WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

ROBERT TRIBBIE and JOSH SAYRE,
Grievants,

v. **Docket No. 2018-0548-CONS**

MASON COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

Grievants, Mr. Robert Tribbie and Mr. Josh Sayre, are employed by Respondent, Mason County Board of Education (the "BOE"). Mr. Tribbie is employed as an Electrician/Groundsman and Mr. Sayre is employed as an Electrician II/General Maintenance employee. Grievants filed a grievance against Respondent on October 10, 2017, at Docket No. 2018-0548-CONS, stating:

> "Grievants received an Observation[*sic*] which indicated that they took a longer lunch break than permitted. Grievants deny the allegation. Grievants contend that they did not take a longer lunch break than permitted and that their deviation from the scheduled lunch break was justified and minimal. Grievant allege a violation of W. Va. Code 18A-2-12a."

The relief sought in the grievance is:

> "Grievants seek removal of the Observation received on September 27, 2017 [*sic*] from their file and be given no consideration in their annual evaluation."

By agreement of the parties, the grievance was waived to Level Three on November 20, 2017. A Level Three hearing was held on February 8, 2018, before the undersigned Administrative Law Judge, Susan L. Basile. At the Level Three hearing, Grievants appeared and were represented by John Roush, Esq. and Respondent was

represented by Leslie Tyree, Esq. At the conclusion of the Level Three hearing, the parties agreed to submit post-hearing arguments, the last of which was received on March 15, 2018, upon which date this matter became mature for decision.

Synopsis

Respondent employs Grievants as maintenance employees. This grievance concerns a "Service Personnel Observation," form ("Observation") issued to Grievants by their supervisor, which documented, in part, that Grievants did not take their lunch during the designated time period on September 19, 2017, and failed to call their supervisor to request a variance from the prescribed period. On this basis, the Observation noted that Grievants did not meet performance standards in that they failed to comply with the rules and County policies. The Observation further noted that Grievants did not meet performance standards in terms of their "quantity of work." Grievants assert that the observations are disciplinary in nature, as well as inaccurate. Grievants further allege that Respondent violated W. Va. Code § 18A-2-12a and W. Va. Code § 18A-2-12a(b)(7), in connection with the lunch requirements and issuance of the Observation.

The "Observation" was not disciplinary in nature and Grievants did not meet their burden of proof to show that Respondent arbitrarily or capriciously documented their failure to take lunch during the required time period. Nor did Grievants prove that the lunch requirements were unenforceable in that Grievants were admittedly well aware of these reasonable requirements and had abided by them in the past. Therefore, Grievants had proper notice of the lunch requirements, and the Observation notation that they violated the rules was neither arbitrary nor capricious. However, Grievants established

that the remaining Observation notations were unsubstantiated and, therefore, arbitrary and capricious.

Accordingly, this Grievance is **GRANTED** in part and **DENIED** in part.

The following facts are based upon an examination of the entire record developed in this matter.

Findings of Fact

1. Grievant Robert Tribbie is employed by Respondent, Mason County Board of Education, as an Electrician/Groundsman.

2. Grievant Josh Sayre is employed by Respondent as an Electrician II/General Maintenance employee.

3. Respondent is a quasi-public corporation created by statute for the management and control of the public schools of Mason County, West Virginia.

4. Respondent's written policy on the duty-free lunch period for service personnel does not specify when the employee must take his thirty-minute duty-free lunch period and does not specifically delegate authority to the maintenance supervisor to assign a time period for lunch.[1]

5. Respondent's maintenance supervisor and Grievants' supervisor, Mr. Cameron Moffett, was instructed by Respondent to monitor the maintenance employees' lunch and break times.

6. Therefore, some time prior to September 19, 2017, Mr. Moffett directed maintenance employees to take their duty-free lunch period from 11:30 a.m., to 12:00

[1] Mason County Schools Bylaws & Policies § 4255, Joint Exhibit #1.

p.m. Mr. Moffett further directed maintenance employees to call him, in advance of 11:30 a.m. to advise him if circumstances might require a change to that prescribed lunch period. Grievants were verbally advised of these directives.[2]

7. The designated lunch period was implemented, and strict adherence to it was required, because in previous years, a group of maintenance employees malingered on a job site, and there had been general complaints from school principals about maintenance employees "loafing" on the job. Grievants were not among those who malingered and the complaints were not directed at them. (Mr. Moffett and Mr. Jack Cullen, Superintendent of the BOE – Level Three.)

8. Mr. Moffett needed to know when an employee was taking lunch to eliminate the anticipated excuse, "I'm on my lunch period," when the employee was actually failing to perform his duties.

9. Grievants are assigned county phones from which they may make any necessary calls to their supervisor.

10. On September 19, 2017, Grievants were working together at the BOE's central office, applying sealer to the BOE's parking lot.

11. On that day, before lunch, Grievant Sayre mixed and prepared the sealer for application on the driveway. Once mixed, the sealer quickly hardens and must be applied and spread immediately after mixing. The time it takes to apply a batch of sealer to the surface of the parking lot necessarily varies, based upon a number of factors.

[2] Though Mr. Moffett testified that he prepared a written document directing maintenance employees to take their lunch during the prescribed period, a written document was introduced into evidence.

12. On September 19, 2017, Grievants were unable to complete the task of spreading or applying a freshly mixed batch of the sealant to the surface of the parking lot by 11:30 a.m.

13. Neither of the Grievants briefly halted their work to call Mr. Moffett to explain the situation and to request permission to leave late for lunch.

14. Grievants began their lunch at 11:35 a.m. and returned to the work site after lunch at approximately 12:05 p.m., rather than 12:00 p.m.

15. Mr. Moffett witnessed Grievants returning to the worksite at 12:05 p.m.

16. On Wednesday, September 20, 2017, Mr. Moffett had a conference with Grievants to ask why they returned late from lunch; however, Grievants refused to answer him to explain, choosing instead to remain completely silent.

17. Mr. Moffett then issued an Observation to Grievants, on or about September 27, 2017, indicating that they did not meet performance standards in three categories, “Complies/Rules,” “Adheres to county policies” and “Quantity of work.” In the comment section, Mr. Moffett noted that Grievants returned to the BOE work site at 12:05 p.m. on September 19, 2017.

18. Mr. Moffett provided no explanation, either on the form or at hearing, of his Observation that the “quantity” of Grievants’ work was not up to standard.

19. Mr. Moffett’s September 19, 2017, physical observation of Grievants work was not scheduled in advance as part of a regular evaluation process and he did not did observe any of the work Grievants performed that day. Mr. Moffett's Observation of Grievants on that day was limited to seeing them returning from lunch five minutes late.

20. Grievant Tribbie had contacted Mr. Moffett in the past when it had been necessary for him to deviate from the prescribed lunch schedule and both Grievants were aware of the lunch requirements.

Discussion

Grievants assert that the Observation is disciplinary in nature and, therefore, Respondent bears the burden of proof in this matter. Respondent replies that the Observations are not disciplinary, but provided to improve work performance. The burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden of proof by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board, 156 C. S. R. 1 § 3 (2008); *Ramey v. Dep't of Health,* Docket No. H-88-005 (Dec. 6, 1988). A grievance concerning a letter of reprimand involves a disciplinary matter in which the employer bears the burden of establishing the charges against an employee by a preponderance of the evidence. *Simms v. Division of Natural Resources*, Docket no. 2015-1156-DOC (Nov. 12, 2015). As Grievants noted, there is no statutory or regulatory definition of letters of reprimand. However, the Grievance Board has held that a letter that alleges misconduct by an employee and *states that it constitutes a warning,* is a letter of warning or reprimand and is considered a disciplinary action. *(Emphasis added). Risk v. Hancock County Bd. of Ed*., Docket No. 07-15-048 (Oct. 3, 1996). Assuming *arguendo*, that the Observations describe employee "misconduct," as Grievants urge, rather than documenting areas that need improvement as Respondent asserts, the Observations do not state that they constitute a "warning" to the employees or state that disciplinary action may be taken against Grievants based upon the Observation. Moreover, there is no evidence that Grievants were disciplined in

any way as a result of the issuance of the observations. Based upon the foregoing, the Observations were not disciplinary in nature.

When a grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); *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). Therefore, Grievants bear the burden of proof in this grievance. "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, “[t]he 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 generally seem to assert that the requirement to take a designated lunch period is either outside Respondent’s authority or arbitrary or capricious. "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). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Dunkel*, 196 W. Va. 604, 474 S.E.2d 534 (1996).

Respondent replies that it is abiding by W. Va. Code § 18A-4-14(1), in that it provides Grievants with a full 30-minute duty-free lunch, which is not violated by the requirements to take lunch between 11:30 a.m. and 12:00 p.m. and to call if there is a necessary variation from the lunch schedule. ("the requirements" or "the lunch requirements"). Respondent further responds that the lunch requirements are legitimately related to ensuring that maintenance employees are working when expected. As such, Respondents contend that Grievants should have called Mr. Moffet, in advance, to notify him that their work would cause them to deviate from the designated lunch period and that absent that call and/or any explanation for their tardiness afterward, Mr. Moffett properly documented his Observations of their performance.

The evidence established that, in the past, some maintenance employees had likely wasted time or "loafed" on the job. Given Respondent's legitimate directive to Grievants' supervisor to prevent further wasted time by some of the service personnel, the lunch requirements are reasonably calculated to permit the maintenance supervisor to ensure that maintenance employees work when expected. In addition, monitoring whether maintenance employees are adhering to these requirements through documented, valid, written Observations is also reasonably related to preventing extended lunch periods.

Grievants also generally assert a violation of W. Va. Code § 18A-2-12a(b)(6), which specifically provides as follows:

> All school personnel are entitled to know how well they were fulfilling the responsibilities and should be offered the opportunity of open and honest evaluations of their performance on a regular basis and in accordance with the provisions of section 12 of this article. All school personnel are entitled to opportunities to improve their job performance prior to the termination or transfer of their services. Decisions concerning the promotion, demotion, transfer or termination of employment of school personnel, other than those for lack of need are governed by specific statutory provisions unrelated to performance, should be based upon evaluations, and not upon factors extraneous thereto. Also personnel are entitled to due process in matters affecting their employment, transfer, demotion or promotion.

Grievants did not cite to violations of any particular provisions of W. Va. Code § 18A-2-12a(b)(6). However, Grievants showed that their supervisor's actual physical observation of them was unscheduled and complained of this. Grievant's were aggrieved that the physical observation was done in passing, and was unplanned by their supervisor. Grievants seemed to assert that their supervisor should only observe or evaluate them through physical observation, when the observation is scheduled in advance, with prior notice of same to them.[3] However, Grievants did not provide any applicable authority to support that Respondent's method of physical observation of maintenance personnel is prohibited.[4] Nor have they provided any authority that would prohibit the supervisor from recording his valid Observations, in written form, to provide to employees to improve their

[3] In the general course of business, supervisors regularly supervise their employees, announced and unannounced, for obvious reasons.

[4] As there is no definition or discussion of an "observation" for school service personnel in the West Virginia Code or West Virginia Department of Education Policies, Grievants urge the Grievance Board to consider how an "observation" is defined under West Virginia Department of Education Policies relating to professional school personnel to resolve whether the observations in this grievance are improper or disciplinary. However, as Grievants aptly point out, the observations used by the BOE in this grievance for maintenance personnel bear little resemblance to the observations described and used for school professional personnel. For this reason, the policy on observations for professional school personnel is inapplicable to resolving the issues in this grievance.

performance. Further, Grievants did not prove that they were treated differently than other similarly situated employees, in that other maintenance workers were observed working at random, without prior notification.

Additionally, Grievants assert that the lunch requirements must be in writing to be valid and enforceable, pursuant to W. Va. Code § 18A-2-12a(b)(7), which provides that, "All official and enforceable personnel policies of the county board must be written and made available to its employees." Mr. Moffett testified that the lunch related requirements were given to Grievants in writing, likely by e-mail, though he did not provide a copy of same. Grievants testified that they did not recall receiving the requirements in writing. However, it is unclear whether the lunch requirements were provided in writing.

However, even assuming the lunch requirements were not provided in writing, this directive by Grievants' supervisor did not rise to the level of an "official enforceable personnel policy of a County Board," which are generally adopted by vote of the board and address larger issues such as job descriptions, employment procedures, etc.[5] Rather, these lunch-related requirements concern daily direction on when work will be performed. However, in order to for these requirements to be enforceable, Respondent must have adequately notified Grievant of them. Grievants freely admit that they knew of the lunch requirements. In fact, Grievant Tribbie agreed that, in the past, he had abided by the requirements by calling his supervisor, and had apparently done so on more than one occasion. Grievants did not express any confusion over the lunch requirements. They testified that they knew their supervisor saw them returning to lunch after the designated

[5] *See* Mason County Schools Website, "Bylaws and Policies", Series 4000 related to service personnel.

time period. Based upon the foregoing, Grievants did not prove any violation by Respondent in implementing or enforcing the lunch requirements through its Observations.

Assuming that the requirements are proper, Grievants finally assert that their five-minute variation from the designated lunch period was insignificant and did not merit a call to their supervisor, citing to the *de minimus* rule, referred to in *Anderson v. Mt. Clemens Pottery Co*, 328 U.S. 680 (1946), which involved computing over-time work by the employee. The United State Supreme Court held in *Anderson, supra.,* that, "It is, only when an employee is required to give up a substantial measure of his time and effort that compensable working time is involved." "Split-second absurdities are not justified by the actualities of working conditions or by the policy of the Fair Labor Standards Act." *Id.* When the matter in issue concerns only a few seconds or minutes of work beyond the scheduled working hours, such trifles may be disregarded. *Id.* However, the lunch requirements do not violate the *de minimus* rule because they do not require Grievants to give up any of their 30-minute duty-free lunch, or to work even a few minutes over the prescribed workday or workweek, per the provisions of the Fair Labor Standards Act. Moreover, if Respondent regularly permitted maintenance personnel to deviate from the lunch requirements at their own discretion, as Grievants are apparently urging, then it would be difficult for Respondent to ascertain whether its maintenance employees were prolonging lunch beyond 30 minutes, accumulating what could be a significant amount of lost labor, over time, for Respondent. Therefore, it was not unreasonable for Grievants' supervisor to note "only" a five-minute deviation from the schedule in the Observations as a violation of the rules.

The remaining issue is whether any of the three written Observations were arbitrary or capricious. *See Bedford County Memorial Hosp., supra.*; *Yokum, supra. Trimboli, supra.,* Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *See State ex rel. Eads v. Dunkel*, *supra*. The Observations noted that: 1.) Grievants returned five minutes after the lunch period and, thus, failed to comply with the rules; 2.) Grievants returned five minutes after the lunch period, in violation of County policy and; 3.) that the "quantity" of Grievants' work was not up to standards.

The undersigned will first address the validity of the written Observations as they relate to Grievants returning from lunch at 12:05 p.m. The explanation Grievants provided for why they left and returned late seems credible to the undersigned. However, though Grievants seem to contend that there was no way to comply with the requirements and still efficiently perform their work in this instance, Grievants could have called Mr. Moffett and asked permission to stop work a little early, go to lunch and return early, rather than mixing a new batch of sealant shortly before lunch and running the risk that they would work past 11:30 a.m. As it was, Grievants were running late, yet they did not make the quick call necessary to let Mr. Moffett know they were going to run late.

Mr. Moffett personally observed Grievants returning late from the designated lunch period. Mr. Moffett was concerned that Grievants returned to the workplace at 12:05 p.m. and gave them the opportunity to explain why they were late before he issued the written observation. Yet Grievants refused to respond to Mr. Moffett to explain why they failed to

call him and were late in returning.[6] Therefore, while it may be true that Grievants did not leave for lunch until 11:35 a.m., and limited their lunch to 30 minutes, Mr. Moffett had no way of knowing that. Given Grievants' refusal to respond to his legitimate inquiry about why they were returning at 12:05 p.m., it was entirely reasonable for Mr. Moffett to make written observations that Grievants returned from lunch after the designated period, with no attempt to contact him, and for him to note that they failed to comply with the rules. Therefore, this particular note should not be removed or modified. However, for the reasons discussed above, Mr. Moffett's notation that Grievants failed to abide by County policies must be removed, as this is inaccurate.

Finally, the undersigned will address Grievants' assertion that the Observation was unsubstantiated, with regard to the notation that they were not performing the quantity of work necessary to meet performance standards. The testimony supported that Grievants were not among those who malingered and that the complaints about "loafing," were not directed at them. Additionally, Mr. Moffett provided no explanation, either on the Observation form or at hearing, in support. Therefore, Grievants established that this

[6] Grievants indicated that their relationship with their supervisor was strained, so they refused to respond to him. Though some supervisors may have treated Grievants' refusal to respond to his question as insubordinate, Grievants' supervisor apparently did not charge them with insubordination.

particular portion of their respective Observations was unsubstantiated and, thus, arbitrary and capricious.

In conclusion, the "Observation" was not disciplinary in nature, and Grievants did not meet their burden of proof to show that Respondent arbitrarily or capriciously documented that Grievants failed to comply with the valid lunch-related rules. However, the two other notes, that county policy was not followed and that the quantity of Grievants' work was not up to standard, were both unsubstantiated and must be removed from the Observation.

Conclusions of Law

1. When a grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); *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).

2. The Grievance Board has held that a letter that alleges misconduct by an employee and states that it constitutes a warning, is a letter of warning or reprimand and is considered a disciplinary action. *Risk v. Hancock County Bd. of Ed.*, Docket No. 07-15-048 (Oct. 3, 1996).

3. A grievance concerning a letter of reprimand involves a disciplinary matter in which the employer bears the burden of establishing the charges against an employee by a preponderance of the evidence. *Simms v. Division of Natural Resources*, Docket no. 2015-1156-DOC (Nov. 12, 2015).

4. The “Observations” issued by Respondent in this grievance are not letters of reprimand or disciplinary in nature, but are intended to improve performance and, therefore, Grievants bear the burden of proving their grievance by preponderance of the evidence.

5. "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 Ser*v., 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).

6. Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Dunkel*, 196 W. Va. 604, 474 S.E.2d 534 (1996).

7. 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. Dunkel*, 196 W. Va. 604, 474 S.E.2d 534 (1996); *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)).

8. W. Va. Code § 18A-2-12a(b)(6) that provides as follows:

> All school personnel are entitled to know how well they were fulfilling the responsibilities and should be offered the opportunity of open and honest evaluations of their performance on a regular basis and in accordance with the provisions of section 12 of this article. All school personnel are entitled to opportunities to improve their job performance prior to the termination or transfer of their services. Decisions concerning the promotion, demotion, transfer or termination of

> employment of school personnel, other than those for lack of need are governed by specific statutory provisions unrelated to performance, should be based upon evaluations, and not upon factors extraneous thereto. Also personnel are entitled to due process in matters affecting their employment, transfer, demotion or promotion.

9. W. Va. Code § 18A-4-14(1) requires the employee to be given a 30-minute duty-free lunch.

10. W. Va. Code § 18A-2-12a(b)(7) provides that, "All official and enforceable personnel policies of the county board must be written and made available to its employees."

11. Grievants failed to establish that Respondent's implementation and enforcement of the subject lunch requirements violated W. Va. Code § 18A-2-12a(b)(6), W. Va. Code § 18A-4-14(1), W.Va. Code § 18A-2-12a(b)(7), or any other applicable statutes, policies, rules or procedures.

12. *Anderson v. Mt. Clemens Pottery Co*, 328 U.S. 680 (1946), involved computing over-time work by the employee and cited to the *de minimus* rule, and held that, "It is only when an employee is required to give up a substantial measure of his time and effort that compensable working time is involved." "Split-second absurdities are not justified by the actualities of working conditions or by the policy of the Fair Labor Standards Act." *Anderson, supra.* When the matter in issue concerns only a few seconds or minutes of work beyond the scheduled working hours, such trifles may be disregarded. *Id.*

13. Respondent's lunch requirements do not violate the *de minimus* rule because they do not require Grievants to give up any of their 30-minute duty-free lunch,

or to work even a few minutes over the prescribed workday or workweek, per the provisions of the Fair Labor Standards Act.

14. Grievants failed to establish that Respondent's implementation and enforcement of the subject lunch requirements violated W. Va. Code § 18A-2-12a(b)(6), W. Va. Code § 18A-4-14(1), W. Va. Code § 18A-2-12a(b)(7), or any other applicable statutes, policies, rules or procedures.

15. Grievants did not meet their burden of proof to show that Respondent acted arbitrarily or capriciously in requiring Grievants to adhere to a designated lunch period and to notify their supervisor, in advance, if they believed they could not.

16. Grievants established that the portion of the Observation that noted their quantity of work was not up to standard was arbitrary and capricious.

17. Grievants established that the portion of the Observation that noted they did not comply with County policies was unsubstantiated and therefore, arbitrary and capricious.

Accordingly, this grievance is **DENIED** in part, and **GRANTED** in part and it is hereby **ORDERED** that the comment or notation relating to substandard quantity of work, and the notation that Grievants failed to abide by County policies, should be removed from the Grievants' respective Observations.

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*, 156 C.S.R. 1 § 6.20 (eff. July 7, 2008).

DATE: APRIL 26, 2018

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SUSAN L. BASILE
ADMINISTRATIVE LAW JUDGE