circumstances, and in which it was clear ab initio disagreement existed as to whether the slot in question was service or professional. The standards for hiring professional and service personnel are quite different, compare Code §§18A-4-8b(a), 18A-4-8b(b), and, therefore, it was crucial to discern which category actually applied. The Basham job was held to be in the service arena and, since it had been filled as if it were a professional position, the selection process was flawed and Respondent directed to initiate corrective action. In the instant case, it was determined that preliminary analysis of that same issue might expedite resolution of the grievance, i.e., if the Coordinator of Purchasing and Supply Management is "service" Basham controls, and in that regard be beneficial to both parties.<sup>8</sup>

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<sup>7</sup> Basham was submitted on the record of its lower-level proceedings and so was not subject to hearing at Level IV.

<sup>8</sup> Furthermore, as recognized by the parties on December 15, even if they had committed a mutual mistake of law, i.e., identified a service job as a professional one, such mistake, affecting the underpinnings of the entire grievance, need not have stood as backdrop for a decision in this forum. Any decision based thereon, without analysis,  
(Footnote Continued)

It was conceded by Mr. Faris that the vacancy was posted as professional and that this was apparent from its form. Significantly, Mr. Bailey opined the hiring and selection process might have been vastly different had the job been announced as a service opening.<sup>9</sup>

## II. APPLICABLE LAW

Code §18A-1-1 provides, in pertinent part:

The definitions contained in. . .[Code] §18-1-1. . .shall be applicable to this chapter. In addition, the following words used in this

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(Footnote Continued)

would clearly have been of questionable legal and precedential value.

It is of course true that this Grievance Board does not anticipate issues not fairly contemplated by the record, Ryan v. Wood Co. Bd. of Educ., Docket No. 54-86-332-3 (Sept. 1, 1987), and that parties may waive theories of recovery or defense by not addressing them, see Boggs v. W.Va. Dept. of Tax, Docket No. 89-T-174 (Sept. 22, 1989). However, the authority of an adjudicating entity, even a purely appellate one, to identify and analyze non-jurisdictional matters not articulated by a party has been recognized in some contexts. See, e.g., Annot., 42 L.Ed.2d 946, "What Issues will the [United States] Supreme Court Consider, Though Not, or Not Properly, Raised by the Parties" (1975, updated through 1989); see also Art. VIII, §4, W.Va. Const. (the Supreme Court of Appeals of West Virginia "shall" consider "every point fairly arising upon the record"). And, it has long been the rule that the findings of an administrative agency which has "unduly restricted its inquiries upon a mistaken view of the law" presents an invalid legal basis for action taken upon judicial review. Illinois Central RR Co. v. ICC, 206 U.S. 441 (1907); see also Heckler v. Campbell, 461 U.S. 458 (1983), and Hormel v. Helvering, 312 U.S. 552 (1941).

<sup>9</sup> Re-posting was not ordered in Basham because there was no evidence that the original announcement was so clearly "professional" or "service."

Mr. Roush expressly noted his non-waiver of any "rights" in Ms. Gillespie to re-posting, making it clear her preferred remedy was not that but instead instatement.

chapter and in any proceedings pursuant thereto shall, unless the context clearly indicates a different meaning, be construed as follows:

. . .

(b) "Professional personnel" shall mean persons who meet the certification and/or licensing requirements of the State, and shall include the professional educator and other professional employees.

(c) "Professional educator" shall be synonymous with and shall have the same meaning as "teacher" as defined in. . .[Code] §18-1-1. . . Professional educators shall be classified as:

(1) "Classroom teacher". . .

(2) "Principal". . .

(3) "Supervisor": The professional educator who, whether by this or other appropriate title, is responsible for working primarily in the field with the professional and/or other personnel in instructional and other school improvement.

(4) "Central office administrator": The superintendent, associate superintendent, assistant superintendent, and other professional educators, whether by these or other appropriate titles, who are charged with the administering and supervising of the whole or some assigned part of the total program of the county-wide school system.

(d) "Other professional employee" shall mean that person from another profession who is properly licensed and is employed to service the public schools and shall include a registered professional nurse. . .

(e) "Service personnel" shall mean those who serve the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, transportation, school lunch, and as aides.

Code §18-1-1 provides, in pertinent part:

The following words used in this chapter and in any proceedings pursuant thereto shall, unless the

context clearly indicates a different meaning, be construed as follows:

. . .

(g) "Teacher" shall mean teacher, supervisor, principal, superintendent, public school librarian; registered professional nurse. . .; or any other person regularly employed for instructional purposes in a public school in this state;

(h) "Service personnel" shall mean all nonteaching school employees not included in the above definition of "teacher". . .

Code §18A-4-8 includes among its class titles of service personnel "Director or coordinator of services," along with this definition: "personnel not defined as professional personnel or professional educators in. . .[W.Va. Code] §18A-1-1. . .who are assigned to direct a department or division." Code §18A-4-8a, which is styled "Service personnel minimum monthly salaries," lists "Director or coordinator of services" at Pay Grade H, the highest plane for service personnel wages.

### III. DISCUSSION

#### **a) Administrative Rules**

Testimony was presented on "Position Code 107," based on regulation or policy generated by the West Virginia Department of Education<sup>10</sup> and under which Respondent alleges

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<sup>10</sup> No written regulation or policy was presented into the record by either party; however, the undersigned takes official notice that the Department of Education requires Position Code 107 personnel to "be defined as professional

(Footnote Continued)



the classification in question falls. Apparently, this "Code" is intended to cover certain county-level coordinator positions and relates in some manner to funding therefor. However, there is no basis in the statutory law for categorizing a county board of education position as other than "professional" or "service,"<sup>11</sup> and the means a given job's salary is funded does not appear to affect those categorizations.<sup>12</sup> See Cox v. Bd. of Educ. of Hampshire Co., 355 S.E.2d 365, 370 (W.Va. 1987).

**b) Nature of Duties**

One indicium of whether a person titled supervisor, director, coordinator or the like should be considered professional or service appears to be the type of activity he or she oversees. See Opin., W.Va. Atty. Gen'l, Aug. 28,

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(Footnote Continued)

personnel in §18A-1-1 and "meet the certification or licensing requirements of the State." See this Decision, infra.

"Purchasing" is listed as an example of a possible program or activity the supervision of which might, in the proper circumstances, be classed under Code 107. Those circumstances do not exist here, and the Coordinator of Purchasing and Supply Management clearly falls not under Code 107 but instead under one of the service personnel Position Codes referenced therein.

<sup>11</sup> Notice is taken that a third category, "auxiliary personnel," once existed in West Virginia education personnel law. These employees were aides, now considered service staffers.

<sup>12</sup> Mr. Bailey explained that the Coordinator of Purchasing and Supply Management post has in the past been funded under professional position strictures.

1969. For example, a county Coordinator of Curriculum & Instruction would likely be required to maintain teaching certification and thus be a "supervisor" per Code §18A-1-1(c)(3) or a "central office administrator" under Code §18A-1-1(c)(4), whereas a Supervisor of Custodial Services, with responsibility for staff and duties clearly contemplated as being in the service realm, would not, and thus be a "director or coordinator of services."<sup>13</sup> See this Decision infra at Section III-c.<sup>14</sup>

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<sup>13</sup> In Cox v. Bd. of Educ. of Hampshire Co., 355 S.E.2d 365 (W.Va. 1987), a county board of education's decision to add the duties of Assistant Transportation Director, an abolished service position, to the portfolio of an Assistant Superintendent of Schools, a professional employee, was allowed. Cox, however, does not mandate an outcome different than that reached in the instant Decision. While the Court stated, in dictum at 370, "We believe it is within the discretion of the county board of education to place this responsibility with a professional employee," the context must not be overlooked. Hampshire County was not filling a vacant position; rather, it was delegating whatever duties of a jettisoned job remained to another staff member. Significantly, the County had determined it had no need of an Assistant Transportation Director, and further decided that the related tasks it desired performed were such that they could be added to those of an extant employee already charged with a full-time workload. It is eminently reasonable to assume the Assistant Superintendent's transportation-area functions consumed only a minimal percentage of his worktime; as such, Cox cannot be said to stand for the proposition that a county board of education has total discretion in establishing its positions as "professional" or "service." Indeed, W.Va. Code §§18-1-1, 18A-1-1, 18A-4-8 would have little meaning if it did. See this Decision, infra at p. 15.

<sup>14</sup> It would be clearly reasonable, however, that a Supervisor of Maintenance, separately listed under Code §18A-4-8 as a service post, might have to obtain and keep some sort of certification and/or licensure in such  
(Footnote Continued)

In the instant case, Grievant cites her work experience, including that with Respondent as a buyer<sup>15</sup> and an accountant II as relevant to her suitability for the position she seeks. "Buyer" and "Accountant II" are both included in the service personnel listing of Code §18A-4-8,<sup>16</sup> and are defined, respectively, as follows:

"Buyer" means personnel employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs.

"Accountant II" means personnel employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations.

It is patent from these descriptions that persons filling the posts arguably engage in tasks that are "pro-

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(Footnote Continued)

endeavors as heating and air conditioning, engineering, etc. Supervisor of Transportation, Food Services Supervisor, Printing Supervisor and Inventory Supervisor are also among the individually-listed titles in §18A-4-8 which may or may not be reasonably subject to certification.

The parties cited the service personnel category of "Electrician" as one for which West Virginia licensure is required and quite understandably so.

<sup>15</sup> Grievant became a buyer only recently, around the time she unsuccessfully sought the job herein contested.

<sup>16</sup> "Accountant I" and "Accountant III" are also included therein. It is noteworthy that accountants employed by county boards of education are apparently not required to hold certification in public accountancy or other state licensure, else they perhaps would be "professional personnel."

At Level IV, it was suggested that persons employed by county boards of education within the "Accountant" series are not accountants in the true sense of the word, but would perhaps more appropriately be designated "bookkeepers."

fessional" as that word is commonly utilized outside the parlance of West Virginia education law, and, further, that within that parlance "professional" and "service" are terms of art. It would at least arguably be desirable for a county board of education in West Virginia to have freedom to select the "most qualified" applicant for vacancies in the categories of Buyer, Accountant II, and others. However, that is simply not what that law, i.e., Code §18A-4-8b(b), provides.<sup>17</sup>

Another entry from Code §18A-4-8 that appears to have some relationship to the Coordinator of Purchasing and Supply Management is "Inventory Supervisor," which "means personnel who are employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies." Interestingly, "Inventory Supervisor" is compensated at Pay Grade "D," clearly lower than that of a "Director or Coordinator of Services" at "H" and even Buyer and Accountant II, which are "F" and "E" respectively. The Coordinator of Purchasing and Supply Management, as explained by Respondent, would be directly responsible for inventory supervisors, warehousing employees and others clearly delineated as service staffers.

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<sup>17</sup> This has been recognized in previous pronouncements of the West Virginia Education and State Employees Grievance Board, including Basham (transportation supervisor) and Jervis v. Wayne Co. Bd. of Educ., Docket No. 50-88-084 (Nov. 2, 1988) (bus mechanic).

c) Restrictions upon "Professional" Status

As indicated by the Level II Decision, and confirmed on December 15, the posting which announced the Coordinator of Purchasing and Supply Management as vacant did not include a requirement of any state certification or licensure. Joint Exhibit 1. At Level IV, Mr. Bailey candidly conceded that recent research had led him to the conclusion that West Virginia law seems to insist upon some form of certification or licensure in order for a post to be "professional."

In Trimboli v. Bd. of Educ. of the Co. of Wayne, 254 S.E.2d 561 (W.Va. 1979), a Director of Federal Programs was found to be a professional employee under law in effect at the time. However, the Court, referencing the precise excerpt from Code §18A-4-8 relevant herein, noted the following:

[The law] was amended [after the actions complained of herein]. One of the classifications added [to Code §18A-4-8] was "'Director or coordinator of services' [which] means personnel not defined as professional personnel or professional educators in. . .[§]18A-1-1. . .who are assigned to direct a department or division." [emphasis deleted]. . . "Professional personnel" in [§]18A-1-1 are certified or licensed persons. . .

At p. 563, n. 2, emphasis supplied.

In addition, a January 22, 1975, Opin. of the Attorney General of the State of West Virginia prominently titled "SCHOOL SERVICE PERSONNEL" addresses the topic. This Opin. contains a rather esoteric discourse on the generally-understood meaning of the term "professional," including some thoughts on the subject from Shakespeare, and with that as

precursor, reads as follows in pertinent part, with emphasis supplied:

We believe that a rational analysis of the job description of the position of [summer] audio-visual specialist contemplated a professional employee. However, it also appears that the draftsman of the job description realistically concluded that it might be impossible to acquire the services of one who was professionally trained in videotaping. . . . The job specification did not include the requirement of teacher certification. . . . [although the person employed] is a professional educator [during the regular school term].

. . . . [I]t is essential that. . . [this position] fall within one of the defined categories of "School personnel." We have concluded that the position does not fall within the category of "Professional personnel". . . [and] [i]t would appear that the only possible category under which this employment would fall is "Service personnel."

. . . In conclusion, we find. . . the position created is not one in which State law requires that the employee possess a "teaching certificate" or other professional certification. We further believe that the employment was such as would be classified as "service personnel". . . .

Even though Code §§18-1-1, 18A-1-1 cannot be said to be totally unambiguous, it does appear, from §18A-1-1(b) and as suggested by Trimboli and the Opin. immediately supra, that "professional personnel" must "meet the certification and/or licensing requirements of the State" in some area.<sup>18</sup>

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<sup>18</sup> For example, the definitions of "service personnel" seem somewhat inconsistent, as do those of "supervisor." However, it appears that Code §18A-1-1(b)'s inclusion of a certification/licensure requirement in the definition of "professional personnel" obviates the need for further analysis of the perceived possible inconsistencies.

Any ambiguity in the statute would have to be resolved  
(Footnote Continued)

See also Swain v. Berkeley Co. Bd. of Educ., Docket No. 02-86-167-2 (Dec. 23, 1986).<sup>19</sup> Respondent contended rather vaguely that it has the discretion to determine whether its positions are "professional" or "service" when they might appropriately be either.<sup>20</sup> While this may be, this discretion cannot be understood as absolute. See n. 13. If, as the statute instructs, professional personnel must maintain some sort of certification or licensure, then such must be a

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(Footnote Continued)

in favor of personnel, anyway. Morgan v. Pizzino, 256 S.E.2d 592 (W.Va. 1979). Even "where there are multiple equally-reasonable interpretations of a school personnel statute, Morgan mandates that the one most favorable to employees should prevail." Burdette v. Kanawha Co. Bd. of Educ., Docket No. 20-88-263 (Mar. 16, 1989). Since it is "easier" for an applicant to prove eligibility for and/or entitlement to a service position, e.g., no "most qualified" standard relevant, the interpretation limiting which positions may appropriately be classed as professional under Code §§18-1-1, 18A-1-1 would be that "most favorable to employees."

It should be noted that the "context" of this case does not "clearly indicate[] a different meaning" from those presented in Code §§18-1-1, 18A-1-1. See ¶1 of those statutes.

<sup>19</sup> The undersigned is aware that Swain was reversed sub nom Bd. of Educ. of the Co. of Berkeley v. The W.Va. Emp'ees Gr. Bd. and Swain, #87-C-46, by the Circuit Court of Berkeley County, West Virginia, on May 15, 1987. However, Swain is distinguishable from the case at bar in two important particulars. First, the vacancy in Swain was advertised as requiring administrative certification, and second, the Swain "Director of Transportation" obviously did not meet the Code §18A-4-8 definition of "Supervisor of Transportation," "Director or Coordinator of Services," or other job title specifically listed as "service" in the statute. See id.

<sup>20</sup> Respondent did not argue such discretion, which was generally referenced in Basham at n. 7, applicable to this position.

stated requirement for position candidacy. Furthermore, a county board of education may only require this type of qualification when it is reasonable to do so and this can be proven, if need be.

In addition to the foregoing, the following formal findings of fact and conclusions of law are made.

#### FINDINGS OF FACT

1. Grievant, a buyer in Respondent's employ, was an unsuccessful applicant for the position of Coordinator of Purchasing and Supply Management.

2. She filed this grievance, claiming herself to be due the job, which she at some point has come to believe was service, over the successful applicant. Respondent answered by stating the successful applicant was the "most qualified" candidate for this position, which it characterized as professional.

3. The Coordinator of Purchasing and Supply Management supervises staff and tasks designated as "service" as opposed to "professional" in the context of education personnel law.

4. Respondent did not require any sort of specialized certification and/or licensure for the Coordinator of Purchasing and Supply Management post.



### CONCLUSIONS OF LAW

1. All positions of employment with a county board of education in West Virginia must be classified as either "professional" or "service." See Opin., W.Va. Atty. Gen'l, Jan. 22, 1975.

2. "'Professional personnel' shall mean persons who meet the certification and/or licensing requirements of the State. . . ." W.Va. Code §18A-1-1(b).

3. Respondent's decision to not require any sort of specialized certification and/or licensure for the Coordinator of Purchasing and Supply Management post was reasonable and not arbitrary or capricious.

4. The staff and tasks under the purview of the Coordinator of Purchasing and Supply Management are reasonably designated as "service" as opposed to "professional" in the context of education personnel law.

5. The Coordinator of Purchasing and Supply Management, as it was described in the original posting, was and is a "service" and not a "professional" position. Cf. Code §§18A-1-1(b), (d).

Accordingly, this grievance is **GRANTED**,<sup>21</sup> only to the extent that Respondent is ordered to re-post the position of Coordinator of Purchasing and Supply Management as a service position.<sup>22</sup>

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code


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<sup>21</sup> This outcome is not inconsistent with that in the recent Grievance Board decision of Russell v. Doddridge Co. Bd. of Educ., Docket No. 89-09-297 (Dec. 8, 1989), which involved a Coordinator of Supportive Services job. A stated requirement of that position, related to student attendance records supervision, was "must be certified or agree to become certified," which apparently referred to some state-level certification. Furthermore, Hearing Examiner Nedra Koval, citing Code §18A-1-1, noted, "The parties did not contend or argue that the position, as posted, was anything but a professional position, and the undersigned has no reason to believe otherwise." Id., n. 2.

Another Grievance Board case worthy of note is Tenney v. Barbour Co. Bd. of Educ., Docket No. 01-88-233 (June 30, 1989), in which a system's Director of Administrative Services was assigned "the additional duties of. . . a service personnel position." The only issue squarely raised by the Tenney scenario was whether or not the grievant was improperly transferred per Code §18A-2-7 by this augmentation of responsibilities. However, he also contended that he, a professional employee, was insulated from service tasks. The respondent agreed to the extent that Director of Administrative Services was professional, citing Position Code 107 as support. It is noted that Mr. Tenney had previously been a principal, and in the absence of evidence to the contrary, it must be assumed his Administrative Services post also required state licensure or certification of some type and thus was indeed professional in nature. See n. 10.

<sup>22</sup> Jervis, Basham, and other Grievance Board cases elaborate on specific requirements of the service personnel selection procedures.

§18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate court.

A handwritten signature in black ink, appearing to read "M. Drew Crislip", written over a horizontal line.

M. DREW CRISLIP  
Hearing Examiner

Dated: January 17, 1990