

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

RITA NOTT, et al.,

Grievants,

v.

DOCKET NO. 2012-0140-CONS

MASON COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Rita Nott filed the following grievance at Level One of the grievance procedure on July 6, 2011, against her employer, the Mason County Board of Education (“Respondent”):

Grievant contends that respondent extended Grievant’s daily schedule for the 2011-2012 school year and future school years without the consent of the grievant and without due process, *i.e.*, notice and an opportunity for hearing. Grievant alleges a violation of W. Va. Code 18A-2-5, 18A-2-6, 18A-2-8a, 18A-2-12a & 18A-4-8(m).

As relief, Grievant sought “restoration of Grievant’s daily schedule to the 2010-2011 number of hours worked and compensation for all time worked over and above the 2010-2011 required number of hours worked per day with interest.” This grievance was assigned Docket No. 2012-0037-MasED. In early July 2011, another 50 school service personnel¹ employed by Respondent filed nearly identical grievances. On August 9,

¹ Shirley Livingston, Denise Bonecutter, Dale L. Dalton, Marketta Crum, Shelia Lanz, Sheila D. Ball, Maia Dawn Endicott, Lisa Ann Gardner, Grace Ann Connolly, Dorothy G. Cook, Lisa Albright, Sandra K. Buttrick, Deborah K. Hopson, Madora May McCarty, Lana J. Rayburn, Doris E. Cromley, Darla M. Jackson, Wanda G. Watterson, L. Sue Smithson, Teresa L. Pyatt, Bonnie Sue Corfee, Cathrine M. Kirby, Janet Sue Reynolds, Diana Lynn Roach, Debra Sayre, Mirlie Sue Castro, Okey W. Livingston, Jennifer Sue Cundiff, Donna Fay Greene, Marcela L. Keefer, Wilma Jane McClure, Summer D. Mitchell, Brigitte Rhodes, Christi Regina Roush, Venis G. Roush, Lawhana Sue Smithson, Kimberly Kay Wilson, Kristen Nichole Wray, Shirley Jean Billings, Cheryl L. Ellis, Angela Michelle Lloyd, Linda C. Nibert, Brenda Lee Keefer, Jean A. Waugh, Manuela Connie Hall, Kathryn Elaine Farr, Nancy M. Warner, Cheryl Suzanne Hull, Lisa Gail Hill,

2011, all of these grievances were consolidated by the Mason County School Superintendent and assigned Docket No. 2012-0140-CONS.

Following a Level One hearing on August 10, 2011, the chief administrator's designee, Jack Cullen, denied the grievance in a written decision issued on September 14, 2011. This matter proceeded through mediation at Level Two and Grievants appealed to Level Three on January 12, 2012. A Level Three hearing was conducted in Point Pleasant, West Virginia, on June 5, 2012, by Administrative Law Judge Landon R. Brown. All Grievants except Shirley Livingston were represented by John Roush, Esquire, with the West Virginia School Service Personnel Association. Grievant Livingston was represented by Jeremy B. Radabaugh with the West Virginia Education Association. Respondent was represented by Gregory Bailey, Esquire, with Bowles Rice.

This matter became mature for decision on July 3, 2012, upon receipt of the last of the parties' post-hearing proposals. Thereafter, for administrative reasons, this grievance was reassigned to the undersigned Administrative Law Judge for adjudication. The undersigned Administrative Law Judge has reviewed the Level One record, the recording of the Level Three hearing, all exhibits, and the parties' post-hearing arguments, prior to rendering this decision.

Synopsis

Respondent Mason County Board of Education began implementing a new "overtime" policy at the beginning of the 2011-12 school year which required certain school service personnel working as cooks, aides and school secretaries (which category

included all named Grievants in this matter) to work an eight-hour work day. Previously, by approved written policy, Grievants' standard work schedule involved a seven-hour work day. Pursuant to an unwritten policy or practice which was never formally approved by the Mason County Board of Education, Grievants were paid at their regular rate of pay for each hour worked over 35 per week up to 40 per week. In calculating "hours worked" for purposes of applying this unwritten policy, a one-half hour duty-free lunch period and two 15-minute duty free breaks were included as work time. Once Grievants' work hours were increased to eight per day and a 40-hour week, Respondent only paid overtime to Grievants as mandated by the federal Fair Labor Standards Act, although Respondent continued to count the one-half hour duty-free lunch period and two 15-minute duty-free breaks as hours worked toward the 40-hour week threshold.

Respondent presented evidence that it was facing a budget deficit in excess of \$1 million, and it was mandated by law to provide aides for certain students more than seven hours per day. However, this increase in Grievants' work hours violated the limitations in the "non-relegation clause" of W.Va. Code § 18A-4-8(m), and Respondent failed to demonstrate any legal basis for superseding that Code provision. Accordingly, this Grievance must be **GRANTED**.

The following Findings of Fact are made based upon the record developed at Level One and continuing through the Level Three hearing.

Findings of Fact

1. Grievants, Rita Nott, Shirley Livingston, Denise Bonecutter, Dale L. Dalton, Marketta Crum, Shelia Lanz, Sheila D. Ball, Maia Dawn Endicott, Lisa Ann Gardner,

Grace Ann Connolly, Dorothy G. Cook, Lisa Albright, Sandra K. Buttrick, Deborah K. Hopson, Madora May McCarty, Lana J. Rayburn, Doris E. Cromley, Darla M. Jackson, Wanda G. Watterson, L. Sue Smithson, Teresa L. Pyatt, Bonnie Sue Corfee, Cathrine M. Kirby, Janet Sue Reynolds, Diana Lynn Roach, Debra Sayre, Mirlie Sue Castro, Okey W. Livingston, Jennifer Sue Cundiff, Donna Fay Greene, Marcela L. Keefer, Wilma Jane McClure, Summer D. Mitchell, Brigitte Rhodes, Christi Regina Roush, Venis G. Roush, Lawhana Sue Smithson, Kimberly Kay Wilson, Kristen Nichole Wray, Shirley Jean Billings, Cheryl L. Ellis, Angela Michelle Lloyd, Linda C. Nibert, Brenda Lee Keefer, Jean A Waugh, Manuela Connie Hall, Kathryn Elaine Farr, Nancy M. Warner, Cheryl Suzanne Hull, Lisa Gail Hill, and Tammy L. Watterson, are employed by Respondent Mason County Board of Education (“MCBOE”) in various job classifications as school service personnel.

2. Prior to the 2011-12 school year, certain Mason County school service personnel worked a seven-hour day, while others worked an eight-hour day. Grievants were within the group of employees who, based upon their classifications, worked a seven-hour day.

3. Under MCBOE Policy 4251, the normal work day for cooks, aides and school secretaries employed by the Mason County Board of Education was seven hours per day. R Ex 4. During the 2010-2011 school year, school service personnel employed as school secretaries, cooks and aides worked this seven-hour day, which was authorized to include a one-half hour duty-free lunch period and two 15-minute duty-free breaks.

4. During the 2010-11 school year, these duty-free lunch periods and two 15-minute breaks (five hours per week) were counted toward an employee's hours worked for purposes of calculating overtime at time and one-half the employee's regular rate of pay, for any time worked over 40 hours. This practice of including these five hours on the clock was not included in any written policy nor had this practice ever been approved or adopted by the Mason County Board of Education.

5. During the 2010-11 school year, school service personnel employed as school secretaries, cooks and aides received additional pay when they worked more than 35 hours in a week, after counting the duty-free lunch hour and two daily breaks as hours worked for purposes of reaching this 35-hour threshold. Such employees were then paid at their regular rate of pay for their first five hours (from 35 hours to 40 hours) and time and one-half for each hour after exceeding the 40-hour limit.

6. On July 13, 2010, the Mason County Board of Education adopted MCBOE Policy 6700 governing overtime. R Ex 1. Policy 6700 required cooks, aides and school secretaries to work an eight-hour day, including a one-half hour duty-free lunch period and two 15-minute breaks. There was no evidence presented that this policy change was actually implemented until the 2011-12 school year.

7. On August 17, 2010, the Mason County Board of Education rescinded its previously adopted by-laws and policies and adopted an online policy manual referred to by its acronym as "NEOLA."² R Ex 6.

8. On June 16, 2011, the Mason County Board of Education rescinded Policy 4251, in order to make it clear that school secretaries, cooks and aides would work

² None of the witnesses were able to explain what these letters stand for.

eight-hour days rather than seven-hour days, and that the regular work week would consist of 40 hours rather than 35.³

9. Grievants' salaries were not increased in response to this change to an eight-hour week. For example, a school secretary whose annual salary was \$25,000 continued to receive the same \$25,000 annual salary after her hours were increased.

10. Respondent Mason County Board of Education made a good faith effort to notify all persons in the service personnel classifications represented by Grievants that Policy 6700 would be implemented during the 2011-12 school year through correspondence addressed to individual employees mailed on or about June 9, 2011. See R Exs 7a, 7b & 7c.

11. Respondent Mason County Board of Education made no effort to invoke W. Va. Code § 18A-2-6, 18A-2-7 or 18A-2-8a, and provide Grievants with timely notice of a proposed change to their employment status and a due process hearing.

12. As of June 30, 2010, Mason County Board of Education was facing a budget deficit of \$1,359,304. R Ex 5.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving each element of their grievance by a preponderance of the evidence. Procedural Rule of the W. Va. Public Employees Grievance Bd., 156 C.S.R. 1 § 3 (2008). See *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997). "A preponderance of the evidence is evidence of greater weight or more convincing than

³ This policy was purportedly rescinded in the "NEOLA" process. However, given some confusion over which policies were actually included in this process, the Board later rescinded Policy 4251 as a separate agenda item.

the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.” *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997).

There are multiple statutory provisions governing the employment of school service personnel, and school employees in general, including the Code language quoted in the following paragraphs.

W. Va. Code § 18A-2-6 provides, in pertinent part:

The continuing contract of any such employee shall remain in full force and effect except as modified by mutual consent of the school board and the employee, unless and until terminated with written notice, stating cause or causes, to the employee, by a majority vote of the full membership of the board before March 1 of the then current school year, or by written resignation of the employee on or before that date. The affected employee has a right of a hearing before the board, if requested, before final action is taken by the board upon the termination of such employment.

W. Va. Code § 18A-2-7 provides, in pertinent part, as follows:

(a) The superintendent, subject only to approval of the board, may assign, transfer, promote, demote or suspend school personnel and recommend their dismissal pursuant to provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before March 1 if he or she is being considered for transfer or to be transferred. Only those employees whose consideration for transfer or intended transfer is based upon known or expected circumstances which will require the transfer of employees shall be considered for transfer or intended for transfer and the notification shall be limited to only those employees. Any teacher or employee who desires to protest the proposed transfer may request in writing a statement of the reasons for the proposed transfer. The statement of reasons shall be delivered to the teacher or employee within 10 days of the receipt of the request. Within ten days of the receipt of the statement of the reasons, the teacher or employee may make written demand upon the superintendent for a hearing on the proposed transfer before the County board of education. The hearing on the proposed transfer shall be held on or before April 15. At the hearing, the reasons for the proposed transfer must be shown.

(b) The superintendent at a meeting of the board on or before April 15 shall furnish in writing to the board a list of teachers and other employees to be considered for transfer and subsequent assignment for the next ensuing school year. An employee who was not provided notice and an opportunity for hearing pursuant to subsection (a) of this section may not be included on the list. All other teachers and employees not so listed shall be considered as reassigned to the positions or jobs held at the time of this meeting the list of those recommended for transfer shall be included in the minute record of the meeting and all those so listed shall be notified in writing, which notice shall be delivered in writing, by certified mail, return receipt requested, to the persons' last known addresses within ten days following the board meeting, or they're having been so recommended for transfer and subsequent assignment and the reasons therefor.

W. Va. Code § 18A-2-12a(b)(6) provides the following guidance: “All school personnel are entitled to due process in matters affecting their employment, transfer, demotion or promotion”

W. Va. Code § 18A-4-8(m) provides:

Without his or her written consent, a service person may not be:

- (1) Reclassified by class title; or
- (2) Relegated to any condition of employment which would result in a reduction of his or her salary, rate of pay, compensation or benefits earned during the current fiscal year; or for which he or she would qualify by continuing in the same job position and classification held during that fiscal year and subsequent years.

W. Va. Code § 18A-4-14(1) provides:

Notwithstanding the provisions of section seven, article two of this chapter, every teacher who is employed for a period of time more than one-half the class periods of the regular school day and every service personnel whose employment is for a period of more than three and one-half hours per day and whose pay is at least the amount in the “state minimum pay scale” as set forth in section eight-a of this article shall be provided a daily lunch recess of not less than thirty consecutive minutes, and such employees shall not be assigned any responsibilities during this recess. Such recess shall be included in the number of hours worked, and no county shall increase the number of hours to be worked by an employee as a result of such employee being granted a recess under the provisions of this section.

W. Va. Code § 18A-4-5b provides, in pertinent part:

These county schedules shall be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation of equipment or other requirements. Further, uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county: Provided, That in establishing such local salary schedules, no county shall reduce local funds allocated for salaries in effect on the first day of January, one thousand nine hundred ninety, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction.

There is also a significant body of law in West Virginia guiding the application of these statutes to school service personnel and other county board of education employees. Thus, any analysis must begin by recognizing that “[c]ounty boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious.” Syl. Pt. 3, *Dillon v. Bd. of Educ.*, 177 W. Va. 145, 351 S.E.2d 58 (1986). Further, “[w]hen a board of education seeks to reduce employment costs, the board may decide that the schools’ best interests require either the elimination of some service personnel jobs or the retention of all service personnel jobs but with reduced employment terms.” *Lucion v. McDowell County Bd. of Educ.*, 191 W. Va. 399, 402, 446 S.E.2d 487, 490 (1994). Moreover, “[d]eterminations of the number of service personnel and the length of their employment terms are primarily management decisions. Without

a clear statutory requirement, such determinations should remain with a board of education.” *Id.*

However, “[s]chool personnel regulations and laws are to be construed strictly in favor of the employee.” Syl. Pt. 1, *Morgan v. Pizzino*, 163 W. Va. 454, 256 S.E.2d 592 (1979). See *Trimboli v. Bd. of Educ.*, 163 W. Va. 1, 254 S.E.2d 561 (1979). Likewise, “[a]n administrative body must abide by the remedies and procedures it properly establishes to conduct its affairs.” Syl. Pt. 1, *Powell v. Brown*, 160 W. Va. 723, 238 S.E.2d 220 (1977).

Under W. Va. Code § 18A-4-14(1), all school service personnel who are employed for more than three and one-half hours per day must be provided a duty-free lunch “recess” of not less than thirty minutes daily and this “recess shall be included in the number of hours worked.” Based upon the clear language of this statute, it does not matter whether or not the Mason County Board of Education ever adopted a policy which included the duty-free lunch period as part of an employee’s hours worked, because that was already mandated by law.

However, the Mason County Board of Education went on and paid employees who worked seven-hour work days at their regular rate of pay for each hour they worked over 35 per week, up to 40 hours per week. In 2011, Respondent sought to halt that practice, which was never put in writing, ostensibly to conform to the federal Fair Labor Standards Act.

This Grievance Board has recognized that a county board of education may seek to conform to the requirements of the Fair Labor Standards Act with regard to the

calculation and recording of time, without violating the non-relegation clause in W. Va. Code § 18A-4-8(m). *Zirkle v. Hancock County Bd. of Educ.*, Docket No. 07-15-124 (Mar. 6, 2008); *Goins v. Raleigh County Bd. of Educ.*, Docket No. 06-41-453 (Mar. 23, 2007). See *Dillon v. Mingo County Bd. of Educ.*, Docket No. 05-29-413 (Apr. 28, 2006). The Fair Labor Standards Act (“FLSA”) does not mandate that non-exempt employees (including Grievants) be paid overtime for each hour worked over 35 per week. However, Respondent was not paying Grievants FLSA overtime in this circumstance. Respondent simply compensated Grievants at their regular rate of pay for each hour worked as a result of the fact that their “regular” work day was seven hours or 35 hours per week, and when Grievants were required to work between 35 and 40 hours per week, it was reasonable to compensate them in some manner. Otherwise, having a seven-hour work day as stated in Policy 4251 would have no consequence, if employees were required to work additional hours each week without compensation.

This becomes something of a “chicken and egg” argument as to which happened first. Of course, the school board is free to conform its policies to follow the Fair Labor Standards Act. *Goins, supra*. However, when the Grievant’s daily work schedule is extended from a seven-hour day to an eight-hour day, conformity is no longer necessary because there is no longer any basis to compensate Grievants for any work they perform between 35 and 40 hours weekly, as those hours have now become part of the established workweek. At the end of the day, this is the crux of what took place here – Grievants’ normal working hours were extended from a seven-hour day and 35-hour week to an eight-hour day and a 40-hour week. Once that change was made,

Respondent decided to include the one-half hour duty-free lunch recess as part of the eight hours worked, as it was already required to do under W. Va. Code § 18A-4-14(1), as well as the two 15-minute break periods, which it is arguably required to count by Department of Education policy which treats such breaks as “hours worked.”

The factual scenario presented here is substantially similar to the facts in *Lambert v. Mercer County Bd. of Educ.*, Docket No. 91-27-520 (May 27, 1992), where this Grievance Board found a violation of the “non-relegation clause” included in W. Va. Code § 18A-4-8 when a service employee’s work hours were increased by one-half hour each day, without her consent or an increase in her salary. *Accord, Pietrantozzi v. Mercer County Bd. of Educ.*, Docket No. 94-27-130 (Dec. 29, 1994).

Respondent explains that because the Mason County Board of Education was experiencing a budget deficit in excess of \$1 million as a result of an unforeseen rise in construction costs, and this was a matter beyond the Board’s control which had been duly reported to the West Virginia Department of Education, and a deficit reduction plan had been approved by the State Board, Respondent was authorized by the language in W. Va. Code § 18A-4-5b to implement these changes, notwithstanding the requirements in the non-relegation clause in W. Va. Code § 18A-4-8(m).

Respondent cited no authority to support this expansive application of W. Va. Code § 18A-4-5b. The primary object in construing a statute is to “ascertain and give effect to the intent of the Legislature.” Syl. pt. 1, *Smith v. State Workmen’s Comp. Comm’r*, 159 W. Va. 108, 219 S.E.2d 361 (1975). In this same regard, where the language of a statute is free from ambiguity, its plain meaning is to be applied without

resort to interpretation. Syl. Pt. 2, *Crockett v. Andrews*, 153 W. Va. 714, 172 S.E.2d 384 (1970). Moreover, statutes which relate to the same subject matter should be read and applied together so that the Legislature's intention can be ascertained from the whole of the enactments. *Poling v. Bd. of Educ.*, 215 W. Va. 231, 234, 599 S.E.2d 654, 657 ((2004). See *W. Va. Dep't of Health & Human Res. v. Hess*, 189 W. Va. 357, 432 S.E.2d 27 (1993).

The pertinent portion of W. Va. Code § 18A-4-5b reads as follows:

These county schedules shall be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation of equipment or other requirements. Further, uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county: Provided, That in establishing such local salary schedules, no county shall reduce local funds allocated for salaries in effect on the first day of January, one thousand nine hundred ninety, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction.

This Code provision makes specific reference to "local salary schedules" and "local funds allocated for salaries" which are "used in supplementing the state minimum salaries" provided for in the Code. It is these local salary supplements to the state minimum salaries which may be adjusted, provided certain specific conditions relating to a budget deficit are met. Respondent was changing employee work schedules and policies, not salaries, or anything that could legitimately be considered as an across-the-board salary supplement. Therefore, the language in W. Va. Code § 18A-4-5b cited by Respondent has no bearing on this grievance.

Respondent also produced evidence that it was mandated under the kindergarten aide/pupil ratio set forth in W. Va. Code § 18-5-18a, and West Virginia Board of Education Policy 2419, to provide aides to students for more than seven hours each day so as to maintain compliance with these requirements. However, there was no viable explanation why the only way to meet these requirements was to assign more time at work for the same pay to aides. This same argument as to why school secretaries needed to be present during the entire school day was likewise unpersuasive. (It also raised the question of how a school secretary would ever receive a 30-minute duty-free lunch recess and two 15-minute duty-free breaks, if someone needs to be present to provide support throughout the school day.)⁴

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. In a non-disciplinary matter, Grievants have the burden of proving each element of their grievance by a preponderance of the evidence. Procedural Rule of the W. Va. Public Employees Grievance Bd., 156 C.S.R. 1 § 3 (2008). See *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Runyon v. Mingo County Bd. of Educ.*, Docket No. 93-29-481 (Apr. 4, 1993).

2. Grievants established by a preponderance of the evidence that Respondent violated the “non-relegation clause” in W. Va. Code § 18A-4-8(m) by increasing their regular working hours from a seven-hour day to an eight-hour day without

⁴ As an alternative course of action, Respondent could have followed W. Va. Code § 18A-2-6 by terminating Grievants’ employment contracts and then filling new jobs with reduced employment terms. See *Lucion v. McDowell County Bd. of Educ.*, 191 W. Va. 399, 446 S.E.2d 487 (1994) (*per curiam*). However, Respondent apparently elected not to take such action to address its deficit issues.

any change in salary, and concomitantly discontinued paying each of them their regular rate of pay for each hour worked over 35 hours per week up to and including 40 hours per week. See *Pietrantozzi v. Mercer County Bd. of Educ.*, Docket No. 94-27-130 (Dec. 29, 1994); *Lambert v. Mercer County Bd. of Educ.*, Docket No. 91-27-520 (May 27, 1992). See also *Crock v. Harrison County Bd. of Educ.*, 211 W. Va. 40, 560 S.E.2d 515 (2002); *Hill, et al., v. Barbour County Bd. of Educ.*, Docket No. 2009-1503-CONS (Mar. 10, 2010).

3. Respondent failed to establish that any provision in W. Va. Code § 18A-4-5b, 18-5-18a, or any other statute, regulation or legal precedent, provided superseding authority for Respondent to disregard the requirements of W. Va. Code § 18A-4-8(m).

Therefore, this grievance is hereby **GRANTED**. Further, it is hereby **ORDERED** that Grievants be returned to a seven-hour per day work schedule, and that each Grievant be compensated at their regular hourly rate of pay, as back pay with statutory interest, less any appropriate deductions but including all benefits derived therefrom, for each hour greater than 35 hours per week, up to and including 40 hours per week, which any Grievant worked during the 2011-12 or 2012-13 school years, and forward from the date of this Decision until the prior work schedule is restored. It is further **ORDERED** that any Grievant who worked more than 40 hours per week during the 2011-12 or 2012-13 school years, and who did not receive FLSA overtime for such hours, be paid at one and one-half times their regular rate of pay, as back pay with statutory interest, less any appropriate deductions, and such payments shall continue forward from the date of this Decision until the prior work schedule is restored. In calculating any such 35-hour or

greater work week, Respondent will include the 30-minute duty-free lunch hour and two 15-minute duty-free breaks each workday, unless a Grievant previously waived such benefits in writing.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. See W. Va. Code § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. See *also* 156 C.S.R. 1 § 6.20 (2008).

LEWIS G. BREWER
Administrative Law Judge

Date: January 17, 2013