WEST VIRGINIA PUBLIC EMPLOYEES' GRIEVANCE BOARD

EUGENE THOMPSON, et al.,
Grievants,

v. **Docket No. 2018-1387-CONS**

DIVISION OF HIGHWAYS.
Respondent.

DECISION

Eugene Thompson, and several Transportation Worker 2 and 3 Equipment Operator employees, Grievants,[1] individually filed a grievance against their employer Division of Highways (DOH), Respondent on June 18, 2018, protesting alleged lost overtime activity and pay. The original grievances were filed through Grievants' then representative Gordon Simmons, UE Field Organizer, UE Local 170, WV Public Workers Union.[2] It is contended that pursuant to past practice, Grievants performed skip paving and earned overtime; now the duties are being given to Disforce. The remedy requested by Grievants is, "to be made whole in every way including honoring past practices going forward and paying Mercer employees back pay with interest for the work they have traditionally performed."

---

[1] The individuals identified as Grievants of this matter tends to fluctuate with time, the original parties and the ultimate participates are not necessarily identical (parallel but not identical). The difference can be explained by passage of time, fluctuation in employment and commitment to the issue. The 32 Grievants specifically identified as participants in the level three hearing that in fact transpire on June 25, 2021 are identified as: Eugene A. Thompson Jr., Greg O'Quinn, Lonnie Huffman, Marty Taylor, Jerry W. Thompson, Bobby W. Lawrence, Darren S. Hicks, Larry Duty, Kevin McCleese, Christopher A. Thompson, Garry T. Eversole, Larry Williams, Tim Christian, Rex Parker, Randy Easter, Dustin L. Williams, Danny Faulkner, Charles Williams, Charmaine Haynes, Ivan Martin, James A. Thornton, Bob Sadler, Gregory Worley, Tracy McClaugherty, Lee Poff, Dale Slone, Mike Minnix, Danette Giles, Roger Woolwine, Chad W. Simpson, Joe Terry, Dennis Bailey. *See* G Ex 2.

[2] At level one, the grievances were consolidated for purposes of hearing and decision. *See* Public Employee Grievance Board correspondence dated July 26, 2018.

A conference was held at level one on August 13, 2018. The Level One Decision dated November 2, 2018, denied the grievance and concluded that Grievants failed to demonstrate that they were discriminated against or that Respondent DOH violated any rule, law, or policy regarding job assignments. On November 9, 2018, Grievants filed a level two appeal, and a mediation session was held on April 8, 2019. Grievants appealed to level three on April 15, 2019. A level three hearing was scheduled for August 7, 2019. On August 1, 2019, Grievants, by representative Gordon Simmons, stated and provided written statement that Grievants wish to withdraw their grievance. By an Order dated August 5, 2019, this grievance matter was dismissed. On August 9, 2019, several Grievants sent in documentation stating that this grievance was dismissed without their knowledge.[3] By an Order dated September 27, 2019, the undersigned Administrative Law Judge, Landon R. Brown, reinstated the above style matter.

On December 12, 2019, parties were served a Notice of Hearing for a hearing set on May 27, 2020. Representative Gordon Simmons, having ceased employment with UE Local 170, was replaced by then representative field representative Gary DeLuke, WV Public Workers Union. Pursuant to an Order entered on April 24, 2020, the May 27, 2020, hearing was continued due to COVID protocol. This matter was then set for hearing on February 8, 2021. Upon Gary DeLuke leaving employment with the Union, he was at that time replaced with representative Vinnie O'Connor. The February 8, 2021, hearing was continued at the request of Representative O'Connor and without objection

[3] There were only 22 Grievants identified on the August 9, 2019, documentation. The difference in the number of Grievants wishing to proceed and the number of Grievants originally identified as Grievants (parties) is of interest but not thought to be a debilitating issue. The undersigned reinstated this grievance out of the abundance of caution. All Grievants were individually provided notification.

by Respondent. This grievance was then set for hearing on June 25, 2021. All Grievants were individually sent a copy of the February 22, 2021, notice that the level three hearing was scheduled for June 25, 2021, via Zoom. Upon Vinnie O'Connor's departure from UE Local 170 employment, it was communicated that Grievants would be represented by Union Representative Michael Hansen, WV Public Workers Union. The undersigned, aware of procedure history of this grievance, determined it would be prudent to have a pre-hearing phone conference with the parties.

On June 10, 2021, Union Representative Michael Hansen and Keith Cox, Esquire, DOH Legal Division appeared by phone before the undersigned Administrative Law Judge to address pre-hearing issues including, but not necessarily limited to, an outstanding Motion to Compel certain discovery request filed by Respondent DOH and clarification/identification of the Grievants being represented the WV Public Workers Union. Pursuant to verbal and written communication from this administrative body, specifically highlighting the undersigned ALJ's verbal order of June 10, 2021, Michael Hansen, WV Public Workers Union, identified 32 Grievants.[4] *See* level 3 hearing, also see G Ex 2. Grievants did not identify what specific policy, Grievants believe Respondent violated or what damages Grievants contend they are entitled, other than the general reference term, back pay.

A level three hearing was held before the undersigned Administrative Law Judge on June 25, 2021, at the Grievance Board's Charleston office. The option to appear by video conferencing (Zoom) was available and communicated to the parties. Grievants

[4] *See* footnote one, infra, for list of individuals identified.

did not appear in person but did appear through Union Representative Michael Hansen. Mr. Hansen appeared pursuant to video conferencing. Respondent DOH appeared through District Ten District Engineer/Manager Joseph Pack, and was represented by counsel Keith A. Cox, DOH Legal Division in person at the Grievance Board's Charleston office. Respondent Attorney Cox motioned to limit the actions of Representative Michael Hansen from fully participation at the level three hearing, citing *West Virginia Department of Health and Human Resources v. C.P. No. 19-1802 (2021).* Said Motion was denied.[5] At the conclusion of the level three hearing, the parties were invited to submit written proposed fact/law proposals. This matter became mature for decision upon receipt of the last of the parties' proposed findings of fact and conclusions of law on or about July 26, 2021.

Synopsis

Grievants are desirous of additional overtime activity and pay. Grievants were represented by Union representation of the WV Public Workers Union, a non-attorney representative. This is Grievants' second bite at this allegation of alleged wrongdoing by Respondent. Grievants, are primarily Transportation Workers 2 and 3 Equipment Operators, who have in the past performed skip paving and earned overtime; however,

[5] There is statutory authority for non-lawyers to represent individuals before various West Virginia State administrative agencies. Citing Supreme Court of West Virginia regarding the unlawful Practice of Law. Regarding the instant administrative body see for example 156 C.S.R. 1 § 8 (2018) and 156 C.S.R. 1 § 6.22 (2018). *Also see* W. Va. Code § 6C-2-1, *et seq.; e.g.,* W. Va. Code 6C-2-2(n) definition of representative; and W. Va. Code § 6C-2-8 "Employee organizations may not be compelled to disclose certain communications; exceptions," (Effective date 2014). It is not new or unique occurrence for a WV Public Workers Union non-attorney representative to appear before this body representing a member.

this activity is now being performed by an alternative branch of Respondent's workforce. Grievants contend Respondent's action are not proper.

Grievants failed to establish that Respondent's business decision was improper or unlawful. It is within the purview of Respondent to reassigned duties within the proper classification of its workforce. It is understood that Grievants wish to maximize their individual earning capability; nevertheless, Grievants have not acquired the ability to dictate their individual workload. The employing State agency, Respondent, maintains it is within its authority and purview to maintain work assignments pursuant to the needs of the organization.

Grievants failed to establish any wrongdoing by Respondent. Grievants failed to identify a specific rule or regulation that Respondent is violating to the detriment of Grievants. Grievants failed to establish any loss of compensation, to which they are clearly entitled. Respondent has recognized and established authority to govern its workforce. Management can determine the best way to utilize various workforce units to better serve the organization's objective and the most efficient use of resources as long as employees are performing task within their classification. This Grievance is DENIED.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.[6]

---

[6] The parties, through their agents, presented proposed joint stipulations as a portion of the record. It was proposed that such stipulations could be accepted by the undersigned as findings of fact, a portion of the proposed joint stipulations are found to be acceptable and relevant information/facts of record in the circumstance of this grievance. The proposed joint stipulations were incorporated as findings of fact as follows.

Findings of Fact

1. Grievants are Transportation Workers 2 and 3 Equipment Operators all assigned to WVDOH organization 1028, Mercer County. *See* Level One Decision.

2. For approximately ten years preceding the spring of 2018, crews made of Org. 1028 members routinely operated the skip paver and were afforded overtime when they were using it.

3. The skip paver was given to Mercer County DOH by the Mercer County Board of Education. R Ex 4

4. A skip paver is a piece of construction equipment used to lay asphalt on roads, bridges, parking lots, and other such places. The skip paver lays the asphalt and then the asphalt is compacted by a roller.

5. In the spring of 2018, DOH management decided to no longer use a skip paver in Mercer County or anywhere else in District Ten. WVDOH District Ten consist of Mercer, Wyoming, McDowell, and Raleigh counties.

6. District Ten management decided around the spring of 2018 to use a self-propelled asphalt machine. District Ten management also determined at that time that members of District Ten's Disforce (Org.1067) would be trained-on and would operate the self-propelled asphalt machine. R Ex 5

7. Disforce is short for District force. In each of the DOH's ten districts, a Disforce is said to operate the "heavy equipment."

8. Since the spring of 2018, members of Org. 1028 have not used the skip paver and said skip paver has sat in a state of disrepair on the Mercer County DOH

grounds. R Ex 4

9. Joseph Pack is the District Ten District Engineer/Manager. Mr. Pack has been in his current position since Mach of 2020 and has been with DOH for approximately twelve and a half years. Respondent called Joseph Pack, who served as its representative at the level three hearing to testify at the same.

10. A piece of equipment known as a latent box or skip paver was given to DOH by Mercer County Board of Education. Mr. Pack explained that DOH in District Ten rarely used latent boxes/skip pavers as they tend to create a poor product. Mr. Pack also reiterated that this latent box, picture in R Ex 4, is split in the middle and that DOH welders are not able to repair it. Pack L3 testimony

11. As depicted in R Ex 5, a self-propelled asphalt paver, is currently used in all four counties making up District Ten. Grievants are not trained to use/operate the self-propelled asphalt paver. Unlike the latent box/skip paver, the self-propelled asphalt paver uses a computer and is quite complex.

12. The self-propelled asphalt paver makes a high-quality product and is operated exclusively by District Ten Disforce by the individuals trained to operate the self-propelled asphalt paver. Pack L3 testimony

13. Management often rotates equipment and employees on equipment throughout the district. It is not established that Respondent is in anyway required to rotate the instant Grievants to a self-propelled asphalt paver or to establish a dedicated self-propelled asphalt paver for Grievants.

14. Respondent has an identified and established overtime policy. *See* R Ex 3.

District Ten District Engineer/Manager Pack was of the opinion that DOH has not breached any part of the overtime policy in the circumstances of the instant matter.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their 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, the party bearing the burden has not met its burden. *Id*

Grievants initialed the instant consolidated grievance against Respondent previously, ironically, several Grievants proclaimed their representative acted without their authorization. The undersigned allowed this matter to be re-calendared after a dismissal order had been warranted. *See* September 27, 2019, Reinstatement Order. Notice of a renewed level three hearing was sent to individual Grievants and Grievants' union representative. Grievants were made aware of the June 25, 2021, level three hearing scheduled before the undersigned Administrative Law Judge. *See* February 22,

2021, Notice of Hearing. Further, their union representative participated in a pre-hearing phone conference on June 10, 2021. The issue in dispute is not complicated or particularly unique.

For the second time, before this Grievance Board at level three, Grievants have individually had the opportunity to pursue their allegation that Respondent is unlawfully governing it workforce. Grievants believe they should be allowed to continue to operate paving equipment and earn the potential overtime associated with the assignment. Grievants are of the opinion that the paving jobs were taken from them and given to the Disforce crew, impermissibly. "Mere allegations alone without substantiating facts are insufficient to prove a grievance." *Baker v. Bd. of Trustees/W. Va. Univ. at Parkersburg*, Docket No. 97-BOT-359 (Apr. 30, 1998) (citing *Harrison v. W. Va. Bd. of Directors/Bluefield State College,* Docket No. 93-BOD-400 (Apr. 11, 1995)).

While Grievants may truly believe they should be performing skip paving and earn overtime, they have not demonstrated that Respondent is acting unlawfully by assigning such activity to Disforce, an alternative work unit of the agency.

This Administrative Law Judge is charged with assessing the credibility of the witnesses. *See Lanehart v. Logan County Bd. of Educ.*, Docket No. 95-23-235 (Dec. 29, 1995); *Perdue v. Dep't of Health and Human Res./Huntington State Hosp.*, Docket No. 93-HHR-050 (Feb. 4, 1994). The Grievance Board has applied the following factors to assess a witness's testimony: 1) demeanor; 2) opportunity or capacity to perceive and communicate; 3) reputation for honesty; 4) attitude toward the action; and 5) admission of untruthfulness. Additionally, the administrative law judge should consider 1) the

presence or absence of bias, interest, or motive; 2) the consistency of prior statements; 3) the existence or nonexistence of any fact testified to by the witness; and 4) the plausibility of the witness's information. *See Holmes v. Bd. of Directors/W. Va. State College*, Docket No. 99-BOD-216 (Dec. 28, 1999); *Perdue, supra*. The testimony of District Ten District Engineer/Manager Joseph Pack was provided direct attention and assessed with the identified factors in consideration.

District Ten District Engineer/Manager Joseph Pack testified at the level three hearing of the instant grievance. With due acknowledgment to his role, the witness responded to queries posed and attempted to explain conduct, unit assignments and analysis of events that transpired throughout the course of relevant events. Pack testified in a manner demonstrating due deference to the issues in contention. The witness's statements did not appear to be rehearsed or insincere. Indeed, he was direct and uncomplicated in responding to questions and relevant issue(s). The testimony of witness was informative and provided a strong foundation for Respondent's decision making. A self-propelled asphalt paver is currently used in all four counties making up District Ten. Mercer County, Organization 1028. Grievants are not trained to use/operate the self-propelled asphalt paver. The self-propelled asphalt paver makes a high-quality product and is operated exclusively by District Ten Disforce by individuals trained to operate the self-propelled asphalt paver. It is not established that Respondent is in anyway required to rotate the instant Grievants to a self-propelled asphalt paver or to establish a dedicated self-propelled asphalt paver for Grievants.

District Ten District Engineer/Manager Pack's testimony established factual background and plausible rationale for Respondent's decision and decision process. Pack's testimony is found to be trustworthy. Grievants did not provide any direct testimony at the level three hearing. The parties, by Grievants' Representative Michael Hansen and Respondent's Attorney Keith Cox, agreed to move into evidence the proposed exhibit documents provided to this body by each side. The joint motion was granted by the undersigned.

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)). While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute his judgment for that of the authoritarian agency. *See generally Harrison v. Ginsberg*, 169 W. Va. 162, 286 S.E.2d 276, 283 (1982).

Respondent is an established and responsible governmental agency. Respondent has identified rationale factors which tend to justify its actions. Respondent's decision to assign paving operations to Disforce is not found to be arbitrary and capricious. Further, it is recognized that Respondent, as an employing State agency, has authority to govern its workforce and assign duties to its employees. At one point or another the issue of this grievance was referenced and/or pondered as whether Respondent is discriminating against the employees in Mercer County by allowing the Disforce crew to operate the paver.[7] Grievants did not establish discrimination or favoritism under the legal test provided in W. Va. Code § 6C-2-2(d).

Generally speaking, management can determine the best way to utilize various workforce units to better serve the organization's objective and the most efficient use of resources as long as employees are performing task within their classification. A grievant's belief that his supervisor's management decisions are incorrect is not grievable unless these decisions violate some rule, regulation, or statute, or constitute a substantial detriment to or interference with the employee's effective job performance or health and safety." *Ball v. Dep't of Transp.*, Docket No. 96-DOH-141 (July 31, 1997); *Mickles v. Dep't of Envtl. Prot.*, Docket No. 06-DEP-320 (Mar. 30, 2007), *aff'd*, Fayette Cnty. Cir. Ct.

[7] For purposes of the grievance procedure, discrimination is defined as "any differences in the treatment of similarly situated employees, unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees." W. Va. Code § 6C-2-2(d) In order to establish a discrimination claim asserted under the grievance statutes, a Grievant must prove that Respondent engaged in discrimination or favoritism under the legal test provided in W. Va. Code § 6C-2-2(d). The first criterion that a Grievant must prove is that he or she has received different treatment from other employees in similar situations. Grievants did not provide any evidence to establish that similarly situated employees have been treated differently or that a policy violation occurred.

Docket No. 07-AA-1 (Feb. 13. 2008). "Management decisions are to be judged by the arbitrary and capricious standard." *Adams v. Reg'l Jail & Corr. Facility Auth.*, Docket No. 06-RJA-147 (Sept. 29, 2006); *Miller v. Kanawha County Bd. of Educ.*, Docket No. 05-20-252 (Sept. 28, 2005). In terms of fundamental employment law, management is empowered with reasonable discretion, when it comes to determine the best use of employees and equipment, regardless of an employee's preference for assignment. Further, Respondent has an identified and established overtime policy. *See* R Ex 3. Employees do not control what jobs they would like to be assigned. Grievants in the circumstance of this matter has not established an inalienable entitlement to specific duties (skip paving) which tends to provide an unspecified amount of overtime wages.

The "clearly wrong" and the "arbitrary and capricious" standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. *Adkins v. W. Va. Dep't of Educ.*, 210 W. Va. 105, 556 S.E.2d 72 (2001)(*citing In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996)). "While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute his judgment for that of [the employer]." *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997); *Blake v. Kanawha County Bd. of Educ.,* Docket No. 01-20-470 (Oct. 29, 2001).

Grievants failed to prove that Respondent's actions were contrary to law, rule or policy, or was in any way arbitrary and capricious. Grievants failed to demonstrate that they were discriminated against by proving that Respondent engaged in discrimination

under the legal test provided in W. Va. Code § 6C-2-2(d) or that Respondent violated any rule, law, or policy regarding job assignments.

The following conclusions of law are appropriate in this matter:

Conclusions of Law

1. Because the subject of this grievance does not involve a disciplinary matter, Grievants has the burden of proving their 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, a party has not met its burden of proof. *Id.*

2. An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). "Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. *See Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996)." *Trimboli v. Dep't of Health and Human Res.*,

Docket No. 93-HHR-322 (June 27, 1997), *aff'd* Mercer Cnty. Cir. Ct. Docket No. 97-CV-374-K (Oct. 16, 1998).

3. The "clearly wrong" and the "arbitrary and capricious" standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis. *Adkins v. W. Va. Dep't of Educ.*, 210 W. Va. 105, 556 S.E.2d 72 (2001)(*citing In re Queen*, 196 W. Va. 442, 473 S.E.2d 483 (1996)). While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute his judgment for that of [the employer]. *Trimboli v. Dep't of Health and Human Res.*, Docket No. 93-HHR-322 (June 27, 1997); *Blake v. Kanawha County Bd. of Educ.,* Docket No. 01-20-470 (Oct. 29, 2001).

4. Grievants failed to prove that Respondent abused its discretion or acted in an arbitrary and capricious manner in the circumstance of the instant matter.

5. "'Discrimination' means any differences in the treatment of similarly situated employees, unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees." *W. Va. Code* §6C-2-2(d). In order to establish a discrimination or favoritism claim asserted under the grievance statutes, an employee must prove:

> (a) that he or she has been treated differently from one or more similarly-situated employee(s);
>
> (b) that the different treatment is not related to the actual job responsibilities of the employees; and,
>
> (c) that the difference in treatment was not agreed to in writing by the employee.

Frymier v. Higher Education Policy Comm'n, 655 S.E.2d 52, 221 W. Va. 306 (2007); *Harris v. Dep't of Transp.*, Docket No. 2008-1594-DOT (Dec. 15, 2008); *See Bd. of Educ. v. White*, 216 W.Va. 242, 605 S.E.2d 814 (2004).

6. Grievants did NOT establish the *prima facia* elements of either a discrimination or favoritism claim. Grievants failed to prove discrimination, favoritism, or that Respondent's actions were arbitrary and capricious.

7. "Mere allegations alone without substantiating facts are insufficient to prove a grievance." *Baker v. Bd. of Trs./W. Va. Univ. at Parkersburg*, Docket No. 97-BOT-359 (Apr. 30, 1998) (citing *Harrison v. W. Va. Bd. of Drs./Bluefield State Coll.,* Docket No. 93-BOD-400 (Apr. 11, 1995)).

8. Grievants failed to identify a specific rule or regulation that Respondent violated to the detriment of Grievants.

9. Grievants failed to establish loss of compensation, that he or she was clearly entitled. Grievants failed to establish sum certain damages.

Accordingly, this grievance is **DENIED**.

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: September 2, 2021

Landon R. Brown
Administrative Law Judge