WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

KRISTI DIETRICH-CRAWFORD
Grievant,

v. **Docket No. 2010-0477-MarED**

MARSHALL COUNTY BOARD
OF EDUCATION,
Respondent.

DISMISSAL ORDER

Grievant, Kristi Dietrich-Crawford, a substitute secretary filed a grievance against her employer, Marshall County Board of Education ("MCBE"), Respondent, protesting the call out process/procedure utilized to fill vacancies during a specified time of mid-2009. The original grievance statement alleged;

> "unfair and unequal substitute secretary rotation for vacancies and jobs at Marshall County Board of Education County Office. 18A-4-15. County has been overriding system to allow preferential opportunities to specific individuals.
>
> Reduction-in-Force secretaries were not placed in secretary rotation for substituting until August, 2009. This oversight took away potential days of work by allowing preferential substitutes to remain in vacancy positions. In RIF letter signed by Mr. Renzella it was stated that we would have preference as a RIF employee at the beginning of the 2009-2010 school year, which begins July 1, 2009. We were terminated June 30, 2009 and therefore eligible for work July 1, 2009.
>
> Substitute secretaries have been denied opportunities to work due to the fact that we have not been trained to work in specific vacancies. No official training has been offered to <u>all</u> substitute secretaries and/or RIF employees."

Grievant requested as remedy:

> "(1) Compensation for days not allowed to work, (2) Fair rotation of substitute secretaries (3) Punitive damages for substitute secretaries, (4) Increase in secretary listing to allow for 120 days work that increase seniority."

A hearing was held at level one on March 3, 2010, and the grievance was denied at that level on April 19, 2010. Grievant appealed to level two on April 26, 2010, and a mediation session was held on September 16, 2010. Grievant appealed to level three on September 24, 2010. A level three hearing was held before the undersigned Administrative Law Judge on January 14, 2011, in the Grievance Board's Westover office. Grievant appeared in person and with legal counsel John E. Roush, West Virginia School Service Personnel Association. Respondent MCBE was represented by Richard S. Boothby, Esquire of Bowles, Rice, McDavid, Graff & Love, LLP. This matter became mature for decision upon receipt of the last of the parties' proposed findings of fact and conclusions of law on or about February 14, 2011. Both parties submitted fact/law proposals.

Synopsis

Grievant contends she was unlawfully deprived of employment opportunity. Grievant alleges Marshall County Board of Education, Respondent, violated W. VA. CODE §§ 18A-4-15 and 6C-2-2(d) & (h). As an employee with preferred recall status, Grievant maintains she should have been offered opportunity for employment in any substitute position prior to employees on the substitute list being given the opportunity. Respondent denies Grievant is entitled to relief of any kind for the alleged violation of law. Respondent further highlights that this grievance was not properly filed and requests this matter be dismissed.

A grievance is to be filed in writing with the Chief Administrator of an agency within fifteen (15) working days following the occurrence of the event upon which the grievance is based. W. VA. CODE § 6C-2-4(a)(1). Having only filed the written grievance statement by fax with the Grievance Board and not with Respondent's Chief Administrator, Grievant's actions might be viewed as substantially compliant, but failing to file within the prescribed time constraint of W.VA. CODE § 6C-2-4 renders this grievance untimely. Grievant failed to properly file the instant grievance. This matter is dismissed as untimely.

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

Findings of Fact

1. Grievant was employed by Respondent as a substitute secretary at the time the current grievance arose.

2. Previously, during the 2008-2009 school year, Grievant was employed by Respondent as a full-time regular secretary at Parkview Elementary. In the Spring of 2009, Grievant's contract was terminated through a reduction in force action.

3. In a letter dated March 10, 2009, from Superintendent Alfred N. Renzella, Grievant was informed that the Board of Education had voted to terminate her contract through the reduction in force procedure and that her name would be placed on a preferred recall list in accordance with West Virginia law which would give her priority for any vacancies that may develop for the next school year. (R. Ex. 8).

4. The preferred recall list referenced in Superintendent Alfred N. Renzella's March 10, 2009 letter and the substitute secretary list is not the same list.[1]

5. Robyn Fitzsimmons, Personnel Director for Respondent, had a practice of placing the names of all employees terminated during the spring reduction in force on the board of education's agenda to be considered for hire as substitute employees near the start of the next school year. (Fitzsimmons, L3 Testimony).

6. Ms. Fitzsimmons does not ask that the names of terminated employees be placed on the board's agenda to be considered for hire as substitutes until just before school starts, in late July or early August. The Administration hopes to be able to place terminated employees back into other full-time jobs wherever possible. The process of changing an employee's status from that of regular to substitute is complex and time-consuming and the Administration does not want to carry out this process only to have to undo it should an employee receive a full-time position before the start of the new school year. (Fitzsimmons, L3 Testimony).

7. Once it is determined that employees terminated due to lack of need in the spring will not have other full-time jobs in the following school year, Ms. Fitzsimmons instructs others to have the names of terminated employees entered into a call-out system as substitutes. (Ronda Kouski and Robyn Fitzsimmons, L3 Testimony).

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[1] There is a distinction between a hiring for a substitute position and a hiring for a regular position. "Vacancies" and "substitution assignments" are not the same or interchangeable concepts. One is an open position in need of permanent replacement personnel while the other is temporary duty, or limited assignment. During the litigation of this grievance, it became apparent that in addition to Grievant's allegations that the call-out system was not providing equitable distribution of assignments, Grievant (via legal counsel) was of the opinion that being placed on the preferred recall list entitled her and another secretary whose contract was also terminated in the Spring of 2009, a right of first refusal of any job or position, temporary or permanent over individuals on a substitute list for the position.

8. Grievant did not contact anyone at the central office to inquire about when she would be eligible for substitute assignments. (Grievant, L3 Testimony). It is not clear when Grievant's name was placed on the substitute secretary list.[2]

9. Gail Artimez, Marilyn Roberts and Dawn Wheeler were employed as substitute secretaries by Respondent in the Summer and Fall of 2009.

10. Ms. Artimez worked in the central office nearly every day in July 2009 up to and including August 24, 2009. In particular, Ms. Artimez worked from July 27, 2009 through August 21, 2009 in job number 228488 at the central office.

11. Ms. Roberts also worked extensively in the central office in July, August, and September 2009. In particular she worked from September 15, 2009 through October 22, 2010 in job number 230597. (R. Ex. 3).

12. Ms. Wheeler worked at the central office from May 2009 through July 28, 2009. Ms. Wheeler resumed working in the central office on August 13, 2009 and continued to do so through the filing of the current grievance.

13. Grievant began actively monitoring who was getting substitute secretary assignments at the central office after the end of the 2008-2009 school year, that is, in July of 2009.[3]

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[2] Grievant proposes she was eligible to be classified as a substitute secretary, July 1, 2009, upon formal separation from duty as a regular full time employee, June 30, 2009. MCBE, Respondent, met in regular session July 28, 2009, and approved an employment contract for Grievant as a Substitute Secretary for the 2009-10 school term. (R. Ex. 7). Thus, Grievant's theoretical eligibility for placement on the substitution list and the date she was formally placed on the substitution list *may* differ by as much as 28 days.

[3] It was Grievant's opinion that certain secretaries appeared to be getting preferential treatment for certain substitute assignments at the county's central office in Moundsville, WV. In particular, Grievant believed that Gail Artimez, Marilyn Roberts, and

14. On July 28, 2009, Grievant was hired by Respondent as a substitute secretary for the 2009-2010 school year. (R. Ex. 7).

15. Marshall County Schools contracts with Regional Education Service Agency (RESA 6) to provide a computer-based substitute employee call-out system ("Call-Out System"). Ms. Ronda Kouski, a coordinator with RESA 6, oversees the operation of the Call-Out System.

16. Substitutes are called by the Call-Out System to fill assignments that are placed into the Call-Out System by administrators or their secretaries. As soon as an assignment is placed into the system, the computer begins using multiple phone lines to call substitutes.

17. On August 5, 2009, the Call-Out System phoned Grievant's phone number.

18. Grievant was on vacation on August 5, 2009, and was not home to answer the phone call to accept or refuse the offered substitute assignment.

19. On September 11, 2009, Marilyn L. Roberts accepted Call-Out System job number 230536 at 6:10 p.m. This job involved working at Center McMechen Elementary School starting on September 16, 2009. (Gr. Ex. 1).

20. A few minutes later, on September 11, 2009, Marilyn L. Roberts accepted Call-Out System job number 230597 at 6:13 p.m. This job involved working with Dr. Susan Jones at the Central Office on September 15, 2009. (Gr. Ex. 1 and R. Ex. 3).

Dawn Wheeler were among those substitute secretaries receiving preferential treatment for central office substitute secretary assignments. Grievant presented no evidence at the Level One or Level Three Hearings that said individuals or any other employee were improperly assigned substitute work by Respondent.

21. On September 15, 2009, Ms. Roberts worked at the Central Office with Dr. Jones. There was additional work to be performed, this substitute assignment was extended. (R. Ex. 6).

22. Ms. Roberts was no longer available to work job number 230536 at Center McMechen Elementary School on September 16, 2009. Ms. Roberts' selection for that job was canceled. (Gr. Ex.1 and R. Ex. 2).

23. Ms. Kouski, RESA 6 coordinator, demonstrated through Call-Out System records, specifically Employee Management System Sheets, that the last substitute secretary assigned in the Call-Out System prior to job number 230597 (Central Office working with Dr. Jones) was job number 230469. (R. Exs. 3 & 9).

24. Ms. Kouski established with these same records that Grievant was the last secretary in the rotation of substitute secretaries called by the Call-Out System for job number 230469. (Employee Management System Sheets, R. Exs. 2 & 9).

25. On September 11, 2009, when the Call-Out System began searching for a secretary to fill the very next substitute secretary assignment, job number 230597 (Central Office working with Dr. Jones), it called Brenda Winters at 6:09 p.m. and then Tracie West and 6:11 p.m. Neither answered the phone. (*See* Employee Management System Sheets, R. Exs. 3, 9 and Gr. Ex. 1). Ms. Roberts was the next secretary in the rotation to be called by the Call-Out system and accepted the assignment. (R. Ex. 3).

26. The Call-Out System recognizes each substitute employee in the rotation. However, it also recognizes that certain substitute employees are disqualified for a particular substitute assignment due to various reasons—for example some have already declined the job, others have already accepted a different substitute assignment during

that day and time, and still others have notified the system they are sick, or otherwise unavailable. (R. Ex. 9, pgs 3-8).

27. Prior to the testimony and evidence presented during the litigation of this grievance, Grievant did not know where in the rotation of substitute secretaries the Call-Out System was on any particular date.

28. On September 2, 2009, Grievant went to the Central Office to inspect records relating to the filling of substitute secretary positions—records she had identified through a freedom of information act request.[4]

29. Grievant did not file her written grievance with the Superintendent of Marshall County Schools. (L-1 Transcript at 49-50) (Executive Secretary Tammy Whitlatch, L3 testimony).

30. Grievant wrote the date "9-23-09" on her Level One grievance form. Grievant's sister-in-law faxed the Level One grievance form to the Grievance Board on October 7, 2009. (Grievant, L3 Testimony and Joint Exhibit at L-1). [5]

31. Grievant was employed as a full-time secretary by Respondent at John Marshall High School near the start of the 2010-2011 school year.

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[4] Grievant did not make copies of the records, it is unclear which records Grievant did in deed inspect on September 2, 2009.

[5] A fax date stamp from the fax phone number 304-845-3243 appears on the grievance form and indicates that the grievance form was sent to the Grievance Board on October 7, 2009. Joint Exhibit at L-1.

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.*

As an initial matter, the undersigned finds it prudent to note the parties' positions with regard to a number of central issues identified as relevant to the instant grievance.

Grievant purports that Respondent unduly denied her employment opportunity.[6] In addition to Grievant's allegation that the Call-Out System was not properly procuring substitutes for assignments, Grievant, as a service personnel employee with preferred

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[6] This contention is not limited to one theory of action. However, it is not of issue that there is no special training required for substitute secretaries to be eligible to work in Respondent's Central Office. This misinformation has been clarified to the satisfaction of the parties and is not a contested subject matter in dispute. The Grievance Board has long held that elements or allegations of the grievance which are raised, but not pursued or developed will be considered abandoned. *Church v. McDowell County Bd. of Educ.*, Docket No. 33-87-214 (Nov. 30,1987). The issue of special prerequisite training for substitute secretaries eligibility for central office assignment is considered abandoned and will not be discussed further.

recall status, avers she should have been offered the opportunity to work in any substitute position prior to employees on the substitute list being given that opportunity. The proposed right of preferred recall list employees to any temporary positions as argued by Grievant is not contained in WEST VIRGINIA CODE §18A-4-15(b). Grievant's Legal Counsel, John E. Roush, who is no stranger to this issue, argues that W. VA. CODE § 18A-4-15(b) must be read *in pari materia* with WEST VIRGINIA CODE § 18A-4-8b(q) and the provisions of the latter section harmonized with those of the former. Counsel maintains the only way to do so is to recognize the right of preferred recall list employees to assignment to temporary positions rather than substitute employees. ("The opportunity to substitute for an absent employee surely is a temporary position."- Grievant's fact/law proposals).

In response, Respondent argues: (1) being placed on a preferred recall list is the statutory right of some school employees whose positions have been terminated due to a reduction in force; (2) being placed on this list grants the former employee certain hiring preference rights for regular positions in their classification that are posted after the start of the new school year, *see* W. VA. CODE § 18A-4-8b(b), (j), & (k); and (3) being placed on this preferred recall list grants a former employee no rights whatsoever in connection with employment as a substitute. With respect to the assignments from the substitution list, Respondent's overall position is that Grievant is not entitled to any relief as she failed to establish assignment error by Respondent in filling substitute positions during the relevant time period. Further, Respondent is of the opinion that this grievance matter was not properly filed and should be dismissed. "If proven, an untimely filing will defeat a grievance, in which case the merits of the case need not be addressed. *Lynch v. W. Va.*

Dep't of Transp., Docket No. 97-DOH-060 (July 16, 1997)." *Carnes v. Raleigh County Bd. of Educ.,* Docket No. 01-41-351 (Nov. 13, 2001).

W.VA. CODE § 6C-2-3(a)(1) requires an employee to file a grievance within the time limits specified by relevant article. W.VA. CODE § 6C-2-4(a)(1) which identifies the process and applicable time lines for filing a grievance states;

> Within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date upon which the event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, an employee may file a written grievance with the chief administrator stating the nature of the grievance and the relief requested and request either a conference or a hearing. The employee shall also file a copy of the grievance with the board.

Grievant did not fully comply with the filing requirements of W.VA. CODE § 6C-2-4(1) in that she did not file her written grievance with Respondent's chief administrator—in this case the superintendent of schools.[7] Grievant never filed a grievance form with the Superintendent of Marshall County Schools—having only filed a copy with the Grievance Board in Charleston on October 7, 2009 by fax.[8] Finding of Fact 29-30. Administrative personnel employed by the Grievance Board forwarded a copy of the grievance form to Respondent. Accordingly, Respondent was eventually notified of Grievant's contentions.

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[7]"'Chief administrator' means, in the appropriate context, the commissioner, chancellor, director, president or head of any state department, board, commission, agency, state institution of higher education, commission or council, the state superintendent, the county superintendent, the executive director of a regional educational service agency or the director of a multicounty vocational center who is vested with the authority to resolve a grievance. A 'chief administrator' includes a designee, with the authority delegated by the chief administrator, appointed to handle any aspect of the grievance procedure as established by this article." W. VA. CODE § 6C-2-2(b).

[8] See L3 Testimony of Grievant and Executive Secretary Tammy Whitlatch; Level One Transcript at 49-50 and Findings of Fact 30-31.

Grievant's counsel cites the principles of "substantial compliance" for consideration. *See State ex rel. Catron v. Raleigh County Board of Education*, 496 S.E.2d 444, 201 W. Va. 302 (1997); *Duruttya v. Mingo County Bd. of Educ.*, 181 W.Va. 203, 382 S.E.2d 40 (1989). He proposes the undersigned should yield to a flexible interpretation, providing a simple and fair grievance process. In the absence of any evidence of bad faith, a grievant who demonstrates substantial compliance with the filing provisions. . . is entitled to the requested hearing. Syllabus Point 2, *Duruttya v. Mingo County Bd. of Educ.*, 181 W.Va. 203, 382 S.E.2d 40 (1989). The undersigned is not of the opinion that the statutory requirement to file with the chief administrator can be ceremoniously ignored, however, the cited proposal warrants consideration *to some degree* in the fact pattern of this grievance.[9] (Emphasis intended). The key to assessing whether a grievance is properly filed is substantial compliance with the statute and rules. 156 C.S.R. 1 § 2.1.4 (2008)

Respondent asked that this grievance be dismissed as untimely filed. It is not clear whether Respondent's request is addressing the physical filing or the effect Respondent highlights the agency should attribute to the filing if the filing is deemed to be substantially compliant.[10] Respondent has presented argument in support of both contentions, thus Respondent's objections to this grievance will be recognized as two-pronged on this issue.

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[9] The level one decision determined, among other rationale, that this grievance was untimely filed because Grievant failed to file a written grievance with Superintendent Renzella.

[10] Respondent has noted as a begrudged fallback position that if it is determined Grievant substantially complied with the filing requirements of W.VA. CODE § 6C-2-4, only those matters occurring during the fifteen (15) days prior to October 7, 2009 should be considered by the Grievance Board, as a matter of law. Grievant contends Respondent's actions were in association with an improper continuing practice, thus she should not be confined to a fifteen day window.

When an employer seeks to have a grievance dismissed on the basis that it was not timely filed, the employer has the burden of demonstrating such untimely filing by a preponderance of the evidence. *Hale & Brown v. Mingo County Bd. of Educ.*, Docket No. 95-29-315 (Jan. 25, 1996). Once the employer has demonstrated a grievance has not been timely filed, the employee has the burden of demonstrating a proper basis to excuse his failure to file in a timely manner. *Higginbotham v. W. Va. Dep't of Pub. Safety*, Docket No. 97-DPS-018 (Mar. 31, 1997); *Sayre v. Mason County Health Dep't*, Docket No. 95-MCHD-435 (Dec. 29, 1995), *aff'd,* Circuit Court of Mason County, No. 96-C-02 (June 17, 1996). *See Ball v. Kanawha County Bd. of Educ.*, Docket No. 94-20-384 (Mar. 13, 1995); *Woods v. Fairmont State College*, Docket No. 93-BOD-157 (Jan. 31, 1994); *Jack v. W. Va. Div. of Human Serv.*, Docket No. 90-DHS-524 (May 14, 1991).

Whether Grievant filed her grievance on September 23, 2009 or October 7, 2009, has significant ramification. Grievant wrote the date "9-23-09" on her Level One grievance form. However, the grievance form was faxed to the Grievance Board on October 7, 2009, not September 23, 2009.[11] A grievance may be filed by placing the grievance form in the United States Postal Service mail, hand-delivery or by facsimile transmission to the appropriate offices.[12] 156 C.S.R. 1 § 2.1.4 (2008). It is not proven that Grievant mailed or

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[11] A fax date stamp appears on the grievance form and indicates that the grievance form was sent to the Grievance Board on October 7, 2009. Level Three Testimony of Grievant; Joint Exhibit at L-1.

[12]"File" or "filing" means to place the grievance form in the United States Postal Service mail, addressed to: (1) the Board's main office and (2) the agency's chief administrator. A grievance may also be filed by hand-delivery or by facsimile transmission to the appropriate office. Date of filing will be determined by United States Postal Service postmark. All grievance forms shall be date stamped when received. Grievance forms may not be filed by interdepartmental mail. Within two days of receipt, the Grievance Board will e-mail the grievance docket number to the chief administrator. *See* 156 C.S.R. 1 § 2.1.4 (2008).

hand delivered the form to Respondent via any identified administrative officer or location. It is established that on October 7, 2009, Grievant exclusively filed with this Grievance Board and not with Respondent's chief administrator, the Superintendent of Marshall County Schools, as specified by W.VA. CODE § 6C-2-4.

Grievant's concerns as to why she was not receiving calls from the Call-Out System became more profound on or shortly subsequent to August 9, 2010 (date she was first contacted for a substitution position). Grievant testified, as she interpreted the Superintendent's March 10, 2009 letter, Grievant was of the belief erroneously or not, she was entitled to substitute secretary assignments prior to MCBOE's July 28, 2009 official recognition of her on the substitution list. Yet, even assuming *arguendo* that Grievant was not entirely aware of all the facts necessary to be charged with knowledge of pertinent events which form the basis of her grievance until September 2, 2009—the date on which she visited the central office to inspect the Call-Out System data—and overlooking for the moment that Grievant failed to file the grievance with the Superintendent, the Level One grievance form faxed to the Grievance Board was not received until October 7, 2009. This is beyond the 15-day deadline for filing a grievance as to any matters occurring prior to September 16, 2009.

These dates take on critical significance in that Grievant contends she is entitled to compensation for lost employment opportunities in July, August and September of 2009, and in particular, compensation for the job performed by Ms. Artimez at the central office (228488) from July 27, 2009 through August 21, 2009 and the position at the central office performed by Ms. Roberts (230597) from September 15, 2009 through October 22, 2009. Grievant did not establish that she was denied any identified work assignment as a

substitute secretary at the central office or any other location commencing within fifteen (15) working days of October 7, 2009.

The October 7, 2009, filing date becomes a continental divide regarding whether Grievant filed within fifteen days of the date upon which the grievable event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to the grievance. Grievant did not file within fifteen working days of either measuring criteria.

Even ***if*** the undersigned was to determine substantial compliance with regard to the physical filing as received by the Grievance Board, Grievant still did not timely file as required by W.VA. CODE § 6C-2-4(a)(1). This grievance as pursued was not properly filed within the time constraints prescribed in W.VA. CODE § 6C-2-4. Thus, even with a liberal interpretation of what Grievant believed, understood and acted upon, this grievance was not properly filed.

Since the grievance was not filed within the mandatory time lines it is dismissed and no other issue are addressed. *See Lynch supra.; Carnes supra.* The undersigned does not reach the question of whether service personnel with preferred recall status are entitled to a right of first refusal of any job or position, temporary or permanent over individuals on a substitute list for the position. Nor is an opinion expressed regarding whether the actions of the Respondent are objectionable as an isolated event or as the latest occurrence of a continuing practice. Grievant was employed as a full-time secretary by Respondent at John Marshall High School near the start of the 2010-2011 school year. It is determined that this grievance as pursued was untimely filed.

The following conclusions of law are appropriate in this matter:

Conclusions of Law

1. In a non-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); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990); *See 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).

2. When an employer seeks to have a grievance dismissed on the basis that it was not timely filed, the employer has the burden of demonstrating such untimely filing by a preponderance of the evidence. Once the employer has demonstrated a grievance has not been timely filed, the employee has the burden of demonstrating a proper basis to excuse his failure to file in a timely manner. *Higginbotham v. W. Va. Dep't of Pub. Safety*, Docket No. 97-DPS-018 (Mar. 31, 1997); *Sayre v. Mason County Health Dep't*, Docket No. 95-MCHD-435 (Dec. 29, 1995), *aff'd,* Circuit Court of Mason County, No. 96-C-02 (June 17, 1996). *See Ball v. Kanawha County Bd. of Educ.*, Docket No. 94-20-384 (Mar. 13, 1995); *Woods v. Fairmont State College*, Docket No. 93-BOD-157 (Jan. 31, 1994); *Jack v. W. Va. Div. of Human Serv.*, Docket No. 90-DHS-524 (May 14, 1991).

3. "If proven, an untimely filing will defeat a grievance, in which case the merits of the case need not be addressed. *Lynch v. W. Va. 7 Dep't of Transp.*, Docket No. 97-DOH-060 (July 16, 1997)." *Carnes v. Raleigh County Bd. of Educ.,* Docket No. 01-41-351 (Nov. 13, 2001).

4. W.VA. CODE § 6C-2-4(a)(1) among other constraints provides that a written grievance is to be filed with the chief administrator of an agency stating the nature of the grievance and the relief requested. Grievant did not fully comply with the filing requirements of W.VA. CODE § 6C-2-4(a)(1) in that she did not file her written grievance with Respondent's Chief Administrator.

5. W.VA. CODE § 6C-2-3(a)(1) requires an employee to file a grievance within the time limits specified by relevant article.

6. A grievance is to be initiated within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date upon which the event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance. W. VA. CODE §§ 6C-2-3(a)(1), 6C-2-4(a)(1).

7. Grievant specifically did not comply with the time constraints prescribed in W.VA. CODE § 6C-2-4(a)(1) for filing a grievance. This grievance was not timely filed.

Accordingly, this grievance is DISMISSED.

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: November 18, 2011

Landon R. Brown
Administrative Law Judge