

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in January 2023

The Board's monthly reports are intended to assist public employers covered by a grievance procedure to monitor significant personnel-related matters which came before the Grievance Board, and to ascertain whether any personnel policies need to be reviewed, revised or enforced. W. Va. Code §18-29-11(1992). Each report contains summaries of all decisions issued during the immediately preceding month.

If you have any comments or suggestions about the monthly report, please send an e-mail to wvgb@wv.gov.

NOTICE: These synopses in no way constitute an official opinion or comment by the Grievance Board or its administrative law judges on the holdings in the cases. They are intended to serve as an information and research tool only.

TOPICAL INDEX
HIGHER EDUCATION EMPLOYEES

KEYWORDS: Default; Level Two Mediation; Timelines

CASE STYLE: Cox v. West Liberty University

DOCKET NO. 2022-0773-CONS (1/12/2023)

PRIMARY ISSUES: Whether Grievant proved default occurred.

SUMMARY: Grievant filed a grievance against Respondent, his employer. When Respondent failed to appear at level two mediation, Grievant moved for default. However, default does not apply to level two mediation. Thus, default is DENIED.

KEYWORDS: Motion to Dismiss; Contract; Non-Renewal; Timelines; Untimely Filed; Employee; Employer; Jurisdiction

CASE STYLE: Cooper v. BridgeValley Community and Technical College

DOCKET NO. 2023-0104-BVCTC (1/18/2023)

PRIMARY ISSUES: Whether this grievance was timely filed.

SUMMARY: Grievant was employed by Respondent as its Corporate Education Faculty & Program Manager. Grievant's position was eliminated, and her contract ended June 30, 2022. Grievant grieved the terms of a new contract she was offered for a different position, which she declined to accept. Respondent moved for dismissal of the grievance alleging lack of standing, mootness, and untimeliness. As Grievant attempts to challenge the terms of a new contract she was offered after her employment had already ceased, the Grievance Board does not have jurisdiction to hear the claim. To the extent that the new contract could be related back to non-renewal of Grievant's prior contract, the grievance was untimely filed. Accordingly, the grievance is dismissed.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
PROFESSIONAL PERSONNEL

KEYWORDS: Multi-classified Service Personnel; Extra Duty Assignments; Overtime Hours

CASE STYLE: Latta, et al. v. Taylor County Board of Education
DOCKET NO. 2022-0696-CONS (1/23/2023)

PRIMARY ISSUES: Whether Grievants were in the same job classification for the purpose of distribution of overtime work.

SUMMARY: Grievants are employed by the Taylor County Board of Education as multiclassified service personnel. Grievants contend that they should have received the same opportunity as a coworker for overtime/extra duty work. Overtime assignments for service personnel are considered extra duty work to be rotated among employees in the particular job classification. For multiclassified employees, the work would only be distributed among employees with all the same classifications. Grievants were not in the same job classification for the purpose of distribution of overtime work. In order for a grievant to demonstrate entitlement to a position or compensation, it is necessary to establish that he or she was “next in line.” Grievants failed to establish that they were “next in line” for any particular extra duty assignments. Accordingly, the grievance is denied.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
SERVICE PERSONNEL

KEYWORDS: Written Reprimand; Crossing the Center Line; Discrimination; Arbitrary and Capricious; Mitigation

CASE STYLE: Brown v. Hampshire County Board of Education
DOCKET NO. 2023-0083-HamED (1/4/2023)

PRIMARY ISSUES: Whether Grievant proved that his punishment was arbitrary and capricious or that mitigation is warranted.

SUMMARY: Grievant is employed as a bus driver by Respondent, Hampshire County Board of Education, and trains Respondent's drivers through a third-party employer. One morning, Grievant maneuvered his bus over the center line in response to an oncoming pickup truck that had crossed into his lane. The pickup truck in turn veered to its right where it struck and injured a student attempting to crossover to board the bus. Respondent issued Grievant a written reprimand which deemed Grievant's maneuver improper and the cause of injury. Respondent suspended for a year its use of Grievant's training services. Grievant claims that he acted to protect students by maneuvering for impact. Grievant asserts that Respondent is not statutorily authorized to stop using his third-party services and claims tortious interference. The Grievance Board lacks jurisdiction over claims related to Grievant's third-party employment. Respondent proved that Grievant improperly crossed the center line and that this infraction is associated with an injury. Grievant failed to prove discrimination or mitigation. Accordingly, this grievance is DENIED.

TOPICAL INDEX
STATE EMPLOYEES

<u>KEYWORDS:</u>	Selection; Discrimination; Favoritism; Arbitrary and Capricious
<u>CASE STYLE:</u>	<u>Drainer v. Division of Highways</u> DOCKET NO. 2022-0706-DOT (1/17/2023)
<u>PRIMARY ISSUES:</u>	Whether Grievant proved discrimination, favoritism, or that the selection decisions were arbitrary and capricious or unreasonable.
<u>SUMMARY:</u>	Grievant is employed by Respondent as a Transportation Worker 2 Equipment Operator. Grievant grieves his nonselection for training, alleging discrimination or favoritism and asserting he was not selected due to his age. Respondent denies discrimination or favoritism and asserts the selection decisions were made according to the needs of the agency. Grievant failed to prove discrimination, favoritism, or that the selection decisions were arbitrary and capricious or unreasonable. Accordingly, the grievance is denied.

KEYWORDS: Reclassification; Reallocation; Pay Grade; Salary Increase; Job Duties; Position Description Form; Arbitrary and Capricious

CASE STYLE: Rauer v. Division of Corrections and Rehabilitation/Bureau of Prisons and Jails AND Division of Personnel
 DOCKET NO. 2019-1219-MAPS (1/30/2023)

PRIMARY ISSUES: Whether Grievant proved that Respondent acted in any manner that was arbitrary and capricious by paying Grievant in accordance with her classification of Corrections Program Manager 3/Regional Director.

SUMMARY: During the 2018 regular session of the West Virginia Legislature a bill was passed to consolidate and reorganize several of the agencies that fell under the Department of Homeland Security. After the legislation was passed, the Department of Homeland Security worked with the Division of Personnel to standardize classifications within the Department. To address the organizational restructuring with the Department of Homeland Security, a new classification structure was proposed to the West Virginia State Personnel Board in a proposal that involved reclassifying positions into the new structure. The State Personnel Board approved the proposal at its June 21, 2018, Board meeting. The position occupied by Grievant was included in the proposal and was reclassified from the classification of Corrections Program Manager 2 to Corrections Program Manager 3 on December 8, 2018. Grievant seeks a salary increase that only occurs when a position is reallocated.

 Grievant claims the duties of her position changed prior to the reclassification; however, she did not complete or submit a Position Description Form for reallocation consideration by the Division of Personnel at any point prior the State Personnel Board reclassification action. Grievant failed to prove she was entitled to receive additional money on the reclassification approved by the State Personnel Board and failed to prove that the position she occupied should have been reallocated. Grievant failed to demonstrate by a preponderance of the evidence that the Division of Corrections and Rehabilitation or the Division of Personnel violated any statute, administrative rule, or policy.