

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

SAMANTHA BALL,

Grievant,

v.

Docket No. 2022-0387-DOT

DIVISION OF HIGHWAYS,

Respondent.

DECISION

Grievant, Samantha Ball, is employed by Respondent, Division of Highways. On November 8, 2021, Grievant filed this grievance against Respondent stating, "Working outside of my job classification since March 29, 2021. ...I do not believe that it is fair, that I am performing and working as a supervisor daily but am denied to be reclassified as such. Per the DOH Pay Plan Policy, I feel that I should be reclassified to an Office Assistant Coordinator or a higher position." Grievant requests, "To be reclassified into the proper classification of a supervisor and to receive the appropriate back pay for the classification increase from March 29, 2021 until present."

A level one hearing occurred on December 2, 2021. A level one decision was issued on January 10, 2022. Grievant appealed to level two on January 20, 2022. Level two mediation occurred on April 5, 2022. Grievant appealed to level three on April 20, 2022. A level three hearing was held online before the undersigned on July 25, 2022. Grievant appeared and was self-represented. Respondent appeared by Matthew Ball, Assistant Director of Human Resources, and was represented by Regenia Mayne, Esq.

This matter matured for decision on August 26, 2022, upon receipt of Respondent's Proposed Findings of Fact and Conclusions of Law (PFFCL).¹

Synopsis

Grievant is employed by the Division of Highways as an Office Assistant 3 (OA3). Grievant asserts her position should be reallocated to an Office Assistant Coordinator (OAC) because her supervision duties meet the OAC classification specification of "lead worker." Yet, the classification specifications for OA3 also list "lead worker." Grievant failed to prove that the best fit for her position is an OAC, as her predominant duties are more aligned with an OA3. Accordingly, the grievance is DENIED.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

Findings of Fact

1. Grievant is employed by Respondent, Division of Highways, as an Office Assistant 3 (OA3, aka HOFASS3) with the Equipment Division. Grievant supervises one employee.

2. On October 17, 2017, the West Virginia Legislature passed Senate Bill 2003, which amended West Virginia Code § 17-2A-24 relating to the employment procedures of Respondent. The bill was signed into law by Governor Jim Justice on October 24, 2017.²

3. Prior to the enactment of Senate Bill 2003, Respondent was subject to the Classification and Compensation Plan as administered by the West Virginia Division of

¹Grievant did not submit PFFCL.

²See *Goodman, et. al. v. DOH*, Docket No. 2019-0863-CONS (June 22, 2021).

Personnel (DOP). Senate Bill 2003 removed Respondent from DOP oversight, giving Respondent sole authority to administer the Plan for its own employees. The bill also permitted Respondent to create its own classification and compensation plan, subject to the approval of the State Personnel Board.³

4. In 2020, Respondent proposed to the State Personnel Board a new classification system and amended pay plan, entitled the Comprehensive Classification and Compensation Plan (CCCP).⁴

5. In accordance with the CCCP, Respondent sent position reallocation letters to numerous employees. Respondent deemed some of these letters to be in error.

6. On December 2, 2020, Respondent's HR Director sent a letter to Grievant stating that her position was being reallocated to a Highway Office Assistant Coordinator (OAC, aka HOFASSC). (Grievant's Exhibit 1)

7. Respondent also deemed this letter to be in error.

8. Grievant requests that her position be reallocated to an OAC.

9. A Position Description Form (PDF) is an official document detailing the duties and responsibilities of a position and is used by Respondent to properly allocate positions in the classified service. (Grievant's Exhibit 6)

10. An on-site job audit is a detailed review of the duties and responsibilities assigned to a position and includes a review of current and previous PDFs, organizational charts, reporting relationships, and organizational setting. It could also include interviews with the employee and supervisor. (Grievant's Exhibit 6)

³*Id.*

⁴*Id.*

11. Any change to or request for review of a position classification requires the submission of a PDF and the performance of an on-site job audit. (Grievant's Exhibit 6)

12. Grievant submitted to Respondent a PDF signed by her supervisor on November 10, 2020. (Grievant's Exhibit 6 & Respondent's Exhibit 1)

13. Respondent conducted a job audit on March 9, 2021.

14. This resulted in an Audit Report dated March 16, 2021. (Respondent's Exhibit 1)

15. The Audit Report states, in part:

It is the determination of the Employees Services unit that the duties and responsibilities performed by Ms. Ball are of a Highway Office Assistant 3. ... Determining factors of this decision pertained to the position being responsible for analyzing audits and invoices, bills, orders, forms, reports and documents for accuracy and initiates correction of errors. In conclusion, we find that a classification of Highway Office Assistant 3 is more accurate for this position, due to the scope of responsibilities of this position in the Comprehensive Classification & Compensation Proposal.

16. Grievant's PDF details her job duties and the approximate percentage of time spent on each duty as follows:

- 40% - Prepares daily payroll sheets and update logs; Manages leave slips, bi-weekly pay sheets, and maintains confidential pay information for 43 employees to ensure each individual is paid properly and all equipment is charged accordingly.
- 15% - Completes DOT-91's & ME-85's for each ORG and status change, transfers equipment in and out daily to coincide with Daily Yard Report; Ensures each incoming DOT-91 has an Evaluation or Repair Request attached, if Evaluation for sale line, ensures all paperwork for each piece is placed in the proper folder; Monitors and updates the temporary equipment loan list for all ORG's within the state weekly and ensures each piece of equipment is still located in said locations and not being used elsewhere.

- 10% - Coordinates and directs the work of the Corrosion and Body shop; Distributes and assigns work; Evaluates work once it's completed; Open, and close multiple new and old equipment work orders daily for the Equipment Shop, Corrosion, Tractor Shop, and Body Shop. Ensure the work orders are properly filled out and completed. Once work order is closed out, file according ED Number. Ensure that equipment/parts are paid for by providing commercial work orders as needed to Store Room.
- 10% - Maintains all equipment mileage, transfers, and status changes for 72+ pieces of equipment for the Equipment Division, Radio Room and Training Academy (Academy, Pad, D3 Pad, D5 Pad and Medina) and enters in into REMIS;
- 10% - Develops preventive maintenance schedules, and coordinates all warranty repair work. Schedules and ensures all recall, warrant and preventative maintenance work assignments are completed and properly documented. Fill out WV State Inspection paperwork and stickers for all vehicles coming through the shop, fill out mileage stickers once Preventative Maintenance work is complete. Once paperwork is submitted back to office, ensure they are properly closed out on REMIS and not showing as being behind or overdue.
- 10% - Updates lists of all equipment, logs, supplies and items at the office; inventories office as requested. Reviews incoming mail to route administrative mail to appropriate authorities and replies to such matters as directed. Receives and independently prepares responses to routine correspondence and inquires; answer inquires, personnel or the general public regarding the building, services rendered, or the staff. Requests and orders supplies as needed.
- 5% - Fill out all Equipment Division AR13's, ensure all paperwork is properly filled out, pictures documented and cost estimate repairs are attached and submitted to Division Director.

(Respondent's Exhibit 1)

17. The classification specification for OA3 states, in part:

Nature of Work: The Highway Office Assistant 3 performs advanced level, responsible, and complex clerical tasks of a complicated nature involving interpretation and application of policies and practices. Interprets office procedures, rules and

regulations. May function as a lead worker for clerical positions. Performs related work as required.

Typical Duties and Responsibilities:

- Analyzes and audits invoices, bills, orders, forms, reports and documents for accuracy and initiates correction of errors[.]
- Maintains, processes, sorts and files documents numerically, alphabetically, or according to other predetermined classification criteria; researches files for data and gathers information or statistics such as materials used or payroll information[.]
- Types a variety of documents from verbal instruction, written, or voice recorded dictation[.]
- Prepares and processes a variety of personnel information and payroll documentation[.]
- Plans, organizes, assigns and checks work of lower level clerical employees[.]
- Trains new employees in proper work methods and procedures[.]
- Answers telephone, screens calls, takes messages and complaints and gives information to the caller regarding the services and procedures of the organizational unit[.]
- Receives, sorts and distributes incoming and outgoing mail[.]
- Operates office equipment such as adding machine, copier, fax machine or other office equipment[.]
- Posts records of transactions, attendance, etc., and writes reports[.]
- Files records and reports[.]
- May operate a VDT using a set of standard commands, screens, menus and help instructions to enter, access and update or manipulate data in the performance of a variety of clerical duties; may run reports from the database and analyze data for management[.]
- Travel may be required; therefore, a valid driver's license may be required.

(Respondent's Exhibit 1)

18. The classification specification for OAC states, in part:

Nature of Work: The Highway Office Assistant Coordinator serves as the lead worker for this series. The position can carry out the details of the assignment and handle problems and deviations as they occur within outlined parameters. This

position may encounter varied duties and unrelated processes or methods. This position may be defined by the considerable amount of data involved, the interpretation of this data, and the refinement of techniques to be used. Performs other related duties as required.

Typical Duties and Responsibilities:

- Receives and independently prepares responses to routine correspondence and inquires; answers inquiries, complaints or request from clients, personnel or the general public regarding the building services rendered or the staff[.]
- Ensures that the office is maintained by staff; requests replacement of equipment, orders supplies and repairs; monitors the use of service contracts.
- Updates lists of all equipment, supplies and items at the office; inventories office as requested.
- Reviews incoming mail to route administrative mail to appropriate authorities and replies to such matters as directed.
- Coordinates the work of the units, passes on work assignments and evaluates work completed; writes reports on unit efficiency, expenditures, contractual agreements or special studies as requested, memoranda from verbal, written, or voice-recorded dictation.
- May enter and manipulate data on a computer terminal or PC to produce reports for management analysis.
- Performs or oversees the performance of personnel and/or payroll, and the bookkeeping for the office; for large entities with various findings or collections, works with auditors or other fiscal control staff.
- Participates on committees as requested by the supervising administrator or field supervisor.
- Travel may be required; therefore, a valid driver's license may be required.

(Respondent's Exhibit 1)

19. Respondent determined that, even though Grievant's position has some of the same duties as an OAC, the volume and complexity of the duties performed by Grievant do not amount to that of an OAC. (Testimony of Matt Ball, Assistant Director of HR, & Rebecca Kelly, Division Manager overseeing classification and compensation)

20. The OAC classification is in use only at the district and county level but not at the division level. (Testimony of Assistant Director of HR Ball & Division Manager Kelly)

21. Respondent determined that Grievant was ineligible for the position of OAC because she does not work at the district or county level. (Testimony of Assistant Director of HR Ball)

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). “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. Dep’t of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff’d*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

Grievant contends that her position should be reallocated from an Office Assistant 3 (OA3) to an Office Assistant Coordinator (OAC). She asserts that the classification specification for an OAC describes it as lead worker for the series and that OAC is the best fit for her position because she supervises another OA3. She also points to a letter from Respondent reallocating her position from an OA3 to an OAC.

Respondent counters that the decision of the level one Grievance Evaluator upholding Respondent’s classification determination of OA3 cannot be reversed because it is not clearly wrong. Respondent claims the reallocation letter it sent Grievant was one of many it erroneously issued in implementing its in-house Comprehensive Classification and Compensation Plan (CCCP). Respondent contends that the OA3 classification is the

best fit for Grievant's position because it fits the duties set forth by Grievant in her Position Description Form (PDF). Respondent contends it only places OACs in counties rather than divisions, that Grievant is in a division, that a supervisor must supervise at least two people, that Grievant only supervises one person, and that it removed a large part of Grievant's supervisory duties after the level one hearing.

"In the grievance procedure, a level three decision does not act to reverse or affirm a level one decision. Level three grievance hearings are de novo, meaning, '[t]rying [the] matter anew the same as if it had not been heard before and as if no decision had been previously rendered.' BLACK'S LAW DICTIONARY 721 (6th ed. 1990)." *Romano v. Southern West Virginia Community and Technical College*, Docket No. 2020-0556-SWCTC (Feb. 20, 2020). Nevertheless, Respondent is at least correct in asserting that Grievant has the burden of showing that its classification determination was not the best fit for her position and thus arbitrary and capricious.

It is well established that a government agency's determination regarding matters within its expertise is entitled to substantial weight. *Princeton Community Hosp. v. State Health Planning & Dev. Agency*, 174 W. Va. 558, 328 S.E.2d 164 (1985). See *W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681 (1993); *Security Nat'l Bank v. W. Va. Bancorp*, 166 W. Va. 775, 277 S.E.2d 613 (1981). The role of the Grievance Board is to review the information provided and assess whether the actions taken were arbitrary and capricious or an abuse of discretion. See *Kyle v. W. Va. State Bd. of Rehab.*, Docket No. VR-88-006 (Mar. 28, 1989). Respondent has discretion in performing its duties provided it does not exercise its discretion in an arbitrary or capricious manner. See *Bonnett v. West Virginia Dep't of Tax and Revenue and Div. of*

Pers., Docket No. 99-T&R-118 (Aug 30, 1999), *aff'd* Kan. Co. Cir. Ct. Docket No. 99-AA-151 (Mar. 1, 2001). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *State ex rel. Eads v. Duncil*, 196 W. Va. 604 at 614, 474 S.E.2d 534 at 544 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)).

This analysis has long been applied to the Division of Highways. On the other hand, the allocation issues linked to Respondent's new classification system appear to be a case of first impression.⁵ Yet, extensive caselaw covers these issues in relation to the Division of Personnel (DOP). The DOP was recently removed from overseeing classification and allocation of Respondent's employees and Respondent was given responsibility for the same. Thus, the existing caselaw on allocation is applicable to Respondent.

The key to the analysis of allocation cases is to ascertain whether a grievant's current classification constitutes the "best fit" for required duties. *Simmons v. W. Va. Dep't of Health and Human Res./Div. of Personnel*, Docket No. 90-H-433 (Mar. 28, 1991); *Propst v. Dep't of Health and Human Resources and Div. of Personnel*, Docket No. 93-HHR-351 (Dec. 3, 1993). Class specifications "are to be read in pyramid fashion, i.e., from top to bottom, with the different sections to be considered as going from the more general/more critical to the more specific/less critical. *Captain v. W. Va. Div. of Health*, Docket No. 90-H-471 (Apr. 4, 1991). For these purposes, the "Nature of Work" section

⁵"First presentation of question of law to a court for examination or decision. A case is said to be 'of the first impression' when it presents an entirely novel question of law for the decision of the court, and cannot be governed by an existing precedent." BLACK'S LAW DICTIONARY 635 (6th ed. 1990)."

of a classification specification is its most critical section. *See generally, Dollison v. W. Va. Dep't of Empl. Security*, Docket No. 89-ES-101 (Nov. 3, 1989).” *Clark v. Ins. Comm’n & Div. of Pers.*, Docket No. 2016-1442-DOR (Dec. 13, 2016), *aff’d*, Kanawha Cnty. Cir. Ct., Docket No. 17-AA-4 (June 5, 2017).

The predominant duties of the position in question are class-controlling. *Broaddus v. W. Va. Div. of Human Serv.*, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). *Carroll v. Dep’t of Health & Human Res.*, Docket No. 04-HHR-245 (Nov. 24, 2004), *citing Broaddus, supra; Barrett et al v. Dep’t of Health & Human Res. & Div. of Personnel*, Docket No. 04-HHR389 (Dec. 6, 2007). Employees who simply perform some duties normally associated with a higher classification may not be considered misclassified *per se*. *Hatfield v. Mingo County Bd. of Educ.*, Docket No. 91-29-077 (April 15, 1996). Furthermore, incidental duties which require an inconsequential amount of employees’ time will not warrant a higher classification if the remainder of their duties are accurately described by their current classification. *Graham v. Nicholas County Bd. of Educ.*, Docket No. 93-34-224 (Jan. 6, 1994). “To prevail upon a claim of misclassification or misallocation, a Grievant must prove by a preponderance of the evidence that her duties more closely match those of another cited class specification than the classification to which he is currently assigned. *See generally, Hayes v. W. Va. Department of Natural Resources*, Docket No. NR-88-038 (Mar. 28, 1989).” *McGraw v. DCR/DJS/SPCJ & DOP*, Docket No. 2021-2005-MAPS (Aug. 3, 2022).

The record does not support Respondent’s assertion that it removed a large part of Grievant’s supervisory duties after the level one hearing or that supervisory duties do not count unless they entail at least two subordinates. Regardless, Grievant’s contention

that her supervision of another OA3 makes the OAC classification the best fit for her position lacks merit. This is because the “Nature of Work” sections for an OA3 and an OAC both use the term “lead worker” to refer to the supervisory nature of the position. The “Nature of Work” section for OA3 more specifically describes this role as “lead worker for clerical positions.” It goes on to describe the clerical nature of an OA3 in summarizing the duties of the position as “performs advanced level, responsible, and complex clerical tasks of a complicated nature involving interpretation and application of policies and practices.” The “Typical Duties and Responsibilities” section provides duties for the OA3 position which are predominantly clerical. These include reviewing submissions and documents for accuracy, maintaining documents, perusing documents for information, preparing documents clerically, supervising clerical employees, training new employees, answering phones, operating office equipment, posting records, writing reports, filing documents, and running reports. Thus, the employee supervised by Grievant performs tasks which are predominantly clerical.

Likewise, the PDF submitted by Grievant for her own position outlines duties that are predominantly clerical. Respondent’s Audit Report confirms the clerical nature of Grievant’s duties in deeming an OA3 to be the best fit for Grievant’s duties and in summarizing these duties as “analyzing audits and invoices, bills, orders, forms, reports and documents for accuracy and initiates correction of errors.” Respondent determined that even though Grievant’s position has some of the same duties as an OAC the volume and complexity of the duties performed by Grievant do not amount to that of an OAC. Any overlap between Grievant’s duties and those of an OAC is incidental, as the duties of an OAC are not the predominant duties of Grievant’s position. Grievant failed to prove

by a preponderance of the evidence that the OAC classification is the best fit for her position.

As for the reallocation letter, the evidence presented shows that Respondent deemed it a mistake. “A state or one of its political subdivisions is not bound by the legally unauthorized acts of its officers and all persons must take note of the legal limitations upon their power and authority. *Cunningham v. County Court of Wood County*, 148 W.Va. 303, 310, 134 S.E.2d 725, 729 (1964).” Syl. Pt. 1, *West Virginia. Pub. Employees Ins. Bd. v. Blue Cross Hosp. Serv. Inc.*, 174 W. Va. 605, 328 S.E.2d 356 (1985). While there is no evidence that the original reallocation decision and the letter memorializing it were unauthorized, the Grievance Board has taken a broad view of an agency’s right to modify or correct its decisions. *See generally McGraw v. DCR/DJS/SPCJ & DOP*, Docket No. 2021-2005-MAPS (Aug. 3, 2022). Grievant failed to prove by a preponderance of the evidence that Respondent was arbitrary and capricious or otherwise acted improperly in reversing its decision to reallocate Grievant’s position.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). “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. Dep’t of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff’d*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

2. “In the grievance procedure, a level three decision does not act to reverse or affirm a level one decision. Level three grievance hearings are de novo, meaning, ‘[t]rying [the] matter anew the same as if it had not been heard before and as if no decision had been previously rendered.’ BLACK’S LAW DICTIONARY 721 (6th ed. 1990).” *Romano v. Southern West Virginia Community and Technical College*, Docket No. 2020-0556-SWCTC (Feb. 20, 2020).

3. It is well established that a government agency's determination regarding matters within its expertise is entitled to substantial weight. *Princeton Community Hosp. v. State Health Planning & Dev. Agency*, 174 W. Va. 558, 328 S.E.2d 164 (1985). See *W. Va. Dep't of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681 (1993); *Security Nat'l Bank v. W. Va. Bancorp*, 166 W. Va. 775, 277 S.E.2d 613 (1981). The role of the Grievance Board is to review the information provided and assess whether the actions taken were arbitrary and capricious or an abuse of discretion. See *Kyle v. W. Va. State Bd. of Rehab.*, Docket No. VR-88-006 (Mar. 28, 1989).

4. Employees have a substantial obstacle to overcome when contesting their classification, as the Grievance Board's review is supposed to be limited to determining whether the agency's action in classifying the position was arbitrary and capricious. *W. Va. Dept. of Health v. Blankenship*, 189 W. Va. 342, 431 S.E.2d 681, 687 (1993).

5. An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *State ex rel. Eads v. Duncil*, 196 W. Va. 604 at 614, 474 S.E.2d 534 at 544 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)).

6. The predominant duties of the position in question are class-controlling. *Broaddus v. W. Va. Div. of Human Serv.*, Docket Nos. 89-DHS-606, 607, 609 (Aug. 31, 1990). *Carroll v. Dep't of Health & Human Res.*, Docket No. 04-HHR-245 (Nov. 24, 2004), citing *Broaddus, supra*; *Barrett et al v. Dep't of Health & Human Res. & Div. of Personnel*, Docket No. 04-HHR389 (Dec. 6, 2007).

7. Class specifications “are to be read in pyramid fashion, i.e., from top to bottom, with the different sections to be considered as going from the more general/more critical to the more specific/less critical. *Captain v. W. Va. Div. of Health*, Docket No. 90-H-471 (Apr. 4, 1991). For these purposes, the “Nature of Work” section of a classification specification is its most critical section. See generally, *Dollison v. W. Va. Dep't of Empl. Security*, Docket No. 89-ES-101 (Nov. 3, 1989).” *Clark v. Ins. Comm'n & Div. of Pers.*, Docket No. 2016-1442-DOR (Dec. 13, 2016), *aff'd*, Kanawha Cnty. Cir. Ct., Docket No. 17-AA-4 (June 5, 2017).

8. Grievant failed to prove by a preponderance of the evidence that the Office Assistant Coordinator classification was the best fit for her position or that Respondent was arbitrary and capricious in keeping her position an Office Assistant 3.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Intermediate Court of Appeals.⁶ Any such appeal must be filed within thirty (30) days of receipt of this decision. W. VA. CODE

⁶On April 8, 2021, Senate Bill 275 was enacted creating the Intermediate Court of Appeals. The act conferred jurisdiction to the Intermediate Court of Appeals over “[f]inal judgments, orders, or decisions of an agency or an administrative law judge entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County pursuant to §29A-5-4 or any other provision of this code[.]” W. VA. CODE § 51-11-4(b)(4). The West Virginia Public Employees Grievance Procedure provides that an appeal of a Grievance Board decision be made to the Circuit Court of Kanawha County. 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 named as a party to the appeal. However, the appealing party is required to serve a copy of the appeal petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b).

DATE: October 3, 2022

Joshua S. Fraenkel
Administrative Law Judge

§ 6C-2-5. Although Senate Bill 275 did not specifically amend West Virginia Code § 6C-2-5, it appears an appeal of a decision of the Public Employees Grievance Board now lies with the Intermediate Court of Appeals.