

# **WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**PAULA HINKLE-BROWN, et al.,  
Grievant,**

**v.**

**Docket No. 2022-0176-CONS**

**MINGO COUNTY BOARD OF EDUCATION,  
Respondent.**

## **DECISION**

Paula Hinkle-Brown, Marcella Charles-Casto, Tamra Ferris, Barbara Fields, Charles D. Ward, Thomas Hoffman, and Shannon Blackburn, all principals, individually filed grievances against their employer, Mingo County Board of Education, Respondent. Grievants challenge the redistribution of administrative duties without posting new jobs.

A representation of the protest(s) as filed on August 31, 2021, provides:

WV 18a-4-7a; 18A-2-7; WV 6c-2-2 Newly created position not properly posted. Redistribution of administrative duties at the central office caused substantial changes in jobs including increasing contracted days to add paid vacation. Information about the new position given to staff and the board of education is confusing and incomplete. Has multiple administrators charged with the same responsibility. On example, Virginia Mounts, who was hired as a technology integration specialist has apparently been promoted to assistant superintendent without the benefit of an administrative certification or the job being posted. There were several positions involved in this reorganization, but they are hard to identify due to having my shared duties with other similar positions.

Relief Sought:

Newly created central office administrative positions posted.

On or about September 10, 2021, the grievances were consolidated. A conference was held at level one and the grievance was denied at that level by a written decision dated April 14, 2022. Grievants appealed to level two on April 28, 2022, and a

mediation session was held on November 9, 2022. At the request of the parties, this matter was held in abeyance for a period to discuss a mutual acceptable resolution. Grievants appealed to level three on December 22, 2022.<sup>1</sup> A level three hearing was held before the undersigned Administrative Law Judge on August 2, 2023, at the Grievance Board's Charleston office. Grievants appeared in person and were represented by Ben Barkey, WV Education Association. Respondent was represented by its General Counsel, Leslie Tyree, Esquire. At the conclusion of the level three hearing, the parties were invited to submit written Proposed Findings of Fact and Conclusions of Law. Both parties submitted fact/law proposals, and this matter became mature for decision on or about on September 1, 2023, on receipt of the last of these proposals.

### **Synopsis**

Grievants, currently Principals in Mingo County, seek to have a number of central office positions posted. Respondent chose to extend/enlarge the contract days of identifiable central office employees. Grievants filed the instant consolidated grievance challenging the actions of Mingo County Board of Education. Grievants believe they individually were denied the opportunity for better employment. Grievants did not prove Respondent's decision(s) to enlarge the employment contracts of select positions necessitated the creation of new positions (requiring posting). Grievants did not

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<sup>1</sup>Subsequently, Grievants Shannon Blackburn and Thomas Hoffman individually withdrew as parties of this grievance. See the respective PEG Board January 18, 2023 and February 1, 2023 dismissal orders.

establish Respondent's decision(s) were arbitrary and capricious or an abuse of discretion. This Grievance is DENIED.

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

### **Findings of Fact**

1. Grievants Paula Hinkle Brown, Marcela Charles Casto, Tamra Ferris, Barbara Fields, and Charles Ward are employed by Respondent, Mingo County Board of Education as Principals.

2. Dr. Johnny Branch became Mingo County Schools Superintendent on the 1<sup>st</sup> day of July 2021.

3. Prior to the 1<sup>st</sup> day of July, 2021, Don Spence was the Superintendent of Mingo County Schools, while Dr. Johnny Branch was Assistant Superintendent.

4. Dr. Branch was actively working with Superintendent Don Spence to transition into the Superintendents role prior to officially taking office.

5. Among other ideas and thoughts discussed to improve the operation of Mingo County Schools, Superintendent Spence and Dr. Branch wanted to extend the employment contracts of central office administrators.

6. Superintendent Don Spence recommended to the Mingo County Board of Education that all "central office employees" be moved to 261-day contracts, to include the custodians, secretaries, Directors, and anyone employed in the central office.

7. With the recommendation of the Superintendent, multiple central office administrators listed as Directors, Supervisors, Facilitators, Coordinators, etc. were

granted 261-day contracts by the Mingo County Board of Education, Respondent at a Board meeting on June 4, 2021.

8. Reasons provided for extending the contracts of central office administrators include, but not necessarily limited to, the following:

a. It was important to Dr. Branch (the then upcoming Superintendent) that the Mingo County Board of Education be a year-round office, having administrators there to operate their departments and provide support to the Superintendent and others on a year-round basis;

b. There were 3 central office directors already holding 261-day contracts, thus creating an inequity in that 3 central office directors/administrators were performing district wide duties and supervising district wide programs under a 261-day contract while the other eight (8) central office directors/administrators were also performing district wide duties and supervising district wide programs while holding only 230/240 day contracts;

c. Several administrative duties and responsibilities previously under the purview of the Assistant Superintendent Branch will be distributed to other administrators within the Mingo County Board of Education's central office.

9. The following central office administrators were recommended for contract increases to 261 days on the June 4, 2021, Mingo County Schools Board Agenda. R

Ex. 1, Consent Agenda III, Section e:

Patrick Billips	230 to 261
Drema Dempsey	240 to 261
Kay Maynard	240 to 261
Virginia Mounts	240 to 261
Rocky Hall	240 to 261
Sabrina Runyon	240 to 261
Lesia Sammon	240 to 261
Janet Varney	240 to 261

10. All central office administrators who were not previously on a 261-day contract were granted a contract extension except for Sandy Pinson and Kyrstyn Noe.<sup>2</sup>

11. Grievant, Paula Brown has held other administrative positions, including assistant superintendent. She would have liked the opportunity to bid for one of the positions with an increased employment contract. L3 testimony.

12. Dr Johnny Branch assumed the position of Mingo County Superintendent on July 1, 2021.

13. Upon becoming Superintendent on July 1, 2021 Dr. Branch officially determined that he would not fill his prior position (Assistant Superintendent). Superintendent Branch proposed to abolish the Assistant Superintendent position as a cost savings measure. Certain central office duties previously performed by Assistant Superintendent Branch were adjusted.

14. Certain central office administrators duties were adjusted to accommodate some of the duties previously completed by Assistant Superintendent Branch. These duties were similar to duties they were already performing in their roles, rather than brand new duties. The central office administrators began to perform more of the same duties that they were already performing, duties already under their umbrella or area. L3 Testimony.

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<sup>2</sup> See *Sandy Pinson and Kyrstyn Noe v Mingo County Board of Education* Docket No. 2022-0011-CONS (Oct. 26, 2022). Grievants did not establish that they are similarly situated employees as central office Directors or staff which report directly to the Superintendent. A Superintendent may make requests and recommendations to the Board regarding salaries, but the Board is not obligated to accept such requests as a mandate. Respondent specifically voted not to approve the motion to extend the employment contract terms of Sandy Pinson and Kyrstyn Noe. Respondent approved 261-day contracts for central office Directors and staff which report directly to the Superintendent. *Id.*

15. Kay Maynard, Director of School Nutrition, has held her position as Director of School Nutrition since 2006 and while initiatives from federal and state government may change certain things about school nutrition programs, no additional duties had been added and her job has not changed in any significant way during the last 17 years. L3 Testimony.

16. Virginia Mounts, Technology Integration Facilitator, has held her position since 2009. Ms. Mounts is responsible for the operation of technology platforms such as email, HR online, virtual learning and professional development platforms. L3 Testimony.

17. Patrick Billips, Technology Coordinator, has held his position since 2000 and is responsible for the hardwire aspect of technology, such as anything involving electrical power. Mr. Billips is responsible for hardwire functions, such as security cameras, district computer support, security doors, and all district computer systems. Mr. Billips continues to work under the same job description for which he applied in 1999 and has been assigned no new duties. L3 Testimony

18. Ms. Mounts and Mr. Billips affirm that while technology changes every day, their roles have not changed in any significant manner under Superintendent Branch.

19. Ms. Mounts is performing more or additional technology support than when Dr. Branch was Assistant Superintendent but has not been assigned new or different duties.

20. Dr. Sabrina Runyon, Director of Early Learning has held her position since 2015. Dr. Runyon's position has not changed since 2015 with the exception of becoming the final authority in approving teacher travel. Previously, Assistant Superintendent

Branch was a step past Dr. Runyon in approving teacher travel. Currently, Dr. Runyon is the final step in an approval process she was always part of.

21. Janet Varney is the Director of Special Education and has held her current position since 2012. Ms. Varney's job has not changed in any significant way since Dr. Branch became Superintendent.

22. Superintendent Branch still performs a large portion of the duties he performed as Assistant Superintendent. Superintendent Branch efficiently performs his duties with the assistance, support, and cooperation of the entire administrative office personnel.

### **Discussion**

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their case by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2018). "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, the party bearing the burden has not met its burden. *Id.*

"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 interests of the schools, and in a manner which is not arbitrary and capricious.' Syl. pt. 3, *Dillon v. Wyoming County Board of Education*, 177 W. Va. 145, 351 S.E.2d 58 (1986)." Syl. Pt. 2, *Baker v. Bd. of Educ.*, 207 W. Va. 513, 534 S.E.2d 378 (2000).

Grievants, currently Principals in Mingo County, seek to have a number of central office positions posted. A variety of individuals received an increase in employment contract days pursuant to the Superintendent's request and Mingo County Board of Education action(s). Grievants perceive they individually were denied the opportunity for better employment. The criteria used to determine who would and who would not receive an increase in employment contracts is debatable. Nevertheless, Grievants have the obligation to establish that Respondent's actions were arbitrary, capricious<sup>3</sup> and/or an abuse of discretion.

Respondent chose to approve and extend the employment contract from 240 days to 261 days of central office Directors and staff that report directly to the Superintendent.

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<sup>3</sup> Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of opinion. See *Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *Eads, supra* (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute his judgment for that of the authoritarian agency. See generally *Harrison v. Ginsberg*, 169 W. Va. 162, 286 S.E.2d 276, 283 (1982).



W. Va. Code §18A-4-7a states in pertinent part: “Boards shall be required to post and date notices of all openings in established, existing or newly created positions in conspicuous working places for all professional personnel to observe for at least five working days. Grievants argue that W. Va. Code §18A-4-7a was violated in that Grievants received new duties without posting the jobs.

This same argument was raised in *Butcher v. Logan County Board of Education*, Docket No. 95-23-015 (Jun 27, 1995) and *Napier v. Logan County Board of Education*, Docket No. 94-23-541 (April 25, 1995). This Board explained “[i]nherent in Grievant's argument is the idea that when duties are transferred from one position to another, a position is created which must be posted. To accept this argument would severely limit the ability of a superintendent to reorganize and manage the county school system.” See also *Cox v. Bd. of Educ. of Hampshire County*, 355 S.E.2d 365, 369 (W. Va. 1987). Additionally, a county superintendent's duties include "powers of independent judgment and discretion." *Hall v. Pizzino*, 363 S.E.2d 886, 888 (W. Va. 1980). Surely a superintendent is allowed to reorganize the duties of his administrative staff and perhaps especially when the personnel involved voluntarily accept the change.

It is within Respondent's discretion to determine the needs of the school system for management of personnel, employment contracts, and compensation, within the requirements of school personnel law. “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 reasonable, in the best interests of the schools, and in a manner which is not arbitrary and capricious.” Syl. pt. 3,

Dillon v. Wyoming County Board of Education, 177 W. Va. 145, 351 S.E.2d 58 (1986). 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, 474 S.E.2d 534 (1996).

Respondent persuasively maintains no new positions requiring posting were created. The testimony of record overwhelmingly provides identified central office administrators duties were adjusted to accommodate some of the duties previously completed by Assistant Superintendent Branch. These duties were similar to duties they were already performing in their roles, rather than brand new duties. The central office administrators began to perform more of the same duties that they were already performing, duties already under their umbrella or area of duties.

Grievants believe they individually were denied the opportunity for better employment. This thought process is logical; however, not necessarily an opportunity enforceable by applicable school law, at this time. While it is understandable that Grievants disagree with Respondent’s selective increase in select employment contracts,<sup>4</sup> Grievants have not proven that Respondent reached a determination that is so implausible that it cannot be ascribed to a difference of opinion. Respondent has some discretion pertaining to salaries and conditions of employment. Respondent chose

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<sup>4</sup> It was thought to be an improvement to the operation of Mingo County Schools for the Mingo County Board of Education to be a year-round office, having administrators there to operate their departments and provide support to the Superintendent and others on a year-round basis. The concept was duly presented and lawfully approved by Respondent. See also *Sandy Pinson and Kyrstyn Noe v Mingo County Board of Education* Docket No. 2022-0011-CONS (Oct. 26, 2022).

to approve and extend the contract from 240 days to 261 days for central office Directors and staff that report directly to the Superintendent. Grievants did not prove by a preponderance of evidence that Respondent exceeded its discretion pertaining to the instant events. Grievants filed the instant grievance challenging the redistribution of administrative duties without posting new jobs. Grievants did not prove that there were any newly created central office administrative position(s) created requiring posting. Grievants did not prove Respondent's decision to increase the contract days of central office administrators was arbitrary and capricious or an abuse of discretion.

The following conclusions of law are appropriate in this matter:

### **Conclusions of Law**

1. Because the subject of this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2018). "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, the party bearing the burden has not met its burden. *Id*

2. “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 interests of the schools, and in a manner which is not arbitrary and capricious.’ Syl. pt. 3, *Dillon v. Wyoming County Board of Education*, 177 W. Va. 145, 351 S.E.2d 58 (1986).” Syl. Pt. 2, *Baker v. Bd. of Educ.*, 207 W. Va. 513, 534 S.E.2d 378 (2000).

3. County Superintendents have the authority to make rational organizational changes in their administrative staff and the duties performed by the senior personnel.

4. Grievants have failed to demonstrate a violation of W. Va. Code §18A-4-7a.

5. Grievants have not met their burden of proof. Grievants did not establish by a preponderance of the evidence that Respondent violated any applicable rule, regulation, or law by providing contract extension to identified central office personnel.

6. Grievants did not prove by a preponderance of evidence that Respondent exceeded its discretion pertaining to the instant events.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Intermediate Court of Appeals.<sup>5</sup> Any such appeal must be filed within thirty (30) days of receipt of this decision. W. VA. CODE

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<sup>5</sup> On 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. 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.

§ 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 17, 2023**

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**Landon R. Brown**  
**Administrative Law Judge**