

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in November 2009

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: SELECTION; MOST QUALIFIED; ARBITRARY AND CAPRICIOUS;
CLEARLY WRONG; INTERVIEW

CASE STYLE: LEMLEY v. WEST VIRGINIA UNIVERSITY
DOCKET NO. 2009-0174-WVU (11/10/2009)

PRIMARY ISSUES: Whether Respondent's non-selection of the Grievant for a posted position was clearly wrong or arbitrary and capricious.

SUMMARY: Grievant asserts that his years of experience as a Trade Specialist Lead II establish his credentials to hold the same position on a different shift. Grievant believes that night shift employees are intentionally being denied transfers to ensure competen

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COUNTY BOARDS OF EDUCATION
PROFESSIONAL PERSONNEL

KEYWORDS: SUSPENSION, DISCIPLINE, MITIGATION, BATTERY
CASE STYLE: KIRK v. LINCOLN COUNTY BOARD OF EDUCATION
DOCKET NO. 2010-0152-LINED (11/17/2009)
PRIMARY ISSUES: Whether Grievant's suspension for striking another teacher should be reduced.
SUMMARY: Grievant was suspended without pay for striking another school employee at school. She does not dispute that she should have been suspended, but challenges the length of her suspension, thirteen days, as excessive. Grievant cited no law, rule, or policy

KEYWORDS: TIMELINESS, UNEQUIVOCAL NOTIFICATION, PERSONAL LEAVE UNSPECIFIED, SICK LEAVE, PERSONAL LEAVE WITHOUT CAUSE, TIME SHEET, GREEN SHEET
CASE STYLE: BARBER, III v. MCDOWELL COUNTY BOARD OF EDUCATION AND DEPARTMENT OF EDUCATION
DOCKET NO. 2009-0458-MCDED (11/4/2009)
PRIMARY ISSUES: Whether Grievant was arbitrarily docked pay for two days where he was absent because of illness, filled out the appropriate leave form and provided the necessary doctor's statement.
SUMMARY: Grievant, a teacher, was not paid for two days he was absent, even though he had leave time to cover these absences and filled out the necessary form. Further, Grievant was charged a ½ PLU day from his leave account, when he did not utilize leave. Upon

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COUNTY BOARDS OF EDUCATION
SERVICE PERSONNEL

KEYWORDS: EXTRACURRICULAR ASSIGNMENTS; POSTING; BUS RUN; ABUSE OF DISCRETION; HIRING; TRANSFER; ARBITRARY AND CAPRICIOUS; STATUTORY RIGHT TO RETAIN ASSIGNMENT; INTERESTS OF STUDENT; SPECIAL EDUCATION STUDENT

CASE STYLE: GARNER, ET AL. v. MONONGALIA COUNTY BOARD OF EDUCATION

DOCKET NO. 2009-0523-CONS (11/4/2009)

PRIMARY ISSUES: Whether it was arbitrary and capricious, or an abuse of discretion for Respondent to combine two short extracurricular assignments into one much longer assignment in order to better serve a special education student, and whether Grievants had acquired the

SUMMARY: At the beginning of the 2008-2009 school year, one of the Grievants was transporting a particular special education student to his assigned work site, and the other Grievant was picking him up at his assigned work site and transporting him back to the voc

KEYWORDS: EXTRA-DUTY ASSIGNMENTS; ROTATION LIST; BID SHEET; SENIORITY; TRIP; BUS OPERATOR; EMERGENCY TRIP; REFUSAL; CANCELLATION

CASE STYLE: SOLLARS v. MONONGALIA COUNTY BOARD OF EDUCATION

DOCKET NO. 2009-0706-MONED (11/9/2009)

PRIMARY ISSUES: Whether MBOE violated W. Va. Code § 18A-4-8b(f) when assigning extra-duty trips.

SUMMARY: Grievant believes he was denied three extra-duty assignments. First, Respondent filled the first extra-duty assignment of the new school year with the person directly above Grievant on the extra-duty rotation list, but then did not give Grievant the next

KEYWORDS: SENIORITY; SUBSTITUTE; CONTRACT EMPLOYEE; REGULAR EMPLOYEE; SUBSTITUTE SENIORITY; REGULAR SENIORITY; TEMPORARY; PERMANENT

CASE STYLE: WEBB v. HAMPSHIRE COUNTY BOARD OF EDUCATION
DOCKET NO. 07-14-334R (11/20/2009)

PRIMARY ISSUES: Whether Grievant's seniority date should be changed.

SUMMARY: Grievant argued her seniority date should be changed from October 1, 1996, to the first day of school in August 1996. Grievant could not recall whether she was called to work as a substitute or as a full-time contract employee. Respondent approved Griev

KEYWORDS: TERMINATION, INSUBORDINATION, IMMORALITY, SEXUAL HARASSMENT; RATIONAL NEXUS

CASE STYLE: KIMBLE v. KANAWHA COUNTY BOARD OF EDUCATION
DOCKET NO. 2009-1640-KANED (11/30/2009)

PRIMARY ISSUES: Whether Grievant was properly terminated from her position as cheerleading coach. Whether a rational nexus existed between her conduct as a coach and her position as a cook.

SUMMARY: Grievant worked as head cook at Mary Ingles Elementary School. She also held an extracurricular position as head cheerleading coach at Riverside High School. Respondent terminated Grievant from both of her positions . Respondent asserts Grievant partic

TOPICAL INDEX
STATE EMPLOYEES

KEYWORDS: AT-WILL EMPLOYEE, DUTY RIG, POLICE OFFICER, FIREARM, SUBSTANTIAL PUBLIC POLICY, OPERATING PROCEDURES, AGENCY POLICY, FRAUD, MODIFICATION

CASE STYLE: DUBITES v. DIVISION OF PROTECTIVE SERVICES
DOCKET NO. 2010-0032-MAPS (11/9/2009)

PRIMARY ISSUES: Whether Grievant has established a violation of substantial public policy where he was dismissed after leaving his “duty rig” unattended in an unsecured area and the Respondent’s operating procedure provided that at-will employees could be dismissed for a

SUMMARY: Grievant, an at-will employee, was discharged from his position as a Capitol Police Officer after leaving his “duty belt” in an unsecured location after work. Grievant’s “duty belt” contained his firearm, handcuffs and cap-stun “pepper” spray.
At-w

KEYWORDS: CDL; RANDOM DRUG TESTING; SUBSTANCE ABUSE; COCAINE; URINE SAMPLE; DRUG AND ALCOHOL TESTING POLICY; GOOD CAUSE

CASE STYLE: HICKMAN, SR. v. DIVISION OF HIGHWAYS
DOCKET NO. 2010-0008-DOT (11/4/2009)

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

SUMMARY: As an employee required to hold a Commercial Driver’s License, Grievant was subject to random drug testing. Respondent’s drug and alcohol abuse policy provides an opportunity to rehabilitate after a first failed drug test. This was Grievant’s second pos

KEYWORDS: COMPENSATION; PAY GRADE; SIMILARLY SITUATED; ARBITRARY AND CAPRICIOUS; ABUSE OF DISCRETION; REALLOCATION; BACK PAY; SALARY

CASE STYLE: CHILDRESS v. WEST VIRGINIA STATE POLICE AND DIVISION OF PERSONNEL
DOCKET NO. 2008-0195-MAPS (11/25/2009)

PRIMARY ISSUES: Whether Grievant was entitled to additional salary given the amount of compensation received by a co-worker.

SUMMARY: Grievant alleges he is entitled to additional compensation. Grievant avers that his compensation should have been the same as a fellow employee during the period of time both were assigned to the West Virginia Intelligence Exchange section of the West Vi

KEYWORDS: DISCIPLINE, DISMISSAL, MITIGATION, FIGHT, RATIONAL NEXUS, VULGAR LANGUAGE, DUCK HUNT, HOSTILE WORK ENVIRONMENT, HARASSMENT

CASE STYLE: WILLIAMS v. ALCOHOL BEVERAGE CONTROL ADMINISTRATION
DOCKET NO. 2009-1684-DOR (11/25/2009)

PRIMARY ISSUES: Whether employee should be dismissed for fighting with a co-worker off State property.

SUMMARY: Respondent dismissed Grievant for allegedly challenging his supervisor's authority, using inappropriate language, harassing fellow employees, exhibiting unprofessional conduct, leaving work early under a false excuse and punching a fellow employee. Griev

KEYWORDS: DISMISSAL, JOB ABANDONMENT, GOOD CAUSE, DISCIPLINE

CASE STYLE: H. v. DEPARTMENT OF HEALTH AND HUMAN RESOURCES/BUREAU FOR MEDICAL SERVICES
DOCKET NO. 2008-1591-DHHR (11/9/2009)

PRIMARY ISSUES: Whether Grievant's abandoned her job.

SUMMARY: Respondent contends that Grievant abandoned her job by failing to appear at work and failing to contact her employer for three consecutive days. In support of Respondent's proposition it sights the Division of Personnel Rule related to "job abandonment"

KEYWORDS: PROBATIONARY EMPLOYEE; UNSATISFACTORY WORK

CASE STYLE: BIAS v. DIVISION OF HIGHWAYS

DOCKET NO. 2009-1518-DOT (11/4/2009)

PRIMARY ISSUES: Whether Grievant proved he should have been retained due to satisfactory work performance.

SUMMARY: Grievant, a probationary employee, was terminated prior to the completion of his probationary period. Respondent asserts Grievant was terminated for disruptive behavior, damaging a snow plow, putting the wrong fuel in a dump truck, and having to be conti

KEYWORDS: REPRIMAND, REPRISAL, RETALIATION, INSUBORDINATION, DISCIPLINE

CASE STYLE: CLEMONS v. DEPARTMENT OF ENVIRONMENTAL PROTECTION

DOCKET NO. 2009-0138-DEP (11/20/2009)

PRIMARY ISSUES: Whether Grievant was properly disciplined for failure to remove excess clutter from her office, or whether the action taken was reprisal for her past actions.

SUMMARY: Grievant was reprimanded for failure to remove clutter from her office that was causing a safety hazard, after repeated directives from her supervisor to do so. She alleged this reprimand was retaliatory for a grievance she filed in 1995 or for a suggest

KEYWORDS: RESIGNATION, RESCIND, ACCEPTANCE, DISCRIMINATON

CASE STYLE: SMITH v. DEPARTMENT OF HEALTH AND HUMAN RESOURCES/LAKIN HOSPITAL

DOCKET NO. 2009-1542-DHHR (11/10/2009)

PRIMARY ISSUES: Whether Grievant rescinded her resignation before it was accepted.

SUMMARY: Grievant turned in her resignation after an incident that led to an investigation concerning possible abuse of a patient. Grievant placed the resignation in her supervisor's mailbox at the end of the evening shift. Two days later, Grievant asked to resc

KEYWORDS: TERMINATION; TRUTHFULNESS; GENERAL ORDERS;
INTERNAL INVESTIGATION

CASE STYLE: YOUNG v. DIVISION OF NATURAL RESOURCES

DOCKET NO. 2009-0540-DOC (11/13/2009)

PRIMARY ISSUES: Whether Grievant engaged in stalking and intentionally provided false information during an internal investigation.

SUMMARY: Grievant was terminated from his position as a Conservation Officer for DNR on October 10, 2008. Respondent asserts Grievant was terminated for both stalking his intimate partner and providing false information in an internal investigation.
Grievant a