

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**SAMARA LEE SWEARENGIN,
Grievant,**

v.

Docket No. 2024-0752-RalED

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

DECISION

Grievant, Samara Lee Swearengin, is employed by Respondent, Raleigh County Board of Education. On May 9, 2024, Grievant filed a level one grievance. Grievant stated:

Grievant bid on a cook position for summer school and was awarded the position. The next day, Grievant was called and informed that the position was being taken away because another cook had more seniority. The cook with more seniority had previously held the position, but failed to bid on the posting, not reaching out to the county until 2 weeks after the position had closed. Becaus [sic] the individual failed to bid on the job, they were not a “qualified applicant.” You cannot be considered a “qualified applicant” without having even been an applicant. WV Code Section 18A-4-8b.

Grievant seeks to be placed in the summer cook position that she was initially, properly awarded as the most senior “qualified applicant” to bid on the position.

The level one conference was held on May 28, 2024, and a decision was issued denying the grievance on May 31, 2024. Grievant appealed to level two on June 10, 2024. Mediation was held on November 13, 2024, but was unsuccessful. Then, Grievant appealed to level three on December 3, 2024. The level three hearing was held before Chief Administrative Law Judge Billie Thacker Catlett on February 24, 2025, at the Grievance Board’s Charleston office.¹ Grievant appeared in person and was represented

¹ The matter was reassigned for administrative reasons to the undersigned for decision.

by representative Cindy Shell and legal counsel Anthony Brunicardi, West Virginia School Service Personnel Association. Respondent appeared by Raleigh County Superintendent, Dr. Serena Starcher, and by counsel, George B. “Trey” Morrone III, Bowles Rice LLP. This matter became mature for decision on March 26, 2025, upon final receipt of the parties’ written Proposed Findings of Fact and Conclusions of Law.

Synopsis

Respondent employed eleven summer cooks in summer 2023, including Grievant. For summer 2024, Respondent posted five Cook III/Cafeteria Manager (“cook”) positions in four elementary schools. Grievant applied for the summer cook positions at all sites. Based on summer seniority, Respondent hired five of the previous summer cooks for summer 2024. Grievant was ranked tenth in summer seniority. Due to the reduction in force, no position was awarded to her. Grievant asserts that the senior cook hired for Ridgeview was not a “qualified applicant” and should not have been awarded the position because the senior cook had not bid on the position. Grievant does not challenge the validity of West Virginia Code § 18-5-39 (f) but challenges its application by Respondent. Grievant failed to prove by a preponderance of the evidence that she was entitled to the summer cook position at Ridgeview Elementary School. Respondent properly awarded the position to the more senior summer cook. 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, Samara Swarengin, is employed by Respondent as a cook during the regular school year at Ridgeview Elementary School in Raleigh County.
2. Grievant was one of eleven cooks employed by Respondent in summer 2023.
3. Due to a reduction in force, Respondent needed only five summer cook positions for 2024: two at Beckley Elementary and one each at Ridgeview Elementary, Fairdale Elementary, and Daniels Elementary.
4. Respondent posted the five positions on April 8, 2024, with an application deadline of April 15, 2024. Respondent provided the posting on the “job hotline” and to the schools for posting in the customary areas.
5. Grievant applied for each of the five summer school cook positions prior to the deadline.
6. Most of the cooks who held positions in summer 2023 submitted applications for the 2024 job postings. (Respondent’s Ex. 2a, 2b, 2c, 2d and 2e.)
7. On April 22, 2024, Ms. Baker called Grievant and advised that Grievant would fill the summer cook position at Ridgeview Elementary. However, Ms. Baker called the next day to advise Grievant that she would not fill the position.
8. The most senior cook, Sherry Hatfield, worked at Coal City Elementary during the previous summer; however, the reduction in force affected the position at Coal City. Ms. Hatfield did not bid on any posting or submit an application. Ms. Hatfield first expressed her desire to retain her summer cook position when she was contacted by

Child Nutrition Director Teresa Baker on April 23, 2024, over one week after the posting closed.

9. Teresa Baker did not first offer the summer cook positions to the most senior cooks from 2023.

10. Grievant emailed Human Resource Director, Amy Semanco, on April 23rd and 24th, to inquire why Ms. Hatfield was allowed to exercise her right to retain under West Virginia Code § 18-5-39 without first making application for any posted summer cook positions.

11. Grievant ranked tenth in seniority among the cooks who participated in the summer school nutrition program in 2023.

12. Ms. Baker normally first offers all summer positions to the previous summer cooks based upon their summer seniority status, regardless of application. (A. Semanco testimony.)

13. In order of their summer seniority, Respondent telephones all previous cooks regarding the right to retain their previous summer position for the upcoming summer.

14. Respondent makes no assumption regarding a prior cook's desire for summer employment based on whether an application is submitted. Each previous summer cook is called to determine their interest. (A. Semanco testimony.)

15. Respondent requires all prior cooks to refuse the summer cook positions before the consideration of an applicant who lacks summer seniority.

16. The five 2024 cook positions were filled by the five cooks of the previous summer with the most summer seniority. Joyce Carpenter was 2023 and 2024 summer

cook at Daniels Elementary. Lori Ann McFalls was 2023 and 2024 summer cook at Fairdale Elementary. Keith Wooten and Elizabeth Sargent were 2023 and 2024 summer cooks at Beckley Elementary.

17. Grievant's previous site at Ridgeview Elementary School was retained by Ms. Hatfield, the most senior summer cook on the list of previous summer cooks. Four other cooks also had greater seniority than Grievant.

18. As to the applicants who bid for the Ridgeview location specifically, Monica McClure also had more seniority than Grievant.

19. The names of all proposed summer cooks are recommended by Ms. Baker to Ms. Semanco, who provides those recommendations to Superintendent Starcher. Superintendent Starcher then presents those recommendations to the Board of Education (hereinafter "BOE") at the next meeting. If the BOE approves, formal offers are made to the employees.

20. Because all vacancies must be voted upon, all 2024 summer cook positions were officially filled on June 11, 2024, when the Board of Education approved the hiring of the five summer cooks recommended by Superintendent Starcher.

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 asserts she was entitled to the 2024 summer cook position at Ridgeview Elementary School because Ms. Hatfield was not a “qualified applicant” for the position. Grievant argues that the previous summer employee must take affirmative action, such as application or expression of desire, to exercise his or her right to retain a summer position. If that employee fails to take any action, Grievant asserts the previous summer employee then waives the right to retain, and the BOE must proceed with the applications received and award the positions in light of the appropriate seniority among the applicants. Essentially, Grievant argues that the BOE should not be required to contact each former summer cook for the upcoming summer term in the absence of an affirmative action.²

Respondent asserts that the BOE must post all vacancies pursuant to West Virginia Code § 18A-4-8b but must also proceed to contact each previous summer employee by summer seniority, without regard for whether an application was submitted in response to the job posting. Respondent gave all cooks who were employed for the 2023 summer school program the option to return for the 2024 summer school program in order of summer seniority. If the BOE is unable to employ enough cooks from those who held positions the prior summer, Respondent would then consider the applications from the additional applicants and hire using the competitive bidding process, pursuant to West Virginia Code § 18A-4-8b (2024). (Ms. Semanco testimony; S. Starcher testimony.)

² Respondent does not express concern for the effort required to ascertain whether the previous summer employee wishes to exercise their right to retain the summer position.

The procedure for awarding summer term employment positions is governed, in part, by West Virginia Code § 18-5-39(f) (2024), which holds that “[a]n employee who was employed in any service personnel job or position during the previous summer shall have the option of retaining the job or position if the job or position exists during any succeeding summer.” If the employee from the previous summer “is unavailable or if the position is newly created, the position shall be filled pursuant to section eight-b, article four, chapter eighteen-a of this code.” *Id.* However, if a county board reduces the number of employees in a particular summer program from the number employed in that position in the previous summer, “the reductions in force and priority in reemployment to that summer position shall be based upon the length of service time in the particular summer program or classification.” W. VA. CODE § 18-5-39(g) (2024).

West Virginia law requires county boards to “post and date notices of all job vacancies of existing or newly created positions in conspicuous places for all school service personnel to observe for at least five working days.” W. VA. CODE § 18A-4-8b(g) (2023). However, a county board of education is authorized to establish “a summer school program, which is to be separate and apart from the full school term as established by each county.” W. VA. CODE § 18-5-39(a) (2024).

Grievant contends that, pursuant to West Virginia Code § 18-5-39 (f), she should have received the position of summer cook at Ridgeview Elementary School, as she held the position at that site in summer 2023. The Grievance Board has interpreted West Virginia Code § 18-5-39(f) to mean that “any employee who accepts a summer assignment is entitled to the same assignment the following year if it exists.” *Cowan, et al., v. Ritchie County Bd. Of Educ.*, Docket No. 2010-1537-CONS (January 20, 2012)

(citing *Lemley v. Wood County Bd. of Educ.*, Docket No. 99-54-198 (Sept. 9, 1999)). However, “assignment” does not necessarily mean “location.” In the case of *Kennedy v. Wetzel County Bd. of Educ.*, Docket No. 2018-1209-WetED (April 9, 2019), Ms. Kennedy’s previous summer bus run was awarded to a more senior summer driver whose previous run was eliminated due to a reduction in force. The Board interpreted West Virginia Code § 18-5-39(g) to require employment of summer bus drivers based on summer seniority, if the number of drivers be reduced. “Each driver is entitled to be rehired into a summer bus position if their seniority allows, but not a particular summer position.” *Kennedy v. Wetzel County Bd. of Educ.*, Docket No. 2018-1209-WetED (April 9, 2019), citing *Cowan, et al. v. Ritchie County Bd of Educ.*, *supra*.

Thus, the Grievance Board made clear that, when determining whether a summer assignment is the same as the one held in a prior summer, the location of the assignment is *not* a key factor. Flexibility exists in the definition of “same assignment.” Even if the location and exact nature of the work are somewhat different, it is sufficient that there is consistency in the type of work being performed.³ *Id.*

Raleigh County operates one summer nutrition program with sites or assignments that vary from year to year. The job duties of the cook position for each location are

³ “By way of example, bus operators’ positions remain the same even though the routes change from summer to summer, school lunch programs at different schools are part of one overall summer lunch program, and a summer transportation program employing aides remains the same program even though the routes change from summer to summer. *Lilly v. Fayette County Bd. of Educ.*, Docket No. 96-10-481 (Sept. 15, 1997).” *Eisentrout v. Preston County Bd. of Educ.*, Docket No. 2010-0022-PreED (Apr. 16, 2010); *Radabaugh v. Monongalia County Bd. of Educ.*, Docket No. 2013-1996-MonED (Sept. 22, 2014); *Williams v. Kanawha County Bd. of Educ.*, Docket No. 0[1]-20-058 (May 10, 2001); *Costello v. Monongalia County Bd. of Educ.*, Docket No. 01-30-016 (June 21, 2001).

essentially the same. Respondent experienced a reduction in force regarding summer cook positions from eleven in 2023 to five summer cooks in 2024. Accordingly, Respondent handled the reduction in force as required by West Virginia Code § 18-5-39(g), which mandates that Respondent reemploy the reduced number of cooks based on summer seniority to each summer cook “position” or “assignment.” *Kennedy, supra*.

There is no dispute that Grievant was tenth in summer seniority. If ten cook positions had been available in summer 2024, Grievant certainly had the right to retain a summer cook position, though not necessarily the same site as summer 2023. However, only five summer cook positions existed; and because Grievant did not possess sufficient seniority to overcome the reduction in force, Respondent did not err in awarding the position at Ridgeview Elementary School to the most senior summer cook, Ms. Hatfield. See *Kennedy v. Wetzel County Bd. of Educ.*, 2018-1209-WetED (April 9, 2019); *Lilly v. Fayette County Bd. of Educ.*, Docket No. 96-10-481 (Sept. 15, 1997); *Lilly v. Fayette County Bd. of Educ.*, Docket No. 99-10-43[3] (Mar. 17, 2000); *Williams v. Kanawha County Bd. of Educ.*, Docket No. 0[1]-20-058 (May 10, 2001); *Costello v. Monongalia County Bd. of Educ.*, Docket No. 01-30-016 (June 21, 2001); *Eisentrout v. Preston County Bd. of Educ.*, Docket No. 2010-0022-PreED (April 16, 2010); *Cowan, et al. v. Ritchie County Bd. of Educ.*, Docket No. 2010-1537-CONS (Jan. 20, 2012).

Grievant further asserts that Ms. Hatfield was not a “qualified applicant” for any summer cook position for summer 2024. First, all parties agree that Ms. Hatfield held the most summer seniority. Second, there is no dispute that Ms. Hatfield did not apply for summer cook in response to the job postings. “This Board has previously noted that §18-5-39 is a narrowly drafted exception to the more general provision in §18A-4-8b requiring

competitive posting for the school service personnel positions.” *McCoy v. Wayne County Bd. of Educ.*, Docket No. 93-50- 475 (Mar. 1, 1994); *Lilly v. Fayette County Bd. Of Educ.*, Docket No. 96-10-481 (Sept. 15, 1997).

The statute must be construed as written. See *Keatley v. Mercer County Bd. of Educ.*, 200 W. Va. 487, 490 S.E.2d 306 (1997). Moreover, “[a] statute must be construed to give effect to all of its provisions, and not to diminish any of them.” *Kennedy, supra* (citing *W. Va. Human Rights Comm’n v. Garretson*, 468 S.E.2d 733, 738, 196 W. Va. 118, 123 (1996)). West Virginia Code § 18-5-39(f) states very clearly that an employee who held the summer position in the preceding year “shall have the option of retaining the job or position if the job or position exists during any succeeding summer.” See *Cecil v. Kanawha County Bd. of Educ.*, Docket No. 97-20-366 (Oct. 31, 1997). Then, the statute explicitly provides for posting according to West Virginia Code § 18A-4-8b only when “the employee is unavailable or . . . the position is newly created.” It is important to note that there is no other provision for posting of summer positions. “Obviously, this legislation provides a specific manner for filling summer positions upon which employees and employers can rely in making their employment decisions. Additionally, the process identified in W. VA. CODE § 18-5-39 is similar to the treatment afforded employees during the regular school year; allowing them to remain in the same positions they filled the prior summer.” *McCoy v. Wayne County Bd. of Educ.*, Docket No. 93-50- 475 (Mar. 1, 1994); *Lilly v. Fayette County Bd. Of Educ.*, 96-10-481 (Sept. 15, 1997).

Service employees who worked during the prior summer in a position that still exists in the coming summer have the option to retain that position. The law essentially provides the “right of first refusal” to the summer service employee. If that same job exists

in any succeeding summer, the service employee may hold that summer position until he or she declines to accept the position. *Cecil, supra*; *Lilly v. Fayette County Bd. of Educ.*, Docket No. 96-10-481 (Sept. 15, 1997). However, the statute does not specify how the prior employee must be notified that a summer position they previously held is available. *Cecil, supra*.

It is only when a summer service position is newly created or the employee who served in the position last summer is unavailable to work the following summer that such positions must be posted and filled pursuant to West Virginia Code § 18A-4-8b.⁴ A previous summer cook cannot be deemed “unavailable” unless an inquiry is made directly to the employee who literally “retains” the position held the prior summer. Unavailability is the key prerequisite for filling a summer position with a new service employee.

In *Cecil v. Kanawha County Bd. of Educ.*, Docket No. 97-20-366 (Oct. 31, 1997), the Grievance Board deemed that **two** postings of the summer aide position were insufficient and provided merely constructive notice to the previous summer aide, whose application was submitted one week after the second posting closed. The posting of the position was found neither necessary nor sufficient to determine whether the previous summer aide was unavailable or wished to exercise her right to retain her previous summer position. Because summer seniority is the first consideration in filling vacancies for summer service positions, the existence of an application during the posting period only becomes relevant when the prior summer employee is unavailable or it is a newly-created position. In that matter, the grievant was available and relayed her desire to retain

⁴ At that point, regular school year seniority applies to the newly created or vacated summer position that is posted pursuant to W. VA. CODE 18A-4-8b. *Nelson, supra*.

prior to another being hired; therefore, the position was retained by the grievant.⁵ *Cecil, supra*. The late receipt of the grievant's application was irrelevant.

Likewise, Ms. Hatfield's lack of application is irrelevant. Ms. Hatfield's interest in the summer 2024 position was confirmed when Teresa Baker inquired. Due to the retention option belonging to the prior summer service personnel, unavailability is the only reason to resort to posting and hiring provision of West Virginia Code § 18A-4-8b. *Cecil, supra*. Thus, Respondent correctly contacted Ms. Hatfield despite the absence of an application or affirmative expression of interest. Respondent would have been in error if another service employee was hired for the summer position while Ms. Hatfield was not "unavailable." *Id.* To sum up, previous summer service personnel must be directly, not constructively, advised of the upcoming summer employment in the same job or position in which they served the prior summer and provided with a meaningful opportunity to accept or decline, prior to any job posting.⁶

The grievance in this matter was prompted by Respondent's posting of the summer position prior to confirming the unavailability of the previous summer employees. In fact, the posting of the summer cook positions was not required at all. Because there is no requirement that the prior summer employee make an application, Ms. Hatfield's failure to apply for the posting does not disqualify her. The law gives Ms. Hatfield the option to retain the position in the following year. No other factors matter until the availability of the

⁵ In *Cecil*, the BOE disregarded Cecil's late application and erroneously hired another individual to fill the position even though Cecil exercised her right to retain prior to the award.

⁶See *Lilly, supra* note 3. The Board noted that the summer positions did not have to be posted until the previous summer employees informed the Respondent that they did not want the positions.

prior service employee is confirmed. For all of the above reasons, the undersigned concludes that Grievant did not prove Respondent erred in awarding the summer cook position to Ms. Hatfield.

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. The procedure for awarding summer term employment positions is governed, in part, by W. VA. CODE § 18-5-39(f), which holds that “[a]n employee who was employed in any service personnel job or position during the previous summer shall have the option of retaining the job or position if the job or position exists during any succeeding summer.” W. VA. CODE § 18-5-39(f) (2024). If the employee from the previous summer “is unavailable or if the position is newly created, the position shall be filled pursuant to section eight-b, article four, chapter eighteen-a of this code.” *Id.* However, if a county board reduces the number of employees in a particular summer program from the number employed in that position in the previous summer, “the reductions in force and priority in reemployment to that summer position shall be based upon the length of service time in the particular summer program or classification.” W. VA. CODE § 18-5-39(g) (2024).

3. West Virginia Code § 18A-4-8b(g) requires county boards to “post and date notices of all job vacancies of existing or newly created positions in conspicuous places for all school service personnel to observe for at least five working days.” W. VA. CODE § 18A-4-8b(g) (2023). However, a county board of education is authorized to establish “a summer school program, which is to be separate and apart from the full school term as established by each county.” W. VA. CODE § 18-5-39(a) (2023).

4. The Grievance Board has interpreted paragraph (f) that “any employee who accepts a summer assignment is entitled to the same assignment the following year if it exists.” W. VA. CODE § 18-5-39 (2024); *Cowan, et al., v. Ritchie County Bd. Of Educ.*, Docket No. 2010-1537-CONS (January 20, 2012) (citing *Lemley v. Wood County Bd. of Educ.*, Docket No. 99-54-198 (Sept. 9, 1999)).

5. The Grievance Board has made clear that, when determining whether a summer assignment is the same as the one held in a prior summer, the location of the assignment is *not* a key factor. See *Kennedy v. Wetzel County Bd. of Educ.*, Docket No. 2018-1209-WetED (April 9, 2019). Even if the location and exact nature of the work are somewhat different, it is sufficient that there is consistency in the type of work being performed. *Id.*

6. Because Grievant did not possess sufficient seniority to overcome the reduction in force, Respondent did not err in awarding the position at Ridgeview Elementary School to the most senior summer cook, Ms. Hatfield. See *Kennedy v. Wetzel County Bd. of Educ.*, 2018-1209-WetED (April 9, 2019); *Lilly v. Fayette County Bd. of Educ.*, Docket No. 96-10-481 (Sept. 15, 1997); *Lilly v. Fayette County Bd. of Educ.*, Docket No. 99-10-43[3] (Mar. 17, 2000); *Williams v. Kanawha County Bd. of Educ.*,

Docket No. 0[1]-20-058 (May 10, 2001); *Costello v. Monongalia County Bd. of Educ.*, Docket No. 01-30-016 (June 21, 2001); *Eisentrout v. Preston County Bd. of Educ.*, Docket No. 2010-0022-PreED (April 16, 2010); *Cowan, et al. v. Ritchie County Bd. of Educ.*, Docket No. 2010-1537-CONS (Jan. 20, 2012).

7. “This Board has previously noted that §18-5-39 is a narrowly drafted exception to the more general provision in §18A-4-8b requiring competitive posting for the school service personnel positions.” *McCoy v. Wayne County Bd. of Educ.*, Docket No. 93-50- 475 (Mar. 1, 1994); *Lilly v. Fayette County Bd. Of Educ.*, Docket No. 96-10-481 (Sept. 15, 1997).

8. The statute must be construed as written. *See Keatley v. Mercer County Bd. of Educ.*, 200 W. Va. 487, 490 S.E.2d 306 (1997). Moreover, “[a] statute must be construed to give effect to all of its provisions, and not to diminish any of them.” *Kennedy, supra*, citing *West Virginia Human Rights Comm’n v. Garretson*, 468 S.E.2d 733, 738, 196 W. Va. 118, 123,(1996). West Virginia Code § 18-5-39 (f) states very clearly that an employee who held the summer position in the preceding year “shall have the option of retaining the job or position if the job or position exists during any succeeding summer.” *See Cecil v. Kanawha County Bd. of Educ.*, Docket No. 97-20-366 (Oct. 31, 1997). Then, the statute explicitly provides for posting according to W. Va. Code § 18A-4-8b only when “the employee is unavailable or . . . the position is newly created.”

9. If that same job exists in any succeeding summer, the service employee may hold that summer position until he or she declines to accept the position. *Cecil, supra*; see *Lilly v. Fayette County Bd. of Educ.*, Docket No. 96-10-481 (Sept. 15, 1997).

10. A previous summer cook cannot be deemed “unavailable” unless an inquiry is made directly to the employee who literally “retains” the position held the prior summer. Unavailability is the key prerequisite for filling a summer position with a new service employee.

11. Because summer seniority is the first consideration in filling vacancies for summer service positions, the existence of an application during the posting period only becomes relevant when the prior summer employee is unavailable or it is a newly-created position. *Cecil v. Kanawha County Bd. of Educ.*, Docket No. 97-20-366 (Oct. 31, 1997).

12. Previous summer service personnel must be directly, not constructively, advised of the upcoming summer employment in the same job or position in which they served the prior summer and provided with a meaningful opportunity to accept or decline prior to any job posting.

13. The summer cook positions were not newly created positions. Further, Ms. Hatfield was not unavailable. She was available and desired to fill the summer 2024 cook position retained from summer 2023.

14. Grievant failed to prove that the decision not to award the cook position at Ridgeview Elementary violated any rule, law or policy or was arbitrary and capricious.

15. Grievant failed to prove by a preponderance of the evidence that she was entitled to a summer cook position in 2024.

Accordingly, the grievance is DENIED.

“The decision of the administrative law judge is final upon the parties and is enforceable in the circuit court situated in the judicial district in which the grievant is employed.” W. VA. CODE § 6C-2-5(a) (2024). “An appeal of the decision of the

administrative law judge shall be to the Intermediate Court of Appeals in accordance with §51-11-4(b)(4) of this code and the Rules of Appellate Procedure.” W. VA. CODE § 6C-2-5(b) (2024). Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such an appeal and should not be named as a party to the appeal. However, the appealing party must serve a copy of the petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b) (2024).

DATE: May 7, 2025

Kimberly D. Bentley
Administrative Law Judge