DOTTIE TRIMBOLI, et al.,

Grievants,

v. **Docket No. 93-HHR-322**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES and DIVISION OF PERSONNEL,

Respondents.

DECISION

Dottie Trimboli (See footnote 1) and numerous other Economic Service Workers ("ESW") filed grievances alleging their placement into Pay Grade 8 during the Statewide Reclassification Project violated statutory requirements of equal pay for equal work. Grievants also allege Respondents' use of the Southeastern Conference Salary Survey ("Survey") to place them in Pay Grade 8 was an arbitrary and capricious act and an abuse of discretion. Grievants seek as relief to be placed in Pay Grade 10.

For administrative reasons, this case was reassigned to the undersigned on June 3, 1996. Several telephonic status conferences were held to promote the exchange of information, witness lists, position statements, and to clarify the parties and their representatives. Three days of hearing were held on August 20, 21, and 22, 1996. Originally, by agreement of the parties, the case was to becomemature for decision on November 11, 1996. Due to Grievants' late filing of their proposed findings of fact and conclusions of law, Respondents were given until January 6, 1997, to file a rebuttal; thus, the case became mature for decision on January 6, 1997.

Issues

Grievants argued their placement at Pay Grade 8 is arbitrary and capricious and contrary to Division of Personnel's ("DOP") own regulations. They believe the complexity of the ESW's work requires a higher pay grade within their job family to achieve equity among the classifications. Grievants also argued the data in the Survey was unreliable and flawed; thus Respondents' reliance

on this data to set pay grades was arbitrary and capricious. (See footnote 2)

Respondents maintained ESW's are properly placed in Pay Grade 8 based on their job duties. They noted ESW's determine eligibility through use of manuals and do not engage in interpretation or analysis of data. Respondents also defended the Survey data and indicated it was not flawed, nor were they aware of any flaws. Respondents noted the arbitrary and capricious standard is a high one, requiring willful and unreasonable action and disregard of known facts, and Grievants failed to meet their burden of demonstrating Respondents' actions were arbitrary and capricious or an abuse of discretion.

Initial Findings of Fact

1. The Legislature directed DOP to develop a new statewide job classification and pay plan for all state employees. 2. DOP was to review all positions within the classified service, consolidate and decrease the number of job titles, and place employees within equitable pay grades based upon a similarity of duties and responsibilities. During the reclassification project the number of classifications decreased from 1300 to 700, and the number of pay grades decreased from 35 to 27.

3. DOP began to reclassify Department of Health and Human Resources ("HHR") employees some time in 1989.

4. All HHR employees completed position description forms ("PDF") which indicated all of their job duties and the percentage of time spent on each job duty. These PDF's were reviewed by each employee's supervisor for accuracy before they were returned to DOP.

5. The primary duty of an ESW is to determine if applicants are eligible for the various assistance programs offered by the Federal and State governments. The work performed by ESW's falls into four categories (the average percentage of time is listed after the activity): 1) taking eligibility applications - 55%; 2) determining eligibility - 20%; 3) writing monthly reports - 20%; and 4) maintaining caseloads - 5%. Grs. Exh. 16.

6. ESW's refer to voluminous manuals in making eligibility determinations. The caseload of an ESW varies from county to county, but an average is about 600 cases. ESW's in some regions are specialized and only work in one or two areas. In other regions, ESW's are generic and cover all 15 assistance programs. ESW's perform some clerical functions and this activity decreases the time they have to determine eligibility.

7. DOP completed a detailed analysis of the PDF's submitted by all HHR employees. From these forms, as well as field visits and job audits, DOP divided HHR employees into groupsbased upon job duties. From an analysis of these job duties, DOP created various job specifications which described the duties of all proposed positions.

8. These job specifications were submitted to HHR for comment and review. HHR reviewed the job specifications and made suggestions and proposals. Some proposals were adopted by DOP.

9. DOP originally suggested a two tiered class series for ESW's. Mr. John Boles, then HHR's Director of Income Maintenance ("OIM"), notified DOP that a two tiered series was not necessary. From this recommendation DOP developed a single, full performance level ESW classification.

10. Once appropriate job specifications were developed, DOP assigned the specifications to appropriate pay grades. To facilitate this assignment, DOP utilized the Survey, which contains benchmark classifications and salaries from member states. The Survey is recognized and utilized by state personnel departments throughout the member states, and it identifies each position and the average salary each state pays the employees in that position.

11. When the Survey contained an exact match for a classification, DOP placed that classification in the closest pay grade to that salary. When there was no exact match for a classification, DOP extrapolated an appropriate pay grade based upon the relative complexity of jobs within the same job family utilizing a job classification that had an exact match. There was no exact match for the ESW in the Survey. The Survey did contain an exact match for Social Service Worker I ("SSW I"), a position within the ESW's job family. The Survey also contained a beginning level ESW, not the full-performance worker used by West Virginia. Using the salary levels for these two positions from the Survey, DOP extrapolated the pay grade for ESW's. 12. SSW I's and ESW's were in the same pay grade prior to reclassification and are in the same pay grade now, a Pay Grade 8.

13. The minimum salary for ESW's increased from $14,424 per year under the old pay plan to $16,116 per year under the new pay plan. Seventy-two percent of ESW's received a pay increase upon implementation of the reclassification, and the average amount was $918.00 per year.

14. During the reclassification of ESW's, Mr. Boles advocated ESW's placed at Pay Grade 9. He never requested ESW's be placed in Pay Grade 10. He also advocated higher pay grades for many other workers in his office.

15. ESW's refer cases to other HHR employees for protective services, employment training,

and other services.

Discussion

During the presentation of evidence, Grievants compared their classification and job duties to other classifications with higher pay grades in an attempt to demonstrate their work had the same or greater degree of complexity. Grievants compared their duties to the duties of Quality Control Reviewers ("QCR") in Pay Grade 10; Child Advocate Legal Assistants ("CALA") in Pay Grade 9; and Employment Programs Specialist ("EPS") in Pay Grade 10. Other job classifications discussed by the parties were the Social Service Workers I, II, and III ("SSW") in Pay Grades 8, 9, and 10, respectively, and Employment Relations Specialist ("ERS") in Pay Grade 9.

The classification specifications for the above identified classifications are restated below:

ECONOMIC SERVICE WORKER

Nature of Work: Under general supervision, performs at the full-perfor mance level in taking applications, determining eligibility for and managing a caseload for a variety of economic assistance programs. Responsible for conducting personalinterviews with clients, evaluating and verifying personal, financial and social information, determining eligibility for services, maintaining a client caseload, and referring clients to other social service and community service agencies when appro priate. May obtain repayment from clients who have been issued economic assistance erroneously. Transportation must be available as travel is required. Must possess a valid driver's license. Performs related work as required.

Examples of Work

Interviews client initially to gain overview of client financial resources and social circumstances pertinent to eligibility for services; performs in-depth interview to establish eligibility for specific programs and benefits, such as food stamps and medical services.

Determines eligibility for economic assistance using eligibility manuals and guidelines.

Contacts banks, employers, medical facilities, physicians, and neighbors as necessary by phone or letter to substantiate client data.

Completes appropriate economic service forms and codes for computer entry thereby authorizing basic services for client; informs client of types of benefits to be received.

Updates each assigned client's case file by scheduling periodic office visits with client.

Takes calls from clients and public and sees "walk-ins" requesting information on economic service programs.

Composes brief social summary of client's circumstances and assesses need for social service intervention; directs client to community resources when needs cannot be met through economic services and/or additional assistance is required.

Explains economic service policies, rules and regulations to client in a manner that makes clear the information on application forms and client's obligations and rights as a recipient of benefits.

Computes amount of benefit client will receive using appropriate monetary guidelines and calculator; computes amount of over-payments when they occur and arranges with client for reimbursement.

Pursues collection of any payments against individuals and households who received Food Stamp Program benefits to which they were not entitled.

Knowledge, Skills and Abilities

Knowledge of economic service programs and policies, rules and regulations.

Knowledge of interviewing techniques and methods for obtaining and communicating information.

Ability to read and comprehend federal and state economic service policies and guidelines.

Ability to interact effectively with people from a wide range of socio-economic backgrounds.

Ability to record pertinent facts and maintain records.

Ability to perform basic arithmetic.

Ability to plan and organize work independently and efficiently.

Ability to work under time constraints in processing economic service applications.

Minimum Qualifications

Training: Graduation from an accredited four-year college or university.

Substitution: Any combination of additional training and/or full-time or the equivalent part-time paid experience interviewing clients, customers or the public and evaluating the data against established standards and guidelines may substitute for the required training on a year-for-year basis except experience in Economic Services work requiring program eligibility decisions may substitute for required training on a one year experience for two years of training.

QUALITY CONTROL REVIEWER

Nature of Work

Under limited supervision, performs work at the full-performance level in the comprehensive and investigative review of selected cases and/or programs in the assigned area of responsibility. Communicates with all parties necessary to obtain or substantiate needed information, including individual contacts and review of records to determine compliance with federal and state guidelines. May provide presentations or training in areas of concern. Performs related work as required.

Examples of Work

Reviews and verifies assigned program areas, including compliance from employer's and individual's standpoint.

Examines case records and/or program information, including mathematical computations, to gain an understanding of what has transpired and to note any deficiency or discrepancy in the information.

Makes necessary contacts to substantiate case records and/or program information.

Analyzes case determinations for adherence to laws, rules, regulations, policies and procedures of applicable program area.

Writes a summary of each case reviewed, stating whether or not an error has been identified, and if so, detailing the nature of the error both for federal/state reporting and for the local agency.

Keeps records of all cases received, including the initiation and completion date of each review conducted for a particular program area.

Completes special reviews of programs as assigned.

Knowledge, Skills and Abilities

Knowledge of federal and state laws, rules, regulations, policies and procedures governing applicable state program areas.

Knowledge of regulations, processes and procedures in the area of assignment.

Ability to perform basic mathematics.

Ability to analyze case determinations for adherence to laws, rules, regulations, policies and procedures of applicable program area.

Ability to interact effectively with people at all socio-economic levels.

Ability to use interviewing techniques to obtain, verify and evaluate sensitive information.

Ability to write clear and concise reports on detailed reviews and investigations.

Ability to schedule work activities.

Ability to keep thorough and accurate records.

Ability to communicate effectively, both orally and in writing.

Minimum Qualifications

TRAINING Graduation from an accredited four-year college or university.

SUBSTITUTION Experience as described below may substitute for the required training on a year-for-year basis.

EXPERIENCE Two years of full-time or equivalent part-time paid employment in responsible eligibility or investigatory work involving credit, insurance, or government programs.

SPECIAL REQUIREMENT Availability of a car for continuous use may be a requisite of employment.

CHILD ADVOCATE LEGAL ASSISTANT

Nature of Work

Under general supervision, assists an attorney in the rendition of professional services in connection with the establishment and enforcement of paternity and support. Assists the attorney with research of legal resource material, including reported decisions and opinions, statutes, rules and regulations, with the preparation and drafting of pleadings or other documents, and with the review and assessment of case files by preparing summaries and reports of pertinent facts, and by compiling information as directed. Develops necessary information to implement methods of child support enforcement. Supports and assists in publicizing the Child Advocate program throughout communities to which assigned, and may assist in delivering services on an as-needed basis in more than one regional office. Performs related work as required.

Examples of Work

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

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

Investigates absent parent resources to determine ability to pay.

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

Prepares and maintains proper documentation on cases.

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

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

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

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

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

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

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

Prepares summaries and reports of pertinent facts and information.

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

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

Composes routine correspondence.

Knowledge, Skills and Abilities

Knowledge of Child Support Enforcement Program guidelines and procedures and state and federal laws governing the program.

Knowledge of the broad principles and application of law, evidence, pleadings, and judicial procedures in West Virginia.

Skill in the preparation of legal documents.

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

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

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

Ability to perform fundamental mathematical calculations.

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

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

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

Ability to supervise personnel engaged in clerical duties.

Ability to understand and follow government organizational and operational policies.

Minimum Qualifications

TRAINING Graduation from an accredited four-year college or university.

SUBSTITUTION Full-time or part-time equivalent experience in the following areas: (1) Experience in a legal setting which required performing legal research, reading and interpreting laws, preparing legal documents, and assisting in the preparation and assessment of case files, under the supervision of an attorney, may substitute for the required training on a year-for-year basis, or (2) debt collections, credit investigations, criminal investigations, law enforcement, or an Economic Service Worker, may substitute for the required training on a year-for-year basis, or (3) completion of an approved Paralegal Assistant program may substitute for two years of the required training, or (4) any combination thereof.

SPECIAL REQUIREMENT Availability of a car for continuous use may be a requisite of employment.

EMPLOYMENT PROGRAMS SPECIALIST

Nature of Work

Under general supervision, performs work at the full-performance level by providing administrative oversight of and complex technical assistance with a particular component of a statewide program, or a major technical area specific to or characteristic of the Bureau of Employment Programs. Assures compliance with federal, state, and local regulations governing the program or technical area. Uses independent judgement to determine appropriate action taken to achieve desired results. Exercises considerable latitude in determining approaches to problem solving. Work may be performed independently and/or in conjunction with other program or technical area staff. Performs related work as required.

Distinguishing Characteristics

The Employment Programs Specialist is distinguished from the Employment Programs Associate by the complex analysis and interpretation necessary to administer programs and assist participants. This class is distinguished from the Employment Programs Specialist, Senior, by the fact that although the Specialist may oversee clerical or support staff in relation to the completion of his/her own work, this class does not function in a lead or supervisory capacity.

Examples of Work

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

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

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

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

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

Writes (drafts, pending discussion and approval) program manuals, clarifying the wording and describing new procedures, etc., accurately.

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

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

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

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

Knowledge, Skills and Abilities

Knowledge of the rules, regulations, policies, and procedures of the Bureau of Employment Programs.

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

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

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

Ability to communicate well, both orally and in writing.

Ability to represent area of assignment and to provide consultation on program or Bureau concerns.
Ability to synthesize information and provide interpretation.

Minimum Qualifications

TRAINING Graduation from an accredited four-year college or university.

SUBSTITUTION Additional qualifying experience as described below may be substituted for the required training on a year-for-year basis.

EXPERIENCE Two years of full-time or equivalent part-time paid experience in providing technical or programmatic assistance to staff, users or participants in a program or technical area specific to or characteristic of the Bureau of Employment Programs. Qualifying experience must have been at a level consistent with the work performed at the Employment Programs Associate level.

EMPLOYMENT RELATIONS SPECIALIST

Nature of Work

Under general supervision, performs advanced work providing a wide range of employment-related social services to applicants and recipients of public assistance such as Work and Training, the Job Training Partnership Act (JTPA), and the Community Work Experience Program (CWEP). Develops jobs for CWEP sponsors. May lead and train new employees in the supervisor's absence. May be required to travel. Must have access to reliable transportation. Performs related work as required.

Examples of Work

Maintains a caseload for employment programs and employment services.

Develops client service employability plan designed to assist clients in attaining employment while receiving employment and social services.

Negotiates and writes CWEP and JTPA contracts with non-profit agencies and employers.

Monitors and evaluates CWEP sponsors and participants to insure compliance with program standards.

Collects and interprets data from CWEP sponsors to calculate and compile reports on program placement.

Counsels clients/families in achieving employment goals.

Prepares periodic social assessment of clients' circumstances and recommends action to accomplish employment goal.

Interacts with a variety of professionals, elected officials, agency directors, and community leaders to assess employment needs of the community and to refer clients to appropriate agency services.

Plans and implements an effective employer relations program in order to develop employment opportunities for clients.

Promotes public relations through speaking engagements and news media.
Directs client in job search activities through utilization of job seeking skills and group or individual employment counseling.

Writes reports on case findings.

May lead and assist in training new employees.

Knowledge, Skills and Abilities

Knowledge of federal and state laws pertaining to social welfare work and training programs and related laws, rules and regulations.

Knowledge of theories, principles, methods and techniques of employment- related social service case work.

Knowledge of referral and placement techniques and procedures.

Knowledge of the general principles of economics and of social and labor market conditions prevailing in the state.

Knowledge of a variety of occupations and their requires qualifications.

Knowledge of job seeking techniques.

Ability to use interviewing techniques and methods for obtaining and communicating information.

Ability to assess social, education, and economic circumstances of clients to determine need for employment, social and support services.

Ability to analyze job requirements and evaluate applicants and/or recipients qualifications.

Ability to communicate effectively both orally and in writing.

Ability to develop client service employability plan and assist client in attaining employment through the provision of employment and social services.

Ability to exercise independent judgment with regard to client participation.

Ability to counsel people in favor of specific actions, changes in attitude or behavior.

Ability to communicate with individuals who have emotional or mental problems and with members of different cultural and sub-cultural groups.

Ability to maintain records, prepare reports and correspondence, and related work.

Minimum Qualifications

TRAINING Graduation from an accredited four-year college or university.

SUBSTITUTION Additional qualifying experience may be substituted on a year-for-year basis for the required education.

EXPERIENCE One year of successful full-time or equivalent part-time paid experience in a technical, professional or administrative capacity in a field of work closely related to the job assignment, such as personnel, health care, education, industrial relations, guidance, public relations, training, psychology, employment placement services, or humanrelations where experience has been gained in helping troubled individuals or families toward normal social development and adjustment.

SUBSTITUTION Graduate study in one of the related fields listed above may be substituted for the required experience on a year-for-year basis.

SOCIAL SERVICE WORKER I

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

Distinguishing Characteristics: All three levels of Social Service Worker provide professional social services to the public. The Social Service Worker I provides these services in one or more of the following areas: day care, chore services, personal care homes, information and referral, health related social services, home management, or other services at this level.

Examples of Work

Maintains a caseload for programs and services at this level.

Takes, evaluates and approves clients application for services, explains services and eligibility criteria.

Recruits, evaluates and approves providers of services at this level; conducts on-site evaluation of providers facilities and services.

Trains clients/families in home management, day care, and other health and personal care areas.

Develops and evaluates client service plan and modifies as necessary.

Counsels clients/families in developing and performing behaviors or acquiring training and resources to attain social, educational and vocational goals.

Provides information on and refers clients to other community and social service agencies; develops community resources needed for client services.

Knowledge, Skills and Abilities

Ability to learn federal and state laws pertaining to social welfare programs and related laws, rules and regulations.

Ability to learn theories, principles, methods and techniques of social service casework.

Ability to identify and deal with emotional states and behavioral patterns.

Ability to monitor and modify client service plans.
Ability to interview clients to obtain pertinent information.

Ability to understand family dynamics.

Ability to communicate effectively both orally and in writing.

Ability to establish and maintain effective working relationship with clients and public.

Minimum Qualifications

Training: Graduation from an accredited four-year college or university. Preference may be given to applicants with a major in social work, counseling, psychology, criminal justice, or rehabilitation.

Substitution: Full-time or equivalent part-time paid experience in human services work in a public or private health or human services agency may be substituted on a year-for-year basis for up to two years of the required training.

Special Requirement: Eligible for licensure as a Social Worker, Graduate Social Worker, or Certified Social Worker by the West Virginia Board of Social Work Examiners.

SOCIAL SERVICE WORKER II

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

Distinguishing Characteristics: All three levels of Social Service Worker provide professional social services to the public. The Social Service Worker II provides these services in one or more of the following areas: nursing home placement, adult family care, pre-institutionalization, admission and aftercare, generic social services, homeless, reception social work, or other services at this level.

Examples of Work

Maintains a caseload for programs and services at this level.

Takes, evaluates and approves client applications for services; explains services and eligibility criteria.

Recruits, evaluates and approves providers of services at this level; conducts on-site evaluation of provider facilities and services.

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

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

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

Speaks before community organizations and groups regarding services available and to develop community resources.

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

Knowledge, Skills and Abilities

Knowledge of theories and practices in social work.

Knowledge of federal and state laws, regulations and programs in social services.

Ability to assess social, educational and economic circumstances of clients to determine need for social services.

Ability to develop client service plan to habilitate and rehabilitate client and assist client in attaining social, educational and vocational goals.

Ability to evaluate social service providers according to established guidelines.

Ability to work effectively with other professionals and social service agencies in providing social services.

Ability to listen effectively to others.

Ability to prepare written reports of case findings.

Ability to add, subtract, multiply and divide.

Minimum Qualifications

Training: Graduation from an accredited four-year college or university. Preference may be given to applicants with a major in social work, counseling, psychology, criminal justice, or rehabilitation.

Special Requirement: Eligible for licensure as a Social Worker, Graduate Social Worker, or Certified Social Worker by the West Virginia Board of Social Work Examiners.

Promotion Only: In addition to the Special Requirement, two years of full-time or

equivalent part-time paid experience as a Social Service Worker, Social Service Supervisor, Protective Service Worker, or Protective Service Worker Trainee.

SOCIAL SERVICE WORKER III

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

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

Examples of Work

Maintains a caseload for programs and services at this level.

Prepares social assessment of client circumstances.

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

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

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

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

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

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

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

Knowledge, Skills and Abilities

Knowledge of theories and practices in social work.

Knowledge of federal and state laws, regulations and programs in social services.

Knowledge of emotional states and their behavioral indicators.

Ability to assess social, educational and economic circumstances of clients to determine need for social services.

Ability to develop client service plan to habilitate and rehabilitate client and assist client in attaining social, educational and vocational goals.

Ability to evaluate social service providers according to established guidelines.

Ability to work effectively with other professionals and social service agencies in providing social services.

Ability to counsel people in favor of specific actions, changes in attitude or insights.

Ability to maintain records, prepare reports and correspondence related to the work.

Ability to communicate with others, both orally and in writing.

Minimum Qualifications

Training: Graduation from an accredited four-year college or university. Preference may be given to applicants with a major in social work, counseling, psychology, criminal justice, or rehabilitation.

Special Requirement: Eligible for licensure as a Social Worker, Graduate Social Worker, or Certified Social Worker by the West Virginia Board of Social Work Examiners.

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

During the hearing, both Mr. Mike Smith, the Director of DOP at the time HHR was reclassified, and Mr. Lowell Basford, Assistant Director of Compensation and Classification at DOP, testified about the process and method of reclassifying HHR's employees. Mr. Basford indicated DOP had more information and feedback sessions with HHR than any other agency it reclassified, and this increased communication was at the request of the appointing authority.

Mr. Basford compared the job duties of the ESW's to SSW I's; both are in Pay Grade 8. He stated both have similar duties and responsibilities at approximately the same level of difficulty and complexity. A review of the classification specifications reveal both work under general supervision at a full performance level. Both maintain a caseload and take applications for services and determine eligibility. Although their duties do vary, they appear similar in complexity. Mr. Basford also compared ESW's to QCR's, CALA's, SSW II's, and ERS's. A CALA caseload may be as high as 1,200 cases, and these employees research and prepare legal documents for their attorney supervisor. SSW II's provide a full range of client services from day care to child protective services. Many state and federal rules and regulations must be interpreted and applied by these workers.

Mr. Basford explained that although QCR's and ESW's perform similar work, the QCR's work differs in depth. The QCR conducts an exhaustive and critical review of the ESW's work and then reports any errors. In essence, the QCR's position has an element of supervision. Grievants' witnesses basically concurred with this assessment. Ms. Betty Stewart and Ms. Judy Williams, both current QCR's and former ESW's, stated the QCR's position was easier because the caseload is lighter, and they have more time to conduct an in-depth review of the ESW's work. QCR's must know and understand the information in the ESW's voluminous manuals, as well as, the information in their own manuals.

Mr. Basford explained that the ERS's receive client referrals from the ESW, and then the ERS utilizes a battery of tests and assessment programs to evaluate the skills, abilities, and aptitudes of the clients to link them to jobs which are developed and negotiated by the ERS with local employers. The evaluation process involves testing which assesses basic education, aptitude testing, interest testing, reading comprehension, prerequisite skills testing and attitude assessment. The ERS administers and interprets these tests in an effort to link the client with jobs requiring these skills, knowledge, and abilities.

A review of the classification specifications of these employees, compared to ESW's, reveal QCR's work under limited supervision, while ESW's work under general supervision, and thatESW's “take applications” while QCR's conduct a “comprehensive and investigative review” of the file completed by the ESW. CALA's research areas of law; compile reports, case files, and current regulations; and locate and investigate parents and determine their ability to pay, including placing liens on their income tax refunds. CALA's also accompany and assist the attorney in court and at hearings. The SSW II works in placement and pre-institutionalization of clients; recruits, evaluates, and approves service providers, including on-site visits; develops a plan of care to assist clients in attaining social, educational, and vocational goals; interacts with a variety of professional practitioners and counsels families to insure the plan is carried out; and speaks before community groups about community services and resources. The ERS's classification specification indicates they first complete a detailed assessment of a client's abilities and limitations through a battery of tests, which they administer and interpret. They then assist clients to find appropriate positions and work with the employer to maintain employment.

An examination of these duties clearly demonstrates the QCR, CALA, SSW II, and ERS classifications perform more complex duties than ESW's because they are required to use more independent thought and judgement to assess and analyze data to determine desired goals and outcomes.

Mr. Basford also compared the duties of the SSW III's to the classification specifications of ESW's. SSW III's work in areas such as adoption and juvenile delinquency. These areas require an exhaustive evaluation of families and individuals, utilizing important judgmental abilities to assess and interpret elements of human behavior. These activities require a close working relationship with the court system. These requirements are not found in the ESW classification. Mr. Basford also testified that the consequence of error for the ESW was not comparable to that of the SSW III because theconsequence of error in a protective services case may, in fact, be the death or physical harm to a child or spouse, while with an ESW's client, the problem would be a delay of services.

A review of the classification specifications also demonstrates SSW III's perform “advanced level professional social service work” in complex or difficult areas such as emergency shelter care, juvenile delinquency, adoption, adolescent parents, and the Hartley program. SSW III's develop, implement, and evaluate client service plans to intervene into difficult situations. SSW III's work

closely with the court system; counsel troubled, youthful offenders; speak to community groups; interact with other professionals; and locate, train, and evaluate care providers.

Clearly, the duties of a SSW III require more independent judgment and intervention than ESW's, as the emergency intervention they perform is not guided by federal and state manuals, but based on experience, knowledge, and an assessment of the current situation. It is true that the consequence of error in many SSW III's situations carries the potential for physical and emotional harm, up to, and including death. As stated by Mr. Basford, the work of an ESW is highly structured and process driven.

Ms. Sheree Smith, an ESW, had formally worked at Workers' Compensation as an Audit Clerk III which she stated was now an EPS, Pay Grade 10. As an Audit Clerk III she was responsible for all aspects of employee accounts and she audited accounts, examined proof of claim, and reviewed bankruptcy issues. She stated both positions were hard and required learning laws, but the ESW position was harder because of the greater workload.

A comparison of the ESW class specification with those of the ESP indicate the ESP provides “administrative oversight”, and “complex technical assistance” to the Bureau of Employment Programs. An ESP also uses “independent judgement”, exercises considerable latitude in determiningapproaches to problem solving, analyzes and interprets laws and regulations, helps to determine need for procedural change, and drafts program manuals. These duties and activities indicate a high degree of independence, responsibility, and complexity than those contained in the ESW classification.

Mr. Boles testified he was not a personnel or classification expert, but maintained that the complexity of the ESW's duties warranted a Pay Grade 9. He also stated he did not know the level and complexity of the work performed by employees outside OIM. Mr. Basford remembered meeting with Mr. Boles and his regional directors and reading their proposals and rationales. He indicated they gave no compelling rationale for placing ESW's into Pay Grade 9; thus they remained at Pay Grade 8.

Mr. Ron Patterson, a former Regional Administrator at OIM, conducted two studies on recruitment and retention of ESW's. He found a 10% turnover rate. Many ESW's moved to higher paying state jobs. Stress, caused by high caseloads, was also found to be a problem. Mr. Patterson believed his studies demonstrated severe recruitment and retention problems.

Mr. Basford rebutted Mr. Patterson's testimony that there were severe recruitment and retention problems with ESW's. He noted there were 400 people on the state register who had indicated their willingness to perform the ESW's job duties, and the number of applicants had increased after the reclassification because of the increase in the pay scale. He also noted that movement from the ESW position, which is one of the entry-level positions in that job family, is expected and desired. The career path for ESW's is to use their experience and years of service to qualify for positions such as Quality Control Reviewer and Child Advocate Legal Assistant, as well as Economic Service Supervisor and Economic Service Coordinator. Mr. Basford also noted the volume of the work load is not considered in assigning pay grades because this is a staffing issue, and does not reflect the complexity of the actual duties performed. See Kuntz and Wilford v. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 96- HHR-301 (Mar. 26, 1997).

Mr. Basford also noted the concentration of ESW salaries at the lower end of the job classification is created by a lack of merit increases and is not related to the Job Reclassification Project. He reported this problem is the same for other classifications across the classification plan. Mr. Basford also testified the overwhelming objection from managers and employees in the job reclassification process was not pay grade, but rather the issue of tenure, and the lack of salary increases for the more tenured employees. The classification and compensation plan is an administrative tool which has, as one of its purposes, to facilitate recruitment of employees, and the increase of the ESW base salary to $16,116 has allowed the agency to recruit effectively for these positions as demonstrated by the approximately 400 applicants on the civil service register for ESW.

Section 5.01 of the Division of Personnel Administrative Rules requires the compensation plan be developed, in part, based on comparability with salary levels in other public jurisdictions and the private sector. The 1989 Southeastern Salary Survey consisted of salary data from 14 southeastern states for 69 benchmark job classifications. The methodology page of the survey indicates that 22 of the job classifications, including the Income Maintenance Eligibility Technician ("ESW I"), (See footnote 3) are taken from the State Salary Survey publication of the United States Office of Personnel Management.

In developing a classification scheme, it is important to evaluate and compare all job classifications against each other, but the most important comparisons are within the job family. ESW's job family is in the Social Services area. The comparison of the ESW's duties with those of

the other job-family classifications demonstrates the differences in the positions with respect to complexity of duties, consequence of error, exposure to danger, need to travel, required level of supervision and review, and independence in judgment and interaction.

Mr. Michael McCabe, Director of the Office of Personnel Services at HHR, testified about the reclassification process and his role in facilitating and implementing the reclassification of HHR employees. He coordinated activities between DOP and HHR to promote interaction, plus clarified communication and positions. He noted there were numerous consultations between HHR and DOP during the job reclassification process, including presentations by DOP staff, statewide teleconferences where employees could ask questions and hear explanations by the DOP staff on job reclassifications, and meetings with office directors in every division with DOP. These meetings allowed individuals to have input on pay grades and classification. Mr. Boles was involved in at least two of these meetings and presented his position that ESW's should be classified at Pay Grade 9 instead of Pay Grade 8. Mr. McCabe recalled that DOP and HHR's administration listened to this input, but the presentation was not convincing and ESW's remained at Pay Grade 8.

Mr. McCabe recounted the reclassification project was delayed in December 1991 because of a lack of funds, and in September 1992 to allow additional input and information from the various offices regarding the proposed job classifications and pay grades. Additional meetings were held in September or October of 1992 with OIM, in which they were allowed to express their concerns on pay grade assignments, classifications, and even individual position allocations. Mr. McCabe described how each office director became an advocate for his particular organizational unit, and these officials lost their objectivity in submitting recommendations to DOP. Each office director felthis particular employees and their jobs were the most important and were indispensable in the agency. Mr. McCabe was thankful that DOP had objectively evaluated the positions across the agency, and was grateful that DOP had utilized the Survey to recommend pay grade assignments.

Mr. McCabe explained how HHR had input and was consulted on the pay grade assignments for those classifications unique to HHR, including the ESW classification, and he participated in setting the initial pay grades for HHR classifications. He reported Mr. Boles and the Regional Administrators met with Secretary Panepinto to increase the ESW's to Pay Grade 9, but she did not concur with that recommendation, and the pay grade remained at 8. Mr. McCabe believes the ESW classification is correctly placed in Pay Grade 8. Level IV Trans. at 93-138.

Grievants next argument is the Survey was significantly flawed, and it was arbitrary and capricious of DOP and HHR to utilize this Survey when setting pay grades. Grievants identified two areas they viewed as problematic with the Survey.

Mr. Boles testified the data received from North Carolina, South Carolina, and possibly Alabama was incorrect in reporting the base salary for the beginning ESW or ESW I. He stated the counties in these states can use supplements to increase these workers' salaries. He did not know how much the supplements were, if all counties gave supplements, or if they were in effect when the data for the 1989 Survey was obtained. Mr. Boles did not testify that DOP or HHR knew about these supplements.

The second alleged Survey problem area is that West Virginia reported 36 ESW I's in 1989, and Grievants believe there were no ESW I's employed by West Virginia in 1989. Mr. Basford explained he received this data from HHR, and he merely processed it for the Survey report. Grievants believe there could not have been any ESW I's in 1989 because all ESW's were reclassifiedas a result of a West Virginia Supreme Court of Appeals decision in the AFSCME quadrilogy (See footnote 4), and the subsequent reclassification of 1984. Grievants did not present any evidence to support their contention.

The Level IV testimony established two classifications for ESW's (I and II) existed in 1989. It is also clear that the AFSCME decisions did not prevent further placement of employees in this classification. AFSCME required ESW's to be classified properly, but did not state workers could not be placed in the ESW I classification. Clearly, Mr. Basford received data from HHR that there were 36 workers in the ESW I classification, and he reported the same to the Survey compilers.

Discussion of Law

The first issue to address whether DOP's placement of Grievants in Pay Grade 8 was arbitrary and capricious and contrary to DOP's regulations, because the complexity of their work is equal to or greater than other more highly rated classifications in their job family.

The West Virginia State Personnel Board, a part of DOP, was created in 1989 to replace the former Civil Service Commission. W. Va. Code §29-6-6 (1989). The duties and responsibilities of the former Director of the Civil Service System were also transferred to the Director of Personnel. W. Va. Code §29-6-9 (1989). Pursuant to W. Va. Code §29-6-10(1), the State Personnel Board hasbeen

delegated the discretionary authority to promulgate, amend, or appeal legislative rules governing the preparation, maintenance and review of a position classification plan for all positions within the classified service . . . based upon a similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class.

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

This standard of entitlement to substantial weight applies when a grievant attempts to review DOP's interpretation of its own regulations and classification specifications to determine if DOP's decision was arbitrary and capricious or an abuse of discretion. Farber v. W. Va. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 95-HHR-052 (July 10, 1995). “There is no question DOP has the authority to establish pay grades within a pay plan.” Stephenson v. W. Va. Bureau of Employment Programs/Div. of Personnel, Docket No. 92-DOP-447 (Aug. 12, 1993). Further, a grievant may prevail by demonstrating his or her reclassification was made in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehab., Docket No. VR-88-006 (Mar. 28, 1989). 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). While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute

her judgment for that of DOP. See generally, Harrison v. Ginsberg, 286 S.E.2d 276, 283 (W. Va. 1982).

An employee who alleges impropriety regarding a reclassification project and challenges the pay grade to which his or her position was assigned, bears the burden of proving the claim by a preponderance of the evidence. This is a difficult undertaking. W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (W. Va. 1995); Bennett v. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 93-HHR-518 (June 23, 1995); Johnston v. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 94-HHR-206 (June 15, 1995); Thibault v. Div. of Rehabilitation Services/Div. of Personnel, Docket No. 94-RS-061 (May 31, 1995); Frame v. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 94-HHR-140 (Nov. 29, 1994). See O'Connell v. W. Va. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 95-HHR- 251 (Oct. 13, 1995). Unless a grievant presents sufficient evidence to demonstrate DOP's determination of pay grade is clearly wrong, inappropriate, or the result of an abuse of discretion, an administrative law judge must give deference to DOP and find that the pay grade assignment was correct. Farber, supra; O'Connell, supra.

On close examination Grievants' argument is not actually one of equal pay for equal work, but an argument for a higher pay grade based on comparative worth. Grievants are not comparing themselves to other employees within their classification who perform substantially similar work through exerting the same effort and by utilizing the same skill level within a substantially similar working environment. See Moore, supra.

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

Most federal courts have expressly rejected claims brought under a pure comparative worth theory absent a showing of intentional discrimination. (See footnote 5) See, Plemer v. Parsons-Gilbane, 713 F.2d1127 (5th Cir. 1983); Power v. Berry County, 539 F. Supp. 721 (W.D. Mich. 1982).

In 1987, the Ninth Circuit overruled a district court's decision in American Federation of State, County and Municipal Employees (AFSCME) v. Washington, 578 F. Supp. 846 (W.D. Wash. 1983), which had ruled that the State of Washington had discriminated against female employees through adoption of its job classification system. The district court determined that comparability of jobs was determined by the State's own evaluation studies. The Circuit Court reversed the District Court and stated as follows:

Disparate impact analysis is confined to cases which challenge a specific, clearly delineated employment practice applied at a single point in the job selection process . . . . A compensation system that is responsive to supply and demand and other market forces is not the type of specific, clearly delineated employment policy contemplated by Dothard and Griggs; such a compensation system, the result of a complex array of market forces, does not constitute a single practice that suffices to support a claim under disparate impact theory.

770 F.2d 1401 (9th Cir. 1985), reh'g denied, 813 F.2d 1034 (9th Cir. 1987). Most federal courts have been reluctant, if not expressly unwilling, to strike down an employer's pay system on the basis of a pure comparable worth theory, absent a companion showing of intentional discrimination.

The majority of federal courts are unwilling to substitute their judgment for that of the various employers in the comparative worth Title VII cases dealing with the issue of numerous positions' value to their employers. In Moore, supra, the Administrative Law Judge stated, this Grievance Board is likewise reluctant to act as an expert in matters of classification of positions, job market analysis, and compensation schemes, and substitute its judgment for that of the administrative agency in charge of classification and compensation. DOP chose to rely upon the Survey in setting the paygrades for the positions in question. DOP believes this salary schedule to be a valid tool to utilize in establishing pay grades for the positions within its classified plan, as this schedule is a model derived from a comparative worth analysis of public sector positions. There has been no showing that DOP's decision was clearly wrong, or arbitrary and capricious. Moore, supra.

Although Grievants presented some evidence to show their classification had the same or greater complexity as other classifications within their job family, this evidence was unconvincing and rebutted by Mr. Basford and Mr. McCabe. Even Grievants' key witness, Mr. Boles, only sought to have Grievants reclassified to a Pay Grade 9. A detailed review of Grievants' classification specification and pay grade, vis-a-vis other classification specifications and pay grades, does not

demonstrate that DOP was clearly wrong or acted in an arbitrary and capricious manner in placing Grievants in Pay Grade 8.

Grievants second contention is that the data in the Survey was unreliable and flawed; thus DOP and HHR were arbitrary and capricious when they relied on this data to place ESW's in Pay Grade 8. As previously stated, an action is arbitrary and capricious if the agency making the decision did not rely on criteria intended to be considered; explained or reached the decision in a manner contrary to the evidence before it; or reached a decision that is so implausible that it cannot be ascribed to a difference of opinion. See Bedford County Memorial Hosp., supra. An action may also be arbitrary and capricious if it is willful and unreasonable without consideration of facts. Black's Law Dictionary, at 55 (3d Ed 1985). Arbitrary is further defined as being “synonymous with bad faith or failure to exercise honest judgment.” Id.

Grievants' evidence did not prove the Survey data was flawed, it only demonstrated it might or could be flawed. The potential flaws referred to by Grievants were not clearly related to the 1989Survey data, and were based on opinion, belief, and incomplete data. Grievants never even alleged DOP or HHR knew the data might be flawed. Such knowledge is required for an action to be arbitrary and capricious or for an action to be willful, unreasonable, and without honest judgment. Further, Grievants did not suggest an alternative survey or methodology that DOP could have utilized.

Based on the above discussion, the following additional findings of fact and conclusions of laws are made.

Additional Findings of Fact

1. The assignment of a pay grade to a position is based on multiple factors which include complexity of duties, degree of public contact, exposure to harm, consequence of error, comparison with other positions in the same pay grade, comparison of positions within a job family, level of technical support, required level of supervision and review, and independence of judgment and interaction. See Vickers v. W. Va. Dept. of Tax and Revenue/Div. of Personnel, Docket Nos. 94-T&R-092/142 (Nov. 14, 1994).

2. An extensive amount of interaction between DOP and the appointing authority occurred prior to the implementation of the proposal. The Secretary of HHR participated in this review and

ultimately “signed off” on the proposal. These consultations met the requirements of the reclassification project. See Bennett v. W. Va. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 93-HHR-518 (June 23, 1995).

3. HHR and DOP did not know Mr. Boles thought the data from the 1989 Survey was incomplete. 4. Thirty-six ESW I's were employed by West Virginia in 1988 and were correctly reported to the Survey.

5. The transfer rate of ESW's to other positions within HHR and state agencies was approximately 10%, and this rate is not out-of-line with other state classifications. The majority of ESW's who transferred went to higher paying positions.

6. There is a career ladder for ESW's within their job family. The expectation is that ESW's who wish to advance would and should apply for the higher paying state positions for which they are qualified by their experience as an ESW.

7. There are no retention and recruitment problems among ESW's, as there are 400 applicants waiting to fill vacant positions, and the 10% turnover rate is similar to turnover rates in other classifications.

8. A comparison of the job duties of ESW's to the classifications listed and discussed in this Decision demonstrates the ESW position is not as complex, possesses a lower consequence of error, is more directly supervised and reviewed, has less exposure to danger and less need for travel, and requires less independent judgment and interaction. The majority of ESW's duties are structured and process driven.

9. The large case loads carried by ESW's are created by the level of staffing, not by classification.

10. The pay grade of ESW's was based on the Survey, their job duties, and a comparison with other state employees. 11. DOP conferred extensively with HHR, the appointing authority, and received the input, assistance, and approval of its job classification plan and pay grade plan from the Secretary and Personnel Director of HHR.

12. The reclassification of HHR, in general, and the ESW's, in particular, was conducted and completed in the same manner as it was conducted in other state agencies.

Conclusions of Law

1. Grievants have the burden of proof in this case to establish, by a preponderance of the evidence, that the assignment of the ESW class title to Pay Grade 8 was clearly wrong, arbitrary, capricious, contrary to regulation, or otherwise illegal and improper. W. Va. Code §29-6A-6; Bennett v. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 93-HHR-518 (June 23, 1995); Johnston v. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 94-HHR-206 (June 15, 1995).

2. W. Va. Code §29-6-10 authorizes the State Personnel Board to promulgate rules for the implementation and administration of the classified State employees' job classification and pay plans for which plans the Personnel Board is responsible. Frame v. W. Va. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 94-HHR-140 (Nov. 29, 1994).

3. W. Va. Code §29-6-10 vests the responsibility for preparing, maintaining, and revising classified State employees' job classification plans and pay plans in the State Personnel Board.

4. DOP assigned pay grades to class titles so that equity is achieved within a “family” of class titles, as well as within an agency as a whole.

5. 143 C.S.R. 1-4.01 requires DOP to confer with the “appointing authority” (in this case, HHR) when adopting and implementing a job classification plan for classified State employees,and requires DOP to base its job classification plan upon “an investigation and analysis of the duties and responsibilities of each position.”

6. The Personnel Board has the authority and responsibility to establish a pay plan for all positions within the classified service, guided by the principle of equal pay for equal work. W. Va. Code §29-6-10(2).

7. The Personnel Board has wide discretion in performing its duties although it cannot exercise its discretion in an arbitrary or capricious manner. Moore v. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 94-HHR-126 (Aug. 26, 1994).

8. “[T]he rules promulgated by the Personnel Board are given the force and effect of law and are presumed valid unless shown to be unreasonable or not to conform with the authorizing legislation.” Farber v. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 95- HHR-052 (July 10, 1995). See, Callaghan v. W. Va. Civil Service Comm'n, 273 S.E.2d 72 (W. Va. 1980).

9. Interpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous, and an agency's determination of matters within its expertise is entitled to

substantial weight. Syl. pt. 3, W. Va. Dept. of Health v. Blankenship, 431 S.E.2d 681 (1993); Princeton Community Hosp. v. State Health Planning, 328 S.E.2d 164 (W. Va. 1985); Dillon v. Bd. of Ed. of County of Mingo, 301 S.E.2d 588 (1983).

10. An employee who alleges impropriety regarding a reclassification project and challenges the pay grade to which his or her position was assigned bears the burden of proving the claim by a preponderance of the evidence. This is a difficult undertaking. Blankenship, supra; Bennett, supra; Johnston, supra; Thibault v. Div. Rehabilitation Services/Div. of Personnel, DocketNo. 94-RS-061 (May 31, 1995); Frame, supra; See O'Connell v. W. Va. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 95-HHR-251 (Oct. 13, 1995).

11. A grievant may prevail by demonstrating his or her reclassification was done in an arbitrary and capricious manner. See Kyle v. W. Va. State Bd. of Rehab., Docket No. VR-88-006 (Mar. 28, 1989).

12. An action is arbitrary and capricious if the agency making the decision did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of opinion. See Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); Yokum v. W. Va. Schools for the Deaf and the Blind, Docket No. 96-DOE- 081 (Oct. 16, 1996).

13. An action may also be arbitrary and capricious if it is willful and unreasonable without consideration of facts. Black's Law Dictionary, at 55 (3d Ed. 1985). Arbitrary is further defined as being “synonymous with bad faith or failure to exercise honest judgment.” Id.

14. While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of DOP. See generally, Harrison v. Ginsberg, 286 S.E.2d 276, 283 (W. Va. 1982).

15. Unless a grievant presents sufficient evidence to demonstrate DOP's determination of pay grade is clearly wrong, inappropriate, or the result of an abuse of discretion, an administrative law judge must give deference to DOP and find that the pay grade assignment was correct. Farber, supra; O'Connell, supra. 16. In order for Grievants to prevail they must show that HHR and DOP acted in an arbitrary and capricious manner by placing the ESW position in Pay Grade 8. To

meet this burden Grievants must show HHR and DOP had no rational basis for placing Grievants in their current pay grade, or that Respondents acted in bad faith by placing the ESW classification in Pay Grade 8 despite overwhelming evidence indicating the classification should be otherwise placed.

17. Grievants have failed to prove HHR or DOP acted arbitrarily or capriciously in assigning the ESW classification to Pay Grade 8. Additionally, Grievants have failed to prove, by a preponderance of the evidence, that the ESW duties are as complex as other classifications assigned to higher pay grades. See, Tomlinson v. W. Va. Dept. of Transp., Docket No. 94-DMV-209 (Oct. 20, 1994); Frame, supra.

18. Respondents did not exceed their statutory authority in their development and implementation of the HHR job classifications and pay grade plans at issue in this case.

19. Grievants did not prove the Southeastern Salary Survey was flawed, and that the use of this data by DOP and HHR to assign pay grades was arbitrary and capricious or an abuse of discretion.

Accordingly, this grievance is **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the circuit court of the county in which the grievance occurred, and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal, and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

_____

JANIS I. REYNOLDS

Administrative Law Judge

Dated: June 27, 1997

Footnote: 1

Grievant Trimboli's grievance was filed on August 20, 1993, and later consolidated with the other Grievants. The parties engaged in discovery after the consolidation.

Footnote: 2

Grievants did not argue Respondents were aware of these alleged problems with the Survey's data.

Footnote: 3

There are no ESW I's in the new classification plan. See Finding of Fact 9.

Footnote: 4

As summarized by the West Virginia Supreme Court in "AFSCME IV", American Federation of State, County and Municipal Employees v. Civil Service Commission of West Virginia, 380 S.E.2d 43 (W. Va. 1989), "AFSCME I", AFSCME v. Civil Service Commission, 324 S.E.2d 363 (W. Va. 1984), recognized that "work performed 'out of classification' was compensable." "AFSCME II", AFSCME v. Civil Service Commission, 341 S.E.2d 693 (W. Va. 1985), "settled the back pay question . . .", by recognizing that full back pay was a remedy for working employees out of classification. "AFSCME III", a per curiam order dated May 20, 1988, AFSCME v. Civil Service Commission, No. 17929, "directed the Civil Service Commission ("CSC") to submit a plan for implementing on [sic] prior decision." In AFSCME IV, "AFSCME successfully challenge[d] the sufficiency of [the plan] implemented by CSC by way of a motion for contempt."

Footnote: 5

In Briggs v. City of Madison, 536 F. Supp. 435 (W.D. Wis. 1982), the District Court found that the employees who were nurses had established a prima facie case of discrimination under a theory of comparable worth after comparing their skills, efforts, responsibilities, and working conditions to those of a group of sanitarians. In accepting the plaintiff's showing of discrimination on its face, the court in Briggs stated the employees would have been paid similarly absent theemployer's discriminatory treatment. Ultimately however, the Briggs court found in favor of the city as it demonstrated that the existing market conditions justified the differences in the two positions' pay ranges.