

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in October 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: Contract Terms; Employee Contacts; Similarly Situated Employees; Arbitrary and Capricious

CASE STYLE: Pinson, et al. v. Mingo County Board of Education

DOCKET NO. 2022-0011-CONS (10/26/2022)

PRIMARY ISSUES: Whether Grievants established by a preponderance of the evidence that Respondent was required to extend their contract terms.

SUMMARY: Grievants filed grievances against Mingo County Board of Education, Respondent regarding their respective contract terms. Respondent chose to extend/enlarge the contract days of identifiable central office employees. Grievants contracts were not enlarged. Grievants allege that Respondent's actions constitute disparate treatment and violation of West Virginia Code §18A-4-5a. Grievants, individually contend entitlement to additional contracts days.

Grievants applied for and accepted the positions which they currently hold or held at the time of the filing. Respondent maintains it is not obligated to extend Grievants contract terms. Grievants did not establish by a preponderance of the evidence that Respondent violated any applicable rule, regulation, or law by not providing Grievants employment contracts equivalent to that of Central Office Directors or employees reporting directly to the Superintendent. Accordingly, this grievance is DENIED.

TOPICAL INDEX
STATE EMPLOYEES

<u>KEYWORDS:</u>	Salary Increase; Pay Range; Discrimination
<u>CASE STYLE:</u>	<u>Hill v. Department of Homeland Security/Parole Services AND Division of Personnel</u> DOCKET NO. 2022-0071-DHS (10/17/2022)
<u>PRIMARY ISSUES:</u>	Whether Grievant proved that he was discriminated against when other employees received pay above the maximum of the pay range of their job classification in error. Whether Grievant proved he was entitled to pay above the maximum of the pay range for his classification.
<u>SUMMARY:</u>	Grievant is employed by Respondent within the Parole Services Division as a Probation and Parole Officer. Grievant protests his employer's refusal to pay him above the maximum salary of the pay range for his classification to fulfill incentive increases granted by the State Personnel Board. Grievant failed to prove he was entitled to receive pay above the maximum of the pay range for his job classification. Grievant further alleges discrimination as other employees received pay above the maximum salary of the pay range for their classifications. Grievant failed to prove discrimination. In addition, the payments to the compared employees were an ultra vires act, for which the employer may not be bound, as the increases were granted in error in violation of the Division of Personnel's administrative rule. Grievant failed to prove he detrimentally relied on a promise of payment that would entitled him to equitable estoppel and any such promise would also have constituted an ultra vires act for which his employer could not be bound. Accordingly, the grievance is denied.

KEYWORDS: Dismissed; Terminate; Suspension; Patient; Neglect; Arbitrary and Capricious; Good Cause; Supervision; Observations; 1:1; Mitigation; APS; Investigation; Disproportionate; Discretion

CASE STYLE: McKenzie v. Department of Health and Human Resources/Mildred Mitchell-Bateman Hospital

DOCKET NO. 2021-0537-DHHR (10/19/2022)

PRIMARY ISSUES: Whether Respondent proved by a preponderance of the evidence that Grievant committed patient neglect which justified Grievant's dismissal.

SUMMARY: Respondent dismissed Grievant from employment for patient neglect in violation of state regulations and Mildred Mitchell-Bateman Hospital policy. Grievant admits to failing to strictly comply with the same but denies neglecting the patient. Respondent proved by a preponderance of the evidence that Grievant actions constituted patient neglect and that such justified Grievant's dismissal. Therefore, the grievance is DENIED.

KEYWORDS: Classification; Reallocation; Job Responsibilities and Duties; Position Description Form; Job Audit

CASE STYLE: Trail, et al. v. Division of Rehabilitation Services/ AND Division of Personnel

DOCKET NO. 2022-0347-CONS (10/31/2022)

PRIMARY ISSUES: Whether Grievants proved by a preponderance of the evidence that the HR Generalist 1 classification is the best fit for their positions.

SUMMARY: Grievant's Trail and Arvis hold positions which are placed in the HR Associate classification. They argue that their positions should be reallocated to the HR Generalist 1 classification which they believe better fits their duties and responsibilities. After several reviews, the DOP determined that Grievants' positions were properly allocated to the HR Associate classification. Grievants challenge that determination. DOP demonstrated that the positions held by both Grievants were all allocated to the HR Associate classification when they were fully examined in 2018 as a result of the State Personnel Board ("SPB") approving a new classification series for Human Resource positions. Grievants did not prove that a significant change had occurred in the duties of the position which would require reallocation, or that the DOP's determination that the best fit for the positions is in the HR Associate classification was clearly wrong.