

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in September 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
HIGHER EDUCATION EMPLOYEES

<u>KEYWORDS:</u>	Selection; Certification; Qualifications; Arbitrary or Capricious
<u>CASE STYLE:</u>	<u>Jeney v. United Technical Center</u> DOCKET NO. 2020-1514-UTC (9/28/2021)
<u>PRIMARY ISSUES:</u>	Whether Grievant proved that he was entitled to the position in question.
<u>SUMMARY:</u>	Grievant was employed by United Technical Center as a Carpenter Instructor. Grievant was eligible to teach Carpentry based on his General Construction certification. Respondent reorganized its curriculum by eliminating the Carpentry position and Masonry position. Grievant is not certified in Carpentry or Masonry. Respondent posted a position for a Carpentry and Masonry Instructor. The successful applicant for this position was certified in Masonry and Carpentry. Grievant challenges this action by Respondent. Grievant failed to prove that he was entitled to the position in question rather than the fully certified applicant. This grievance is denied.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
PROFESSIONAL PERSONNEL

KEYWORDS: Suspension; Termination; Immortality; Immoral Conduct; Arbitrary and Capricious

CASE STYLE: Woart v. Mercer County Board of Education
DOCKET NO. 2021-2181-MerED (9/22/2021)

PRIMARY ISSUES: Whether Respondent's decision to terminate Grievant's employment contract was justified.

SUMMARY: Grievant was employed by Respondent as a Spanish teacher. Respondent suspended Grievant, then subsequently terminated her contract of employment, citing charges of insubordination and immorality, as well as a violation of the Mercer County Schools Policy G-24. Grievant denies all of Respondent's allegations and asserts that mitigation of her dismissal is warranted. Respondent met its burden of proving that Grievant's actions constitute insubordination and that such justifies its decision to suspend, and subsequently terminate, Grievant's employment contract. Grievant failed to present sufficient evidence to demonstrate that mitigation is warranted. Respondent failed to prove its claims of immorality and that Grievant violated Policy G-24. Accordingly, the grievance is DENIED.

TOPICAL INDEX
STATE EMPLOYEES

KEYWORDS: Alternative Work Schedule; Discrimination; Arbitrary and Capricious

CASE STYLE: Warner, et al v. Tax Department

DOCKET NO. 2020-0434-CONS (9/29/2021)

PRIMARY ISSUES: Whether Respondent's decision to terminate Grievant's alternative work schedules was arbitrary and capricious, or otherwise improper.

SUMMARY: Grievants are employed by Respondent as Auditor 3 field auditors. Grievants requested and were granted the opportunity to work alternative work schedules (AWS) pursuant to policy in 2018. While working AWS, Grievants worked four days per week, ten hours per day. About one year later, Respondent terminated Grievants' AWS and returned them to a traditional work week schedule, citing decreased production. Respondent also terminated Grievants' ability to apply for AWS in the future, but did not prohibit the office-based auditors from the doing so. Grievants allege discrimination. Respondent denies Grievants' claims and asserts that it had the authority to terminate their AWS and prohibit them from working AWS in the future given the responsibilities of their positions. Grievants failed to prove their claim by a preponderance of the evidence. Therefore, this grievance is DENIED.

KEYWORDS: Pay Raise; Paygrade; Pay Plan Policy; Classification; Arbitrary and Capricious

CASE STYLE: Rice, et al v. Department of Health and Human Resources/William R. Sharpe, Jr. Hospital

DOCKET NO. 2019-1861-CONS (9/22/2021)

PRIMARY ISSUES: Whether Grievants proved that Respondent lacked discretion to decide against additional pay increments.

SUMMARY: Grievants were promoted to Mental Health Therapist positions at Sharpe Hospital, jumping five paygrades in the process. Grievants received the mandated 22 percent pay raise and are properly compensated within their paygrade. Nevertheless, Grievants seek an additional discretionary raise under the Division of Personnel Pay Plan Policy because their qualifications exceed the required minimum. Respondent cites budgetary restraints and risk of internal salary inequity in rejecting the additional raise. Grievants did not prove that this denial was arbitrary and capricious. Accordingly, the grievance is DENIED.

KEYWORDS: Suspension; Misconduct; Gross Misconduct; Insubordination

CASE STYLE: Owen v. Division of Highways

DOCKET NO. 2021-0255-DOT (10/7/2021)

PRIMARY ISSUES: Whether Respondent proved Grievant committed misconduct and was justified in suspending Grievant for three days for the proven misconduct.

SUMMARY: Grievant was employed by Respondent as a Transportation Worker 3, Crew Chief. Grievant was suspended for three days for four separate alleged acts of misconduct. Respondent failed to prove Grievant's refusal of a directive was insubordinate as Respondent did not prove the refusal was wilful. Respondent proved Grievant committed gross misconduct for stranding a coworker during lunch at a restaurant by purposely leaving in the only vehicle without warning. Respondent was justified in suspending Grievant for three days for that act of gross misconduct. Accordingly, the grievance is denied.

KEYWORDS: Jurisdiction; Employee; Employer

CASE STYLE: Looney v. Supreme Court of Appeals

DOCKET NO. 2022-0096-MISC (9/17/2021)

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

SUMMARY: The Supreme Court of Appeals of West Virginia is responsible for personnel matters regarding its own staff, and Grievant is not an "employee" under the definition found in W. VA. CODE § 6C-2-2(e)(3). Respondent's request is granted, and the grievance is dismissed due to lack of jurisdiction.