WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

RANDALL HAZLEWOOD,
Grievant,

v. **Docket No. 2018-0864-CONS**

GENERAL SERVICES DIVISION,
Respondent.

D E C I S I O N

Randall Hazlewood, Grievant, filed this consolidated grievance against his employer the West Virginia General Services Division, ("GSD"), Respondent. On October 17, 2017, Grievant filed a level one grievance stating "[i]mproper EPA3[.]" As relief sought, Grievant requested "[t]o be made whole in every way including revision of EPA3." This grievance was assigned the Docket Number 2018-0589-DOA. Thereafter, on November 6, 2017, Grievant filed a second level one grievance stating as follows: "[d]enial of raise based on improper EPA[.]" As relief sought, Grievant asked "[t]o be made whole in every way including granting raise with back pay and interest[.]" This grievance was assigned the Docket Number 2018-0670-DOA. A level one hearing in Docket Number 2018-0589-DOA was conducted on November 7, 2017, and denied by decision dated November 30, 2017. A level one hearing in Docket Number 2018-0670-DOA was conducted on December 11, 2017, and denied by decision dated December 15, 2017. Grievant filed his appeals to level two on December 3, 2017, and December 20, 2017. The two grievances were consolidated by Order entered January 12, 2018, and assigned docket number 2018-0864-CONS.

On or about March 19, 2018, Respondent filed *General Services Division's Motion to Dismiss Grievance* alleging the grievance was untimely filed and that Grievant lacked

a grievable issue. Respondent asserted the grievance was not timely filed because Grievant is challenging his EPA3 a year after it was issued in 2016. Grievant's response to that argument was that the EPA3 grieved was issued in October 16, 2017. It was apparent from relevant documents that some facts were in dispute. This is a consolidated grievance wherein the original two grievances are treated as one.[1] It is possible that one claim in a consolidated grievance may be dismissed while other claims remain. Respondent's *Motion to Dismiss* was denied at that time by an April 12, 2018 decision.

A level three hearing was held before the undersigned Administrative Law Judge on January 10, 2019, at the Grievance Board's Charleston office. Grievant appeared in person and by his representative, Gordon Simmons, UE Local 170, West Virginia Public Workers Union. Respondent appeared by agency representative Director Greg Melton and legal counsel Mark S. Weiler, Assistant Attorney General. Post hearing, both parties submitted written Proposed Findings of Fact and Conclusions of Law, and this matter became mature for decision on or about February 13, 2019, on receipt of the last of these fact/law proposals.

Synopsis

Grievant was denied a discretionary merit increase. This is a consolidated grievance wherein the original two grievances are treated as one. In a consolidated

[1] Respondent also asserts that "[a]n agency's decision not to recommend a discretionary pay increase generally is not grievable," citing *Lucas v. Dep't Health and Human Res.,* Docket No. 07-HHR-141 (May 14, 2008), and *Morgan v. Dep't Health and Human Res.*, Docket No. 07-HHR-131 (June 5, 2008). Respondent also argues that no grievable issue exists because it has the sole discretion as to whether to submit an employee for a salary advancement.

grievance, it is possible that one claim may be dismissed while other claims remain, in the instant grievance, additional facts and/or clarification were collected before any final determination was reached on the pending issue(s). Grievant protests Respondent's determination not to provide him a discretionary salary increase. Challenging how the score of his 2016 EPA3 is being used is different from challenging the score on the EPA. Grievant did not timely challenge the validity of the 2016 EPA. Grievant did successfully challenge the validity of his 2017 EPA. Grievant failed to establish by a preponderance of the evidence that Respondent's decision not to recommend him for a discretionary merit increase violated any law, rule, policy or procedure, or that it was otherwise arbitrary and capricious. This Grievance is **GRANTED IN PART AND DENIED IN PART**.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant has been employed for seven years as a facility equipment maintenance technician (FEMT) by the General Services Division, Respondent. Generally, a FEMT duties consist of performing experienced journey level work maintaining and repairing a variety of equipment used in heating, cooling and general operation of public buildings.

2. During part of 2016 and all of 2017, Grievant reported to Greg Edelman, GSD Buildings Operations Maintenance Supervisor. Mr. Edelman has more than 40 years of experience working in mechanical trades, which includes heating/cooling, electrical, and plumbing contracting. Supervisor Edelman also has seven years of mechanical contracting project management experience.

3. During the time period relevant to this grievance, Operations Maintenance Supervisor Edelman reported to David Parsons, Building Operations Maintenance Manager.

4. As Building Operations Maintenance Manager, Dave Parsons was responsible for managerial oversight of everyone in his section, which included a team of supervisors and line staff. Manager Parsons was also responsible for serving as the reviewing manager of EPA 3s prepared by the supervisors that reported to him.

5. On or about July 18, 2017, a moratorium on awarding salary advancements was rescinded by the Governor. *See* R Ex 4 – Governor's Deputy Chief of Staff Memorandum dated July 18, 2017.

6. The Governor's Memorandum among other provisions noted, *inter alia*, that salary advancements could not be awarded to employees who had received a disciplinary action during the most recent performance review cycle. Employees could not be considered for salary advancements if they received an EPA rating below "Meets Expectations" during the most recent review cycle. Salary advancements also could not cause the new salary to exceed the maximum of the compensation range to which the employee's classification was allotted. *See* R Ex 4.

7. GSD is a division of the Department of Administration. The Department of Administration and GSD chose to pursue salary advancements on behalf of GSD employees.[2]

[2] Pursuant to the Division of Personnel's ("DOP") Pay Plan Policy, a salary advancement is "[a] discretionary increase in compensation granted in recognition of the quality of job performance." R Ex 6, Policy revised July 1, 2017, at Section II BB. "When increases are discretionary, appointing authorities have no obligation to pursue and employees have no entitlement to receive them." *Id*. at Section I.

8. GSD Director Greg Melton was charged with the responsibility of putting together a plan to award salary advancements in accordance with the DOP Pay Plan Policy and the standards set forth in the Governor's Memorandum.

9. The Governor's Office needed to approve Respondent's plan for recommended salary advancements. If Respondent's plan was not sanctioned, the request would not be approved by the DOP and there would be no salary advancements or merit increases.[3] R Ex 4 – Governor's Memorandum. Discretionary increases could only become effective after all approvals had been obtained. *Id*. Retroactive wages would not be authorized under any circumstances. *Id*.

10. Director Melton first considered proposing an across-the-board raise for eligible employees receiving at least a "Meets Expectations" ranking on their EPA3 for the most recent performance review cycle, which was October 1, 2015, through September 30, 2016. However, both he and the Cabinet Secretary concluded that such a plan would not conform with the intent of merit-based salary advancements. Melton L-3 Testimony

11. Director Melton met with his deputy director, chief financial officer, section chiefs, and human resources personnel to evaluate the budget and to establish a set of rules to follow in recommending merit increases for eligible employees. *See* R Ex1 and 2

12. Respondent formulated and implemented a methodology to evaluate employee EPA3 data in determining who would be recommended for a salary advancement. Respondent's plan as proposed was in accordance with the Governor's

[3] Salary advancements are often referred to as merit raises or increases.

Memorandum. Not all eligible employees would receive a salary increase. *See* Melton L-3 Testimony and R Ex 4.

13. All eligible employees were placed in three performance bands based on a statistical Bell Curve and resultant Standard Deviation. A qualifying employee whose EPA3 score was more than one standard deviation below the mean score of 2.07, or EPA3 of 1.90 or lower, was not recommended for a merit increase. *See* Melton L-3 Testimony; also see R Ex 1 Salary Advancement Memorandum dated August 23, 2017 and R Ex 5 – Employee Spreadsheets.

a. A qualifying employee whose EPA 3 score was within one standard deviation below the mean score of 2.07, or EPA 3 of 1.91 to 2.06, was recommended for a low band merit increase. *Id*.

b. A qualifying employee whose EPA 3 score was equal to or within one standard deviation above the mean score of 2.07, or EPA 3 score between 2.017 and 2.23, was recommended for a middle band merit increase

c. A qualifying employee whose EPA 3 score was more than one standard deviation above the mean score of 2.07, or EPA 3 score of 2.24 or higher, was recommended for a high band merit increase. *Id*.

14. The employee names associated with the EPA scores were unknown to Director Melton during the process. The rules as set and put in place were considered to be objective and transparent. The methodology was not put in place to exclude any specific individual from being recommended for a merit increase.

15. For the rating period of October 1, 2015, to September 30, 2016, Grievant received an EPA3 with a rating score of 1.78. The 2016 EPA3 was signed by Grievant's then Supervisor, and by his manager, David Parsons, on September 22, 2016. G Ex 1

16. Grievant did not file a grievance concerning this EPA3 when it was given to him in September 2016.[4]

17. Grievant's EPA score of 1.78 was more than one standard deviation below the mean EPA score of 2.07. Grievant was not recommended for a merit increase

18. There were other employees with higher EPA3 scores that were not recommended for merit increases because they also had scores that fell more than one standard deviation below the mean EPA score of 2.07:

Initials	Title	Score
CB	Groundskeeper	1.87
CH	Administrative Services Assistant 1	1.83
RH	Facilities Equipment Maintenance Technician	1.87

See R Exs 1 and 5.

19. There were other employees other than Grievant not recommended for merit raises. For a variety of reasons no less than 24 individuals employed by Respondent did not receive a salary increase pursuant to Respondent's discretionary salary advancement choices.

20. Grievant specifically acknowledges that in late August or early September 2017, his supervisor told him he was not going to receive a merit increase. L-3 testimony

21. Further, on October 16, 2017, Grievant's immediate supervisor, Greg Edelman, met with Grievant and issued him an EPA3.[5] Mr. Edelman gave Grievant the

[4] The time period for filing a grievance ordinarily begins to run when the employee is unequivocally notified of the decision being challenged. Grievant became aware of EPA3 score September 2016. November "2017" is more than 15 working days post September 30, 2016.

[5] This EPA is a separate and distinct EPA, different than the September 2016 EPA. The two EPAs are not interchangeable and should not be confused with one another. The October 16, 2017 EPA was not used by Respondent to establish discretionary raises.

EPA3. Grievant had the opportunity to write down any comments. Grievant did not make any written comments. Grievant signed the EPA 3. See R. Ex 8 – Hazlewood EPA 3 dated October 16, 2017.

22. Supervisor Edelman has done about 20 EPA 3s over the past three years with various employees under his supervision. Supervisor Edelman maintains he followed training and procedure in putting together Grievant's EPA 3. L-3 Testimony. Supervisor Edelman maintains he based the EPA 3 on the work Grievant performed, his observations, and how he worked with Grievant.

23. In addition to his own opinion regarding Grievant work performance, Supervisor Edelman relied upon input from other GSD supervisors, including his direct supervisor, Dave Parsons, when evaluating Grievant.

24. On or about November 6, 2017, Grievant filed a grievance concerning Respondent's failure to grant him a discretionary raise. *See* level one form dated November 6, 2017

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his case by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2018). "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). Where the evidence equally supports both sides, a party has not met its burden of proof. *Id.*

Pursuant to the Division of Personnel's ("DOP") Pay Plan Policy, a salary advancement is "[a] discretionary increase in compensation granted in recognition of the quality of job performance." *See* R Ex 6 – DOP Pay Plan Policy revised July 1, 2017, at Section II BB. "When increases are discretionary, appointing authorities have no obligation to pursue and employees have no entitlement to receive them." *Id* at Section I. The salary increase in discussion associated with this grievance is a discretionary pay increase.

On or about July 18, 2017, a moratorium on awarding salary advancements was rescinded by the Governor. West Virginia General Services Division, ("GSD"), Respondent is a division of the Department of Administration. The Department of Administration and GSD chose to pursue salary advancements on behalf of GSD employees. Grievant did not receive a salary increase. Grievant is challenging how the score on his September 2016 EPA was used to establish his eligibility for a discretionary salary increase. This is different from challenging the score on the EPA. Grievant did not challenge the validity of the 2016 EPA at the time of evaluation. He was rated 1.78 overall. The time period for challenging the veracity of EPA3, for the rating period of October 1, 2015, to September 30, 2016, was prior to October 25, 2016.[6] Grievant is

[6] Applicable W. VA. CODE sets forth the time limits for filing a grievance as follows:

saddled with a 1.78 EPA3 score. While it is true Grievant was unaware of the future magnitude of 2016 EPA score, he did know the score were important, it is far too late to attack the evaluator, or the equality of the standard used.[7]

Grievant is not happy with how Respondent has chosen to utilize 2016 EPAs. Grievant was made aware in August or September, 2017, he would not receive a discretionary merit increase or salary advancement based on an EPA3 given to him almost a year earlier, September 2016. Grievant's blessing and/or approval is not imperative or needed by Respondent to utilize the EPA scores as a discerning factor for salary advancement. Employers make administrative decisions that affect employees' compensation and employment environment on a regular basis and whether the employee approves, most of the time, is not an overwhelming concern of the employer. Generally, an Employer-Employee relationship is not a partnership. Grievant has not established Respondent's identified discernment tool is unlawful.

In accordance with the Governor's Memorandum, GSD employees were not to be considered for a merit increase if they rated below "Meets Expectations" on their EPA3 in

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> Within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date upon which the event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, an employee may file a written grievance with the chief administrator stating the nature of the grievance and the relief requested and request either a conference or a hearing . . . .

W. VA. CODE § 6C-2-4(a)(1). "'Days' means working days exclusive of Saturday, Sunday, official holidays and any day in which the employee's workplace is legally closed under the authority of the chief administrator due to weather or other cause provided for by statute, rule, policy or practice." W. VA. CODE § 6C-2-2(c). Relevant to the instant matter fifteen working days post September 30, 2016 is prior to October 25, 2016 not November "2017".

[7] The undersigned is aware of Respondent's rationale for its prior motion to dismiss.

the most recent review cycle, which at that time for Grievant was October 1, 2015, through September 30, 2016. *See* Greg Melton L-3 Testimony and R Ex 4 – Governor's Memorandum. Respondent formulated and implemented a methodology to evaluate eligible employees, discerning which would receive a salary advancement. See finding of fact 13, *supra.* This methodology was objective and transparent. The methodology was developed after much deliberation. It was not put in place to exclude any specific individual from being recommended for a merit increase. An across the board raise for all employees who just met expectations was thought not to conform with the intent of merit-based salary advancements. Grievant has not established Respondent's thought process to be arbitrary, capricious or a violation of an applicable governing regulation.[8]

Lastly, and separate from the discretionary pay increase issue, Grievant asserts the EPA 3 rating ("Meets Expectations") he received in October 2017, was improper. He seeks to have the EPA3 revised upward. Grievant established some recognizable flaws in Respondent's evaluation of his work performance. It is not established that Supervisor Edelman held any animus toward Grievant but it is more likely than not that Grievant suffered from undo suspicion of wrong doing (e.g., missing tools).[9]

[8] 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 is 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). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *Eads, supra* (*citing Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982))."

[9] Respondent's Operations Manager Parsons suspected Grievant of being involved in the theft and/or failure to safeguard equipment. Capitol police conducted an investigation of the tool theft, along with another equipment theft discovered and reported by Grievant, for which Parsons believed Grievant to be guilty. After six months, the Capitol police issued two investigative reports concluding that there was no

Under the performance factors and standards for maintains flexibility in the 2017 EPA3 for Grievant, Supervisor Edelman rated him as needing improvement for 'willingly accepts a variety of responsibilities,' 'adapts to new situations in a positive manner,' and 'is resourceful and generally seeks work process improvements.' The comments section under the performance factors and standards for maintains flexibility in Grievant's 2017 EPA3 stated, Grievant "has struggled in his last two assignments. Complained about numerous things. Grievant is not resourceful at all, can't or won't acquire his own materials, tools for simple tasks. He will point out problems but doesn't fix them." *See* G Ex 2. Grievant testified that the requested materials were not supplied, and that, after tools he had been assigned were stolen from Building 86, "they were not replaced. I didn't have some of the tools to do some of the work they were wanting me to do." Grievant testified and this trier of fact believes Grievant's requests for materials and reissued tools were what Edelman referred to as "complaints." Grievant's work place conduct was being minimized and he was being evaluated under a cloud of unsubstantiated wrong doing. Grievant toiled under the undue weight of ridicule and prejudice.

The undersigned ALJ is aware of *Hazlewood v. West Virginia General Services Division,* Docket No. 2017-2495-CONS (Jan. 9, 2019) and Supervisor Edelman's L-3 testimony during the instant grievance matter. The needs improvement portions of the 2017 EPA3 is uncontrovertibly related to Operation's Manager Parson's directives or heavy-handed influence on Grievant's work environment and reputation. Grievant

evidence Grievant was involved in the thefts. *Also see Hazlewood v. West Virginia General Services Division,* Docket No. 2017-2495-CONS (Jan. 9, 2019)

testified during the hearing for the instant grievance that, now that Parsons is no longer operations manager, his latest EPA3 has returned to being consistently good in his annual rating. Grievant established his 2017 EPA was unduly influenced and effected by an evaluator abuse or discretion in rating Grievant. *Wiley v. West Virginia Division of Natural Resources*, Docket No. 97-DNR-397 (Mar. 26, 1998); *Maxey v. West Virginia Department of Health & Human Services*, Docket Nos. 92-HHR-088/224/362 (Aug. 16, 1993); *Messenger v. West Virginia Department of Health & Human Resources*, Docket No. 92- HHR-388 (Apr. 7, 1993); *Hurst v. West Virginia Department of Transportation*, Docket No. 91-DOH-326 (Feb. 27, 1992); *Wiley v. West Virginia Workers' Compensation Fund,* Docket No. WCF-89-015 (July 31, 1989).

Grievant's request for the correction of his 2017 EPA3 is reasonable. Grievant's 2017 evaluation is established to be flawed in that the evaluator(s) abused his discretion in rating Grievant's work place activity and attitude. Respondent should take the necessary steps to ensure that Grievant's October 2017 EPA is removed from his personnel file and replaced with a fair and equitable EPA.

This trier of fact specifically recognizes and highlights that the October 2017 EPA is a separate and distinct evaluation different than the September 2016 EPA. The two EPAs are not interchangeable and should not be confused with one another. The October 16, 2017 EPA was not used by Respondent to establish discretionary raises nor can it be inferred that the established flaws/deeds which effected the 2017 EPA can be attributed to the September 2016 EPA.[10]

[10] Eg., noting that the break-in which Parsons was convinced that Grievant participated transpired

The following conclusions of law are appropriate in this matter:

Conclusions of Law

1. The subject matter of this consolidated grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 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. W. Va. Dep't of Health & Human Res*., Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party has not met its burden. *Id*.

2. 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 is 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). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *Eads, supra* (*citing Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)).

January 30, 2017, long after the September 2016 EPA.

3. When pay increases are discretionary, appointing authorities have no obligation to pursue and employees have no entitlement to receive them. DOP Pay Plan Policy (Revised July 1, 2017).

4. "[A]n employer's decision on merit increases will generally not be disturbed unless shown to be unreasonable, arbitrary and capricious, or contrary to law or properly-established policies or directives. *Little v. W. Va. Dep't of Health & Human Res.*, Docket No. 98-HHR-092 (July 27, 1998); *Salmons v. W. Va. Dep't of Transp.*, Docket No. 94-DOH-555 (Mar. 20, 1995); *Terry v. W. Va. Div. of Highways*, Docket No. 91-DOH- 185 (Dec. 30, 1991); *Osborne v. W. Va. Div. of Rehab. Serv.*, Docket No. 89-RS-051 (May 16, 1989)." *Johnson v. Div. of Highways*, Docket No. 2017-2504-CONS (Dec. 22, 2017); See also *Laticia J. Trent v. Division of Motor Vehicles*, Docket No. 2018-0672-DOT (Oct. 12, 2018)

5. 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)). See also *Laticia J. Trent v. Division of Motor Vehicles*, Docket No. 2018-0672-DOT (October 12, 2018). "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).

6. Grievant failed to establish he was entitled to a discretionary merit increase.

7. Grievant failed to prove that GSD's decision not to recommend him for a discretionary merit increase violated any law, rule, policy or procedure, or that it was otherwise arbitrary and capricious.

8. Grievant did established by a clear preponderance of the evidence that the October 2017 annual performance appraisals for Grievant were imposed under abuses of administrative discretion. *Wiley v. West Virginia Division of Natural Resources*, Docket No. 97-DNR-397 (Mar 26, 1998); *Maxey v. West Virginia Department of Health & Human Services*, Docket Nos. 92-HHR-088/224/362 (Aug. 16, 1993); *Messenger v. West Virginia Department of Health & Human Resources*, Docket No. 92- HHR-388 (Apr. 7, 1993); *Hurst v. West Virginia Department of Transportation*, Docket No. 91-DOH-326 (Feb. 27, 1992); *Wiley v. West Virginia Workers' Compensation Fund,* Docket No. WCF-89-015 (July 31, 1989).

Accordingly, this grievance is **GRANTED IN PART AND DENIED IN PART**. This grievance is **GRANTED** in that Respondent is **ORDERED** to remove from Grievant's file the October 2017 EPA3. This matter is **DENIED** in that Grievant is <u>not</u> granted a discretionary pay raise previously provided to numinous other employees of Respondent.

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 (2018).

Date: March 28, 2019

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Landon R. Brown
Deputy Chief Administrative Law Judge