

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in June 2022

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
COUNTY BOARDS OF EDUCATION
PROFESSIONAL PERSONNEL

KEYWORDS: Motion to Dismiss; Lack of Jurisdiction; COVID-19 Jobs Protection Act; Federal Labor Standards Act

CASE STYLE: Collins v. Calhoun-Gilmer Career Center
DOCKET NO. 2022-0334-CGCC (6/27/2022)

PRIMARY ISSUES: Whether the Grievance Board has jurisdiction in this matter.

SUMMARY: Grievant was placed on quarantine after testing positive for COVID-19. He was not allowed to report to work for five days and was not instructed to provide and assistance remotely for his students. Nonetheless, Grievant did assist his students daily pursuant to an on-line platform. Grievant was paid sick leave for the five days, and seeks to have his sick leave account credited with the five days he was charged while on quarantine. Respondent moved to dismiss the grievance arguing when the Legislature passed the COVID-19 Jobs Protection Act it removed jurisdiction from the Grievance Board to hear and claims arising out of facts related to the Covid-19 pandemic. Grievant argues that the Federal Labor Standards Act preempts the Jobs Protection Act. However, Grievant, as a vocational teacher, is exempt from coverage under the Fair Labor Standards Act provisions related to wage and overtime.

KEYWORDS: Selection; Qualifications; Skill Level; Prerequisites; Discrimination; Arbitrary and Capricious

CASE STYLE: Boone v. Cabell County Board of Education
DOCKET NO. 2022-0159-CONS (6/3/2022)

PRIMARY ISSUES: Whether Grievant proved that the selection process was arbitrary or discriminatory.

SUMMARY: Grievant, an Adult Education Teacher and part-time Systems Operations Specialist, protests her non-selection for one of five full-time Technology Support and Training Specialist positions posted for identified schools of Cabell County. Respondent maintains Grievant is not qualified in that Grievant is lacking an identified requisite for the posted position(s). Grievant does not possess an IC3 Digital Literacy Global 5 Certification. Grievant did not establish that Respondent's actions were "arbitrary and capricious" or "clearly wrong." Accordingly, this grievance is DENIED.

KEYWORDS: Discrimination; Favoritism; Cooling System; Arbitrary and Capricious
CASE STYLE: Botkin, et al v. Kanawha County Board of Education
DOCKET NO. 2021-0897-CONS (6/15/2022)

PRIMARY ISSUES: Whether Grievants proved that they were treated differently than any similarly-situated employee.

SUMMARY: Grievants are employed by Respondent as auto mechanic and diesel technology instructors at Ben Franklin Career and Technical Center. The shops assigned to Grievants lack adequate cooling systems and get uncomfortably hot. Grievants allege discrimination, favoritism, and an unsafe work environment. They request the installation of adequate cooling systems. Respondent has spent thousands to alleviate the heat, to no avail. Respondent contends that a minimum of half a million dollars is necessary to equip Grievants' shops with adequate cooling systems, rendering it cost prohibitive. While some shops at the facility have effective cooling systems, it is unclear when these were installed or how the cost compares with estimates for Grievants' shops. Grievants thus failed to prove discrimination or favoritism. While it is likely that extreme heat interferes with job performance and safety, Grievants failed to prove they are entitled to an expenditure of funds by Respondent necessary to adequately cool their shops. Accordingly, this grievance is DENIED.

KEYWORDS: Evaluation; Ratings; Negative Comments; Job Duties; Arbitrary and Capricious

CASE STYLE: Womble v. Marion County Board of Education
DOCKET NO. 2021-2517-MrnED (6/3/2022)

PRIMARY ISSUES: Whether Grievant proved that the rating of "emerging" and the rationale presented by the evaluator in support of the rating is lacking in merit or proper foundation and can reasonably be viewed as arbitrary.

SUMMARY: Grievant has been an employee of Marion County Board of Education for eleven years. Grievant has been an assistant principal at Fairmont Senior High School for over four years. Grievant filed this action challenging his evaluation for the 2020-2021 school year in areas in which he received a rating of "emerging." Under the totality of the circumstances of this case, Grievant was able to demonstrate that the rating of "emerging" and the rationale presented by the evaluator in support of the rating is lacking in merit or proper foundation and can reasonably be viewed as arbitrary. This grievance is granted, and Respondent is ordered to change the ratings of "emerging" to "accomplished" in the appropriate areas of the 2020-2021 evaluation.

TOPICAL INDEX
STATE EMPLOYEES

KEYWORDS: Written Reprimand; Work Standards; Job Performance; Disciplinary Action Policy; Arbitrary and Capricious; Mitigation

CASE STYLE: Rutherford v. Division of Highways
DOCKET NO. 2020-1568-CONS (6/23/2022)

PRIMARY ISSUES: Whether Respondent proved by a preponderance of the evidence that Grievant violated WVDOH Standards of Work Performance and Conduct.

SUMMARY: Grievant is a Transportation Worker 2 Equipment Operator employed by Respondent. Grievant protests a written reprimand and suspension for not performing up to work standards and failure to conduct himself properly during interactions with supervisors. Grievant repeatedly questioned management’s decisions and openly argued with his supervisor regarding job directions. Grievant is disruptive and in violation to established work standards. Respondent by a preponderance of the evidence established proper justification for disciplinary action. Accordingly, the grievance is DENIED.

KEYWORDS: Termination; Job Duties; Requirements; Job Description

CASE STYLE: Boggess v. Parkways Authority
DOCKET NO. 2022-0464-DOT (6/15/2022)

PRIMARY ISSUES: Whether Respondent had good cause to terminate Grievant’s employment.

SUMMARY: Grievant was employed by Respondent as a permanent, part-time toll collector. Grievant was an at will employee. Respondent terminated Grievant’s employment asserting that Grievant could not meet the essential functions of her position. Grievant challenged her dismissal, arguing that Respondent “waived the right to require [her] to comply with the job description requirements.” Grievant did not assert that Respondent’s motivation in discharging her contravened any substantial public policy. Therefore, this grievance is DENIED.