THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

BOBBY L. VICARS,
Grievant,

v. **Docket No. 2010-0712-BSC**

BLUEFIELD STATE COLLEGE,
Respondent,

and

DEBOARAH J. HALSEY-HUNTER,
Intervenor.

DECISION

Grievant Bobby L. Vicars filed a grievance against his employer Bluefield State College ("BSC") on November 20, 2009. Intervenor Dr. Halsey-Hunter was added by Order entered August 9, 2010.

Grievant's statement of grievance states, "Non selection for the James H. Shott Endowed Chair in Business. Selection Committee failed to follow proper selection procedures to determine the most qualified applicant. Based upon information provided by ACBSP, the other applicant does not meet the degree requirement for the position. Applicant appointed was also not the most qualified applicant relative to other selection criteria."

For relief, Grievant is seeking, "Instatement to the position of James H. Shott Endowed Chair in Business as of the date of the initial selection with back pay to that date including all benefits and other amenities commensurate with the position."

A level one conference was held on December 3, 2009. The parties then participated in level two mediation on March 9, 2010. After a successful appeal to level three, a hearing was held on August 23, 2010, in the Grievance Board's Beckley office.

Grievant was represented by J. W. Feuchtenberger, Esquire. Respondent was represented by James "Jake" Wegman, Assistant Attorney General. Intervenor was represented by Mary Snelson, WVEA. This case became mature on October 6, 2010, upon the parties' filings of findings of fact and conclusions of law.

Synopsis

Both Grievant and Intervenor applied for the position of the James H. Shott Endowed Chair. Intervenor was chosen. Grievant then filed a grievance. *See Vicars v. Bluefield State College*, Docket No. 2008-1645-BSC (Sept. 9, 2009). In that decision, the grievance was granted in part, and denied in part, holding that the Grievant had proven the selection process was flawed, but Grievant did not prove that he was the most qualified applicant for the position.

Upon receipt of the decision, Dr. Don Smith, Provost, chose a new selection committee and provided them with guidelines for the position and the applications of both Grievant and Intervenor. Dr. Smith then met with the committee and explained the ruling in the first grievance. The committee reviewed the applications and then voted for Intervenor.

Grievant avers the process was flawed again in that the Shott Endowed Chair position was to have a term of three years, but Respondent decided to begin a new three year term, thereby allowing Intervenor to be in the position for four years and delaying Grievant's ability to apply. Grievant also asserts that Respondent's decision to place Intervenor into the position was arbitrary and capricious. Grievant argues Intervenor does not meet the appropriate qualifications with respect to the required degree. Grievant avers Respondent is biased against him.

Respondent argues that the decision in the first grievance does not give guidance with respect to whether to begin the three year period again, and therefore, for logistical purposes, Respondent decided to disregard the prior year Intervenor served and begin the three years again. Respondent avers it is not biased against Grievant, and that the process was fair and all was done to accomplish a fair and unbiased result.

Grievant has met his burden in this matter. Therefore, this grievance is GRANTED.

Findings of Fact

1. Grievant has been employed by Respondent as a professor of business for thirty-five years.

2. Respondent is the recipient of an endowment to fund the James H. Shott Chair in the School of Business. First occupied in 2005, the James H. Shott Chair was designated as a three-year appointment by BSC. The Shott Endowed Chair position includes a salary supplement and is recognized for a certain amount of prestige.

3. Dr. Smith originally announced the opening to full-time faculty members in the School of Business by his memo dated April 3, 2008. There were guidance materials made available to the applicants by Dr. Smith's memo.

4. Grievant and Intervenor were the only applicants for the Shott Endowed Chair position.

5. Intervenor was originally selected to fill the position. Grievant then filed a grievance which was granted in part, and denied in part. The decision stated, "Respondent is ORDERED to repeat the selection process for this position following all applicable policy requirements, and after considering relative merit and qualifications of the candidates." *See Vicars v. Bluefield State College*, Docket No. 2008-1645-BSC (Sept. 9, 2009).

6. Upon receipt of the grievance decision, Dr. Smith originally planned to open up the selection to all full-time professors in the School of Business, but decided not to after Grievant raised objection.

7. Dr. Smith then chose a new selection committee. There are no formal requirements for the composition of that committee.

8. The new selection committee was comprised of full-time faculty who were tenured or tenure track.

9. Both Grievant and Intervenor submitted the same information as they had previously.

10. The BSC Criteria & Procedure for Appointment to the "James H. Shott" Endowed Chair provides, in pertinent part, the following:

> General Criteria & Eligibility Requirements for the
> "James H. Shott" Endowed Chair
>
> Criteria for appointments to endowed chairs must reflect the highest ideals for academic excellence and scholarly or creative achievement. While all appointments are made by the Bluefield State College Endowed Chair Committee, procedures for recruitment must be consistent with the stipulations of the endowment and other administrative procedures established in the various academic units.
>
> I. GENERAL CRITERIA FOR APPOINTMENTS
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> 1. Doctorate in field as accepted by the ACBSP (Association of Collegiate Business Schools and Programs)
>
> 2. Tenured Full-Professor at BSC or current institution, or per that is eligible to be appointed to the rank of tenured professor
>
> 3. A demonstrated record of teaching excellence
>
> 4. A commitment to scholarly research demonstrated by publications in journals (preference given to refereed journals) and presentations

5. Evidence of professional contributions, designations, certifications, appointments, etc., consistent with that expected of an endowed chair

6. A commitment to institutional service, demonstrated by a pattern of continuous service on both division and college-wide committees

7. A demonstrated record of exemplary community involvement/public service, or to current institution and the community in which the person currently resides

8. A minimum of 10 years of aggregate college-level teaching experience and/or professional business experience, with due consideration given for additional years of service

9. Evidence the professor has worked to improve the quality of the learning experiences available to students

10. Commitment to coordinate grant submissions for the benefit of the BSC Division of Business

III. PROCEDURE FOR APPLYING FOR ENDOWED CHAIR

1. The Provost shall solicit and receive applications of candidates for the new endowed chair. All applications must pass through normal academic channels (e.g., department chair following appropriate faculty consultation) and each academic officer should attach a confidential recommendation to each applicant's portfolio.

2. Each applicant's portfolio must include the following:

a. a statement delineating how the applicant meets the criteria for appointment

b. a current curriculum vitae

c. a bibliography of the applicant's scholarly presentations, performances, and/or exhibitions

d. a listing of the applicant's scholarly presentations, performances, and/or exhibitions

e. a listing of the applicant's professional, public, and College service activities

f. a record of the applicant's teaching effectiveness

> 3. Statements or endorsements from faculty or other sources may be included in the portfolio if desired. The department chair will ensure each portfolio is complete prior to forwarding it to the BSC Endowed Chair Committee and Provost.
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> 4. The BSC Endowed Chair Committee will review all applications, make an evaluation, and forward these materials to the President.
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> 5. The Provost will also make an additional evaluation and forward their [sic] materials to the President.

11. Dr. Smith met with the selection committee and provided them with the reason the process for the position was being repeated. He also provided them with a copy of the *General Criteria & Eligibility Requirements for the "James H. Shott" Endowed Chair*, and a copy of the application/portfolio of each of the two applicants.

12. Dr. Smith informed the committee it would have approximately 12 days to review the applications/portfolios and criteria/eligibility requirements, and that the committee could interview the candidates if it deemed appropriate.

13. If the committee did not believe interviews were necessary, each member was to provide the Chair of the Committee with their copy of the applications/portfolios and attach his/her vote. The Chair was then to forward the committee members' votes to Dr. Smith who would forward the committee's vote, his vote and the vote of the Dean of the School of Business on to the President.

14. Dr. Frank Ball, Chair of the Committee, only generally looked at the applications in relation to the criteria.

15. Beth Pritchett served on the committee, and made a list of pros and cons for each applicant. The committee was told to make their own individual decision without the input of others.

16. The committee unanimously voted to place Intervenor into the Shott Endowed Chair position. The Dean voted for Intervenor, as did Dr. Smith.

17. Criterion 1 of the Shott Endowed Chair position looks at "Doctorate in field as Accepted by the Association of Collegiate Business Schools and Programs ("ACBSP")." Grievant has a B.S. in Business Administration; M.B.A., Management; Ed. D., Higher Education Administration/Business. Intervenor has a B.S. in Education; M.S. in Vocational Technical Education; Ed. D., Vocational Technical Education. After reviewing credentials, the ACBSP determined Grievant to be doctorally qualified in Management and minimally qualified in Law. The ACBSP determined Intervenor to be doctorally qualified in Business Communication, Computer Applications and Secretarial Science.

18. Criterion 2 looks at "Tenured Full-Professor at BSC or current institution, or person that is eligible to be appointed to the rank of tenured professor." Both applicants are tenured, full-professors at BSC.

19. Criterion 3 requires "A demonstrated record of teaching excellence." In addition to letters of recommendation from two faculty members, one community leader, and two college administrators, Grievant included two positive endorsement letters from two of his former students. Intervenor included two letters of recommendation, both from faculty members. Grievant created the Marketing Internship at BSC that continues to date and has provided marketing/management students a teaching/learning experience outside the classroom. Both applicants included copies of student evaluations for recent years, and the results for both applicants were well above average. Both applicants have developed conventional and on-line courses.

20. Criterion 4 looks at "A commitment to scholarly research demonstrated by publications in journals (Preference Given to Refereed Journals) and presentations." Grievant identified five publications in his application, including two editions of the custom published business law textbook used by students at BSC, and a March 2008 publication in Leadership & Organizational Managment Journal, a refereed journal. Intervenor listed one publication, her 1996 dissertation. Both applicants identified numerous presentations.

21. Criterion 5 is "Evidence of professional contributions, designations, certifications, appointments, etc., consistent with that expected of an endowed chair." Grievant holds professional certification as a Certified Manager from the Institute of Certified Professional Managers. Intervenor did not address this in her application, and testified she did not hold any certifications.

22. Criterion 6 is "A commitment to institutional service, demonstrated by a pattern of continuous service on both division and college-wide committees." Grievant served nine years as Chair, Division of Business, at BSC. Intervenor served three years as Dean, School of Business, at BSC.[1]

23. Criterion 7 looks at "A demonstrated record of exemplary community involvement/public service, or [sic] to current institution and the community in which the person resides." Both applicants listed significant community service.

24. Criterion 8 is "A minimum of 10 years of aggregate college-level teaching experience and/or professional business experience with due consideration given for additional years of service." Grievant has 38 years of full-time college-level teaching

[1]The title of Chair was changed to Dean throughout the college with no change of responsibilities or salary.

experience, 35 years at BSC, two years at the University of Virginia-Wise, and two years at Mars Hill College in North Carolina. Intervenor has 25 years of full-time college-level teaching experience, all at BSC.

25. Criterion 9 is "Evidence the professor has worked to improve the quality of learning experience available to students." Both applicants have developed on-line courses. Grievant's application stated he had "custom published a business law textbook to specifically fit the needs of our [BSC] students" in 2003 and again in 2005, created the Marketing Internship course that continues, developed and implemented a team teaching plan in 2005-2006, and wrote a principles of management manuscript for free use by BSC management students in 2006-2007. Intervenor's application indicates that she attended a class related to online teaching and a two-day seminar addressing online course development eight years ago.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 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). 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).

In a selection case, the grievance procedure is not intended to be a "super interview," but rather, allows a review of the legal sufficiency of the selection process. *Thibault v. Div. of Rehabilitation Serv.*, Docket No. 93-RS-489 (July 29, 1994). The Grievance Board recognizes that selection decisions are largely the prerogatives of management. While the individuals who are chosen should be qualified and able to perform the duties of their new position, absent the presence of unlawful, unreasonable, or arbitrary and capricious behavior, such selection decisions will not generally be overturned. *Skeens-Mihaliak v. Div. of Rehabilitation Serv.*, Docket No. 98-RS-126 (Aug. 3, 1998); *Ashley v. W. Va. Dep't of Health and Human Resources*, Docket No. 94-HHR-070 (June 2, 1995); *McClure v. W. Va. Workers' Compensation Fund,* Docket Nos. 89-WCF-208/209 (Aug. 7, 1989). An agency's decision as to who is the best qualified applicant will be upheld unless shown by the grievant to be arbitrary and capricious or clearly wrong. *Thibault, supra.*

Grievant's burden is to demonstrate Respondent violated the rules and regulations governing hiring, acted in an arbitrary and capricious manner, or was clearly wrong in its decision. *Surbaugh v. Dep't of Health and Human Serv.*, Docket No. 97-HHR-235 (Sept. 29, 1997). If a grievant can demonstrate the selection process was so significantly flawed that he or she might reasonably have been the successful applicant if the process had

been conducted in a proper fashion, this Board can require the employer to review the qualifications of the grievant versus the successful applicant. *Thibault, supra; Jones v. Bd. of Trustees/W. Va. Univ.*, Docket No. 90-BOT-283 (Mar. 28, 1991).

"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 Resources*, 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*, 196 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." *Id.* (*citing Arlington Hosp. v. Schweiker,* 547 F.Supp. 670 (E.D. Va. 1982)). "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 a board of education. *See generally, Harrison v. Ginsberg,* [169 W. Va. 162], 286 S.E.2d 276, 283 (W. Va. 1982)." *Trimboli, supra.*

From the first witness through to the final witness, it was clear that there was a bias against Grievant. While testifying, Dr. Smith stated that he did not question Intervenor's degrees or qualifications, but unprompted testified he felt as though there was a possibility

Grievant misled the committee with respect to his qualifications. After Grievant was able to produce documentation to explain that he had not misled anyone, Dr. Smith then unsolicited testified that Intervenor's husband had written a recommendation letter for Grievant prior to Intervenor submitting her application for the position. Dr. Smith testified that Grievant did not remove the letter or talk to Intervenor's husband about it once Intervenor submitted her application for the position. When asked if Grievant had violated any rules, Dr. Smith replied no, but he believed it was "uncollegial."

Dr. Smith also testified he had difficulty getting other faculty to serve on a committee when it involves Grievant because the other faculty members are worried about another grievance. This statement, taken as true, gives the undersigned pause, as she questions whether Grievant could receive a fair opportunity at receiving the Shott Endowed Chair position.

Dr. Smith also indicated in an email to the committee members that they did not have to specify reasons for their vote. The Committee Chair, Dr. Ball, testified that he only generally looked at the applications in relation to the criteria. Both committee members who testified indicated there were no deliberations between the members. There was no matrix, allowing them to rate each applicant in relation to the criteria. Instead, the members were provided with the information and ample time to review both the applications and requirements. While giving the committee members time to review the applications and the qualifications assists in fixing one of the problems presented in the first grievance, that is only part of it. The committee members are supposed to use the time given to actually review the documents so as to make an intelligent and informed decision, and at least one member did not do that.

When Intervenor took the stand, she did so with her arms crossed and answered questions combatively. At one point, when asked by Grievant's attorney if the list of classes were classes she had taught, she indicated she was not sure without even looking at the document. The undersigned had to direct her to each specific class.

Another concern is that when Respondent went back to repeat the selection process as ordered in the first grievance, it decided to begin a new three year period. The practical effect of that is to postpone the opportunity for the unsuccessful applicant to apply for the position, and allow the successful applicant to remain in the position for four years. Dr. Smith testified that there was little guidance from the first grievance decision. The relief paragraph in that case states, "Accordingly, this grievance is GRANTED, IN PART, and DENIED, IN PART. Respondent is ORDERED to repeat the selection process for this position following all applicable policy requirements, and after considering relative merit and qualifications of the candidates." *See Vicars v. Bluefield State College*, Docket No. 2008-1645-BSC (Sept. 9, 2009).

The Term of Appointment stated in the Criteria for the Endowed Chair states, "The term of this endowed appointment will be designated as three-year appointment; however, Chairholders are subject to review every year by the BSC Endowed Chair Committee. Chairholders who resign from the College or retire automatically terminate the reminder [sic] of their term. If an endowed chair does not complete the full school year, the Dean of the School of Business will appoint a business faculty member to complete the remaining year. The application process will then be opened for a new endowed chair." Joint Exhibit 1.

Taking both the decision and the specified term of appointment together, it is clear that the appointment was to be for three years. What Respondent did was create a new three year term, which in essence creates a chilling effect for others, specifically Grievant, if he were not chosen.

Dr. Smith also attempted to open up the Shott Endowed Chair position to other applicants, and relented only after Grievant's objections. When looking at the first grievance decision, the law states "this Board can require the employer to review the qualifications of the grievant versus the successful applicant." *See Vicars v. Bluefield State College*, Docket No. 2008-1645-BSC (Sept. 9, 2009).

Given the circumstances surrounding the selection for the Shott Endowed Chair, it appears as though there was bias against Grievant. When reviewing his qualifications, with respect to Intervenor's, the undersigned is left wondering how the committee determined Intervenor was better qualified. In each of the ten qualifications, Grievant and Intervenor are either equal, or Grievant is more qualified. Grievant identified five publications, including a publication in a refereed journal. Intervenor only listed her dissertation.

Grievant asserts Intervenor does not meet the requirement of holding a doctorate in the field as accepted by the ACBSP, criterion number one for appointment. No one from the ACBSP testified, but a letter dated March 3, 1999, was introduced. That letter determined Grievant to be doctorally qualified in Management and minimally qualified in Law. Intervenor was determined to be doctorally qualified in Business Communication, Computer Applications and Secretarial Science. (Joint Exhibit 4). Based on this, Intervenor is considered to have met the first criterion for appointment.

With that being said, Grievant holds a professional certification as a Certified Manager from Institute of Professional Managers. Management is his primary teaching field. Intervenor does not hold any additional certifications.

Grievant served as Chair of the Division of Business at BSC longer than Intervenor. Grievant has taught at the college level longer than Intervenor. Grievant created a marketing internship course to assist students in obtaining experience in that field. Grievant developed and implemented a team teaching plan and wrote a principles of management manuscript. Intervenor has only attended a class related to online teaching and a two day seminar addressing online course development eight years ago.

Given the extensive experience Grievant has had and the lack of explanation as to the rationale behind the decision, the committee's choice to place Intervenor in the Shott Endowed Chair position is arbitrary and capricious. While the first grievance found Grievant did not meet his burden in proving he was the most qualified, given the development of the extensive facts concerning the qualifications of the respective candidates, Grievant has met his burden in this instance.

Therefore, this grievance is GRANTED.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 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). 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).

2. In a selection case, the grievance procedure is not intended to be a "super interview," but rather, allows a review of the legal sufficiency of the selection process. *Thibault v. Div. of Rehabilitation Serv.*, Docket No. 93-RS-489 (July 29, 1994). The Grievance Board recognizes that selection decisions are largely the prerogatives of management. While the individuals who are chosen should be qualified and able to perform the duties of their new position, absent the presence of unlawful, unreasonable, or arbitrary and capricious behavior, such selection decisions will not generally be overturned. *Skeens-Mihaliak v. Div. of Rehabilitation Serv.*, Docket No. 98-RS-126 (Aug. 3, 1998); *Ashley v. W. Va. Dep't of Health and Human Resources*, Docket No. 94-HHR-070 (June 2, 1995); *McClure v. W. Va. Workers' Compensation Fund,* Docket Nos. 89-WCF-208/209 (Aug. 7, 1989). An agency's decision as to who is the best qualified applicant will be upheld unless shown by the grievant to be arbitrary and capricious or clearly wrong. *Thibault, supra.*

3. Grievant's burden is to demonstrate Respondent violated the rules and regulations governing hiring, acted in an arbitrary and capricious manner, or was clearly

wrong in its decision. *Surbaugh v. Dep't of Health and Human Serv.*, Docket No. 97-HHR-235 (Sept. 29, 1997). If a grievant can demonstrate the selection process was so significantly flawed that he or she might reasonably have been the successful applicant if the process had been conducted in a proper fashion, this Board can require the employer to review the qualifications of the grievant versus the successful applicant. *Thibault, supra; Jones v. Bd. of Trustees/W. Va. Univ.*, Docket No. 90-BOT-283 (Mar. 28, 1991).

4. "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 Resources*, 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*, 196 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." *Id.* (*citing Arlington Hosp. v. Schweiker,* 547 F.Supp. 670 (E.D. Va. 1982)). "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 a board of education. *See generally, Harrison v. Ginsberg,* [169 W. Va. 162], 286 S.E.2d 276, 283 (W. Va. 1982)." *Trimboli, supra.*

5. Grievant has met his burden in this matter and has proven that the selection of Intervenor was arbitrary and capricious and that he was the most qualified candidate for the position.

Accordingly, this grievance is **GRANTED**. Respondent is **ORDERED** to place Grievant in the Shott Endowed Chair position upon receipt of this Decision and allow him to complete a three year term beginning from his instatement into the position.

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: December 21, 2010

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Wendy A. Campbell Elswick
Administrative Law Judge