JAMES HAGER, et al.,

Grievants,

v. Docket Nos. 98-DPS-306/307/308

DEPARTMENT OF PUBLIC SAFETY

and DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievants, James Hager, Teresa Bias, and Ronaka Higginbottham, filed this grievance in March 1998 stating:

> **No salary increase has been received since our duties and responsibilities were increased, along with unwanted overtime.** (See footnote 1)
>
> **Relief sought: back pay plus 10% interest from nov. 3,1998 (sic).** (See footnote 2)

This grievance was waived at Level I and denied at Levels II and III. Grievants appealed to Level IV, and a hearing was held on September 8, 1998. After the hearing, the parties agreed there was no need to submit written proposals, and this grievance became mature on the hearing date. (See footnote 3)

Issues and Arguments

Grievants make two basic arguments. The first argument relates to comparing their duties to those of other employees. They argue they are misclassified at pay grade 6 and should be reclassified with their current position description at pay grade 7, because of the complexity of their duties. They base this argument on the duties of the Customer Service Representative, Lead ("CSRL"), which has similar

"Examples of Work" as their own and is in pay grade 7. They also claim their duties and responsibilities are greater than the duties and responsibilities of the Customer Service Representative ("CSR"), who are paid at a pay grade 6. Second, Grievants argue the pay increase they received upon reclassification from a pay grade 5 to a pay grade 6 on July 13, 1998, should have begun on November 3, 1997, when they began their new duties.

Respondents aver Grievants are properly classified and compensated at a pay grade 6, and that the pay increase could not begin until the new class specification was approved by the Division of Personnel ("DOP").

After a detailed review of the record in its entirety, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievants are currently employed by the Department of Public Safety ("DPS") as Driver License Examiners, at pay grade 6.

2. During 1997, DPS made plans to change the duties of the Driver License Examiners because the use of a "new digitalized licensing system ha[d] created a significant change in the[ir] responsibilities." Level III, DOP Exh. 1. 3. DPS worked with DOP and its employees to develop a new Driver License Examiner class specification. This new Driver License Examiner class specification was increased from the former pay grade 5 to a pay grade 6 to reflect the added duties and responsibilities.

4. DPS asked for special permission from DOP to give all Driver License Examiners, who were already in the pay grade 6 pay range, a five per cent pay increase, and this request was granted.

5. DOP Director Edison Casto informed Colonel Gary Edgell, Superintendent of the West Virginia State Police, on May 28, 1998, that the State Personnel Board

had approved the revised class specification, as well as the five percent pay increase for the employees already in the pay grade 6 range. This change was to be effective on July 16, 1998.

6. Grievants administer all tests required of applicants for a West Virginia driver's license. They agree they perform the duties identified in the Driver License Examiner class specification, but believe these duties should be compensated at a pay grade 7.

The pertinent class specifications are identified below.

DRIVER LICENSE EXAMINER

Nature of Work: Under general supervision of the MVI-CDL officer, administers all tests required of applicants for West Virginia driver's licenses and processes all types of driver's license transactions including collections of fees and issuing licenses. Administers road skill tests as required. Performs related work as required.

Examples of Work

Administers all tests related to obtaining West Virginia driver's license: vision test, written test, computerized test and oral test for those with reading impairment.

Conducts skills test for Class D and E licenses (chauffeurs and regular operator license) i.e., parking testing and on-the -road skills test.

Issues all types on driver's licenses and ID cards; reviews documentation to ensure that information is complete and accurate; approves license for issuance.

Calculates and collects fees for all types of driver's license; operates cash register.

Enters driver's information into computerized photo licensing equipment; obtains finger imagines (sic) and signature; photographs applicants for license, permits or ID cards.

Overrides the computer and makes voids.

Balances cash drawer with the log of transactions at the end of each business day; prepares and makes bank deposit; transports money to and from bank; copies, faxes and mails Division of Motor Vehicles reports daily.

Performs inspection of applicant's vehicles for proper operation; rejects vehicles found in unsafe condition.

Reviews for accuracy and legibility applications for learner's permits and transfers from out of state; compares applications to supporting documents.

Checks and scores tests; validates tests; issues licenses with passing scores.

Logs each applicant for written and driving test.

Answers questions and provides general information about driver performance exams, testing procedures and applicable motor vehicle laws.

Completes monthly transportation reports for assigned vehicle.

Travels to assigned designated testing site to administer tests; and issues driver's licenses.

Conducts driver clinic interviews as assigned by the supervisor .

Conducts voter registration.

CUSTOMER SERVICE REPRESENTATIVE

Nature of Work: Under general supervision, performs full-performance level clerical/public contact work involving the processing, recording and issuance of

drivers' license, vehicle registration, vehicle titles, and related documents. Work is characterized by regular and recurring tasks requiring knowledge and interpretation of motor vehicle and driver registration and license laws, policies and procedures. Operates moderately complex office equipment on a regular basis. Refers unusual or hostile situations to a supervisor. Performs related work as required.

Examples of Work

Greets motorists in person or by telephone, answers questions regarding state law, policy or procedure; assists motorists in the processing of driver and motor vehicle license and registration; explains necessary forms, fees, taxes, and surcharges involved in the licensing of vehicles, including boats and motorcycles.

Reviews state code, vehicle registration manuals, policy directives, and vehicle appraisal guides to locate information applicable to the licensing situation.

Enters data into the computer to access previous registration data and to update or enter new file information.

Reviews motorists' documentation to ensure that all information is complete and accurate; assesses fees and gives receipts of payment; balances the cash drawer with the log of transactions at the end of each business day.

Relieves other staff for breaks during the day; performs support duties such as re- stocking forms or making copies.

Mails out forms in answer to inquiries; may compose routine explanations to accompany forms.

CUSTOMER SERVICE REPRESENTATIVE, LEAD

Nature of Work: Under general supervision and in a lead capacity, performs and leads public contact work involving the receipt, auditing, processing, recording and issuance of drivers' license[s], vehicle registration, vehicle titles and related documents. Performs daily audits and prepares daily labor reports as directed. Responsible for office in the absence of the manager or supervisor. Performs voids and corrects errors in computer cash register system. Assists in assigning, reviewing and approving the work of other employees; may approve leave requests, trains employees in new work methods and orientation; handles unusual and complex driver or motor vehicle licensing and title problems. Assists public by telephone and in person in processing driver or motor vehicle license and title processing. Explains and provides assistance in requirements, fees, documents, forms, taxes and surcharges involved in registering and licensing vehicles. Reviews and processes documents, issues drivers' licenses, vehicle plates. Performs related duties as required.

Examples of Work

Assists in planning, assigning and reviewing the work of others and trains employees in work methods.

Audits Customer Service Representatives at check-out time and verifies transactions at the end of the day.

Has authority to make corrections/voids to other Customer Service

Representatives' transactions in the computer cash register system.

In the absence of a Supervisor will have authority as established by management: i.e., delegate job assignments, arrange work schedules, prepare daily labor reports, approve leave requests, counsel employees on current and/or new policies and procedures, and prepare correspondence and reports, etc.

Greets motorists in person or by telephone, answers questions regarding state law, policy or procedure; assists motorists in the processing of driver and motor vehicle license and registration; explains necessary forms, fees, taxes, and surcharges involved in the licensing of vehicles, including boats and motorcycles.

Reviews state code, vehicle registration manuals, policy directives, and vehicle appraisal guides to locate information applicable to the licensing situation.

Enters data into the computer to access previous registration data and to update or enter new file information.

Reviews motorists' documentation to ensure that all information is complete and accurate; assesses fees and gives receipts of payment; balances the cash drawer with the log of transactions at the end of each business day.

Relieves other staff for breaks during the day; performs support duties such as re- stocking forms or making copies.

Mails out forms in answer to inquiries; may compose routine explanations to accompany forms.

DISCUSSION

The first issue to address is whether DOP's placement of Grievants in Pay Grade 6 was arbitrary and capricious and contrary to DOP's regulations, because the complexity of their work is equal to or greater than another more highly rated classification. (See footnote 4)

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 has been 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 equalwork. 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, 166 W. Va. 117, 273 S.E.2d 72 (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 class 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 pay grade was selected 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 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. Trimboli v. W. Va. Dept. of Health and Human Resources/ Div. of Personnel, Docket No. 93-HHR-322

(July 7, 1997). See W. Va. Dept. of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681 (1993); 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 uphold the pay grade assignment. 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 performsubstantially 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.2d 1127 (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.

Although Grievants presented some evidence to show their classification had the same complexity as another classification this evidence was unconvincing and was rebutted by Mr. Basford's testimony. A detailed review of Grievants' class specification and pay grade, vis-a-vis the CSRL's pay grade, does not demonstrate that DOP was clearly wrong or acted in an arbitrary and capricious manner in placing Grievants in pay grade 6. Grievants compare their duties with those of the CSRL's and note that many of the "Examples of Work" are the same, especially since both classifications have the right to make voids in the cash register. Grievants also note that they have multiple duties that relate to money, deposits, and other bank transactions. These duties are certainly an important part of Grievants' duties. However, an examination of the "Nature of Work" Section reveals that the key difference between the two class specifications is the lead or quasi-supervisory duties of the CSRL. Grievants agreed they have no lead or supervisory duties, and agreed that they do not supervise other employees in any way.

Grievants responded to this argument by questioning whether the employees who are classified as CSRL's actually perform these duties. This argument is without merit. If employees classified as CSRL are not performing this key function of their class specification then they would be misclassified, and would not merit pay grade 7. It is noted that the difference between a CSR and a CSRL is the quasi-supervisory duties.

As far as a comparison between the duties of CSR and Driver License Examiners' job duties, DOP's decision to place both in the same pay grade was not shown to be arbitrary and capricious. While Grievants deal in more detail in one

specific area, the CSR's appear to have less detail in an area, but are required to understand and explain the law and regulations to customers in multiple areas. Both groups collect money, balance cash drawers, and log transactions. Clearly, Grievants have more duties relating to money such as deposits and voids, but these duties do not demonstrate that Grievants are in the incorrect pay grade. Accordingly, Grievants have failed to meet their burden of proof and demonstrate they should be paid at pay grade 7. The increase in Grievants' duties warranted an increase to a pay grade 6, but did not warrant an increase to a pay grade 7. The next issue to discuss is whether Grievants should have received the pay increase from the date they began their duties, November 3, 1997, not from the effective date of the new approved class specification. The case of Harvey v. Bureau of Employment Programs/Division of Personnel, Docket No. 96-BEP-484 (Mar. 6, 1998) is instructive. In that case an employee agreed to work on a prototype claims team. This employee understood that he would be compensated as an Office Assistant II until a new classification was approved and established for his role on the claims team, and was told that, whenever reclassification took place, he would not receive retroactive compensation for working in a higher classification.

That situation is similar to what happened in this case. Grievants knew their duties were in the process of being changed, a new classification was being written, and they would be upgraded. Indeed, Grievants helped write the new class specification. They were not promised any retroactive pay increases.

This Grievance Board has previously determined that an employee who voluntarily "fills in" for an employee in a higher classification without a guarantee of additional pay may not later successfully claim that he should have received the pay of the higher classification. Freeman v. W. Va. Dept. of Health & Human Resources, Docket No. 90-H-237 (Dec. 26, 1990). Accord, Deel v. Bureau of Employment Programs, Docket No. 96-BEP-361 (Mar. 11, 1997); Spencer v. W. Va.

Dept. of Health & Human Resources, Docket No. 93-HHR- 523 (Oct. 28, 1994); Thornton v. W. Va. Workers' Compensation Fund, Docket No. 90- WCF-077 (Dec. 26, 1990). See also Gregg v. Bd. of Trustees, Docket No. 94-MBOT-863 (Dec. 18, 1996). Grievants' situation in the instant matter is similar to the circumstances in Freeman, supra, and the above-cited cases which followed Freeman. Grievants voluntarily began performing the new duties with the full knowledge that, they were engaging in more complex activities. Grievants had a reasonable expectation that they would eventually be reclassified to a new classification title at a higher pay grade, although there was no guarantee what that pay grade would be. There was likewise no guarantee how long the reclassification process would take, although it obviously took longer than Grievants anticipated. Grievants ultimately received what they had a reasonable expectation of receiving; they were reclassified from pay grade 5 to pay grade 6.

It is unfortunate that the process of establishing a new classification for the work Grievants were performing was not completed in a shorter time frame. Nonetheless, there is no evidence that any of the parties prolonged the reclassification process simply to take advantage of Grievants, or to avoid having to pay a higher salary to those employees. Grievants have not established that either DPS or DOP violated any statute, policy, rule, regulation, or written agreement within the meaning of W. Va. Code § 29-6A-2(i) through their conduct in this matter. Likewise, Grievants have failed to demonstrate that the conduct of DPS and DOP was arbitrary and capricious in the circumstances presented. See generally, Bedford County Memorial Hosp. v. Health & Human Serv., 769 F.2d 1017 (4th Cir. 1985); Staton v. Wyoming County Bd. of Educ., 184 W. Va. 369, 400 S.E.2d 613 (1990).

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 Driver License Examiners class title to pay grade 6 was clearly wrong, arbitrary, capricious, contrary to regulation, or otherwise illegaland 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. An employee who alleges impropriety 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, Docket No. 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).

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

4. 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).

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

7. 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 v. W. Va. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 95-HHR-052 (July 10, 1995); O'Connell, supra.

8. In order for Grievants to prevail they must show DPS and/or DOP acted in an arbitrary and capricious manner by placing the Driver License Examiners position in pay grade 6. To meet this burden Grievants must show DPS and DOP had no rational basis for placing Grievants in their current pay grade, or that Respondents acted in bad faith by placing the Driver License Examiners classification in pay grade 6 despite overwhelming evidence indicating the classification should be otherwise placed.

9. Grievants have failed to prove DPS or DOP acted arbitrarily or capriciously in assigning the Driver License Examiners classification to Pay Grade 6. Additionally, Grievants have failed to prove, by a preponderance of the evidence, that the Driver License Examiners duties are the same or very similar to the duties of the CSRL See, Tomlinson v. W. Va. Dept. of Transp., Docket No. 94-DMV-209 (Oct. 20, 1994); Frame, supra.

10. Employees who voluntarily agree to work outside their current classification, which is ultimately awarded a higher classification, may not later

successfully claim they should have received the pay of the higher classification for the time they worked in the newclassification. Harvey v. Bureau of Employment Programs/Div. of Personnel, Docket No. 96-BEP-484 (Mar. 6, 1998). See Deel v. Bureau of Employment Programs, Docket No. 96- BEP-361 (Mar. 11, 1997); Spencer v. W. Va. Dept. of Health & Human Resources, Docket No. 93-HHR-523 (Oct. 28, 1994); Freeman v. W. Va. Dept. of Health & Human Resources, Docket No. 90-H-237 (Dec. 26, 1990); Thornton v. W. Va. Workers' Compensation Fund, Docket No. 90-WCF-077 (Dec. 26, 1990).

11. Grievants failed to prove that the DPS or DOP violated any rules, policy, regulation, or statute when it reclassified them to the newly-redesigned classification of Driver License Examiners in July 1, 1998, without awarding back pay to November 1997, when they began performing the essential duties of the new classification in the context of a prototype or changed position. See Deel, supra; Freeman, supra.

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: September 30, 1998

Footnote: 1

The overtime portion of the grievance was abandoned.

Footnote: 2

The parties confirmed this date was intended to be November 3, 1997.

Footnote: 3

Grievants were pro se, Respondent Department of Public Safety ("DPS") was represented by DPS Attorney Dolores Martin, and Respondent Division of Personnel was represented by Mr. Lowell Basford, Assistant Director of Classification and Compensation.

Footnote: 4

For a detailed discussion of DOP's role in classifying and placing employees in pay grades, see Trimboli v. W. Va. Dept. of Health and Human Resources/ Div. of Personnel, Docket No. 93-HHR-322 (July 7, 1997).

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 the employer'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.