

WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

HANGANG YU,

Grievant,

v.

Docket No. 2022-0801-WVU

WEST VIRGINIA UNIVERSITY

Respondents.

DECISION

Grievant, Yu Hangang, was employed as an Associate Professor by Respondent, West Virginia University. On May 20, 2022, Grievant filed a grievance alleging:

On May 12, 2022, I received an email from Provost office of West Virginia University. In the attached letter, Provost informed me that my employment as tenured associate professor will end as of May 11, 2023. This decision was based on Provost's evaluations in three areas (Research, Teaching, Service) that directly contradict the evaluations from P&T committees and Dean of School of Medicine. Other job options were not discussed in Chair and Provost decisions.

As relief, Grievant requests:

Some positive information about my academic performance was ignored or misinterpreted in the evaluations. I am seeking an opportunity to present non-selective evidence about my academic performance and obtain direct answers to my simple questions I asked multiple times in my rebuttals to the committees, the Chair, and the dean's evaluations.

A level one hearing occurred on July 25, 2022. A level one decision denying the grievance was issued on August 15, 2022. On August 30, 2022, Grievant appealed to

level two. Mediation occurred on November 2, 2022. Grievant appealed to level three on November 14, 2022. On February 22, 2023, a level three Grievance Board hearing was held before the undersigned. Grievant appeared in person and was self-represented. Respondent was represented by Samuel Spatafore, Assistant Attorney General. This matter matured for decision on April 14, 2023. Each party submitted Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant was a tenured Associate Professor for Respondent, West Virginia University. Grievant was dismissed for insubordination after failing to improve on “unsatisfactory” ratings in the core areas of “research” and “teaching.” A tenured Associate Professor must achieve at least “satisfactory” ratings in these categories. Respondent proved that Grievant’s dismissal was justified. Accordingly, this 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 was employed by Respondent, West Virginia University (WVU), as a tenured Associate Professor in the School of Medicine’s Department of Physiology and Pharmacology.

2. To continue at the rank of Associate Professor, a faculty member must achieve at least “satisfactory” ratings in each of the core areas of “research,” “teaching,”

and “service.” Ideally, an Associate Professor should achieve ratings of “good” or “excellent.”

3. Between 2012 and 2017, Grievant received a rating of “satisfactory” or above in all categories. (R’s Exh 1).

4. In 2018, Grievant’s Chairperson (Chair) performed an annual review of Grievant and recommended that Grievant “create and fully engage with a mentoring committee to aid [you] in the composition of grant applications.” (R’s Exh 1).

5. In 2019, Grievant’s Department Committee recognized Grievant’s efforts in “research” as “good.” However, Grievant’s Chair cited Grievant for a lack of progress in scholarly production and rated Grievant’s “research” as “unsatisfactory.” The Chair listed two goals that Grievant needed to achieve in “research” to ensure his continued appointment. The first goal was to complete a scientific manuscript as the first or senior author and to have it accepted for publication in a reputable peer-reviewed journal by June 30, 2020. The second goal was to secure major extramural funding to justify the resources committed to support his laboratory and to produce two original scientific manuscripts accepted for publication in a reputable peer-reviewed journal by June 30, 2021. (R’s Exh 1).

6. In his productivity report for 2020, Grievant cited publication of one manuscript as senior author, submission of one extramural grant proposal, and delivery of one presentation to the WVU Cancer Institute. (R’s Exh 1).

7. While Grievant’s “teaching” performance was predominantly rated “good” from 2012-2016, the rating dropped to “satisfactory” in 2017. In 2017, the Department

Committee recommended that Grievant seek additional training to improve his teaching. In 2018, the Chair recommended that Grievant take courses or participate in workshops offered by WVU to improve his teaching. (R's Exh 1).

8. Grievant's 2019 file did not include evidence that he participated in any "teaching" development activity. While the Department Committee rated Grievant's 2019 "teaching" as "satisfactory," the Chair's rating was "unsatisfactory." The Chair again provided Grievant with goals to ensure future reappointment. (R's Exh 1).

9. These goals were arranged by semester for 2020-2021, and included Grievant's participation in the HSC Faculty Engagement Event and the Teaching Scholar Summer Institute, allowing for the observation of one of Grievant's lectures by a master teacher with a follow up evaluation for a second lecture after addressing the review from the first observation, and committing to appropriate teaching blocks in graduate and professional programs with a course load comparable to other tenured Associate Professors. (R's Exh 1).

10. Grievant received "good" and "excellent" ratings in "service" from 2012-2018 but requested to be released from two committee appointments in 2019, citing the need to increase his "research" productivity. The Chair rated Grievant's "service" for 2019 as "satisfactory" but advised Grievant that to retain his appointment in the future he must re-engage in committee service to the department and maintain a level of service comparable to other tenured Associate Professors.

11. Grievant listed his “service” activities for 2020 as participation on one department committee, serving as a reviewer for three journals, and membership on an editorial board for a fourth journal.

12. Provost Maryanne Reed evaluated Grievant’s performance in “research,” “teaching,” and “service” for the 2020-21 annual review. She reviewed Grievant’s Digital Measures (DM) file, all available productivity reports from 2018-2020, the departmental and school level evaluations and recommendations, Grievant’s rebuttals, responses to the rebuttals, and all Department Committee and Chair reviews from 2012-2019. (R’s Exh 1).

13. On May 13, 2021, Provost Reed sent Grievant a detailed review of her findings and directives and provided a detailed history of the events outlined above. Provost Reed noted that the Chair recommended Grievant’s dismissal but that she herself had decided to give Grievant another chance. (R’s Exh 1).

14. Provost Reed informed Grievant that the Department Committee, the Chair, and the Dean rated Grievant’s “research” for the year as “unsatisfactory,” even after considering that research was 75% of Grievant’s workload. Nevertheless, the school-wide committee reached a split decision with three finding Grievant’s “research” to be “satisfactory,” two deeming it “unsatisfactory,” and one abstaining.

15. Provost Reed set forth her findings on Grievant’s “research” as follows:

Based on your annual reports available in Digital Measures, it appears that you have had three manuscripts published as either first or senior author, but have not received new extramural funding since at least 2017. In reviewing the totality of your promotion and tenure file and considering

your 75% research effort, **I also consider your research productivity unsatisfactory.** [emphasis added]

16. The review informed Grievant that “all levels of review” had rated his “teaching” for the year as “unsatisfactory.”

17. Provost Reed set forth her findings on Grievant’s “teaching” as follows:

Based on your annual reports available in Digital Measures, it appears that you have not completed the recommended development activities to improve your teaching and that your student evaluations have remained unchanged and below the mean. Additionally, significant concerns exist regarding your mentorship of graduate students, with no clear documentation of the quality of your efforts with regard to your role as mentor/advisor. **I consider the totality of your teaching productivity unsatisfactory.** [emphasis added]

18. The review informed Grievant that “all levels of review” had rated his “service” for the year as “unsatisfactory.”

19. Provost Reed set forth her findings on Grievant’s “service” as follows:

Based on your annual reports available in Digital Measures, it appears that your service productivity is below what would be expected for a faculty member with your years of experience. You made a request in 2019 to have your committee assignments reduced. However, this reduction did not improve your research productivity, while it appears that you have made some effort to be assigned additional committees as recommended. **I consider the totality of your service productivity to be satisfactory; however, your productivity for the current annual review cycle is unsatisfactory.** It is crucial that your level of service increase in order for you to make reasonable contribution in this mission area. [emphasis added]

20. Despite concerns related to Grievant’s performance for several years and his failure to meet goals for improvement in all three mission areas, Provost Reed

acknowledged that challenges created by COVID-19 restructuring may have increased the difficulty in achieving full compliance. Provost Reed warned:

Concerns related to your performance have been included in your reviews for several years, and multiple explicit goals for performance in all three mission areas were provided to you in your 2019 chair review. Based on the information provided in your annual report and rebuttal, it does not appear that you have made significant efforts to achieve a majority of these goals.

... I concur with all levels of review that your record in Research and Teaching is “Unsatisfactory.” Your research and teaching does not meet the expectations for continuation as a tenured Associate Professor at West Virginia University and you will need to **significantly** increase your productivity in order for you to be ultimately successful.

I note that it is your responsibility to detail your record in Digital Measures. You will have until December 31, 2021 to document appropriate improvement in your record in research and teaching sufficient to meet the requirements articulated in the prior letters. Thus, your review during the 2021-22 cycle will determine your future at West Virginia University.

21. Despite the Chair’s recommendation of dismissal, Provost Reed renewed Grievant’s appointment for the 2021-2022 academic year. Provost Reed noted it was Grievant’s responsibility to detail his record in Digital Measures and warned that failure to provide documentation of improvements in “research” and “teaching” to an acceptable level would determine his future at WVU.

22. Provost Reed listed the following directives that Grievant was required to complete by December 31, 2021:

- Use the Digital Measures file as the record that will be evaluated.
- Publish one peer-reviewed manuscript and have a second in review to be published in reputable journals.
- Submit one major funding request to an external source.
- Participate in one national conference.
- Volunteer as an ad hoc reviewer for the Journal Communications Biology, Biomolecules, Cells and Cardiovascular Therapeutics.
- Volunteer as a panel reviewer for American Heart Association proposals.
- Carry a teaching and service load comparable to those of other tenured Associate Professors in the department, including team teaching, and providing student and peer evaluations of each course.
- Improve teaching effectiveness in all assignments demonstrated by average/satisfactory reviews by students and peers.
- Rectify all other remaining deficiencies identified in previous cycle reviews.
- Work with the Chair and Dean designee to develop a Memorandum of Understanding (MOU) by June 30, 2021. The MOU was to clearly outline the directives and was to include a plan to increase Grievant's performance in all three mission areas and define the minimum expectations necessary to support a rating of "satisfactory."

23. Provost Reed informed Grievant of her decision to continue his appointment but advised that refusing legitimate reasonable directions would constitute insubordination and be the basis for dismissal under the Board of Governors (BOG) Faculty Rule 4.2.

24. Grievant did not grieve his 2020-2021 annual review.

25. Grievant cooperated with the Chair in preparing an MOU in June 2021. The MOU included the directives outlined by the Provost and deficiencies identified in

previous reviews. Grievant was directed to complete the following corrections by December 31, 2021:

- Formation and use of a research mentoring committee.
- Formation and use of a teaching mentoring committee.
- Publish two original science manuscripts in professional, peer-reviewed journals.
- Presentation of original science at national meetings.
- Presentation of original science at Departmental level.
- Obtain one major extramural grant.
- Submit one major extramural grant proposal.
- Participate in Faculty Engagement Event.
- Participate in Teaching Scholar Summer Institute.
- Improve teaching effectiveness to average/satisfactory marks in all classes lectured in.
- Provide peer-review feedback of all lectured classes.
- Serve on manuscript and grant review panels.
- Engage in service at the university, school, and department levels.

(R's Exh 2).

26. On May 12, 2022, Provost Reed completed and mailed Grievant her review of Grievant's performance for the 2021-2022 annual review process. Provost Reed outlined Greivant's failure to comply with directives from 2021 in the areas of "research," "teaching," and "service." Provost Reed informed Grievant that he would be issued a terminal contract for the coming academic year and that his employment would end on May 11, 2023. Provost Reed stated that she concurred with the recommendations of the Department Committee, the Chair, and the Tenure Committee to not continue Grievant's appointment as a tenured Associate Professor. (R's Exh 4).

27. Provost Reed issued Grievant a rating of "unsatisfactory" on "research." Provost Reed charted Grievant's ratings in "research" and determined that

documentation in Grievant's DM file showed that Grievant only partially met the directive regarding the "formation and use of a research mentoring committee," that Grievant did not meet the directive regarding the "presentation of original science at the department level," and that Grievant did not meet the directive regarding "obtaining one major extramural grant." Grievant did not comply with the directive to "significantly increase" his productivity in "research," did not present his research at a department level meeting, did not utilize a research mentoring committee, was not awarded an external grant, and did not meet his research directives.

28. On the "research" related directives, Grievant was credited with two published manuscripts, both as first author, in non-predatory journals, four pending grant application submissions (although he did not include supporting documentation in DM), and poster presentations at one regional and two national conferences with concerns about legitimacy due to the predatory nature of the conference.

29. Provost Reed issued Grievant a rating of "unsatisfactory" on "teaching." Provost Reed charted Grievant's ratings in "teaching" and determined that Grievant failed to meet directives because he did not significantly increase his productivity, failed to provide evidence in his DM file of peer evaluations of his teaching, and failed to utilize a teaching mentoring committee.

30. On "teaching" related directives, Grievant was credited with partially meeting the directive on "formation and use of teaching mentoring committee" and with meeting the directive to "participate in teaching scholar summer institute."

31. Provost Reed determined that Grievant did not meet the “service” directive of “volunteering as a panel reviewer for the American Heart Association” but that he met three other “service” directives. Provost Reed therefore determined that Grievant demonstrated significant improvement in “service,” which she rated as “satisfactory.”

32. Respondent informed Grievant in advance that it would rely on his documentation of activities in DM to complete his evaluation. Yet, Grievant failed to document all his activities in DM as he had been directed.

33. Provost Reed concluded that Grievant’s conduct constituted insubordination.

34. BOG Faculty Rule 4.2 sets forth insubordination as the “refusal to abide by legitimate reasonable directions of administrators” and establishes it as a cause for dismissal. (R’s Exh 3 & 4).

Discussion

In disciplinary matters, the burden of proof rests with the employer to prove that the action taken was justified, and the employer must prove the charges against an employee 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.*

Respondent asserts that the decision to dismiss Grievant was justified because Grievant failed to complete directives, amounting to insubordination. BOG Faculty Rule 4.2 sets forth insubordination as the “refusal to abide by legitimate reasonable directions of administrators” and establishes it as a cause for dismissal. Provost Reed warned Grievant in his 2020-2021 review that he had to significantly improve his performance in the core areas of “teaching,” “research,” and “service.” She issued directives for Grievant to complete to continue as an Associate Professor. Grievant signed an MOU showing that he understood these directives. Grievant failed to comply with most of the directives and failed to improve his performance in core areas.

Considerable discretion is accorded to academic administrators in making personnel decisions regarding such matters as faculty retention or promotion. See generally *Siu v. Johnson*, 784 F.2d 238 (4th Cir. 1984); *Smith v. Univ. of N. Carolina*, 632 F.2d 316 (4th Cir. 1980); *Kunda v. Muhlenberg College*, 621 F.2d 532 (3d Cir. 1980). In applying the arbitrary and capricious standard of review to academic matters, such as promotion, tenure and non-retention of faculty status, the Grievance Board has recognized that the decisional, subjective process by which such status is awarded or denied is best left to the professional judgment of those presumed to possess a special competency in making the evaluation. *Gruen v. Bd. of Directors*, Docket No. 95-BOD-281 (Mar. 6, 1997); *Gomez-Avila v. W. Va. Bd. of Trustees*, Docket No. 94-BOT-524 (Mar. 14, 1995); *Carpenter v. Bd. of Trustees*, Docket No. 93-BOT-220 (Mar. 18, 1994); *Cohen v. W. Va. Univ.*, Docket No. BOR1-86-247-2 (July 7, 1987). See *Siu, supra*; *Kauffman v. Shepherd College*, Docket No. BOR1-86-216-2 (Nov. 5, 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) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). “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 was 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).” *Trimboli v. Dep’t of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997), *aff’d* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998).

“[T]he “clearly wrong” and the “arbitrary and capricious” standards of review are deferential ones which presume an agency’s actions are valid as long as the decision is supported by substantial evidence or by a rational basis. Syllabus Point 3, *In re Queen*, 196 W.Va. 442, 473 S.E.2d 483 (1996).” Syl. Pt. 1, *Adkins v. W. Va. Dep’t of Educ.*, 210 W. Va. 105, 556 S.E.2d 72 (2001) (*per curiam*). “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 her judgment for that of [the employer].” *Trimboli v. Dep’t of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997), *aff’d* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998); *Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001), *aff’d*

Kanawha Cnty. Cir. Ct. Docket No. 01-AA-161 (July 2, 2002), appeal refused, W.Va. Sup. Ct. App. Docket No. 022387 (Apr. 10, 2003).

Grievant was repeatedly warned that he needed to improve his performance in the three core areas of “research,” “teaching,” and “service” but failed to do so. Despite voicing ongoing concerns, Provost Reed provided Grievant opportunities to improve and renewed Grievant’s appointment for the 2021-2022 academic year. Provost Reed did so even though Grievant’s Chair recommended that Grievant be dismissed. In renewing Grievant, Provost Reed warned him that he could be dismissed on grounds of insubordination if he failed to provide documentation of improvements to an acceptable level in his “research,” “teaching,” and “service” by December 31, 2021.

Grievant counters that his accomplishments were not considered. However, Grievant failed to include most of his claimed accomplishments in his DM files even though he was ordered to do so by Provost Reed in his 2020-2021 review. Respondent considered every activity that Grievant documented in his DM file. As for any attempt to challenge the directives issued in May 2021, Grievant failed to grieve these directives or the 2020-2021 review. “If an employee does not grieve specific disciplinary incidents, he cannot place the merits of such discipline in issue in a subsequent grievance proceeding. *Jones v. W. Va. Dept. of Health & Human Resources*, Docket No. 96-HHR-371 (Oct. 30, 1996); *See Stamper v. W. Va. Dept. of Health & Human Resources*, Docket No. 95-HHR-144 (Mar. 20, 1996); *Womack v. Dept. of Admin.*, Docket No. 93-ADMN-430 (Mar. 30, 1994). In such cases, the information contained in prior disciplinary documentation must be accepted as true. *See Perdue v. Dept. of Health &*

Human Resources, Docket No. 93-HHR-050 (Feb. 4, 1994).” *Aglinsky v. Bd. of Trustees*, Docket No. 97-BOT-256 (Oct. 27, 1997), *aff’d*, Monongalia Cnty. Cir. Ct. Docket No. 97-C-AP-96 (Dec. 7, 1999), appeal refused, W.Va. Sup Ct. App. Docket No. 001096 (July 6, 2000).

Provost Reed’s decision in May 2022 to issue Grievant a terminal contract was premised on Grievant’s failure to significantly increase his productivity in 2021-2022 from his performance review for 2020-2021. Grievant is now precluded from challenging his 2020-2021 review. Respondent presented sufficient evidence that Grievant did not adequately comply with the directives issued in that review, leading to his dismissal. Respondent proved by a preponderance of evidence that its dismissal of Grievant was reasonable in that Grievant failed to obtain satisfactory ratings in core areas and failed to meet standards necessary to support Grievant’s continued appointment as a tenured Associate Professor.

Accordingly, the grievance is DENIED.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. In disciplinary matters, the burden of proof rests with the employer to prove that the action taken was justified, and the employer must prove the charges against an employee 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. Considerable discretion is accorded to academic administrators in making personnel decisions regarding such matters as faculty retention or promotion. See generally *Siu v. Johnson*, 784 F.2d 238 (4th Cir. 1984); *Smith v. Univ. of N. Carolina*, 632 F.2d 316 (4th Cir. 1980); *Kunda v. Muhlenberg College*, 621 F.2d 532 (3d Cir. 1980). Moreover, in applying the arbitrary and capricious standard of review to academic matters, such as promotion, tenure and non-retention of faculty status, the Grievance Board has recognized that the decisional, subjective process by which such status is awarded or denied is best left to the professional judgment of those presumed to possess a special competency in making the evaluation. *Gruen v. Bd. of Directors*, Docket No. 95-BOD-281 (Mar. 6, 1997); *Gomez-Avila v. W. Va. Bd. of Trustees*, Docket No. 94-BOT-524 (Mar. 14, 1995); *Carpenter v. Bd. of Trustees*, Docket No. 93-BOT-220 (Mar. 18, 1994); *Cohen v. W. Va. Univ.*, Docket No. BOR1-86-247-2 (July 7, 1987). See *Siu, supra*; *Kauffman v. Shepherd College*, Docket No. BOR1-86-216-2 (Nov. 5, 1986).

3. "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 her judgment for that of [the employer]." *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997), aff'd Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998); *Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001), aff'd Kanawha Cnty. Cir. Ct. Docket No.

01-AA-161 (July 2, 2002), appeal refused, W.Va. Sup. Ct. App. Docket No. 022387 (Apr. 10, 2003).

4. Respondent proved by a preponderance of the evidence that its dismissal of Grievant was reasonable in that Grievant failed to obtain satisfactory ratings in core areas and failed to meet the necessary standards to continue as a tenured Associate Professor.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Intermediate Court of Appeals.¹ Any such appeal must be filed within thirty (30) days of receipt of this decision. 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: May 22, 2023

Joshua S. Fraenkel
Administrative Law Judge

¹On 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.