

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in August 2021

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: Selection; Summer Position; Summer Seniority; Most Qualified Applicant; Arbitrary and Capricious

CASE STYLE: Wroblewski v. Wayne County Board of Education
DOCKET NO. 2020-1507-WayED (9/7/2021)

PRIMARY ISSUES: Whether Grievant proved by a preponderance of the evidence that he was the most qualified candidate for the position of Summer Food Service Site Supervisor.

SUMMARY: Grievant was regularly employed by Respondent as a teacher. Grievant applied for the position Summer Food Service Site Supervisor position, but he was not selected for the same. Grievant argued that he should have been selected for the position because of his summer seniority and as he was applicant with the highest qualifications. Respondent denies Grievant's claims and asserts that the position was not a summer school position. Respondent asserts and that it properly selected the most qualified applicant based upon the factors listed in West Virginia Code § 18A-4-7a. Grievant proved his claims by a preponderance of the evidence. Therefore, the grievance is GRANTED.

TOPICAL INDEX
STATE EMPLOYEES

KEYWORDS: Employee; Employer; Jurisdiction

CASE STYLE: Bostic v. Department of Homeland Security/Mountaineer Challenge Academy
DOCKET NO. 2022-0135-MISC (9/14/2021)

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

SUMMARY: Grievant was employed by the West Virginia Military Authority at the Mountaineer Challenge Academy. Grievant's employment was specifically exempted from the grievance procedure by statute. The Grievance Board lacks jurisdiction in this matter. Accordingly, the grievance is dismissed.

KEYWORDS: Termination; Probationary Employee; Misconduct; Discrimination

CASE STYLE: Lee v. Department of Health and Human Resources/Mildred Mitchell-Bateman Hospital
DOCKET NO. 2020-0765-DHHR (9/9/2021)

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

SUMMARY: Grievant, a probationary employee, was dismissed from his cook position for allegedly threatening to leave a female coworker dead on the floor. Grievant does not deny making the statement but argues that it is just a common expression and was not intended as a threat. He notes that the other cooks did not treat him as a colleague and constantly caused problems for him. Finally, he avers that he and the coworker were in a heated argument, and she was yelling at him as well. Yet the coworker did not receive any discipline which he believes is unfair. Respondent proved the charges against Grievant and the grievance is DENIED.

KEYWORDS: Overtime; Job Duties; Discrimination; Arbitrary and Capricious

CASE STYLE: Thompson, et al. v. Division of Highways

DOCKET NO. 2018-1387-CONS (9/2/2021)

PRIMARY ISSUES: Whether Respondent's actions were arbitrary, capricious or in violation of any known rule or regulation applicable to the circumstance.

SUMMARY: Grievants are desirous of additional overtime activity and pay. Grievants were represented by Union representation of the WV Public Workers Union, a non-attorney representation. 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 this activity is now being performed by an alternative branch of Respondent's work force. Grievants contend Respondent's actions are not proper.

Grievant failed to establish that Respondent's business decision was improper or unlawful. 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. Grievance DENIED.