

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**JASON WOMACK and CHRISTOPHER MEANS,**

**Grievants,**

**v.**

**Docket No. 2016-1577-CONS**

**DIVISION OF HIGHWAYS,**

**Respondent.**

**DECISION**

Grievants, Jason Womack and Christopher Means, filed level one grievances against their employer, Respondent, Division of Highways ("DOH"). Grievant Womack's statement of grievance was dated April 1, 2016, and stated as follows: "[d]iscrimination due to that I'm in another crew for backhoe position and that I'm Barbara Englehardt's son. I have the most seniority and past work experience."<sup>1</sup> As relief sought, Grievant Womack seeks the following: "[b]ackhoe position and a chance to go to [B]uckhannon, so can move to TWIII." Grievant Means' statement of grievance was dated April 18, 2016, and stated as follows: "[n]ot selected for backhoe position." As relief sought, Grievant Means requested "[t]o be made whole in every way including selection for backhoe."<sup>2</sup> At level one, the two grievances were consolidated and given the Docket Number 2016-1577-CONS.

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<sup>1</sup> Grievants do not address the claim of discrimination in their proposed Findings of Fact and Conclusions of Law. As such, the undersigned deems this claim abandoned, and the same will not be addressed further herein.

<sup>2</sup> Grievants clarified that they were not alleging that they had not been selected for a backhoe job; they had not been selected to go to the backhoe training that is held in Buckhannon, West Virginia. There was no backhoe position for which they applied and were not selected. This grievance concerns only that they were not selected to attend the special training.

A level one conference was conducted on May 11, 2016. The consolidated grievance was denied by decision dated June 2, 2016. Grievants appealed to level two on June 5, 2016. A level two mediation was conducted on August 12, 2016. Grievants perfected their appeal to level three of the grievance process on August 8, 2016. A level three hearing was conducted by the undersigned administrative law judge on November 2, 2016, at the Raleigh County Commission on Aging in Beckley, West Virginia. Grievants were represented by Gordon Simmons, UE Local 170, West Virginia Public Workers Union. It is noted that Grievant Means appeared in person at the level three hearing. Grievant Womack did not appear in person, but his representative indicated that he had Grievant Womack's authority to proceed in his absence. Respondent was represented by counsel, Jessica R. Church, DOH Legal Division. This matter became mature for decision on December 9, 2016, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law.

### **Synopsis**

Grievants signed up to be considered for selection to attend backhoe training at the Respondent's Equipment Operators Training Academy. Through such trainings employees receive certifications that help them to advance through the tier system resulting in higher pay, and qualify them for temporary upgrades in pay when operating the equipment. Grievants were not selected for the training despite their years of experience and time with the agency. Respondent selected another employee who had less work experience and only one year of service with DOH. Grievants argue that Respondent failed to follow its policy for selecting employees for these trainings, and that its decision was arbitrary and capricious. Respondent denies Grievants' claims, and

asserts that it followed its policy and its selection decision was proper. Grievants proved by a preponderance of the evidence that Respondent failed to follow its policy for selecting employees for the training, and that its decision was arbitrary and capricious. Therefore, the grievance is GRANTED.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

### **Findings of Fact**

1. Grievants Womack and Means are employed by Respondent in the classification of Transportation Worker 2, in Respondent's District 1 in Kanawha County, West Virginia. Both Grievants have been employed by Respondent for approximately five years.

2. Kenny Hamrick was employed by Respondent as a Transportation Supervisor, and served as Grievants' direct supervisor. Mr. Hamrick is responsible for selecting employees under his supervision for Respondent's equipment operator's training academy. One of Mr. Hamrick's responsibilities was to select employees to recommend to attend the equipment training offered in Buckhannon, West Virginia. Mr. Hamrick retired sometime before the level three hearing in this matter.

3. Aaron Gillispie is employed by Respondent as District 1 Engineer. Mr. Gillispie received the recommendations made by Mr. Hamrick, and if he concurred with the same, he would forward the recommendation to the Buckhannon equipment division so that the employee recommended could be scheduled for training.

4. Attending a training at the Equipment Operators Training Academy and receiving certifications enables employees to advance to higher pay tiers. Also,

employees selected for these trainings receive pay upgrades for the operation of equipment during and after training.

5. The West Virginia DOH Administrative Operating Procedure, Section IV, Chapter 9, "Equipment Operators Training Academy," pertains to the selection of employees for training in Buckhannon, West Virginia.<sup>3</sup>

6. The West Virginia DOH Administrative Operating Procedure, Section IV, Chapter 9, "Equipment Operators Training Academy," Section III B "Applying for Basic and Pre-Certification Equipment Operator Courses," states, in part, as follows:

1. When there is a need for additional employees to operate equipment requiring certification and consistent with the classifications of Transportation Worker II or III, the organization supervisor will:
  - a. post a notice to that effect on the organization's bulletin board for ten working days; and
  - b. ensure that employees are informed of the opportunity for training and that they are given the opportunity to tell him or her of their interest.
2. Qualified and interested employees will advise the organization supervisor of their interest within ten working days of the posting.
3. After ten working days from posting the notice, the organization supervisor will:
  - a. consider all interested employees based on their work experience, general abilities, valid CDL and work history including the amount of time employed with the agency;
  - b. make a list of his or her choices based upon the preceding criteria; and

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<sup>3</sup> See, Respondent's Exhibit 1.

- c. send the list of choices, along with the names of all other interested employees, to the District Engineer or Division Director.
- 4. The District Engineer or Division Director will review the supervisor's choices and the names of other interested employees and will:
  - a. decide which of the employees are to be trained; and
  - b. provide an approved list to the organization supervisor and the Training Coordinator. No employees will be notified that they have been selected for training until approved by the District Engineer or Division Director. . . .<sup>4</sup>

7. On March 18, 2016, a sign-up sheet for backhoe training with the Equipment Operator Training Academy in Buckhannon, West Virginia, was posted in District 1. The posting listed the "date up" as March 18, 2016, and the "date down" as April 1, 2016. This sign-up sheet was signed by Kenny Hamrick as Supervisor. In addition to requiring the employees' signatures, the sign-up sheet requested the following information from the employees: last four digits of social security number; organization number; job classification; valid CDL (yes or no); DOH service years/months; and, experience on equipment requesting training years/months.<sup>5</sup> It is noted that Grievant Means testified that this was the second sign-up sheet posted for this training. The first one was posted, and he signed it, but it was taken down for an unknown reason, and a new sheet was posted on March 18, 2016. However, no evidence other than Grievant Means' testimony was presented on this issue.

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<sup>4</sup> See, Respondent's Exhibit 1.

<sup>5</sup> See, Respondent's Exhibit 2, sign-up sheet.

8. Ten employees, including Grievants, signed the March 18, 2016, sign-up sheet to be considered for backhoe training at the Equipment Operator Training Academy. There was only one position for backhoe training available.

9. Grievant Means and Grievant Womack signed-up to be considered for the backhoe training on the sign-up sheet posted on March 18, 2016. In the “DOH Service Years/Months” column, Grievants Means and Womack both wrote 5 years. In the “Experience on Equipment Requesting Training Years/Months” column, Grievant Womack wrote 11 years, and Grievant Means wrote “2 yrs with State.”<sup>6</sup>

10. Colton Asbury was one of the ten employees who signed up to be considered for the backhoe training. Mr. Asbury indicated on the sign-up sheet that he had one year of service at DOH. In the “Experience on Equipment Requesting Training Years/Months” column, Mr. Asbury listed the following: “1 year DOH & Farm use & Coal miner.”<sup>7</sup>

11. Gary Lacy was one of the ten employees who signed up to be considered for the backhoe training. In the “Experience on Equipment Requesting Training Years/Months” column Mr. Lacy listed “3 yrs.” However, Mr. Lacy did not give a clear answer in the column “DOH Service Years/Months.” It appears that Mr. Lacy had written in a number, but marked it out.<sup>8</sup> Therefore, it is unknown how many years or months of DOH service Mr. Lacy had accrued.

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<sup>6</sup> See, Respondent’s Exhibit 2, sign-up sheet.

<sup>7</sup> See, Respondent’s Exhibit 2, sign-up sheet.

<sup>8</sup> See, Respondent’s Exhibit 2, sign-up sheet.

12. Kenny Hamrick recommended employee Colton Asbury to Aaron Gillispie to be selected to attend the backhoe training. Mr. Gillispie approved Mr. Asbury, making Mr. Asbury the successful candidate for the training.

13. Aaron Gillispie made the decision as to which employee would be approved to attend the backhoe training. Mr. Gillispie received Mr. Hamrick's recommendation of Mr. Asbury, along with the sign-up sheet, employee performance appraisals, AR-13 accident forms, documentation of disciplinary actions, and leave balances for the ten employees. In addition to the factors listed in The West Virginia DOH Administrative Operating Procedure, Section IV, Chapter 9, "Equipment Operators Training Academy," Mr. Gillispie considered the employees' disciplinary histories, accrued leave balances, and employee performance appraisals. Mr. Gillispie did not consider the employees' seniority, stating that such would be used as a tiebreaker when all other things were equal.<sup>9</sup>

14. Aaron Gillispie did not score or rank the employees who were seeking to be selected for the backhoe training. However, Mr. Gillispie testified that he listed the candidates and the factors considered on a "master list" that he retained. Such was not introduced into evidence.

15. In evaluating the employees seeking selection for the backhoe training, Aaron Gillispie placed a significant amount of weight on the employees' disciplinary history and accrued leave balances. Mr. Gillispie asserted that such was part of the employees' "work history" and/or "general abilities."<sup>10</sup> As Grievant Womack had past

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<sup>9</sup> See, testimony of Aaron Gillispie.

<sup>10</sup> See, testimony of Aaron Gillispie.

disciplinary actions in his record, Mr. Gillispie did not chose him for the backhoe training. Mr. Gillispie believed that Grievant Means, who had been employed for five years, and Mr. Asbury, an employee for one year, had about the same accrued leave balance. Mr. Gillispie counted this against Grievant Means as he believed his leave accrual balance should be higher.<sup>11</sup>

16. Aaron Gillispie did not consider Grievant Means' work history and experience at DOH's Chelyan garage, where he worked for two years, or at Whiteoak Transport in the private sector, when making the selection for the backhoe training.

17. Ultimately, Mr. Asbury was removed from consideration by management, and he was not sent for the training. Thereafter, Kenny Hamrick recommended his second choice, Gary Lacy, to Aaron Gillispie for approval to attend the backhoe training. Mr. Gillispie approved Mr. Hamrick's recommendation of Gary Lacy, and Mr. Lacy was sent for the backhoe training.

18. Gary Lacy had no disciplinary issues in his record. There was no evidence presented regarding his leave balances.

19. Kenny Hamrick did not testify at the level three hearing in this matter.

### **Discussion**

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). See also *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19,

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<sup>11</sup> See, testimony of Aaron Gillispie.



1988). "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. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievants argue that Respondent's decision in selecting who would attend the Equipment Operator Training Academy in April 2016 was improper and arbitrary and capricious. Respondent asserts that it followed its policy for selecting employees to attend the training, and that its decision to select Colton Asbury for the training was proper.

In this matter, Respondent points to the West Virginia DOH Administrative Operating Procedure, Section IV, Chapter 9, "Equipment Operators Training Academy," as controlling. Section III B "Applying for Basic and Pre-Certification Equipment Operator Courses," states, in part, as follows:

1. When there is a need for additional employees to operate equipment requiring certification and consistent with the classifications of Transportation Worker II or III, the organization supervisor will:
  - a. post a notice to that effect on the organization's bulletin board for ten working days; and
  - b. ensure that employees are informed of the opportunity for training and that they are given the opportunity to tell him or her of their interest.
2. Qualified and interested employees will advise the organization supervisor of their interest within ten working days of the posting.
3. After ten working days from posting the notice, the organization supervisor will:
  - a. consider all interested employees based on

- their work experience, general abilities, valid CDL and work history including the amount of time employed with the agency;
- b. make a list of his or her choices based upon the preceding criteria; and
  - c. send the list of choices, along with the names of all other interested employees, to the District Engineer or Division Director.
4. The District Engineer or Division Director will review the supervisor's choices and the names of other interested employees and will:
- a. decide which of the employees are to be trained; and
  - b. provide an approved list to the organization supervisor and the Training Coordinator. No employees will be notified that they have been selected for training until approved by the District Engineer or Division Director. . . .<sup>12</sup>

The evidence presented establishes that notice of the training was posted for ten days, and ten employees, including Grievants, expressed their interest by signing the same. After the tenth day, the sign-up sheet was taken down, and Kenny Hamrick selected Colton Asbury to be recommended for the training. Mr. Hamrick did not testify at the level three hearing; therefore, it is unknown how he came to decide to recommend Mr. Asbury. Mr. Gillispie testified that he received Mr. Hamrick's recommendation, along with the sign-up sheet, employee evaluations, AR-13 accident reports, disciplinary histories, and leave balances for each employee on the sign-up list. It is noted that out of all of these records, only the sign-up sheet was presented as evidence in this matter.

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<sup>12</sup> See, Respondent's Exhibit 1.

Mr. Gillispie further testified that he went into the “mainframe” computer system himself, and reviewed information for each of the ten. It is unclear what employee information is accessible through the mainframe system. However, Mr. Gillispie indicated that he had access to the mainframe, but Mr. Hamrick did not. Based upon his testimony, Mr. Gillispie placed emphasis on the employees’ disciplinary history and leave balances in making his decision. After reviewing this information, Mr. Gillispie accepted the recommendation of Mr. Hamrick and approved Mr. Asbury for the training. Mr. Gillispie testified that the same procedure was repeated when Mr. Asbury was removed from consideration for the training, and Mr. Lacy was recommended and selected.

The policy states that the organization supervisor “will consider all interested employees based on their work experience, general abilities, valid CDL and work history including the amount of time employed with the agency,” then send a list of his or her choices to the District Engineer or Division Director. The policy further states that “[t]he District Engineer or Division Director will review the supervisor’s choices and the names of other interested employees and will: a. decide which of the employees are to be trained,” and send a list of the approved employees to the training coordinator. As Mr. Hamrick did not testify, it is unclear as to what he reviewed and how he came to select Mr. Asbury. Therefore, it is unclear whether Mr. Hamrick, as supervisor, followed the policy. However, Mr. Gillispie, the District Engineer, testified about what he reviewed before approving Mr. Asbury, and asserted that he considered the factors listed in the supervisor section of the policy, those being work experience, general abilities, valid CDL, work history, except for time with the agency, or seniority. Mr. Gillispie indicated that he placed significant weight on disciplinary history and accrued leave balances, asserting

that such fell within “general abilities.” “General Abilities” is not defined in the policy. Mr. Gillispie did not select Grievant Womack because of his disciplinary history. Mr. Gillispie did not select Grievant Means because he believed that Grievant Means’ leave balances should have been higher given his years with DOH. Mr. Gillispie’s logic appears to have been that Mr. Asbury and Grievant Means had the same, or comparable, leave balances, and Mr. Asbury had only been there one year. It is undisputed that neither Grievant Means nor Grievant Womack was on any kind of leave restriction at the time of the selection, and there had been no issue with their use of accrued leave. Grievant Means testified in rebuttal that the combined total of his accrued annual leave and sick leave at the time of the selection was between 220 and 250 hours, and that his sick leave balance alone was 126 hours. While these facts are somewhat disputed, neither party provided any documentation of Grievant Means’ or Mr. Asbury’s leave balances.

While Mr. Gillispie testified that leave balances alone did not decide this, he clearly gave them significant weight in making his decision. While the undersigned has no definition of “general abilities,” it seems odd that accrued leave balances or disciplinary history would be considered an ability. It seems understandable that if an employee were having attendance issues or were on leave restriction, such could possibly be relevant when deciding if he or she should be granted such a training opportunity because attendance at the training and “seat time” before the training is required. However, that is not what happened in the instant matter. Neither Grievant has any attendance problems. Mr. Gillispie appears to have largely disregarded consideration of Grievants’ tenure with the agency and their experience, and instead focused on the leave balances and discipline. It is noted that Grievant Means admitted that he did not include his years

at Whiteoak Transport on the sign-up sheet, but stated he included them on the first sign-up sheet that was posted, and that Mr. Hamrick was the one who told him to do so. Further, Mr. Means testified that he had two years of experience running the backhoe for DOH at the Chelyan Garage, which was listed on the sign-up sheet as “2 yrs with state.” It is unclear as to what Mr. Gillispie reviewed in the mainframe computer system, but one would think that at least some of this would be included in Grievant Means’ record. Further, Mr. Gillispie appears to have considered nothing about Grievant Womack except that he had a disciplinary record. The evidence presented established that Grievant Womack has been disciplined three times: a verbal reprimand in 2011; a suspension in 2012; and, a written reprimand in 2013. Grievant Womack, by his representative, acknowledged these three disciplinary actions. No documentation of Grievant Womack’s disciplinary actions was presented as evidence at the hearing. It is noted that Mr. Gillispie alleged that another incident occurred around the time of this selection, but no evidence was presented to support this allegation.

Given that the controlling policy states that work experience, work history, DOH service, and general abilities are to be considered in making the selection, it does not appear that Mr. Gillispie or Mr. Hamrick followed the same. Mr. Asbury had less tenure than Grievants, and less experience. What Mr. Asbury had was no discipline at the time, and Mr. Gillispie found his leave balance to be appropriate for his one year with the agency. Further, the Grievance Board recognizes selection decisions are largely the prerogative of management, and absent the presence of unlawful, unreasonable, or arbitrary and capricious behavior, such selection decisions will generally not be overturned. *Mihaliak v. Div. of Rehab. Serv.*, Docket No. 98-RS-126 (Aug. 3, 1998). An

agency's decision as to who is the best qualified applicant will be upheld unless shown by the grievant to be arbitrary and capricious or clearly wrong. *Thibault v. Div. of Rehab. Serv.*, Docket No. 93-RS-489 (July 29, 1994). "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).

In making his decision, Mr. Gillispie did not consider Grievant Womack's 11 years of experience, his time with DOH, or anything else, except that he had a disciplinary record. While disciplinary history is a part of an employee's work history, and such is one of the factors to be considered, Mr. Gillispie considered nothing else about Mr. Womack. The evidence suggests that the fact that Grievant Womack had a disciplinary history alone disqualified him from being considered. It does not appear that the behavior resulting in the discipline, or the type of discipline itself, was a consideration. The only thing considered was the existence of a disciplinary history. The policy states that all of the listed factors are to be considered, and that was not done. Further, the policy says nothing about disciplinary history, or disqualifying applicants, and Respondent presented no other policies. Moreover, if employees who have *any* history of disciplinary action are excluded from consideration on that basis alone, it is likely that employees who have less time with the agency and less work experience will be favored for selection over more

experienced employees because they have not had as many opportunities to make mistakes. As noted earlier, Mr. Asbury had only one year with DOH when he was selected, and part of the reason he was selected was that he had no disciplinary history.

Mr. Gillispie discounted Grievant Means' work experience and his 5 years of tenure because Mr. Gillispie decided that his leave balances should have been higher. There was no set standard by which Mr. Gillispie was making this determination. It appears to be that he just thought the balance should have been higher because someone with one year has as much leave accrued. This was totally arbitrary. He did not look for any explanation for the balances, and it is not clear if Mr. Gillispie even used the correct balances in coming to this unilateral conclusion. Further, when Mr. Asbury was not permitted to go to the training in Buckhannon, Mr. Hamrick and Mr. Gillispie repeated the same process, disregarded Grievants again for the same reasons, and selected Mr. Lacy.

Accordingly, Mr. Gillispie failed to follow the policy for selecting employees for the Equipment Operators Training Academy, and the decisions he made were arbitrary and capricious. Therefore, this grievance is granted.

The following Conclusions of Law support the decision reached:

### **Conclusions of Law**

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). See also *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). "The preponderance standard generally requires proof that a

reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichtliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. In this matter, Respondent points to the West Virginia DOH Administrative Operating Procedure, Section IV, Chapter 9, "Equipment Operators Training Academy," as controlling. Section III B "Applying for Basic and Pre-Certification Equipment Operator Courses," states, in part, as follows:

1. When there is a need for additional employees to operate equipment requiring certification and consistent with the classifications of Transportation Worker II or III, the organization supervisor will:
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3. After ten working days from posting the notice, the organization supervisor will:
  - a. consider all interested employees based on their work experience, general abilities, valid CDL and work history including the amount of time employed with the agency;
  - b. make a list of his or her choices based upon the preceding criteria; and
  - c. send the list of choices, along with the names of all other interested employees, to the District Engineer or Division Director.



4. The District Engineer or Division Director will review the supervisor's choices and the names of other interested employees and will:
  - a. decide which of the employees are to be trained; and
  - b. provide an approved list to the organization supervisor and the Training Coordinator. No employees will be notified that they have been selected for training until approved by the District Engineer or Division Director. . . .

3. The Grievance Board recognizes selection decisions are largely the prerogative of management, and absent the presence of unlawful, unreasonable, or arbitrary and capricious behavior, such selection decisions will generally not be overturned. *Mihaliak v. Div. of Rehab. Serv.*, Docket No. 98-RS-126 (Aug. 3, 1998). An agency's decision as to who is the best qualified applicant will be upheld unless shown by the grievant to be arbitrary and capricious or clearly wrong. *Thibault v. Div. of Rehab. Serv.*, Docket No. 93-RS-489 (July 29, 1994). "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).

4. Grievants proved by a preponderance of the evidence that Respondent failed to follow its policy regarding the selection of employees to be sent to the Equipment

Operators Training Academy, and that Respondent's selection decision was arbitrary and capricious.

Accordingly, the grievance is **GRANTED**. Respondent is hereby **ORDERED** to provide backhoe training through the Equipment Operators Training Academy in Buckhannon, West Virginia, to both Grievants as soon as possible, but no later than four months from the entry of this order.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. See 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 so named. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. See *also* W. VA. CODE ST. R. § 156-1-6.20 (2008).

**DATE: March 24, 2017.**

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**Carrie H. LeFevre**  
**Administrative Law Judge**