WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

AUDRA STEPHENS
Grievant,

v. **Docket No. 2009-0904 WayED**

WAYNE COUNTY BOARD OF EDUCATION,
Respondent,

v.

DAVID CRISEL
Intervenor.

D E C I S I O N

Grievant, Audra Stephens, filed a grievance against the Wayne County Board of Education (WCBE), Respondent in January 2009,[1] protesting the awarding of an extracurricular bus driving assignment, identified herein as the Spring Valley High School shuttle run. The specific relief sought by Grievant in her grievance statement provided:

> "The said run needs to be awarded to the next senior driver who bid on that position. Back pay starting from January 5, 2009 daily. 25.00 per daily run. All contractual runs to be bid yearly when there is a RIF so that all senior drivers will always be able to have a contractual run 18A-4-8g section e."

Subsequently, at the level one conference, Grievant adjusted the relief requested to contend that she should be awarded the position.

A conference was held at level one on February 13, 2009, and the grievance was denied at that level on February 20, 2009. Grievant appealed to level two on March 13, 2009, and a mediation session was held on June 12, 2009. Grievant appealed to level three on June 29, 2009. A level three hearing was held before the undersigned

[1] Grievant filed the grievance on January 20, 2009, with the West Virginia Public Employees Grievance Board and filed the same grievance with the Wayne County Board of Education on January 23, 2009. The exact filing date of the instant grievance has not been an issue of contention for the parties.

Administrative Law Judge on November 17, 2009, in the Grievance Board's Charleston office. Grievant appeared in person and by Representative Ben Barkey, West Virginia Education Association. Respondent was represented by David A. Lycan, Esquire, its General Counsel. Intervenor, David Crisel appeared in person and with the representation of Joe White, West Virginia School Service Personnel Association (WVSSPA).

This matter became mature for decision on December 16, 2009, the deadline for the submission of the parties' proposed findings of fact and conclusions of law. The Grievant and Respondent submitted fact/law proposals.

Synopsis

Grievant, a regularly employed bus operator, filed the instant grievance alleging that Respondent had violated a Memorandum of Agreement previously agreed upon by the Respondent and its school bus operators, when it awarded an extracurricular bus driving assignment to a bus operator, who already possessed a contractual evening run. The individual, who was awarded the driving assignment, participated in this grievance as an Intervenor. Respondent avers that the shuttle bus run need not be considered a p.m. or evening run for the Intervenor because it occurs before his regular daily bus run is completed and does not violate the terms and conditions of the referenced Memorandum of Agreement or any known WEST VIRGINIA CODE.

It was not established that Respondent abused its considerable discretion in the circumstances of this case. Grievant was not the next most senior applicant who bid on the referenced assignment and the next most senior driver did not file a grievance over the awarding of the driving assignment. Grievant did not establish by a preponderance of the

evidence that she suffered a loss certain as a result of Respondent's actions, nor was it established that Respondent's actions were unlawful. Accordingly this grievance is Denied.

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

Findings of Fact

1. Grievant is a regularly employed bus operator for Respondent, Wayne County Board of Education. She has been a bus operator for Respondent for twenty-three (23) years and is currently assigned to the Spring Valley High area.

2. In December of 2008, and January of 2009, Grievant held no extracurricular bus run, morning or evening.

3. Intervenor, David Crisel, is an employee who has worked for Respondent as a bus operator for forty-two (42) years. He too is currently assigned to the Spring Valley area.

4. Respondent, Wayne County Board of Education, and various organizations representing Wayne County bus operators, entered into a written Memorandum of Agreement in 1997, whereby the parties all agreed to certain procedures to be followed with regard to bus assignments and specified related activity.[2] The Memorandum is a

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[2] In accordance with statute W. VA. CODE § 18A-4-8b Extra Duty Assignments, Subsection (f)(B) "An alternative procedure for making extra-duty assignments within a particular classification of employment may be used if the alternative procedure is approved both by the county board of education and by an affirmative vote of two thirds of the employees within that classification category of employment." The Wayne County Board of Education and the various employee organizations reached such an agreement on or before June 23, 1997. The contract/agreement remains in effect on a three year rotational basis unless parties follow the notification procedure outlined in the second sentence "It is expressly provided, however, that either party desiring change shall, at least 60 days prior to April 1 of the third year, notify the other of its desire to make changes for the succeeding years." *See* Gr. Ex. 2, p.11 and West Virginia Code.

viable agreement between the parties of this grievance at all times relevant to this grievance.

5. Under the section of the Memorandum entitled "**MISCELLANEOUS**," under Subsection "S" appears the following specific language: "NO BUS OPERATOR shall have more than one (1) extra curricular bus run, between his/her a.m. and p.m. regular runs on any school day, either bid or assigned in any said area. A bus operator may have one (1) established extra curricular bus run after his/her p.m. regular run."[3]

6. On December 5, 2008, Respondent posted an extracurricular bus run for Spring Valley High School to begin at 3:15 p.m. (Resp. Ex. 3) Grievant, Intervenor and other bus drivers bid upon this posted assignment.

7. The purpose of the extracurricular shuttle bus run was to transport certain Spring Valley High School students after school from Spring Valley High School to its Vo-Tech school building located across the main public road and approximately two hundred yards away. These students were participating in extracurricular activities such as Jr. ROTC drills and weightlifting for athletes, which took place right after school within the Vo-Tech Center. This shuttle run takes approximately ten minutes to complete.

8. The newly created extracurricular bus driving assignment was described as "Spring Valley Shuttle Run" for the posting period of December 5-11, 2008. The position was specifically described in the posting as follows: "This run will pay $20.00 each day

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[3] Parties in the present grievance are in agreement that a regularly employed bus operator for the Wayne County Board of Education could, in addition to the bus operator's morning and afternoon runs involving his or her regular assignment, possibly have an extracurricular day run assignment and an extracurricular evening (p.m.) run assignment on the same school day. They do not agree that the facts of this case constitute such a situation.

when students are transported. This run will end when there is no longer a need. Driver will transport Spring Valley High School students from High School to Vocational at 3:15, then return to finish evening run."[4]

9. Among the applicants for the position during the posting period were Grievant, the Intervenor, David Crisel, and Grievant's brother, Dale Stephens. With regard to the posted shuttle bus run assignment at Spring Valley High School, Intervenor was the most senior of all the bus operators who applied for this extracurricular assignment, Dale Stephens was the second most senior of all the bus operators who applied for the position and Grievant was the third most senior of the applicants.

10. On December 16, 2008, at its regular board meeting after the posting period had concluded, Respondent approved David Crisel (Intervenor) for the Spring Valley shuttle run. (Resp. Ex. 5)

11. Grievant was not the next most senior applicant who bid on the "Spring Valley Shuttle Run" and the next most senior applicant (Dale Stephens) did not file a grievance over the awarding of the assignment to Intervenor.

12. The afternoon portion of Grievant's regular daily bus run begins at approximately 2:15 p.m. each day and does not conclude until approximately 4:00 p.m. Grievant did not have any extracurricular assignments at the time of filing of her grievance.

13. The afternoon portion of Intervenor's regular daily bus run begins around 2:30 p.m. and concludes around 3:35 p.m. Further, prior to December 2008 and for the

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[4] The posted time for the run was listed as being 3:15 because it was the Transportation Director's understanding that 3:15 p.m. was the time that school let out at Spring Valley High School.

remainder of that school term, Intervenor, the most senior bus operator in the county, had an extracurricular evening run assignment, beginning at 4:30 p.m., that occurs after the conclusion of the p.m. portion of his regular daily run.

14. Intervenor picks up and delivers various middle school students during the first part of the afternoon portion of his regular daily run and thereafter travels to Spring Valley High School where his bus is the first bus in line when high school is dismissed; he then picks up and transports the students designated for the Spring Valley shuttle bus run across the public highway to the Vo-Tech Center and then immediately returns to the high school and gets in line and picks up the remainder of the high school students who are part of his daily bus run and delivers these students to their residences or other designated locations.

15. Prior to the instant state of affairs, Respondent had never authorized or scheduled an extracurricular run during an employee's regular run.

16. Initially, the Intervenor was not performing the run as outlined in the bid. Intervenor, was not always making two separate distinct runs and, at times, would load all the children from both the extra-duty run and his evening high school run and do both simultaneously.[5] He rectified the situation by making one or two students wait at the high

[5] Respondent explained, in part, that it had been Transportation Director Tab Mathis' intent that, the Intervenor, after delivering part of his students from his regular daily afternoon run was to pick up students at Spring Valley High School (SVHS) that were to be part of the shuttle bus run and transport them from SVHS to the Vo-Tech Center, which would only take a few minutes, and after doing so, Intervenor was to return to SVHS and get his bus in the bus drivers' line and then pick up and transport his SVHS students, who constituted the remainder of the students on his scheduled afternoon portion of his daily regular bus run, to their residences, etc. Thus, if the shuttle run is executed as designed, said assignment is performed during Intervenor's regular p.m. run and would constitute in Respondent's interpretation of applicable components an extracurricular day assignment.

school while he takes the majority on the extra duty trip, then circles around, picks up the remaining one or two students that he asked to remain behind.

17. By letter dated January 16, 2009, thirty days after the Spring Valley assignment had been awarded by Respondent to Intervenor at a regular meeting held on December 16, 2008, Dale Stephens requested Respondent's then Service Personnel/Transportation Director Tab Mathis to pull his bid with regard to the Spring Valley shuttle run.

18. By letter dated February 19, 2009, Director Mathis informed bus operator Stephens that since he did not request a withdrawal of his bid upon this position until a month after the position had been awarded to the Intervenor, that Mr. Stephens' bid could not be pulled after the fact and therefore "must remain a part of the bid record on this posting."

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her case by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2008). "A preponderance of the evidence is evidence of greater weight or more convincing than 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). In other words, "[t]he preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486

(May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. *Id.*

Grievant avers that Respondent erred in awarding the extracurricular assignment, in that this particular assignment (Spring Valley Shuttle Run) constituted a p.m. run for Intervenor and he already had an evening run. Grievant contends this action is and was a violation of a duly authorized Memorandum of Agreement between relevant parties. The Memorandum of Agreement that Grievant referenced is an agreement (approx. 14 pages) originally entered into by the Wayne County Board of Education and the West Virginia Education Support Personnel, the West Virginia Education Association and the West Virginia School Service Personnel Association, adopted on June 23, 1997. Subsection "S" of the Memorandum of Agreement provides that, "NO BUS OPERATOR shall have more than one (1) extracurricular bus run, between his/her a.m. and p.m. regular runs on any school day, either bid or assigned in any said area. A bus operator may have one (1) established extracurricular bus run after his/her p.m. regular run."

The controversy as presented had not been previously addressed by the parties, in that prior to the instant situation, Respondent had never authorized or scheduled an extracurricular run <u>during</u> an employee's regular run. It is not in dispute that a regularly employed bus operator, for the Wayne County Board of Education, in addition to the bus operator's regular morning and afternoon assignment runs, could have an extracurricular day run assignment and an extracurricular evening run assignment on the same school day. What is disputed is whether the facts of this case constitute two extracurricular evening run assignments being authorized by Respondent.

Testimony and evidence of record indicate that the Respondent's Transportation Department was presented with a peculiar set of circumstances leading up to the posting of a new extracurricular bus driving assignment at Spring Valley High School. The circumstances were represented to include the following information:

> a) Spring Valley High School is located across a public highway and approximately 200 yards up that highway from its own Vo-Tech Center.
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> b) During the 2008-2009 school year, certain Spring Valley High School students were involved in extracurricular activities, such as after school training for Jr. ROTC members, weight lifting activities for school athletes, etc. that were taking place immediately after school at the Vo-Tech Center.
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> c) These students were exiting Spring Valley High School right after school and walking across and then along a busy public highway to attend these extracurricular activities at the Vo-Tech Center.
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> d) . . . [T]he Transportation Director and his supervisors in his department decided to create a shuttle bus run whereby these students would be shuttled from the high school to the Vo-Tech Center immediately after school. Due to the limited number of students to be transported and the close proximity of the destination, and the fact that the Transportation Director had been having one of the regular drivers to shuttle these students prior to the posting of the assignment, the Transportation Department knew this shuttle run would take approximately 5 to 8 minutes to complete.[6]
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> e) . . . [A]ll regular bus drivers within the Spring Valley High School area who would be logistically available to make this shuttle run would not have completed the afternoon portion of their daily regular runs at the time that the above students needed to be transported on the above shuttle run, the Transportation Department's Director had the run posted as requiring whomever was awarded this shuttle run to make this very short shuttle run before completing the afternoon portion of his or her regular daily run and then return immediately to Spring Valley High School and complete the evening portion of his or her daily regular run.

Respondent's PFOF/COL Document

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[6] Respondent had been paying bus operator Dale Stephens extra to transport students during his regular p.m. run, but after it was determined that the trip was actually a separate extracurricular run, the shuttle run was posted.

Transportation Department Supervisor David Thompson testified at level three that he was involved in the planning and posting of the Spring Valley shuttle bus run assignment along with former Director Mathis. Mr. Thompson, whose job it is to assign and schedule bus runs in Wayne County, testified he was of the opinion that the Spring Valley Shuttle Run would be considered an extracurricular daytime run assignment for any drivers, who was the successful applicant, because any such driver would not have completed his regular daily run at the time he or she made this extracurricular run.[7] To Supervisor Thompson it was clear that since none of the bus drivers would have completed his/her daily afternoon bus run at the time of the Spring Valley Shuttle Run, the run is considered an extracurricular daytime run, inferring this to be true no matter which driver performed the duty. Grievant avers that the extracurricular run in question is not an "a.m. run" as it does not fall "between [a driver's] a.m. and p.m. regular runs" but begins after the p.m. run has started.

All parties agree a key component to identifying the nature of an extracurricular run is the positioning of the assignment in relation to the driver's regular daily runs. It could be differentiated that one party is under the belief that the dominating characteristic is the time period the extracurricular run commences (after the driver has begun his p.m. run), while the other maintains, the demonstrative factor is the positioning of the extracurricular run in relationship to the completion of the driver's p.m. run (prior to conclusion of the drivers

[7] It is undisputed and of record that this shuttle run was added to prevent certain students participating in extracurricular activities from crossing the public highway on foot and that the run needed to be done immediately after school so that these students would not be tempted to cross the highway on foot. The timing of this shuttle run is an essential element of the assignment.

afternoon daily run). The precise wording of Subsection "S" of the Memorandum of Agreement, as cited by all parties, does not *per se* eliminate either interpretation.

Prior to the instant circumstances, it is believed that, Respondent had never authorized or scheduled an extracurricular run during an employee's regular run, thus this scenario had not been addressed.

Respondent interprets the language of Subsection "S" of the Memorandum of Agreement to encompass the time period after the beginning of a driver's daily a.m. run but prior to the conclusion of a driver's regular p.m. run. (not the beginning of the p.m. run but its conclusion in fact). Respondent's application in the circumstances of this grievance is not factually inaccurate but encompassing the widest time period possible. While the students for the two distinct runs, tend to some degree, commingle on Intervenor's bus, Grievant specifically testified that the shuttle run is completed prior to making the afternoon regular assignment run. See Findings of Fact 14, 16, and fnt. 5. If the shuttle run is executed as designed, said assignment is performed prior to Intervenor transporting the SVHS students on his scheduled afternoon portion of his daily regular bus run to their residences. Respondent relies heavily on a liberal application of "between."

County boards of education have substantial discretion in matters relating to the hiring of school personnel as long as their decisions are in the best interests of the school, and are not arbitrary and capricious. *Dillon v. Bd. of Educ. of County of Wyoming,* 177 W. Va. 145, 351 S.E.2d 58 (1986). Considerable deference is afforded Respondent. Respondent's motivation, analysis and actions indicate an attempt to insure the safety and welfare of the students intrusted to its care. Further, Respondent's actions were taken

after a measure of analysis was given to the overall circumstances. It is established that Respondent acted with diligence.

"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)." *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil,* 198 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *Eads, supra* (*citing Arlington Hosp. v. Schweiker,* 547 F. Supp. 670 (E.D. Va. 1982)).

The undersigned does not find that Respondent acted arbitrary and capricious, or abused its discretion in determining that the Spring Valley Shuttle Run would be considered an extracurricular daytime run assignment for Intervenor. When establishing the assignment, it was clear to Respondent that none of the drivers would have completed their respective afternoon run at the time of the extracurricular run in discussion. In the circumstances of this case, Respondent's interpretation of what constitutes an extracurricular day run is consistent with the parameters of conceptual definition. It is well settled law in West Virginia that an administrative agency's interpretation of its statutes are given great weight unless clearly wrong. *See Dillon v. Board of Educ. of County of Mingo*,

171 W.Va. 631, 301 S.E.2d 588, 590-91 (1983); Syl. Pt. 4, *Security National Bank & Trust v. First W. Va. Bancorp Inc.*, 166 W.Va. 775, 277 S.E.2d 613, 614 (1981), *appeal dismissed*, 454 U.S. 1131, 102 S.Ct. 986, 71 L.Ed.2d 284 (1982). Respondent's interpretation is plausible. Further, in application it does not violate the cited Memorandum of Agreement. The undersigned cannot conclude that Respondent's actions were an abuse of its broad discretion.

Of the applicants who bid upon the Spring Valley Shuttle Run assignment, Intervenor, was the most senior applicant for the position, as well as being the most senior bus operator in the county school system. Dale Stephens was the next most senior applicant for the position and Grievant was the third most senior applicant for the position. While bus operator Stephens testified he was of a mind to withdraw his bid for the position, it is not at all certain that he did so prior to the awarding of the assignment to Intervenor. *See* Findings of Fact 17 and 18.

It has been long-held that "[i]n order for a grievant to demonstrate entitlement to a position or compensation, it is necessary to establish he or she was 'next in line.'" *See Jamison v. Monongalia County Bd. of Educ.*, Docket No. 2008-0293-MonEd (Aug. 27, 2008); *Jamison v. Monongalia County Bd. of Educ.*, Docket No. 05-30-338 (Jan. 20, 2006); *Richards v. Kanawha County Bd. of Educ.*, Docket No. 99-20-108 (May 5, 1999); *Clark v. Putnam County Bd. of Educ.,* Docket No. 97-40-313 (Apr. 30, 1998); *Little v. Kanawha County Bd. of Educ.*, Docket No. 96-20-352 (Apr. 30, 1998). Dale Stephens, the next most senior applicant for the position, did not file a grievance over the awarding of the assignment to Intervenor. Accordingly, it is not established that Grievant as the third most

senior applicant for the position suffered an injury-in-fact, economic or otherwise. Dale Stephens is Grievant's brother and it is honorable that he would step aside so that his sister might be awarded an extra assignment. But it is not established to the undersigned that Grievant did so prior to it being determined that his bid for the position served as a direct obstacle to Grievant's legal claim. It is not established by a preponderance of the evidence that Grievant suffered a loss certain. A Grievant must show "an injury-in-fact, economic or otherwise" to have what "constitutes a matter cognizable under the grievance statute." *Lyons v. Wood County Bd. of Educ.,* Docket No. 89-54-601 (Feb. 28, 1990); *Dunleavy v. Kanawha County Bd. of Educ.*, Docket No. 20-87-102-1 (June 30, 1987).

When the named grievant is not personally harmed, there is no cognizable grievance. *Long v. Kanawha County Bd. of Educ.*, Docket No. 00-20-308 (Mar. 29, 2001); *Pomphrey v. Monroe County Bd. of Educ.,* Docket No. 94-31-183 (July 1, 1994). A general claim of unfairness or an employee's philosophical disagreement with a policy does not, in and of itself, constitute an injury sufficient to grant standing to grieve. *See Olson v. Bd. of Trustees/Marshall Univ.*, Docket No. 99-BOT-513 (Apr. 5, 2000), *citing Skaff v. Pridemore*, 200 W. Va. 700, 490 S.E.2d 787 (1997)." *Vance v. Jefferson County Bd. of Educ.,* Docket No. 02-19-030R (Nov. 20, 2002).

In summation, it is not established that Respondent has violated its considerable discretion in determining that the Spring Valley Shuttle Run is considered an extracurricular day assignment for Intervenor because it occurs before his regular afternoon bus run is completed. Respondent's interpretation is plausible. Grievant has failed to meet the applicable burden of proof concerning her claim that the Respondent improperly awarded

the extracurricular assignment at issue to Intervenor. Grievant did not establish by a preponderance of the evidence that Respondent violated Subsection "S" of the cited Memorandum of Agreement and its applicable terms. Further, Grievant did not establish she suffered an injury-in-fact. Delicately stated, Grievant's argument regarding relevant applicants was not persuasive and, therefore, Grievant has failed to meet her burden of proof. Grievant was not the next most senior applicant who bid on the extracurricular assignment.

In that Respondent's actions in the circumstances of the case were reasonable, its actions were not arbitrary and capricious. Respondent has successfully defended its actions in the circumstances of this grievance.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her case by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2008); *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). "A preponderance of the evidence is evidence of greater weight or more convincing than 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).

2. County boards have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel, but this discretion must be

exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. *Dillon v. Bd. of Educ. of County of Wyoming,* 177 W. Va. 145, 351 S.E.2d 58 (1986).

3. "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)." *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil,* 198 W. Va. 604, 474 S.E.2d 534 (1996).

4. It is well-settled law in West Virginia that an administrative agency's interpretation of its statutes are given great weight unless clearly wrong. *See Dillon v. Board of Educ. of County of Mingo*, 171 W.Va. 631, 301 S.E.2d 588, 590-91 (1983); Syl. Pt. 4, *Security National Bank & Trust v. First W. Va. Bancorp Inc.*, 166 W.Va. 775, 277 S.E.2d 613, 614 (1981), *appeal dismissed*, 454 U.S. 1131, 102 S.Ct. 986, 71 L.Ed.2d 284 (1982).

5. In order for a grievant to demonstrate entitlement to a position or compensation, it is necessary to establish he or she was 'next in line.' *See Jamison v. Monongalia County Bd. of Educ.*, Docket No. 2008-0293-MonEd (Aug. 27, 2008); *Jamison v. Monongalia County Bd. of Educ.*, Docket No. 05-30-338 (Jan. 20, 2006); *Richards v.*

Kanawha County Bd. of Educ., Docket No. 99-20-108 (May 5, 1999); *Clark v. Putnam County Bd. of Educ.,* Docket No. 97-40-313 (Apr. 30, 1998); *Little v. Kanawha County Bd. of Educ.*, Docket No. 96-20-352 (Apr. 30, 1998).

6. "When the relief sought by a [g]rievant is speculative or premature, or otherwise legally insufficient, [the] claim must be denied." *Lyons v. Wood County Bd. of Educ.*, Docket No. 89-54-601 (Feb. 28, 1990); *See Clark v. Putnam County Bd. of Educ.*, Docket No. 97-40-313 (April 30, 1998).

7. Grievant failed to meet the burden of proof concerning her claim that the Respondent improperly awarded the extracurricular assignment at issue to the Intervenor.

8. Respondent's actions were not arbitrary and capricious, or an abuse of discretion.

Accordingly, this grievance is **DENIED**.

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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (2008).

Date: April 27, 2010

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Landon R. Brown
Administrative Law Judge