

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**ROSEMARIE BUTLER and YVETTE MOHLER,
Grievants,**

v.

Docket No. 2024-0383-CONS

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

ORDER UPHOLDING LEVEL ONE DISMISSAL ORDER

Grievants, Rosemarie Butler and Yvette Mohler, filed separate grievances at level one on or about October 18, 2023. The grievances were consolidated. Grievants are bus operators, and they take issue with “twelve unfilled bus runs needed coverage. Rather than placing them back up for bid, they are adding them to different buses and paying extra to the drivers of their choosing. Jefferson County is not going by seniority when assigning the unfilled runs, with some of the runs even going to new employees. Ms. Butler [Grievants] has been skipped over numerous times despite having seniority over individuals who have been selected.” Grievants seek relief in the form of having Respondent placing the twelve unfilled bus runs up for bid. Grievants request that Respondent fill the bus runs according to seniority.

This grievance was dismissed at level one due to being untimely by Joyce White, Deputy Superintendent of Operations/Level 1 designee by letter dated December 1, 2023. Grievants appealed to level two on December 15, 2023. The West Virginia Public Employees Grievance Board acknowledged this appeal on December 20, 2023. Effective June 9, 2023, if a grievance is dismissed at level one for untimeliness, the grievance may not proceed to alternative dispute resolution but, instead, may only be appealed to level three. The administrative law judge must review the dismissal order and either uphold the dismissal or overturn the dismissal and return the grievance to level one for disposition. W.VA. CODE § 6C-2-3(c)(1). In any event, Respondent filed a Motion to Dismiss on January 9, 2024. Grievants filed a Response to Respondent’s Motion to Dismiss on or about January 18, 2024. Grievants are represented by Anthony Brunicardi,

General Counsel, West Virginia School Service Personnel. Respondent is represented by Jason S. Long, Esquire, Dinsmore & Shohl LLP. The Motion to Dismiss as well as the level one dismissal are in the proper posture for a ruling.

Synopsis

The limited record of this matter demonstrates that Grievants failed to file a grievance within fifteen days following the occurrence of the event upon which the grievance is based. Accordingly, the level one dismissal is upheld.

The following Findings of Fact are based on the lower-level record of this case.

Findings of Fact

1. Grievants are bus operators employed by the Jefferson County Board of Education.
2. Grievants take issue with the way Jefferson County Board of Education was filling bus runs. Grievants assert that they were being passed over in favor of new and less senior employees.
3. Grievants acknowledged at level one that they were aware the week before the start of the school year in August of 2023 of Respondent's handling of what they refer to as the "twelve unfilled bus runs."
4. The limited record supports a finding that Grievants were aware of the handling of the runs at issue before the start of the school year when they filed this grievance dated October 18, 2023.

Discussion

Effective June 9, 2023, a level one dismissal order is final and a grievance may not proceed on the merits but only on appeal of the dismissal order as follows:

A grievance must be filed within the time frames established in §6C-2-4 of this code. If the level one evaluator determines that the grievance was not timely filed, an order dismissing the grievance shall be issued. . . This decision may be appealed to level three, and an administrative law judge shall review the order. If the dismissal is upheld an order shall be issued and the grievance shall be removed from the grievance board's docket. If the dismissal is overturned an order shall be entered stating with particularity the facts and the law found to be in error in the order below. The grievance will be returned to level one for disposition. W. VA. CODE § 6C-2-3(c)(1).

In this case, the grievance was dismissed at level one for untimeliness. Mr. Long, on behalf of his client, Jefferson County Board of Education, renewed this defense in his Motion to Dismiss filed after the level one dismissal. The grievance process must be started within 15 days following the occurrence of the event upon which the grievance is based, or within 15 days of the most recent occurrence of a continuing practice. W. VA. CODE § 6C-2-4(a)(1); *Selfert v. Hancock County Bd. of Educ.*, Docket No. 02-15-079 (July 17, 2002). The time period for filing a grievance ordinarily begins to run when the employee is "unequivocally notified of the decision being challenged." *Harvey v. W. Va. Bureau of Empl. Programs*, Docket No. 96-BEP-484 (Mar. 6, 1998); *Whalen v. Mason County Bd. of Educ.*, Docket No. 97-26-234 (Feb. 27, 1998).

The limited record of this case demonstrates that the grievance was not filed within the fifteen-day statutory timeframe. Grievants acknowledged at level one that they were aware the week before the start of the school year in August of 2023 of Respondent's handling of what they refer to as the "twelve unfilled bus runs." The limited record supports a finding that Grievants were aware of the handling of the runs at issue before the start of the school year when they waited to file this grievance dated October 18, 2023. Pursuant to W. VA. CODE § 6C-2-3(c)(1) the level one dismissal order is upheld, and the grievance is **ORDERED** removed from the grievance board's docket.

Any party may appeal this Order to the Intermediate Court of Appeals.¹ Any such appeal must be filed within thirty (30) days of receipt of this Dismissal Order. 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: February 9, 2024

Ronald L. Reece
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 W. VA. 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.