THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

LAWRENCE A. BARBER, III,
Grievant,

Docket No. 2011-1304-McDED

v.

MCDOWELL COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

Lawrence A. Barber, III, ("Grievant") is employed by the McDowell County Board of Education ("Board") as an alternative education teacher. Grievant applied for the posted administrative position of Director of Facilities and Safety for the McDowell County School District ("District"). The position was posted twice and Grievant applied following both postings, but was not selected to fill that position. Grievant filed a grievance on March 14, 2011, asserting that he was the most highly qualified applicant for the position of the Director of Facilities and Safety and that the Board, in failing to hire him, was in violation of W. Va. Code § 18A- 4-7a. The grievance further asserts that Grievant should have been granted an interview following the first posting, but was not. As his remedy, Grievant seeks to be placed into the position of Director of Facilities and Safety and seeks, "receipt of any back wages and benefits lost; attorney's fees and costs; all costs associated with the grievance procedure."

Prior to a Level One hearing, Grievant filed a Notice of Default on March 23, 2011. On May 24, 2011, a default hearing was held by the W.Va. Public Employees Grievance Board ("Grievance Board") in Beckley, West Virginia. On November 22, 2011, the Grievance Board issued an Order Denying a Default and remanded the grievance for a Level One hearing on the merits.

The Board convened a Level One hearing on December 7, 2011. Grievant, a law school graduate, appeared pro se. Howard Seufer, Jr., Esq., Bowles, Rice, McDavid, Graff and Love LLP, represented the Board. The Board objected, on the grounds of untimely filing, to the portion of the grievance which alleged Grievant should have been granted an interview following the first posting of the contested position. The Superintendent's December 15, 2011, Level One decision denied all relief sought. Grievant appealed to Level Two and a mediation session was held on March 13, 2012.

Grievant appealed to Level Three. The parties agreed to submit the grievance for decision based upon the lower level record and proposed findings of fact and conclusions of law. Respondent submitted Proposed Findings of Fact and Conclusions of Law, which were received by the Grievance Board on May 14, 2011. This matter became mature for decision on that date.

Synopsis

Grievant applied twice for the administrative position of Director of Facilities and Safety and was not the successful applicant. Grievant avers that the Board violated W. Va. Code § 18A-4-7a in failing to interview him following the first posting of the contested position and in hiring another applicant following the second posting.

Respondent did not have to comply with W. Va. Code § 18A-4-7a because on November 8, 2002, the W. Va. State Board of Education, under the authority of W. Va. Code §18-2-E-5(p)(4)(C)(v)(II), intervened in the operation of the McDowell County School District. Throughout the postings and interviews for the contested position, the intervention had been continuously in effect. That intervention allowed the State

Superintendent to select the candidate for the administrative position at issue without consideration of W. Va. Code § 18A-4-7. Respondent, nonetheless, voluntarily applied the matrix at W. Va. Code § 18A-4-7a in assessing and recommending who should be selected for the contested position. The appropriate criterion were applied consistently to all of the applicants. Respondent demonstrated that the selection process was fair and unbiased. Moreover, Grievant's assertion that the Board should have interviewed him following the first posting is time-barred. Grievant should have commenced his grievance within 15 days after he learned of the second posting, but failed to do so. The grievance is DENIED.

The following facts are found to be proven by a preponderance of the evidence based upon an examination of the entire record developed in this matter.

Findings of Fact

1. At all times relevant to this grievance, Grievant was employed by the McDowell County Board of Education as an alternative education teacher.

2. The Board of Education of McDowell County was under the intervention of the W. Va. State Board, pursuant to W. Va. Code § 18-2E-5 at all times relevant to this grievance. Under the statute, the State Superintendent has the sole discretion to hire administrators and principals in the McDowell County School District without regard to the provisions of W. Va. Code § 18A-4-7a.

3. The Board first posted the newly created administrative position of Director of Facilities and Safety for the McDowell County School District from December 2 through December 8, 2010. The "Standards of Posting" for this position were as

follows: “Bachelor’s degree or higher; specialization in engineering and construction or related field preferred experience in plant operations, maintenance, energy management, and construction or related field; Proficient in Life Safety Code, Uniform Building Code, ASHRAE 90.1 (the energy code) and ASHRAE 62 (indoor environments) preferred; registered professional engineer or AFE Certified Plant Engineer Certification preferred; Commercial HVAC and electrical experience preferred.” (Level One Board Exh. 1.)[1]

4. Grievant applied for said position in December of 2010. The McDowell County Board of Education’s Superintendent, Mr. James G. Brown, (“Superintendent”) selected the top three candidates to be interviewed for the position. Grievant was considered for the position, but was not among the three finalists. Based upon a review of all of the candidates’ applications, consideration of their past experience and their performance during the interview process, the Superintendent recommended to the State Superintendent that Mr. Jarrett Lusk should be hired to fill the contested position. Before the State Superintendent acted upon that recommendation, Mr. Lusk withdrew his application.

5. The position was again posted from January 24 through February 2, 2011. Grievant was deemed to be among the three most highly qualified candidates following the second posting. The finalists were Mr. William Chapman, Ms. Katrina Estep and Grievant.

[1] This posting, marked as *Level One Board Exh. 1*, is dated January 24, 2011 through February 2, 2011. It was agreed that contents of this posting were identical to the first posting, of December 2 through December 8, 2010. (Level One Hearing Transcript at pp. 20-21.)

6. More than 15 days elapsed between January 24, 2011, when the job was posted a second time, and March 14, 2011, when Grievant instituted this grievance.

7. To assist the Superintendent in making a recommendation for hiring to the State Superintendent, he assessed the three candidates using the seven point matric system (the "matrix"), found at W. Va. Code § 18A-4-7a(a)(c)(1)-(7). In assessing the qualifications of applicants for a position under the foregoing, the statute instructs that, "consideration shall be given," to each of the following:

(1) Appropriate certification, licensure or both;

(2) Amount of experience relevant to the position;

(3) The amount of course work, degree level or both in the relevant field and degree level generally;

(4) Academic achievement;

(5) Relevant specialized training;

(6) Past performance evaluations conducted pursuant to twelve [18A-2-12], article two of this chapter; and

(7) Other measures or indicators upon which the relative qualifications of the applicant may be fairly judged.

8. The Director of Personnel for the McDowell County School District, Ms. Barbara Miller, testified that the above-cited matrix system was used by the Superintendent to fill all administrative positions. In this instance, the matrix used by the Superintendent allowed for 78 total points; 18 for the first six criterion and 60 for the seventh. Three points were allotted under each of the first 6 categories. (*Level One Board Exh. 3.*)

9. Ms. Miller testified that she assigned the points to the candidates under the first four criterion. She did this after receipt of the applications and before the interviews. She received some input on these scores from the Superintendent during the preliminary stages of the evaluation, before interviewees were selected. (*Level One Board Exh. 3.*)

10. Ms. Miller further testified that she referred to the, "McDowell County Schools Evaluations of Qualifications per § 18A-4-7b: First Set of Factors…Professional Personnel Other than Regularly Employed Classroom Teachers," in scoring the candidates. *(Level One Board Exh. 4.)* It provides guidance to judge and weigh the qualifications of job candidates and to assign scores for the matrix at W. Va. Code § 18A-4-7a.

11. There were two categories which were left blank, where no score was assigned for any of the candidates. The criterion, which were not scored, were four and five, "Relevant specialized training," and, "Past performance evaluations." Therefore, only five of the seven criterion were assessed.

12. Grievant scored higher than Mr. Chapman in three of the five categories assessed. Grievant scored two points and Mr. Chapman one in, "Amount of course work and/or degree level in the relevant field and degree level generally." Ms. Miller testified that Grievant was assigned two points in this category because he had a B.S. and a Master's degree. Both Grievant and Mr. Chapman hold Engineering degrees. Grievant's Doctorate of Juris Prudence was, properly, not considered and no credit was assigned for that degree. Grievant also received the highest score of three, under "Academic Achievement," based upon his GPA, whereas Mr. Chapman had no points

designated in this category. However, Mr. Chapman received a higher score than Grievant under the criteria of, "Amount of experience relevant to the position…" Ms. Miller indicated that both Mr. Chapman and Ms. Estep had "plant" experience. Consequently, Ms. Miller determined that Mr. Chapman merited three points in this category as opposed to Grievant's one-and-one-half points. (*Level One Board Exh. 3.*)

13. Under criteria number seven, "Other measures or indicators upon which the relative qualifications may be fairly judged," Mr. Chapman's score was far superior to those of the other two applicants. This score was derived in large part from the interview process, wherein each interviewee was assessed based upon his or her responses to a series of twelve questions. (*Level One Board Exh. 2 - "Interview Questions for Director of Safety and Facilities".*) [2] Ms. Miller testified that twelve questions had been formulated relating to the contested position and that she gave those questions to the Superintendent before interviews. The questions attempted to ascertain the candidates' professional qualifications and personal characteristics insofar as these would affect job performance.

14. The Superintendent of the McDowell County Schools, Mr. Brown, and the Assistant Superintendent of Facilities for the McDowell County Schools ("Assistant Superintendent") conducted the interviews of the applicants and uniformly asked the twelve questions of all of the candidates. The Assistant Superintendent was the person

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[2] "Interview Questions for Director of Safety and Facilities," included, *inter alia*: "7. Of paramount importance to us is the safety of our students and staff. What are some areas you [sic] school maintenance you think would be high risk and in need of your attention on a routine basis?"; "12. What experience do you have in managing a construction project? Also, what is your experience in working with construction bidding to include payment of prevailing rate?"; " 11. We discovered that we have no hot water in the home economics room. Use the set of plans provided to advise us if the problem is with the hot water tank in that room, or could it be something else?"

to whom the future Director of Facilities and Safety would directly report. Mr. Brown awarded the points under category seven when he conducted the interviews of the finalists for the position. Each question was assigned five points, allowing a maximum score of 60 points under criteria seven. Mr. Chapman was awarded a score of 49.5, Ms. Estep 32.5 and Grievant 25, out of the possible 60 points available.

15. The total score awarded to each of the candidates was the sum of the scores awarded to each of the finalists in five categories of the seven categories on the matrix. Out of the total 78 points available on the entire matrix, the three candidates scored as follows: William Chapman scored 56.5; Katrina Estep scored 37.5; and Grievant scored 32.5. (*Level One Joint Exh. 3 and 4.) .*

16. The two incomplete categories on the matrix each allowed a maximum score of 3 points. Even if Grievant had merited the full six points available under those two categories and even if the other two candidates had merited no points under same, Grievant's total score would have been 38.5 as compared to Mr. Chapman' s score of 56.5. However, if given these 6 additional points, Grievant would have scored one point higher than Ms. Estep who had 37.5 points. Even so, Grievant would still have remained second in relation to Mr. Chapman.

17. Based upon these total scores, the Superintendent, Mr. James Brown, nominated Mr. William Chapman for the position of Director of Facilities and Safety. The State Superintendent subsequently hired Mr. Chapman.

18. The position of Director of Facilities and Safety was posted for a second time from January 24, 2011 to February 2, 2011. Grievant filed his grievance on March 14, 2011.

Discussion

The Board of Education of McDowell County is under State intervention, pursuant to W. Va. Code §18-2-E-5(p)(4)(C)(v)(II). Therefore, the State Superintendent has the sole discretion to hire administrators and principals in the McDowell County School District without regard to the provisions of W. Va. Code § 18A-4-7a. Because Grievant has asserted no basis for this grievance other than the provisions of W. Va. Code 18A-4-7a, which is not controlling, the grievance fails to state a claim upon which the relief can be granted. *Nelson v. Lincoln County Board of Educ. and Dept. of Educ.* Docket No. 2009-0044-LinED (May 13, 2009) *Jarvis v. McDowell County Bd. Of Ed.,* Docket No. 07-33-408 (Dec. 19, 2008).

Even if Respondent had been constrained by the requirements of W. Va. Code § 18A-4-7a in hiring the Director of Facilities and Safety, Respondent employed the matrix properly and Respondent used its considerable discretion to choose the most qualified candidate for said position.

In a non-selection case, Grievant bears 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). "The generally accepted meaning of preponderance of the evidence is, 'more likely than not.' " *Jackson v. State Farm Mut. Auto Ins. Co.,* 215 W. Va. 634, 640, 600 S.E.2d 346, 352 (2004).

First, Grievant avers that he should have been interviewed following the initial posting of the contested position, as he was qualified for it. More than 15 days had elapsed between the period of the second posting, which was from January 24, 2011 through February 2, 2011, and the date when Grievant instituted this grievance, March

14, 2011. The Respondent argues that the portion of the grievance relating to the failure of the Board to interview Grievant following the first posting of the contested position was untimely. W. Va. Code § 6C-2-3. A grievant is excused for his delay in filing a grievance when the untimely filing, "was the result either of deliberate design or actions that an employer should have unmistakably understood would cause the employee to delay filing his charge." *Naylor v. W. Va. Human Rights Commission*, 378 S.E.2d 843 (1989); *Davisson v. Lewis County Board of Educ.*, Docket No. 05-21-112 (July 27, 2005). In this case, there was no evidence of an attempt to delay Grievant from filing a grievance. The grievance, as it concerns the failure to interview Grievant following the first posting, was filed well beyond the prescribed 15 days following the second posting of the contested position, and there was no attempt to delay. Thus, this portion of the grievance is time-barred and must be denied.

Grievant further asserts that Respondent violated W. Va. Code § 18A-4-7a, in selecting a candidate who was less qualified for the position than he. However, the Respondent assessed the credentials of the top three candidates based upon the matrix at W. Va. Code § 18A-4-7a(a)(c)(1)-(7). Respondents produced the matrix showing the relative ratings of the final three applicants. (*Level One Board Exh. 3.*) The Director of Personnel, Ms. Miller, stated that the matrix system was used by the Superintendent to fill all administrative positions. Ms. Miller assigned points under the first four categories of the matrix in this instance. She determined the candidates' qualifications and scores based upon the amount of their experience relevant to the position, educational attainment and academic performance. She also referred to the "McDowell County Schools Evaluations of Qualifications per § 18A-4-7b: First Set of Factors…Professional

Personnel Other than Regularly Employed Classroom Teachers" in scoring the candidates. (*Level One Board Exh. 4.*)

The candidates were further evaluated on the basis of their responses to the twelve afore-mentioned questions. The questions fairly attempted to ascertain information about the candidates' various skills, engineering expertise, and the traits which would equip them for the administrative and managerial requirements of the posted position. The position entailed a significant amount of responsibility. (*See Level One Board Exh. 1, at pp. 2-3, "Job Description".*) The point system gave equal points to all of the questions and the questions were uniformly asked of each of the candidates. The interview process, scored under criteria seven, allowed for a possible 60 points and was not improperly weighted in relation to the other 6 criterion in judging Grievant's qualifications. In a selection case, Grievant "must prove by a preponderance of the evidence that the employer violated the rules and regulations governing hiring, acted in an arbitrary and capricious manner, or was clearly wrong in its decision." *Workman v. Division of Corr.*, Docket No. 04-CARR-384 (Feb. 28, 2005). The interview aptly assisted Respondent to assess the candidates' various qualifications. Assigning more weight to this section did not make the process flawed or render it arbitrary and capricious.

It was also particularly apropos that the Superintendent, Mr. James Brown, and the Assistant Superintendent convened to evaluate the candidates, given that the successful applicant would be directly under their "chain of command." "County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be

exercised reasonably, in the best interest of the schools, and in a manner which is not arbitrary or capricious." Syl. Pt. 3 of *Dillon v. Board of Educ. Of Wyoming County*, 177 W. Va. 145, 351 S.E.2d 58 (W. Va. 1986). The scope of review of a decision to fill an administrative vacancy is narrow and the hearing officer may not simply substitute his or her judgment for that of the State Superintendent. *Hicks v. Mingo County Board of Educ.*, Docket No. 07-29-054 (Apr. 23, 2008); *See Harrison v. Ginsberg*, 169 W. Va. 162, 286 S.E.2d 276, 283 (1982). The County Superintendent and Assistant Superintendent were in the best position to interview and assess the qualifications of the candidates and their judgment should not be supplanted in this instance.

Under two of the seven categories of the matrix, scores were not recorded for any of the three top candidates. They were, "Relevant specialized training," and, "Past performance evaluations." The fact that no points were assigned under these two criterion did not affect whether Grievant was selected for the position, because even if Grievant had been awarded the maximum number of points in those areas, he still would not have scored higher than the successful candidate for the contested position. The failure to assess two of the statutory criterion for this administrative post did not render the selection process arbitrary or capricious. The irregularities were not of such significance that the outcome of the process would have been different. *James Amick and Floyd Friend v. Nicholas County Board of Education,* 96-34-354/357 (June 19, 1997) C. A. # 97-AA-87*, Affirmed, Zakaib, J.; Oxley v*. *Summers County Bd. of Educ*., 00-45-399 (June 15, 2001). The selection of candidates for educational positions is not simply a, "mechanical or mathematical process." *Hoffman v. Mingo County Bd. of*

Educ., Docket No. 97-29-266 (June 15, 1998) (citing *Tenney v. Board of Educ*., 183 W. Va. 632, 398 S.E.2d 114 (1990)).

There was testimony taken from only one witness with knowledge of the hiring process related to filling the contested position, Ms. Miller. Mr. Chapman, the successful candidate, did not testify so as to his qualifications or lack thereof for the vacant position. The Assistant Supervisor, who would directly supervise the individual selected as Director of Facilities and Safety, was not called to explain the selection process. The County Superintendent, who finally nominated the candidate for the position, did not testify concerning the selection process.

In this instance, the Board had in place a formalized hiring system. The above-mentioned twelve interview questions and the criterion on the matrix were uniformly employed to evaluate the top three candidates for the position. Grievant offered no proof that he had more relevant education, training or experience than the successful candidate. The evidence of record is insufficient to prove by a preponderance of the evidence that the selection process was flawed and that, but for errors made in the selection process, Grievant would have been found the most qualified candidate for the disputed position. The grievance is denied.

Conclusions of Law

1. Because this is a non-disciplinary grievance, Grievant has the burden of proving his case by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Hanshaw v. McDowell*

County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988); *Landy v. Raleigh County Bd. of Educ.*, Docket No. 89-41-174 (Dec. 14, 1989). In a non-selection grievance, it is Grievant's burden to show, by a preponderance of the evidence, that the assessment was flawed or did not comply with the policy, and that, but for the errors, the outcome of the selection process might reasonably have been different. *French v. Mercer County Board of Educ.*, Docket No. 2009-0822-MerED (Dec. 8, 2009) and cases cited. "The 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. Health and Human Res.,* Docket No 92-HHR-486 (May 17, 1993). A preponderance, "is generally recognized as evidence of greater weight, or which is more convincing than the evidence which is offered in opposition to it." *Petry v. Kanawha County Bd. Of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997).

2. When the W. Va. Board of Education intervenes in a county school system under W. Va. Code §18-2-E-5(p)(4)(C)(v)(II) (2005), it preempts Article 4, Chapter 18A of the Code, which ordinarily governs hiring decisions by county boards of education. In such circumstances, the State Superintendent is under no obligation to comply with W. Va. Code Section 18A-4-7a (2005) in making selection decisions, such as the decision that is challenged in this grievance. Given that Grievant has asserted no basis for this grievance other than the provisions of W. Va. Code 18A-4-7a, which are not controlling, the grievance fails to state a claim upon which the relief can be granted. *Nelson v. Lincoln County Board of Educ. and Dept. of Educ., Docket No. 2009-0044-LinED (May 13, 2009).*

3. Even if W. Va. Code §18-2-E-5(p)(4)(C)(v)(II) (2005) were not controlling, and the provisions of W. Va. Code § 18A-4-7a were mandatory in this instance, an analysis of the facts warrants the conclusion that Respondent properly used the matrix and hired the most qualified candidate for the position.

4. The grievance process is not intended as a "super interview," but merely an analysis of the legal sufficiency of the selection process at the time it occurred. *Thibault v. Div. of Rehab Serv.*, Docket No. 93-RS-489 (July 29, 1994). "If the decision was properly based upon the information then available to the board of education, and the process was not flawed to the point that the outcome might reasonably have been otherwise, the hiring will be upheld." *Harrison v. Wyoming County Bd. Of Educ*., Docket No. 89-45-500 (Dec. 29, 1989) (citing *Stover v. Kanawha County Bd. Of Educ*., Docket No. 89-20-75 (June 26, 1989)). The selection process under debate in this grievance passes muster. Also see, *Bedford County Memorial Hosp. v. Health and Human Services*, 769 F2d 1017 (4th Cir. 1985).

5. "Selection decisions are largely the prerogative of management, and absent the presence of unlawful, unreasonable, or arbitrary and capricious behavior, such selection decisions will generally not be overturned." *Jordan v. Div. of Highways*, Docket No. 04-DOH-202 (Jan. 26, 2005). As such, in this selection case, Grievant "must prove by a preponderance of the evidence that the employer violated the rules and regulations governing hiring, acted in an arbitrary and capricious manner, or was clearly wrong in its decision." *Workman v. Division of Corr.*, Docket No. 04-CORR-384 (Feb. 28, 2005); See generally, *Harrison v. Ginsberg, 286 S.E.2d 276* (W.Va.1982) The discretion of the Board is particularly broad with respect to selecting administrators.

"Once a board reviews the W. Va. Code Section 18A-4-7a criteria it must consider, it has wide discretion in choosing the administrator[.]" *Marsh v. Wyoming Board of Educ*., Docket No. 94-55-022 (Sept. 1, 1994). As such, the Respondent was vested with much discretion when selecting Mr. Chapman for the position in dispute.

6. The Respondent did not complete two categories of the matrix at W. Va. Code § 18A-4-7a. An administrative body must normally, "abide by the remedies and procedures it properly establishes to conduct its affairs." *Syl. Pt. 1, Powell v. , Mr. Brown*, 160 W.Va. 723, 238 S.E.2d 220(1977); *Bailey v. W. Va. Dept. of Transportation*, Docket No. 94-DOH-389 (Dec. 20, 1994). However, failure to follow prescribed procedures does not always render the action taken null and void. Whether Grievant suffered significant harm as a result of the procedural error must also be considered. *McFadden v. W. Va. Dept. of Health and Human Resources*, Docket No. 94-HHR-428 (Feb. 17, 1995). *Delauder v. W. Va. Dept. of Health and Human Services, Bureau for Child Support Enforcement*, Docket No. 07-HHR-326 (Jan. 28, 2009). Grievant was not harmed by Respondent's omission on the matrix because even if Grievant had been awarded the maximum number of points in those areas, the successful applicant would still have garnered more total points than did Grievant. Although the manner of scoring was not entirely correct, it had no demonstrable effect on the decision-making process and the candidate ultimately chosen. *Amick v. Nicholas County Board of Educ*., 95-34-037 (Aug. 23, 1995). (*C. A. # 95-AA-224, Affirmed, Berger, J.*)

7. The matrix at W. Va. Code § 18A-4-7a may be used to "narrow the field" of candidates. Mr. Chapman was apparently impressive in his interview, warranting far more points for his responses, in the judgment of the County Superintendent, than

Grievant. The interview questions could fairly elicit responses which would allow the Respondent to assess how the candidates would handle the myriad responsibilities of the new position. The questions asked under category seven of the matrix clearly "narrowed the field" in the instant grievance and were not improperly weighted. *Oxley v. Summers County Board of Educ*., Docket No. 00-45-399 (June 15, 2001).

8. Grievant has failed to meet his burden of proving, by a preponderance of the evidence, that he was more qualified for the disputed position than Mr. Chapman or that the selection process was arbitrary or capricious.

9. Finally, that portion of Grievant's claim relating to his assertion that the Respondent violated W. Va. Code §18A-4-7(a) in failing to interview him following the first posting of the contested position is barred by W. Va. Code §6C-2-4(a)(1).

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 (eff. July 7, 2008).

DATE: July 19, 2012

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SUSAN L. BASILE
ADMINISTRATIVE LAW JUDGE