MARCIA BOURGEOIS,

Grievant

v. **Docket No. 95-BOT-112**

WEST VIRGINIA BOARD OF TRUSTEES/MARSHALL UNIVERSITY.

Respondent

D E C I S I O N

___Grievant, Marcia Bourgeois, employed by the Board of Trustees (Respondent) as an Assistant Director of Residence Services at Marshall University (MU), filed a level one grievance on March 11, 1994, in which she alleged:

I was forced to resign my position due to reprisal for filing grievances. I experienced a hostile environment, harassment and demeaning actions toward me. I believe I had two options before me; to be fired or resign. I expect relief to be a similar or greater position at the University, backpay, termination or reprimand of Winston Baker and Ray Welty, legal fees and punitive damages

The grievance was denied at levels one and two. Grievant chose to bypass consideration at level three as is permitted by W. Va. Code §18-29-4(c), and advanced her appeal to level four on March 15, 1995. An evidentiary hearing was held on September 19, 1995, and the matter became mature for decision at the conclusion of the briefing period on August 4, 1997. (See footnote 1)

___There is no significant dispute regarding the following facts relevant to the disposition of this grievance.

Findings of Fact

1. Grievant was first employed by Marshall University in 1983, and, with the exception of a two year absence, remained an employee until March 1994. 2. Beginning in May 1989, for a period of approximately two years, Grievant held the position of Assistant Manager of Housing.

3. In 1990, Grievant considered filing a grievance seeking to resolve a disparity in pay levels between herself and another Assistant Manager of Housing, but was told that it would do her no good

because there was a freeze on salary increases. This matter was later put on hold during the "Mercer" reclassification of higher education employees.

4. In March 1992, it was announced that under the direction of Associate Vice President Ray Welty, the departments of Housing and Residence Life were to be merged into Residence Services effective the end of the spring semester.

5. As a result of the merger, Joe Marshman and Linda Rowe, Director and Associate Director of Residence Life, respectively, were scheduled to be "laid off" effective December 31, 1992.

6. Subsequent to the merger, Grievant retained her role under the working title of Assistant Director of Residence Services. Grievant continued her duties relating to the assignment process, and assumed additional duties in residence life programming and educational matters previously completed by Ms. Rowe.

7. Ms. Rowe and Mr. Marshman prevailed in grievances they filed regarding their scheduled lay-offs, and were reassigned as Associate Directors of Residence Services. This change in the organizational plan had no impact on Grievant's duties.

8. In July 1992, Grievant was assigned additional duties in the form of direct supervision of two area coordinators, and the indirect supervision of student staff. Upon assumption of these duties, Grievant was given an interim 8% salary increase beginning December 17, 1992. 9. Grievant's supervisory duties concluded in July 1993; however, she continued to receive the salary increase until January 1994.

10. In January 1993, the position of Director of Residence Services became available. Grievant, Ms. Rowe, and Mr. Marshman were internal applicants for the assignment. The selection committee ultimately recommended, in order of preference, Joanne Goldwater, Winston Baker, and Grievant. Ms. Goldwater declined the appointment and Mr. Baker accepted the offer.

11. Grievant filed a grievance as a result of her nonselection as Director of Residence Services.

12. Subsequently, Grievant filed several grievances alleging retaliatory action on the part of Mr. Baker and Mr. Welty. The matters were consolidated and appealed to level four, where they were assigned the docket number 93-BOT-432.

13. Upon the advice of her physician, Grievant took a leave of absence from early December 1993, until January 2, 1994. After a brief return to work, she began a second leave of absence from

January 2, 1994, through March 3, 1994.

14. By letter dated March 3, 1994, Grievant resigned her position at MU.

15. The retaliation grievance was dismissed after Grievant's resignation and Grievant filed the present matter consolidating those issues under a claim of constructive discharge.

Respondent raises three procedural issues which were not previously ruled upon. Grievant has not addressed any of these matters in her post hearing submission and they may be quickly ruled upon. First, Respondent argues that the Grievance Board does not have jurisdiction over a constructive discharge claim. The basis for this argument is that this type of case does not fall within the definition of a grievance as defined in W. Va. Code §18-29-2, which states that a claimmay be brought by an affected employee. Because Grievant has resigned, Respondent claims that she is no longer an employee and may not avail herself of the grievance procedure.

The Grievance Board considers constructive discharge cases, which are similar in nature to those cases in which a respondent has terminated a grievant's employment. It has been previously held that "whether an employer's conduct constitutes a constructive discharge and the grievant's status as an employee are inextricably intertwined. Ball v. W. Va. Alcohol Beverage Control Comm., Docket No. 90-ABCC-027 (June 15, 1990); See Daniels v. W. Va. Dept. of Health and Human Resources, Docket Nos. 94-HHR-1135/95-HHR-053 (May 31, 1995). Therefore, this argument is rejected.

Respondent next claims that the grievance was not filed within the timelines set forth in W. Va. Code §18-29-4. This matter was raised during the level four retaliation/harassment hearing relating to any allegations which occurred outside the fifteen day time frame during which a level one grievance is to be filed. Because the issue in this grievance has shifted from specific acts of retaliation to dismissal, it would be proper to consider the acts, even if they occurred more than fifteen days prior to the termination of her employment. Respondent also argues that Grievant's letter of resignation was not filed within fifteen days of any event because she had been away from work for approximately three months, and nothing happened on March 3, 1995, the day she submitted her resignation. Because Grievant filed a level one complaint on March 11, 1995, within fifteen days of her resignation, which is the grievable event, the claim is ruled timely filed.

Respondent's third claim is that Grievant is barred from bringing this action by the doctrine of res judicata which does not allow the relitigation of claims upon which a final judgment has been rendered. Respondent asserts that the "Dismissal Order" filed in grievance Docket No. 93-BOT-

432was a final judgment on the claims of retaliation/harassment which could have been decided at that time. Respondent further argues that Grievant acquiesced to the Motion to Dismiss in the previous grievance, waiving any further rights with regard to those claims. Because this issue at hand is constructive discharge, and not directly retaliation/harassment, it is determined that the grievance will not be barred by res judicata.

The basis of the present grievance is Grievant's claim that she was forced to resign her employment due to retaliation/harassment by her supervisor which left her with no meaningful alternative. Generally, constructive dismissal occurs when an employer deliberately makes or allows an employee's working conditions to become so intolerable that the employee has no real choice but to quit, i.e., the employee is forced to resign to escape the intolerable employment circumstances. The standard by which constructive dismissal is determined is whether a reasonable person would view the working conditions as intolerable, not upon the subjective belief of the employee. Factors such as a continuous pattern of discriminatory or improper treatment or illegal conduct on the part of the employer, may be indicative of whether a constructive dismissal occurred. Ball, supra.

Constructive discharge cases are not viewed as disciplinary in nature, therefore, Grievant has the burden of proving the allegations of the grievance by a preponderance of the evidence. In Slack v. Kanawha County Housing and Redevelopment Authority, 188 W. Va. 144, 423 S.E.2d 547 (1992), the West Virginia Supreme Court of Appeals held that when constructive discharge is claimed by an employee, the employee must prove sufficient facts to establish the retaliatory discharge, i.e., that the intolerable conditions that caused the employee to quit were created by the employer and were related to those facts that gave rise to the retaliatory discharge. The Court determined, however, that it was not necessary for the employee to prove that the employer's actionswere taken with the specific intent to cause the plaintiff to quit.

Under Slack it is not necessary for the Grievant to prove reprisal. Furthermore, proving reprisal may not be sufficient to establish constructive discharge; however, the parties have chosen to present their cases for review under the standards for reprisal, and such an analysis appears to be practical under the facts of this case. W. Va. Code §18-29-2(p) defines “reprisal” as “the retaliation of an employer or agent toward a grievant or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.” A grievant claiming retaliation must establish a prima facie case of reprisal by establishing:

(1) that she engaged in protected activity, e.g., filing a grievance;

(2) that she was subsequently treated in an adverse manner by the employer or an agent;

(3) that the employer's official or agent had actual or constructive knowledge that the employee engaged in the protected activity; and

(4) that there was a causal connection (consisting of an inference of a retaliatory motive) between the protected activity and the adverse treatment.

Conner v. Barbour County Bd. of Educ., Docket Nos. 93-01-543/544 (Jan. 31, 1995). See Frank's Shoe Store v. W. Va. Human Rights Comm'n, 365 S.E.2d 251 (W. Va. 1986); Fareydoon-Nezhad v. W. Va. Bd. of Trustees/Marshall Univ., Docket No. 94-BOT-088 (Sept. 19, 1994). If a grievant establishes a prima facie case of reprisal, the employer may rebut the presumption of retaliation by offering legitimate, nonretaliatory reasons for its actions. See Mace v. Pizza Hut, Inc., 377 S.E.2d 461 (W. Va. 1988). If the Respondent is successful in rebutting the prima facie case, Grievant may still prevail if she can establish by a preponderance of the evidence that the reason given by the employer was merely pretextual. Grievant has established a prima facie case of reprisal by showing that she filed a grievance when she was not selected for the position of Director of Residence Services; that her first and second level supervisors were aware that she had filed the grievance; and, that after she filed a grievance she was treated adversely as indicated by the following: (See footnote 2)

1. Once Welty is advised that a grievance had been filed, he refuses to reimburse Grievant for airplane tickets she had purchased to attend a housing institute seminar, thus causing her a loss of a few hundred dollars.

2. After the new director [Mr. Baker] starts working, he denie[s] Grievant compensatory time to take 1/2 hour off work per week to attend a class even though this was allowed per the staff handbook and other employees in the department were taking 2-3 hours off per week.

3. Baker denie[s] Grievant vacation time so that she c[an] participate in her sister['s] treatment in the hospital even though three other[s] [are] allowed to take vacation during that time (Baker stated that no one was allowed vacation during August because it is a busy time of the year).

4. After coming on board, Baker never me[ets] with Grievant although he me[ets] with every

other employee in the department one-on-one. He ignores her until she asks for a meeting.

5. Baker strips [sic] Grievant of her duties, her keys are taken, and all residence services duties are stricken. Grievant's job changes almost 75% and results in a demotion. Baker's testimony that he wanted to assume those responsibilities himself is shown to be completely false by the testimony of the other departmental employees, all of whom support Grievant's position . . . .

6. Grievant's secretary is reassigned to do other work leaving Grievant essentially without a secretary or any support staff.

7. Grievant's paraprofessional staff (administrative staff,student help etc ...) [a]re taken off projects that she has assigned and reassigned to other projects without Grievant's permission or knowledge making it nearly impossible for her to achieve the goals assigned to her (setting her up for failure).

8. An Area Coordinator leaves for another position and Grievant ask[s] for his computer, which Grievant had researched and bought. Grievant is denied this computer and it is given to Baker's secretary who ha[s] no computer skills whatsoever.

9. Committees are formed for which Grievant is appointed Chair without her knowledge. Meetings are scheduled and held and Grievant, of course, does not show up because she has not been kept in the loop. Grievant's reputation and performance skills are thus imperilled. Once Grievant was advised of the Committees, she requested certain people with appropriate backgrounds be included, and, her request is of course denied.

10. The office locks are changed and Grievant is not provided a key. Grievant is locked out of her office and has to call security to get in. However, security refuse[s] her access until approval from Ray Welty c[an] be obtained. Grievant wait[s] over 1 ½ hours to get into her office. Grievant [i]s humiliated and demeaned by the incident.

11. Grievant makes room assignment for an entire campus of students. The day beofre [sic] check, the room numbers are changed in the dormitories without informing Grievant. Thus, the next day, it is Grievant who is subjected to the angry parent and student complaints concerning the mess-up. Additionally, the housing staff and security staff are led to believe that Grievant was at fault.

12. Grievant is not allowed to leave the office without first telling Baker where she is going, when she will return, with whom she is meeting and why. Standard office procedure has been to let the front desk know and to let [her] administrative assistant know.

13. Grievant is no longer to attend meetings by herself. Grievant must take an administrative assistant or a secretary with her to every University Committee meeting she attends.

14. Grievant is no longer allowed to schedule lunch timesor break times for those persons she supervises. Rather, she has to get approval from Baker's secretary. Baker's secretary likewise takes over all of Grievant's hiring of student help and training.

15. Grievant is denied permission to attend the W. Va. Student Personnel Association Meeting although Grievant is a Committee Chair Person [sic] with the group. After calling attention to the denial and requesting several times to be allowed to go, Grievant is allowed to go, but, is denied a car and other expenses although others in the University are given such things.

16. Grievant is elected secretary to WV[A]SPA (a professional housing group) at the October meeting. When Grievant return[s] to campus she [i]s chastised and reprimanded for being elected. Standard University and Office practice encourages participation in professional organizations.

17. Marshall holds the annual RA conference for 1993. Baker refuses to answer invitations, to attend or to speak at the conference. It is traditional for the host Director of Housing to attend the welcoming ceremonies and to speak. He does nothing thus intentionally embarrassing Grievant before her State wide [sic] peers.

18. Grievant ask[s] for numerous mediation between her and Baker. Grievant is denied each and every request for University assistance in resolving these difficulties.

19. Grievant is told that she can no longer send out correspondence in her own name or signature.

20. Grievant is told that she may no longer send out generic information, such as “check-out” procedures, etc... without having it okayed by Baker's secretary.

21. Baker comes into the hall way [sic] during a meeting with students and staff and screams at Grievant for approving a class schedule for one of the student help. This approval had been made earlier when it was still [her] duty. Grievant is mortified at this loud, wrongful, reprimand in front of her staff. Grievant believes at this point that Baker has lost control and could possibly physically strike her.

22. (See footnote 3) Grievant had requested a clarification memo from Baker about sick leave or vacation time. Baker calls Grievant into his office where he tells her that he didn't realize she was that stupid and read his former policy out loud to her. Grievant never did receive the sought after clarification.

23. Another assistant is allowed to go into Grievant's office and search through her desk looking for information. Said Assistant attempted to break into Grievant's computer files. When this was reported to Baker, he did nothing.

24. Grievant is assigned public relations. Yet, she is not allowed to speak with the newspaper, t.v., University media etc...

25. Grievant is assigned marketing duties, so, she request[s] some training or at least an opportunity to take a marketing class since she had no prior experience in marketing. Baker gives her no response, thus, another set up for failure. Additionally, other assistants have sent out marketing surveys etc... about which Grievant is not informed. Grievant does the same work over again because she has not been advised others have already done it.

26. Grievant is left off of meeting agendas completely or is put at the bottom after maintenance staff, student help, etc...This is extremely demeaning.

27. Grievant gives Baker a confidential memo concerning her unhappiness and the possibility that she may pursue other jobs. Grievant asks that this be kept confidential, yet Baker puts his response in the front office box for others to read, citing [her] confidential memo in his response.

28. Baker fires [a] student that works for Grievant without first discussing it with her or letting her know. When Grievant question[s] one particular firing, Baker loses his temper, screams at Grievant, attempts to physically intimidate her, and will not let her speak or close the door. Witnesses

have verified this incident and, security [i]s called. Grievant request[s] protection from the University. The University fails to respond.

29. During a grievance hearing, Grievant went down the hall and Baker block[s] her way.

30. Grievant, on numerous occasions, asks for meetings with the University counsel, Layton Cottrill, or the President, as per Dr. Piou's advice. Grievant is ignored or denied. Grievant sought help on numerous occasions through Dr. Piou and personnel.

31. Grievant is called in Dr. Gross' office for a meeting. In attendance [i]s Skip Lutz, an Associate Vice President. Dr. Gross offers Grievant “a deal”. Grievant is told that she can not [sic] have her attorney present even though she request[s] counsel's presence. Additionally, Grievant advise[s] Dr. Gross that she thought it was illegal or unethical to discuss anything outside of her counsel's presence. Dr. Gross advise[s] grievant that she must drop all grievances and that if she d[oes] so, he w[ill] put her in a “created” position at the same salary and not take away her 8% pay raise. Grievant is told that she would work under Lutz's division, but, would have no permanent office, no clerical staff, no budget, and no specific or defined job description. Grievant is also told that she would not be allowed to have any contact whatsoever with anyone in residence services. Grievant is given 24 hours to decide . . . .

32. Baker institutes a policy that anyone can go into anyone else's office, so, it would be inappropriate to have personal items present.

33. Grievant takes a medical leave of absence on December 10, 1993, under the advice of her psychiatrist and counselor.

34. When Grievant returns on January 2, 1994, no one person speaks to her or with her. Grievant is handed several memos with projects that have extremely short deadlines and a memo from personnel that [her] 8% pay raise has been taken from [her].

35. [Grievant's] administrative assistant has resigned due to stress of the work place.

36. Grievant is forced to resume medical leave. Grievant uses all of her accumulated leave time and then goes on lave [sic] without pay. Grievant is questioned extensively about her leave and her physician receives inquiries as to why grievant is “out & about”. The University sends numerous

inquiries to doctor. Then Grievantis called into payroll to get her last check. The check is for too much, but, when Grievant attempts to write the University a check for the over-payment, the University insists that she get cash from somewhere. Grievant bursts into tears from this humiliation, but, does as the University requests.

37. Grievant asks for another meeting with the President, but, is ignored.

38. Grievant returns to work on March 1 and has two days worth of grievance hearings. The first thing that happens on her return is a confrontation with Baker wherein he chastises Grievant about running off memos and advises her that she must schedule times so that the copier is not tied up. Again, not one person speaks to her or with her. Baker comes into her office (obviously to confront her about something) and sees Grievant's husband standing there with a box of items for Grievant's office, and states that he wants to see her in his office. Grievant resigns at 1:30 that day, again at her psychiatrist's and counselor's recommendation.

39. Throughout the grievance proceedings, the University has denied subpoenas, denied excusing certain hearing examiners and has made the procedure a torture.

___Respondent does not address each complaint individually, but offers the following as legitimate, non-discriminatory reasons for its actions:

___1. Modification of duties - Mr. Baker shifted the supervision of the area coordinators and office management functions away from Grievant to conform with his personal managerial style and in an effort to remove a layer of administration between himself and the student body. Further, Respondent denies that he appointed his secretary to supervise the central office, she simply supervised two student assistants. Mr. Baker admits that he did require that all personnel files, not just those managed by Grievant, be consolidated at the central office, so that he could react promptly to any problems. Previously, each department had maintained its own personnel files. While Mr. Baker exhibited a different supervisory philosophy which was not appreciated by Grievant and otheremployees, Respondent asserts that his actions in these regards were not indicative of a retaliatory motive.

2. Decrease in pay - Respondent argues that the 8% reduction made in Grievant's salary in January 1994, was long overdue in that she had not been responsible for the additional duties upon

which the supplement had been based since July 1993.

3. “Set me up” actions - (a) Changing room numbers - Respondent argues that it would have been senseless for Mr. Baker to have changed the room numbers simply to sabotage Grievant, because, as Director he was ultimately accountable for the problems the changes may have caused, and any mismanagement would reflect upon him.

(b) Changing locks to the office doors - Respondent states that the locks were changed following the termination of another employee, and that Grievant had simply not yet been given a new key. Respondent acknowledges that Grievant was locked out of her office for a short period of time, but notes that it was a single, isolated incident.

(c) Marketing Committee meeting - Mr. Baker had directed his secretary to schedule the meeting. The secretary failed to notify Grievant, and has apologized.

(d) Dress Code - Respondent argues that Grievant had asked to wear a staff shirt on moving day. Mr. Baker permitted her, and the other employees who dressed more formally, to wear whatever they wished.

(e) Time off in August - Mr. Baker testified that he had only recently assumed his duties at Marshall, and understood that departmental policy prohibited annual leave in August. He asserts that he did not grant such leave to any employees who may have been out of the office that month. When he learned that Grievant had requested the time due to an illness in the family, he did not object toher use of sick leave.

(f) Public relations and marketing - Assistant Director Larry Crowder gave a television and radio interview on overflow housing and Joe Marshman conducted an environmental assessment; however, Respondent argues that it is difficult to perceive how these activities stripped Grievant of her duties. Further, Mr. Baker had to assign some duties to Mr. Marshman who had previously been scheduled for termination, but then retained his position. Respondent states that while there may have been some overlap of duties assigned to Grievant and Mr. Marshman, it must also be kept in mind that Grievant had advised Mr. Baker on August 4, 1993, that she was seeking employment elsewhere, and indicated that she would potentially be gone by October. Thus, the assignment to Mr. Marshman had been made with the understanding that Grievant may no longer be in Respondent's employ. Respondent further contends that it would have been senseless to harass Grievant during this period of time when it was believed that she would soon be leaving the department.

___(g) Release time - Mr. Welty explained that Grievant may not have initially been approved for leave time for a “special topics” course she wanted to take because the school allowed release time for classes, but not for research projects. In any event, Respondent notes that Mr. Baker ultimately allowed Grievant the time under the criteria which she suggested.

(h) WVASPA Conference - Respondent denies that Mr. Welty and Mr. Baker's failure to take a more active role in this activity was an indication of reprisal. To the contrary, Respondent notes that Mr. Welty assisted with budgeting the costs.

(i) NHTI Conference - Grievant was scheduled to attend this conference, but changed her mind after she did not receive the Director's position. The conference director advised Mr. Welty that because individuals had to apply for the slot, Marshall could not simply send someone inGrievant's place, and the slot was cancelled. Respondent did not reimburse Grievant for her air fare because she pulled herself from the trip.

Respondent has provided the required legitimate, non-discriminatory reasons for most of the actions cited by Grievant as motivated by reprisal. Grievant responds by claiming that the reasons were merely pretextual; however, the evidence does not support that claim. Although Grievant perceives Mr. Baker's actions to be retaliatory, the record indicates that their differences were caused to a great extent due to their different managerial styles. For example, Grievant took personal offense when Mr. Baker implemented a policy that required all outgoing correspondence be under his signature and that all files be moved to his office. Further, many of Mr. Baker's actions were reasonably taken in light of Grievant's statement that she was seeking employment elsewhere and intended to be gone within a short period of time. Grievant requests a similar, or better position as relief, yet when Marshall raised such a possibility to her, she rejected it. While it is apparent that Grievant was very unhappy with Mr. Baker's hiring and supervisory style, and with changes made in her position, the record does not support a finding that Respondent, particularly Mr. Welty and Mr. Baker, created circumstances for Grievant under which a reasonable person would have believed there was no alternative but to resign.

___Consistent with the foregoing findings of fact and discussion, the following conclusions of law are made in this matter.

Conclusions of Law

1. To determine whether a resignation is, in effect, a constructive discharge, it must be determined whether the employer has deliberately caused or allowed the employee's working conditions to become so intolerable that a reasonable person in the employee's situation would havefelt compelled to resign. Ball v. W. Va. Alcohol Beverage Control Comm., Docket No. 90-ABCC-027 (June 15, 1990).

2. When a grievant chooses to establish that she was constructively discharged by Respondent's acts of reprisal, she must establish a prima facie case of reprisal by showing:

(1) that she engaged in protected activity, e.g., filing a grievance;

(2) that she was subsequently treated in an adverse manner by the employer or an agent;

(3) that the employer's official or agent had actual or constructive knowledge that the employee engaged in the protected activity; and

(4) that there was a causal connection (consisting of an inference of a retaliatory motive) between the protected activity and the adverse treatment.

Conner v. Barbour County Bd. of Educ., Docket Nos. 93-01-543/544 (Jan. 31, 1995). See Frank's Shoe Store v. W. Va. Human Rights Comm'n, 365 S.E.2d 251 (W. Va. 1986); Fareydoon-Nezhad v. W. Va. Bd. of Trustees/Marshall Univ., Docket No. 94-BOT-088 (Sept. 19, 1994). If a grievant establishes a prima facie case of reprisal, the employer may rebut the presumption of retaliation by offering legitimate, nonretaliatory reasons for its actions. See Mace v. Pizza Hut, Inc., 377 S.E.2d 461 (W. Va. 1988). If the Respondent is successful in rebutting the prima facie case, Grievant may still prevail if she can establish by a preponderance of the evidence that the reason given by the employer was merely pretextual.

3. Grievant established a prima facie case of reprisal; however, Respondent has offered legitimate, nondisciminatory reasons for its actions, and Grievant has failed to prove that the reasonswere merely pretextual.

4. Grievant has failed to prove by a preponderance of the evidence that she was constructively discharged from her employment due to reprisal under the legal standard established in Slack v. Kanawha County Housing and Redevelopment Authority, 188 W. Va. 144, 423 S.E.2d 547 (1992)

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Cabell County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. 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.

Date: December 29, 1997 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

For administrative reasons this matter was transferred to the undersigned, and received on August 20, 1997.

Footnote: 2

These specific acts of reprisal were set forth in Grievant's proposed findings of fact and conclusions of law. Inconsistencies in tense have been corrected within brackets.

Footnote: 3

At this point, Grievant's numbering began at 20 again. This has been corrected to lessen confusion.