THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

KENNETH ISAAC TERRY
Grievant,

v. **Docket No. 2026-0015-DoHS**

DEPARTMENT OF HUMAN SERVICES/
BUREAU FOR SOCIAL SERVICES,
Respondent.

DECISION

Grievant is employed by Respondent, Department of Human Services, Bureau for Social Services, as a Youth Services Supervisor ("YSS"). On July 7, 2025, Grievant filed this grievance against Respondent, stating, "Pay compression not being granted, questions about the denial never answered both times that it was submitted. Have staff making as much or more that supervisors. Feel like we were sold snake oil in order to switch policys with no intentions on paying it out. 6.5 in OSA policy. When asked why I was taken out of the pay system for retention raises also no response, have dates and emails for all above mentioned. See attached." For relief, Grievant "Requested 20% increase in order to stay above staffs pay who will be getting the retention raises at 2, 4, 6, and 8 years of service. I will not be in line for any more raises because of my tenure and this my only safeguard of fair compensation."

Following the July 25, 2025, level one hearing, a level one decision was rendered on August 18, 2025, denying the grievance. Grievant appealed to level two on August 26, 2025.[1] Following unsuccessful mediation, Grievant appealed to level three of the

[1] Grievant's level two grievance form stated, "Denied a raise that is in policy. See attached. Denied twice based on budget constraints, now because of the use of "may". Was there ever budget constraints? Was stated on last hearing these raises have been given before so if no budget constraint why not now?" For relief, Grievant stated, "be

grievance process on November 17, 2025.[2] A level three hearing was held on May 8, 2026, before the undersigned at the Grievance Board's Charleston, West Virginia office. Grievant appeared and was self-represented. Respondent appeared by Amanda Queen and was represented by counsel, Heather L. Olcott, Assistant Attorney General. This matter became mature for decision on June 3, 2026, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant is employed as a Youth Services Supervisor ("YSS") by Respondent. Grievant protests Respondent's decision not to provide the salary increases for pay compression used to entice Grievant's switch to Office of Shared Administration. Respondent asserts the pay increases that Grievant seeks are simply discretionary and are not required. Grievant has failed to prove by a preponderance of the evidence that he is entitled to a pay increase, or that Respondent has violated any law, rule, or policy or acted in an arbitrary and capricious manner by failing to grant the same. 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 has been in the position of Youth Services Supervisor since July 2023.

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included in with the rest of staff who receive retention raises based on years of service or 20% increase above current staff. 20% will keep me above the pay compression mark for about 2 years before staff get next set of raises."

[2] The level three grievance form stated, "denied raise that is stated in policy, see attached." Grievant seeks "back pay, increase in salary, etc."

2. On December 19, 2023, Grievant opted in to the Office of Shared Administration ("OSA") Classification system and received an annual salary increase of approximately $4,400 based on the OSA salary schedule. G. Ex. 5.

3. Grievant called no witnesses during the hearing but testified on his own behalf. Grievant testified that he felt pressured to opt in to the OSA system after receiving an email on January 9, 2024; however, this claim is not believable because Grievant opted into the OSA system three weeks prior, on December 19, 2023. (Grievant's Ex. 1.) Additionally, it should be noted that Grievant signed the opt-in form one day after the option became available to employees. G. Ex. 4, 5.

4. The "system comparison chart" lists "competitive pay schedules with recurring update" and "correction of pay compression" as a feature of OSA. No further evidence addressed the method, if any, which was proposed for the correction of pay compression. G. Ex. 6.

On May 29, 2025, Grievant requested a 20% pay compression salary increase because some of his subordinates earn within 10% of his current salary. In addition, his subordinates are projected to receive biannual retention pay increases.[3] G. Ex. 8.

5. On June 11, 2025, Commissioner Lorie Bragg denied his request for a discretionary salary increase due to budget constraints. G. Ex. 9.

6. Grievant grieved the denial of his discretionary pay request. Grievant claimed that employees were promised pay compression raises during the town hall

[3] Retention incentives are also "discretionary pay increases," subject to periodic review and changes in budgetary circumstances.

meetings presented by DoHS, prior to employees' option to enter the OSA system. Grievant testimony.

7. Grievant did not present evidence regarding any individual who was in attendance at the town hall meeting to support this allegation.

8. Amanda Queen, Human Resources Director, did not attend the meeting which Grievant attended. However, she attended several town hall meetings and heard no promises of compression raises at any of the meetings she attended.

9. OSA Compensation Administration Policy OSA-HRP2 Section 6.0 addresses discretionary pay raises. Section 6.5.1 explains that "the pay of supervisors may be increased when the pay of subordinates falls within 10% of the supervisor's pay." Additionally, Section 6.5.2 states that "supervisors may receive up to 20% above their current salary." R. Ex. 2.

10. DoHS was not presenting any requests to OSA for discretionary pay raises due to budgetary constraints. There were not sufficient funds available to support discretionary raises. G. Ex. 8; Queen testimony.

11. Grievant had also requested a discretionary pay raise prior to the June 2025 request, which was also denied; however, he did not grieve that denied request and will not be addressed in this grievance.

12. Director Queen presented a table that she prepared to track employees' requested pay increases, which reflects that discretionary pay increases for professional skills development have been placed on hold for the time being and all other discretionary pay increases have been denied. R. Ex. 1.

13. Director Queen is not privy to specific budget details, but it was her understanding that if budget constraints are lifted in the future, discretionary raises may be reconsidered. Queen testimony.

14. By letter dated June 11, 2025, Commissioner Lorie Bragg advised Grievant that the discretionary pay increase was being denied based on budget constraints. G. Ex. 8.

15. Pursuant to OSA Compensation Administration Policy 1.1, Respondent has no obligation to pursue a discretionary increase and employees are not entitled to receive a discretionary increase. Further, [s]uch increases are subject to authorization or limitation by the Governor's Office, Cabinet Secretary, appropriate authority, and/or the OSA." R. Ex. 2.

16. OSA Compensation Administration Policy 6.1.4 states, "Funding must be available." R. Ex. 2.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his 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 he is entitled to a discretionary pay increase for pay compression based upon pay inequity and Respondent's alleged promise that OSA will ensure supervisors maintain a higher pay scale than their subordinates. Respondent asserts their actions were proper and that Grievant failed to prove any violation of law, rule, or policy.

An agency's interpretation of the provisions of its own internal policy is entitled to deference by this Grievance Board, unless the interpretation is contrary to the plain meaning of the language, or is inherently unreasonable. *See Dyer v. Lincoln County Bd. of Educ.*, Docket No. 95-22-494 (June 28, 1996). OSA Compensation Administration Policy OSA-HRP2 Section 6.0 states that supervisors "may" receive a pay increase and the amount "may" be up to 20%. In addition, the policy is clear that an appointing authority "must" have the funding available to increase employee pay. Respondent's interpretation of the policy is neither contrary to the plain meaning of these statements nor inherently unreasonable.

Salary inequity pay increases are discretionary pay increases subject to Respondent's OSA Compensation Administration Policy. "[T]he granting of internal equity pay increases is a decision that is within the discretion of the employer to make, and such increases are not mandatory or obligatory on the part of Respondent." *Harris v. Dept. of Transp.*, Docket No. 2008-1594-DOT (Dec. 15, 2008); *Fallon v. Div. of Corr. and Rehab.*, Docket No. 2021-2469-MAPS (May 16, 2022). The Grievance Board has stated that "[a]n agency's decision not to recommend a discretionary pay increase generally is not grievable." *Lucas v. Dep't Health and Human Res.*, Docket No. 07-HHR-141 (May 14, 2008). *See also Morgan v. Dep't Health and Human Res.*, Docket No. 07-HHR-131 (June 5, 2008). "However, discretionary decisions must be made in a manner that is reasonable and not arbitrary and capricious. *See* [*Mihaliak*] *v. Div. of Rehab. Serv.*, Docket No. 98-RS-126 (Aug. 3, 1998)." *Compton v. Div. of Juvenile Serv.*, Docket No.

2018-0756-MAPS (October 24, 2018) (citing *Moore v. Dep't of Envtl. Prot.*, Docket No. 2014-0046-DEP (May 9, 2014)). 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).

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*., *supra*; *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).

Even if there was unclear communication by the speaker at a town hall meeting regarding pay compression, Grievant presented nothing to corroborate the allegation. Further, he failed to establish Respondent’s obligation to grant the pay increase at all. Respondent has denied all discretionary pay increases. Grievant presented no evidence that Respondent was motivated by any improper purpose or consideration.

Grievant failed to prove by a preponderance of the evidence that he is entitled to a discretionary pay increase. Respondent’s denial of the discretionary pay increase cannot be deemed arbitrary and capricious and did not violate any rule, policy, or law. Therefore, the grievance must be denied.

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 his 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. An agency’s interpretation of the provisions of its own internal policy is entitled to deference by this Grievance Board, unless the interpretation is contrary to the

plain meaning of the language, or is inherently unreasonable. *See Dyer v. Lincoln County Bd. of Educ.*, Docket No. 95-22-494 (June 28, 1996).

3. "[T]he granting of internal equity pay increases is a decision that is within the discretion of the employer to make, and such increases are not mandatory or obligatory on the part of Respondent." *Harris v. Dept. of Transp.*, Docket No. 2008-1594-DOT (Dec. 15, 2008); *Fallon v. Div. of Corr. and Rehab.*, Docket No. 2021-2469-MAPS (May 16, 2022). The Grievance Board has stated that "[a]n agency's decision not to recommend a discretionary pay increase generally is not grievable." *Lucas v. Dep't Health and Human Res.*, Docket No. 07-HHR-141 (May 14, 2008). *See also Morgan v. Dep't Health and Human Res.*, Docket No. 07-HHR-131 (June 5, 2008). "However, discretionary decisions must be made in a manner that is reasonable and not arbitrary and capricious. *See* [*Mihaliak*] *v. Div. of Rehab. Serv.*, Docket No. 98-RS-126 (Aug. 3, 1998)." *Compton v. Div. of Juvenile Serv.*, Docket No. 2018-0756-MAPS (October 24, 2018) (citing *Moore v. Dep't of Envtl. Prot.*, Docket No. 2014-0046-DEP (May 9, 2014)).

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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).

6. "'[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*., *supra*; *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).

7. Grievant failed to prove that Respondent's decision not to approve the discretionary pay increase violated any rule, law or policy or was arbitrary and capricious.

8. Grievant failed to prove by a preponderance of the evidence that he is entitled to a discretionary pay increase.

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: July 24, 2026

Kimberly D. Bentley,
Administrative Law Judge