WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

BONNIE DEMPSEY,

Grievant,

v. **Docket No. 2013-1138-FayED**

FAYETTE COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Bonnie Dempsey, is employed by the Fayette County Board of Education ("Board") as a Cook/Cafeteria Manager at Ansted Elementary School ("School"). A Board employee who worked with Grievant claimed that Grievant intentionally sprayed her in the face with water in the kitchen of the School. A Pre-disciplinary Hearing was conducted on November 30, 2012, concerning this spraying incident. At present, the Board of Education of Fayette County is under the control of the West Virginia State Board of Education ("State Board"). Following the Pre-disciplinary Hearing the Superintendent of the Board ("Fayette County Superintendent") recommended suspending Grievant without pay for three days and the same was ratified by the State Board acting on behalf of the Board. On February 1, 2013, Ms. Dempsey filed this grievance contesting her suspension. Grievant contends that the spraying was accidental and alleges violations of W. VA. CODE §§18A-2-7 and 18A-2-8. As relief, Grievant seeks compensation for all lost wages and benefits, "including but not limited to seniority," with interest. Grievant also seeks to have her record expunged of all

references to the suspension. Grievant appealed directly to Level Three pursuant to W. VA. CODE §§18A-2-8 and 6C-2-4(a)(4).

A Level Three hearing was held at the Charleston office of the West Virginia Public Employees Grievance Board on April 24, 2013. Grievant appeared at the hearing with her representative John E. Roush, Esq., of the West Virginia School Service Personnel Association. Rebecca M. Tinder, Esq., of Bowles Rice McDavid Graff & Love LLP, represented Respondent. The parties submitted Proposed Findings of Fact and Conclusions of Law, which were received at the West Virginia Public Employees Grievance Board on May 24, 2013. This grievance became mature for decision on that date.

Synopsis

Grievant was suspended for three days without pay for intentionally spraying a coworker in the face with water. Grievant argues that the spraying was accidental. Respondent proved that Grievant intentionally sprayed a coworker with water and that this act was a violation of Policy 5902 of the Employee Code of Conduct of the West Virginia and Fayette County Boards of Education, which constituted insubordination and that Grievant's three-day suspension was justified and appropriate. Therefore, this grievance is DENIED.

The following facts are found to be proven by a preponderance of the evidence based upon an examination of the entire record developed in this matter.

Findings of Fact

1. Grievant is a Cook/Cafeteria Manager at the School. Grievant has been an employee of the Board since 1983.

2. Grievant works in the School's kitchen with Ms. Theresa Mullins and Ms. Tami Langley, both of whom are cooks in the "Cook II" classification.

3. The School kitchen includes a dishwashing area where dishes are sprayed off using a hand-held sprayer/faucet. In order for the water to spray out, the sprayer/faucet must be squeezed. The water sprays vertically into the sink unless the sprayer is manipulated in another direction by the handler. The water from this commercial kitchen sprayer/faucet sprays out with a force greater than that of a residential sprayer/faucet.

4. On October 5, 2012, Grievant was spraying dishes at the sink. Ms. Mullins was standing near Grievant, assisting with cleanup. Ms. Langley was also working in the kitchen with Grievant.

5. The custodian of the School, Ms. Jerry Lynn Critchley, also happened to be in the kitchen at this time.

6. It was a very hot day outside, making the kitchen uncomfortably warm, and Ms. Langley remarked that it was, " … hotter than a pig going to slaughter." Grievant responded that she could cool Ms. Langley off, if Ms. Langley wanted her to do so. Ms. Langley responded that she did not want Grievant to spray her.

7. Sometime shortly after the remark about the heat by Ms. Langley, Grievant directed the nozzle of the sprayer/faucet at Ms. Langley and sprayed

her in the face with water. Ms. Langley was standing at a distance of approximately 6 to 15 feet from Grievant at the time.[1] The spray nozzle was turned horizontally or perpendicular to the floor and directed at Ms. Langley.[2]

8. Neither Ms. Critchley nor Ms. Mullins heard the exchange about the heat and “spraying to cool off” between Ms. Langley and Grievant. Ms. Mullins noted that the dishwasher was running at the time, making it hard to hear what was said, but she was aware that the others were talking.

9. At the time of the spraying incident, Ms. Critchley was standing next to Ms. Langley. Both Ms. Critchley and Ms. Mullins observed Grievant spraying Ms. Langley directly in the face and saw water dripping from her face afterward.

10. Ms. Langley responded immediately and angrily to being sprayed, saying to Grievant that, "Paybacks are coming back to you."

11. After this remark by Ms. Langley, Grievant immediately apologized for spraying Ms. Langley.

12. Ms. Langley was upset and embarrassed by the incident and complained about it to Ms. Mullins who attempted to comfort her.

13. The spraying incident occurred on Friday, October 5, 2013. The incident was not reported to the principal of the School until Monday, October 8, 2012.

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[1] The witnesses gave various testimony regarding how far Ms. Langley was from Grievant during the spraying; anywhere from 6-15 feet.

[2] There was some testimony that this sprayer was unpredictable, i.e., it had swung and hit a coworker in the face in the past. However, the testimony clearly established that, in order for Ms. Langley to have been sprayed in the face from a distance of 6 to 15 feet, the nozzle must have been intentionally directed from its usual downward position and upward and toward Ms. Langley.

14. There had admittedly been tension in the workplace between Ms. Langley and Grievant prior to the spraying incident.

15. Prior to the spraying incident, Grievant had been "teased" by her coworkers on occasion but did not complain about it until her Pre-disciplinary hearing on November 30, 2012.

16. Ms. Dempsey's personnel file revealed the following:

a. An April 21, 2010, Warning Letter which included admonitions that should Grievant "have a problem with someone, please address it with Mr. Whitt (the School Principal) and he will handle it. Be careful how you speak to people. It costs nothing to be nice and pays great dividends." (Board Exhibit 6.)[3]

b. An Evaluation dated May 27, 2011, in which Grievant received an unsatisfactory rating in the areas of public relations and employee relationships. (Board Exhibit 7.)

c. An Improvement Plan dated May 27, 2011, wherein a plan was developed to address Grievant's performance in the areas of public relations and employee relationships. (Board Exhibit 8.)

d. Letter of Suspension issued on February 13, 2012, suspending Grievant for two days "for violating the employee code of conduct, wherein it was noted that "[a]ny additional misconduct may result in a more severe consequence." (Board Exhibit 9.)

e. A letter dated February 20, 2010,[4] outlining the conclusion of the improvement plan and a statement that Grievant was encouraged "to get along with everyone on staff at Ansted Elementary School." Grievant was further directed "to follow the employee code of conduct." (Board Exhibit 10.)

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[3] The record of the Level One proceedings was admitted into evidence and made a part of the record at the Level Three hearing as Respondent's Exhibit No. 1. Respondent's Exhibit No. 1, at Tab 4, was the hearing transcript from Grievant's Pre-disciplinary Hearing of November 30, 2012, including the Board Exhibits attached thereto at Nos. 1-13. To be clear, these Board Exhibits at Tab 4, Nos. 1-13, will hereafter be referred to as "Board Exhibits."

[4] This letter was erroneously dated 2010. The correct date is February 20, 2012.

f. A May 24, 2012, observation form in which Grievant was advised to "focus on positive relationships" and "treat others with respect and kindness." (Board Exhibit 11.)

g. A May 24, 2012, Evaluation where all areas were marked as Satisfactory. (Board Exhibit 12.)

h. An October 1, 2012, Warning Letter in which Grievant was reminded by the Superintendent of the Fayette County School Board, Mr. Keith Butcher, ("Superintendent Butcher") that "[t]he employee code of conduct requires employees to exercise proper judgment in the completion of their duties. Such judgment includes having appropriate interaction with adults and students." (Board Exhibit 13.)

17. When the October 1, 2012, Warning Letter was delivered, Superintendent Butcher personally met with Grievant and discussed the importance of the tenets of the Employee Code of Conduct and her need to adhere to the same.[5]

18. Nutrition Director Seay of Fayette County participated in a number of meetings with Grievant, prior to the spraying incident, in which Grievant's interactions with others were addressed.[6] Director Seay also reported that some of the substitutes have refused to work at the School as a result of the actions of Grievant.

19. All employees of the Board are governed by the Employee Code of Conduct Policies of both the West Virginia State Board of Education and the Fayette County Board of Education which requires all employees to:

a. exhibit professional behavior by showing positive examples of communication, fairness

[5] That meeting was four days before the spraying incident.
[6] The Nutrition Director's full name was not provided.

b. contribute, cooperate and participate in creating an environment in which all employees/students are accepted…

c. maintain a safe and healthy environment, free from harassment, intimidation, bullying

d. create a culture of caring through understanding and support…

e. demonstrate responsible citizenship by maintaining a high standard of conduct, self-control, and moral/ethical behavior and]

f. comply with all Federal and West Virginia laws, policies, regulations and procedures." (Board Exhibit 5.)

20. Grievant was aware of the mandates of the Employee Code of Conduct Policies of both the State and Fayette County Boards of Education ("Employee Code of Conduct") and had been instructed about their contents on multiple occasions, including on the first day of the 2012-2013 school year. The Superintendent found that Grievant's conduct of spraying a co-worker with water was a form of harassment, intimidation and bullying that was not in conformity with the Employee Code of Conduct.

21. W. VA. CODE §18A-2-8 identifies the types of conduct that can result in disciplinary action, which includes insubordination. The Superintendent determined that Grievant's failure to follow the Code of Conduct and its directives constituted insubordination.

22. As a result of the foregoing, the Superintendent suspended Grievant without pay for three days and the same was ratified by the State acting on behalf of the Board. (Board Exhibit 1.)

Discussion

The burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2008); *Hoover v. Lewis County Bd. of Educ.*, Docket No. 93-21-427 (Feb. 24, 1994); *Landy v. Raleigh County Bd. of Educ*., Docket No. 89-41-232 (Dec. 14, 1989). "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). Where the evidence equally supports both sides, the employer has not met its burden. *Leichliter v. W. Va. Dep't of Health & Human Res.,* Docket No. 92-HHR-486 (May 17, 1993).

Ms. Langley testified that she found Grievant hard to work with and that Grievant “belittled her every chance she got.” Grievant’s counsel argues that these admissions reveal Ms. Langley's animosity toward Grievant. Grievant further contends that Ms. Langley exaggerated her testimony to “cause trouble" for her and that Ms. Langley's accusation that she is a "liar" further indicates Ms. Langley's deep animosity toward her. In addition, Grievant argues that Ms. Langley's statement that, "Paybacks are coming back to you," are the words of an antagonist vowing revenge rather than the words of an innocent victim

expressing shock and hurt feelings. However, Ms. Langley insisted that her comment about “paybacks” did not mean that she wished Grievant "ill."

Both Grievant and Ms. Langley testified that before the spraying incident Ms. Langley remarked that, "It was hotter than a pig going to slaughter," and that Grievant responded that she could cool Ms. Langley off, if Ms. Langley wanted her to do so. Both also agreed that Ms. Langley responded that she did not want Grievant to “cool her off.” However, very shortly thereafter, Ms. Langley was sprayed in the face with water by Grievant. Immediately before the incident, Ms. Mullins was standing near Grievant, “catching dishes,” at the end of the dishwasher. Grievant contends Ms. Mullins was teasing her at that time and that she turned toward Ms. Mullins during the teasing with the sprayer in hand. Grievant’s counsel contends that Ms. Langley, was "a bystander" who was accidentally sprayed when Grievant turned to confront her “tormentor,” Ms. Mullins.[7] Ms. Langley testified that after Grievant sprayed her with the water, Grievant said, "You’re cooled off now." Grievant’s testimony of the events does not include this last remark about cooling off. Ms. Langley did not respond calmly to being sprayed, rather she made the statement that, "Paybacks are coming to you." Ms. Langley thought Grievant believed that spraying her was a, “funny, joking thing to do,” but Ms. Langley did not find it humorous.

Given the varied and contradictory testimony of the witnesses concerning the spraying and the motivation ascribed to it, the credibility of the witnesses is called into question in this matter. An Administrative Law Judge is charged with

[7] Grievant insisted that she did not intend to spray Ms. Mullins either.

assessing the credibility of the witnesses who appear before her. *Lanehart v. Logan County Bd. of Educ.,* Docket No. 95-23-235 (Dec. 29, 1995); Perdue *v. Dept. of Health and Human Res./Huntington State Hosp.,* Docket No. 93-HHR-050 (Feb. 4, 1993). 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. In addition the ALJ should consider: 1) the 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 statement. *See Holmes v. Bd. of Directors/W. Va. State College,* Docket No. 99-BOD-216 (Dec. 28, 1999); *Perdue v. Dep't. of Health & Human Res./Huntington State Hosp.*, Docket No. 93-HHR-050 (Feb. 4, 1994).

In evaluating the biases or motives of the witnesses, the undersigned considered that Ms. Langley might have some animosity toward Grievant due to their tense working relationship. As a consequence, Ms. Langley may have exaggerated or been untruthful about the nature of the spraying incident and its affect on her. Ms. Mullins confirmed that the atmosphere in the kitchen was sometimes tense due to the conduct or mood of Grievant. Moreover, Grievant's personnel record confirms that she has repeatedly had issues with her public and employee relationships in the workplace. Particularly given Ms. Langley's remark about "paybacks are coming," it is certainly conceivable that Ms. Langley may have resented Grievant and exaggerated the spraying incident, characterizing it

as intentional when it was not. However, Grievant admitted to asking Ms. Langley if she would like to be sprayed to “cool off.” The dialogue between the two coworkers concerning the heat and a “spray to cool off” lends credibility to Ms. Langley’s account of the events and to her perception that Grievant’s act was intentional. Given this conversation and Grievant's past errors in judgment as to how she related to others in the workplace, the undersigned finds that Ms. Langley’s testimony about Grievant's intent is credible.

Additionally, the undersigned notes that Grievant only first mentioned that she was being teased at her Pre-disciplinary Hearing on November 30, 2012. The other witnesses admitted that there had been mild teasing of Grievant by Ms. Mullins, but could not recall whether this teasing occurred on the day in question. That Grievant only later provided the teasing as the reason for her sudden turn toward Ms. Mullins with the sprayer is suspect, because if the teasing were truly troublesome to her, she would certainly have remembered and reported it promptly in connection with the incident.

In addition, the undersigned had the opportunity to observe Ms. Mullins and Ms. Critchley as they testified concerning the spraying incident. Both of these witnesses had operated the sprayer/faucet and knew how it worked. Both believed the spraying was intentional. Ms. Critchley testified that, “It was done on purpose. It went beyond having fun.” She thought Grievant sprayed Ms. Langley in the face "on purpose” and that Grievant’s action was "rude." Both Ms. Mullins and Ms. Critchley were obviously dismayed by the spraying incident. They were convincing when they testified that they would have been angry or upset if they

had been in Ms. Langley's position. The undersigned also found Ms. Mullins' testimony to be genuine when she indicated that she felt compelled to comfort Ms. Langley following the incident. If it had been a mere accident, consoling Ms. Langley would have been unnecessary. In addition, the undersigned found that the testimony given by Ms. Mullins and Ms. Critchley was credible based upon their clear and uncontradictory communication concerning the incident and their sober attitude toward the action. Though there was prior tension among those working in the kitchen, which may have influenced the testimony of Ms. Mullins and Ms. Critchley, these witnesses were nonetheless perceived by the undersigned as accurate in their appraisal of what they observed.

To further determine whether the spraying was accidental, it is necessary to examine how the sprayer/faucet works. All of the witnesses described the operation of the sprayer/faucet in the same way, testifying that the operator of the faucet must maintain constant pressure on it for it to spray and that it normally sprays downward into the sink. The force of the water is dictated by how much the sprayer/faucet is squeezed. Grievant testified that as she turned toward Ms. Mullins she was not cognizant of the fact that she was still spraying the water. She specifically stated that, "I went up with the sprayer. I didn't do it on purpose to spray someone," and "I was holding the sprayer and I went up." Given the normal operation of the faucet, it is clear that Grievant consciously turned the sprayer/faucet to a position that was perpendicular to the floor and squeezed/maintained pressure on it to spray the water. Grievant admitted that some water did spray on Ms. Langley. Grievant also testified that some water

sprayed on the floor rather than on Ms. Langley.[8] However, the credible testimony of Ms. Critchley and Ms. Mullins established that Grievant applied enough consistent pressure to the sprayer/faucet to cause water to spray approximately 6-15 feet to reach Ms. Langley's face, leaving Ms. Langley's face dripping with water.

Ms. Langley's complaint about the extreme heat and Grievant's undisputed offer to spray Ms. Langley, which occurred shortly before the spraying incident, coupled with the way the faucet must be operated to spray horizontally with any force, makes it simply implausible to the undersigned that Grievant sprayed the water accidentally. Moreover, Grievant's personnel record indicated prior problems with employee relationships. In light of the foregoing, the undersigned finds that Grievant intentionally sprayed Ms. Langley in the face with water. While there was likely no malicious intent by Grievant, the undersigned finds that Grievant's act was in violation of the Employee Code of Conduct, which requires employees to "exhibit professional behavior by showing positive examples of … communication, [and] fairness…; contribute, cooperate and participate in creating an environment in which all employees/students are accepted…; maintain a safe and healthy environment, free from harassment, intimidation, [and] bullying…; create a culture of caring through understanding and support; … demonstrate responsible citizenship by maintaining a high standard of conduct, self-control, and moral/ethical behavior…[and] comply with

[8] The testimony concerning whether water sprayed on the floor, rather than on Ms. Langley, and how much water was on the floor after the incident varied.

all Federal and West Virginia laws, policies, regulations and procedures." Grievant's conduct was counter to creating a "culture of caring through understanding and support," demonstrated lack of "self-control," and was harassing and intimidating to Ms. Langley.

W. VA. CODE §18A-2-8 identifies the types of conduct that can result in disciplinary action, which includes insubordination. Insubordination involves the "willful failure or refusal to obey reasonable orders of a superior who is entitled to give such order." *Riddle v. Bd. of Directors, So. W. Va. Community College*, Docket No. 93-BOD-309 (May 31, 1994) (cites omitted); *Webb v. Mason County Bd. of Educ*., Docket No. 26-89-004 (May 1, 1989). Insubordination may also be found when an employee shows a willful disregard for the implied directions of an employer. *Sexton v. Marshall Univ.*, Docket No. BOR2-88-029-4 (May 25, 1988), citing *Weber v. Buncombe County Bd. of Educ*., 266 S.E.2d 42 (N.C. 1980). In order to establish insubordination, the Board must demonstrate that a policy or directive that applied to the employee was in existence at the time of the violation, and the employee's failure to comply was sufficiently knowing and intentional to constitute the defiance of authority inherent in a charge of insubordination. *Conner v. Barbour County Bd. of Educ.,* Docket No. 94-01-394 (Jan. 31, 1995), *aff'd., Conner v. Barbour County Bd. of Educ.*, Civil Action No. 95-AA-66, Cir. Ct. Kanawha County (May 1, 1996) (W. Va. Supreme Court refused to hear appeal, Nov. 19, 1996) and *Domingues v. Fayette County Board of Education*, Docket No. 04-10-341 (Jan. 28, 2005) *aff'd. Manuel Domingues v. Fayette County Bd. of Educ.,* Kanawha County Circuit Court Civil Action No. 05-

AA-21 (Feb. 12, 2007). Insubordination may be based upon a violation of a written policy, such as the State Board of Education's Employee Code of Conduct. *Domingues v. Fayette County Board of Education*, Docket No. 04-10-341 (Jan. 28, 2005) *aff'd. Manuel Domingues v. Fayette County Bd. of Educ.,* Kanawha County Circuit Court Civil Action No. 05-AA-21 (Feb. 12, 2007). *See also, generally, Conner v. Barbour County Bd. of Educ.,* Docket No. 94-01-394 (Jan. 31, 1995). Grievant was clearly aware of the Employee Code of Conduct Policies of both the West Virginia State Board of Education and the Fayette County Board of Education. Prior to this incident, she was counseled on several occasions to conduct herself accordingly. Her failure to do so constituted insubordination.

Conclusions of Law

1. The burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2008); *Hoover v. Lewis County Bd. of Educ.*, Docket No. 93-21-427 (Feb. 24, 1994); *Landy v. Raleigh County Bd. of Educ*., Docket No. 89-41-232 (Dec. 14, 1989). "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). Where the evidence equally supports both sides, the employer has not met its burden.

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

2. Respondent proved, by a preponderance of the evidence, that Grievant violated the Employee Code of Conduct Policies of both the West Virginia State Board of Education and the Fayette County Board of Education by intentionally spraying her coworker with water.

3. W. VA. CODE § 18A-2-8 identifies the types of conduct that can result in disciplinary action, which includes insubordination.

4. Insubordination involves the "willful failure or refusal to obey reasonable orders of a superior who is entitled to give such order." *Riddle v. Bd. of Directors, So. W. Va. Community College*, Docket No. 93-BOD-309 (May 31, 1994) (cites omitted); *Webb v. Mason County Bd. of Educ*., Docket No. 26-89-004 (May 1, 1989). Insubordination may also be found when an employee shows a willful disregard for the implied directions of an employer. *Sexton v. Marshall Univ.*, Docket No. BOR2-88-029-4 (May 25, 1988), citing *Weber v. Buncombe County Bd. of Educ*., 266 S.E.2d 42 (N.C. 1980).

5. In order to establish insubordination, the Board must demonstrate that a policy or directive that applied to the employee was in existence at the time of the violation, and the employee's failure to comply was sufficiently knowing and intentional to constitute the defiance of authority inherent in a charge of insubordination. *Conner v. Barbour County Bd. of Educ.,* Docket No. 94-01-394 (Jan. 31, 1995), *aff'd., Conner v. Barbour County Bd. of Educ.*, Civil Action No. 95-AA-66, Cir. Ct. Kanawha County (May 1, 1996) (W. Va. Supreme Court

refused to hear appeal, Nov. 19, 1996) and *Domingues v. Fayette County Board of Education*, Docket No. 04-10-341 (Jan. 28, 2005) *aff'd. Manuel Domingues v. Fayette County Bd. of Educ.,* Kanawha County Circuit Court Civil Action No. 05-AA-21 (Feb. 12, 2007).

6. Insubordination may be based upon a violation of a written policy, such as the State Board of Education's Employee Code of Conduct. *Domingues v. Fayette County Board of Education*, Docket No. 04-10-341 (Jan. 28, 2005) *aff'd. Manuel Domingues v. Fayette County Bd. of Educ.,* Kanawha County Circuit Court Civil Action No. 05-AA-21 (Feb. 12, 2007). *See also, generally, Conner v. Barbour County Bd. of Educ.,* Docket No. 94-01-394 (Jan. 31, 1995).

7. Respondent established that Grievant was insubordinate as she was well aware of Employee Code of Conduct of the State of West Virginia and of the Fayette County Board of Education and violated it when she sprayed a co-worker with water from the dish sprayer on October 5, 2012. The Board has met its burden of proof by a preponderance of the evidence and demonstrated that Grievant was insubordinate. Accordingly, the 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 (eff. July 7, 2008).

DATE: JULY 10, 2013

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SUSAN L. BASILE
ADMINISTRATIVE LAW JUDGE