

WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

SYNOPSIS REPORT

Decisions Issued in April, 2020

The Board's monthly reports are intended to assist public employers covered by a grievance procedure to monitor significant personnel-related matters which came before the Grievance Board, and to ascertain whether any personnel policies need to be reviewed, revised or enforced. W. Va. Code §18-29-11(1992). Each report contains summaries of all decisions issued during the immediately preceding month.

If you have any comments or suggestions about the monthly report, please send an e-mail to wvgb@wv.gov.

NOTICE: These synopses in no way constitute an official opinion or comment by the Grievance Board or its administrative law judges on the holdings in the cases. They are intended to serve as an information and research tool only.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
PROFESSIONAL PERSONNEL

<u>KEYWORDS:</u>	Contract; Pay Uniformity; Discrimination; Arbitrary and Capricious
<u>CASE STYLE:</u>	<u>Wallace v. Wayne County Board of Education</u> DOCKET NO. 2018-1331-WayED (4/24/2020)
<u>PRIMARY ISSUES:</u>	Whether Respondent's failure to have identical working days for all high school principals of the county was arbitrary and capricious conduct and/or discrimination in violation of identified uniformity principle(s).
<u>SUMMARY:</u>	Grievant, a retired principal, who was previously employed as a regular full-time principal, filed a grievance against her employer, Wayne County Board of Education, Respondent, contesting that she was improperly denied a 240-day contract during her employment. Grievant's contention that the Principalship at Tolsia High School is the only high school principal position in the county with a 220-day contract and such disposition is unlawful. Grievant bid upon and accepted the position as a 220-day contract. Grievant has not been discriminated against or been the victim of favoritism with regard to contract terms, nor did she demonstrate that the identified statutory uniformity provision has been violated. It is not established by a preponderance of the evidence that Respondent has exceeded its authority in choosing to implement a 220-day contract for the high school principal position in discussion. This grievance is DENIED.

KEYWORDS: Selection; Qualifications; Policy; Discrimination; Favoritism; Arbitrary and Capricious

CASE STYLE: Williams v. Kanawha County Board of Education

DOCKET NO. 2019-0640-KanED (4/24/2020)

PRIMARY ISSUES: Whether Grievant established flaw in the selection process.

SUMMARY: This grievance involves the selection of the Principal for South Charleston High School. West Virginia Code § 18A-4-7a sets out specific criteria a county school board is to use in determining which candidate is the most qualified for a professional position. While each of the factors listed in West Virginia Code § 18A-4-7a must be considered, this CODE Section permits county boards of education to determine the weight to be applied to each factor when filling an administrative position, so long as this does not result in an abuse of discretion.

County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. However, this discretion must be exercised reasonably and in a manner, which is not arbitrary and capricious. It seems readily evident that Respondent relied upon the ambiguity of discretion, to the point of invalidating the established and recognized selection procedure designed to assist in the identification of the best candidate.

Grievant is unequivocally qualified for the position in discussion. Respondent does not dispute that Grievant scored the highest in the interview and was the number one among the candidate matrix. What Respondent disputes is that Grievant's ranking makes her the most qualified candidate for the position. In the fact pattern of this matter there were notable dealings, some more significant than others but overall the cumulative effect of events tend to represent substantial flaw(s) in the discretion used and/or verification of the most qualified candidate for the position. Grievant established that Respondent used an ambiguous selection process to identify and confirm the successful applicant for the position in discussion. This grievance is granted in part and denied in part.

TOPICAL INDEX
STATE EMPLOYEES

<u>KEYWORDS:</u>	Suspension; Release; Inmate; Discrimination; Dismissal Order; Favoritism; Arbitrary and Capricious; Mitigation; Erroneous; Error; Booking; Discipline; Charges; Custody; Misinterpret
<u>CASE STYLE:</u>	<u>Banks v. Division of Corrections and Rehabilitation/Bureau of Prisons and Jails</u> DOCKET NO. 2019-1354-MAPS (4/17/2020)
<u>PRIMARY ISSUES:</u>	Whether Respondent proved by a preponderance of the evidence that Grievant engaged in misconduct and the 24-hour suspension without pay imposed was justified. Whether Grievant proved by a preponderance of the evidence his claims of discrimination and favoritism and whether mitigation of his suspension was warranted.
<u>SUMMARY:</u>	At the times relevant herein, Grievant was employed by Respondent as the Booking Supervisor. While Grievant was serving as shift supervisor, he reviewed a Dismissal Order issued by the Circuit Court and approved the release of an inmate for extradition to Virginia. Three months later, Respondent reviewed the Order and determined that that the inmate was released in error. Grievant was suspended without pay from employment for twenty-four hours for approving the release. Grievant argued that he did nothing wrong and the Dismissal Order was confusing. Grievant also raised claims of discrimination and favoritism in that no one else involved with the release was disciplined. Respondent proved its claims by a preponderance of the evidence. Grievant failed to prove his claims of discrimination and favoritism by a preponderance of the evidence. Grievant also failed to prove that mitigation of his discipline was appropriate. Therefore, this grievance is DENIED.

<u>KEYWORDS:</u>	Suspension; Termination; Due Process Rights; State Drug Policy; Text Messages; State-Issued Cell Phone; Gross Misconduct; Employee Conduct Policy
<u>CASE STYLE:</u>	<u>Broyles v. Department of Health and Human Resources/Bureau for Children and Families</u> DOCKET NO. 2019-0565-DHHR (4/24/2020)
<u>PRIMARY ISSUES:</u>	Whether Respondent had good cause to terminate Grievant.
<u>SUMMARY:</u>	Grievant was employed by Respondent as a Social Service Worker 2. Grievant was first suspended without pay pending investigation and then terminated from employment for using her State-issued work cell phone to purchase illegal drugs. Respondent proved Grievant used her State-issued work cell phone to purchase illegal drugs. Respondent violated Grievant's right to procedural due process when it terminated her employment without giving her notice and opportunity to be heard prior to terminating her employment. As a pre-deprivation hearing would not have changed the outcome, the remedy for the violation is nominal damages of one dollar. Accordingly, the grievance is granted, in part, and denied, in part.
<u>KEYWORDS:</u>	Termination; Probationary Officer; One-Year Probationary Period; Training; Unsatisfactory Performance
<u>CASE STYLE:</u>	<u>Luther, Jr. v. Division of Natural Resources</u> DOCKET NO. 2020-0559-DOC (4/17/2020)
<u>PRIMARY ISSUES:</u>	Whether Grievant prove that his job performance during his probationary period was satisfactory.
<u>SUMMARY:</u>	Grievant was a Natural Resources Police Officer serving a one-year probationary period. After 42 weeks in the probationary program, Grievant's employment was terminated for unsatisfactory performance. Grievant argued that his job performance was satisfactory, and his training officers were overly critical of every mistake he made. He argues that the hypercritical environment caused him to be tentative in making decisions and uncertain of his actions. Respondent demonstrated that Grievant had not progressed to the point where it was believed he could properly function independently as a NRPO despite significant training and opportunities to improve. Grievant did not prove that his probationary job performance was satisfactory.

KEYWORDS: Reimbursements for Business Expenses; State Travel Policy; Job Duties; Discrimination; Job Classification; Arbitrary and Capricious

CASE STYLE: McCumbers, et al v. Department of Health and Human Resources/Bureau for Children and Families

DOCKET NO. 2019-1226-CONS (4/2/2020)

PRIMARY ISSUES: Whether Grievants provided that they are being subjected to discrimination.

SUMMARY: Grievants are both employed by Respondent in the Bureau for Children and Families. They are CPS Workers assigned to the Crisis Response Team. Grievants make two discrete claims. First, Grievant McCumbers and Grievant Pigman allege that Respondent is not reimbursing them in a timely manner for expenses they incur while performing their mandatory duties. These delays are for long periods and cause Grievants financial distress. Grievants did not prove that the delays were intentional or that Respondent was violating any law, rule, regulation or policy.

Next, Grievant McCumbers alleges that Respondent has a performance standard and expectation requiring her as a CRT CPS Worker to complete at least 15 CPS cases per month, while regular CPS Workers are only required to complete ten. She argues that the performance standard is arbitrary and capricious as well as discriminatory. Respondent demonstrated that the standard was interpreted and applied by management to be a flexible goal rather than a hard and fast expectation. Also issues which impair Grievant and others from meeting the goal are considered and applied. Grievant did not prove that she, as a CRT CPS Worker, was similarly situated with regular CPS Workers or that the standard as applied is arbitrary and capricious.

KEYWORDS: Across-the-Board; Pay Raise; Probationary; Temporary; Discrimination; Favoritism; Appointment; Offer; Permanent; Full-Time

CASE STYLE: Tincher, Sr., et al. v. Division of Corrections and Rehabilitation/Bureau of Prisons and Jails
DOCKET NO. 2019-0881-CONS (4/2/2020)

PRIMARY ISSUES: Whether Grievants proved that they were entitled to receive a special hiring rate and a 5% across-the-board raise granted to state employees on July 1, 2018.

SUMMARY: Grievants are both employed by Respondent as Correctional Officer 1s. Grievants were hired as temporary employees and began working for Respondent on July 9, 2018. Grievants did not receive the across-the-board pay raise granted to state employees effective July 1, 2018. Grievants argue that they were improperly denied the same and claims discrimination and favoritism. Respondent denies Grievants' claims and argues that only regular, full-time employees who were employed prior to July 1, 2018, were eligible for the raise. Grievants failed to prove their claims by a preponderance of the evidence. Therefore, this grievance is DENIED.