



**Members**  
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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.  
Governor

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THOMAS A. BRAUN

v.

WVU HOSPITALS, INC.

GRIEVANCE NO. 36-86-043

DECISION

This Hearing Examiner having reviewed this appeal to level four as presented by the grievant's representative, makes the following finding of facts:

1. That the grievant, Thomas A. Braun, R.N., was employed as a staff nurse II in the pediatrics unit of WVU Hospitals, Inc.
2. That in May, 1985, Braun's employment as Staff Nurse II was terminated.
3. That on June 14, 1985, Braun filed a grievance at level one under the West Virginia Board of Regents Policy Bulletin No. 52, "Classified Employee Grievance Procedure".
4. That Braun charged his termination was unwarranted and unfair.
5. That Braun pursued his grievance to completion under Policy Bulletin No. 52.

6. That Braun did not receive an evidentiary hearing at any level.

7. That on October 14, 1985, Braun filed a grievance with the Education Employees Grievance Board stating that multiple violations had occurred during the processing of his grievance filed under Policy Bulletin 52.

8. That Braun requests that due to these alleged violations that he be reinstated to his former position.

9. That this second grievance was denied at levels one and two. The denial at level two being based on grievant's untimely filing.

10. That the file indicates no appeal was made to level three in this matter.

11. That grievant's representative filed an appeal to level four on December 4, 1985.

12. That Braun is clearly covered by the grievance procedure administered by the Education Employees Grievance Board as set forth in West Virginia Code 18-29-1.

13. That employees of the Board of Regents or of state institutions of higher learning have the option of filing grievances under W.Va. Code, 18-29-1 or in accordance with any Board of Regents policies regarding said employee.

14. That Braun exhausted his administrative remedy under Policy Bulletin No. 52.

15. That the grievance filed with this Board is not the wrongful dismissal grievance filed previously; however, it does arise out of the same incident and the grievant requests the same relief.

#### CONCLUSIONS OF LAW

This is not a grievance stating that an employee was improperly dismissed, but rather stating that the grievance procedure under which he sought an administrative remedy was incorrectly applied. The grievant is asking this Board to review the policy and procedure of the Board of Regents grievance policy, to find the alleged violations/ misapplications and to reinstate him as Staff Nurse II.

To consider this grievance as presented would be to act outside the scope of authority granted to this Board. This decision is based on W.Va. Code, 18-29-1 et. seq. which states that Braun would have a choice of forum. While this Board did not exist at the time of his dismissal, a grievance procedure was available and Braun did process his grievance to completion under that policy. Although the grievance filed with this Board is technically original, it is so related to the first grievance it is apparent the grievant is seeking a second administrative remedy for his dismissal.

W.Va. Code, 18-29-1 clearly states that certain employees such as Mr. Braun have a choice of agencies to which they may file a grievance but does not allow any grievant to choose both.

Second, this Board does not have the power or authority to review actions taken under another policy.

Braun has exhausted his administrative remedy in this matter and it would be improper for this Board to become involved at this time. To imply any such power would be in direct contravention of statutory rules of construction. As this grievance requests the Board to act outside its authority, the request must be denied.

Finally, it should be noted that the procedures and time limitations to be followed in the processing of a grievance are set forth in W.Va. Code, 18-29-4. This grievance was dismissed at level two as being untimely filed. That decision was issued November 15, 1985. Appeal was not made to level four until December 4, 1985, making this application also untimely.

For all the reasons discussed above, this grievance is denied. Either party may appeal this decision to the Circuit Court of Kanawha County or Monongalia County within thirty (30) days of receipt of this decision. Please notify this office of your intent to appeal in order that the record may be prepared and transmitted to the Circuit Court.

Sue Keller

SUE KELLER  
Hearing Examiner

Dated: February 21, 1986