JANICE P. TAYLOR

v. **Docket No. 95-PEDTA-023**

WEST VIRGINIA DIVISION OF

NATURAL RESOURCES/PIPESTEM STATE PARK

DECISION

The grievant, Janice Taylor, filed this complaint against the Respondent Division of Natural Resources at Level IV, January 23, 1994, alleging, among other things, that a recent personnel evaluation was "unfair." Because it appeared that she was also alleging that her employment had been improperly terminated, the complaint was treated as a direct appeal to Level IV pursuant to W.Va. Code §29-6A-4(e). At a hearing held March 13, 1995, it became clear that the grievant was protesting only a November 27, 1993 personnel evaluation.

At the outset of the hearing, counsel for the Respondent represented and the grievant did not dispute, that she is and has been since her initial employment, a "seasonal" housekeeper at Pipestem State Park. Counsel moved to dismiss the case on the grounds that the grievant was not hired for permanent employment and, therefore, could not meet the definition of employee found inW.Va. Code §29-6A-2(e). The grievant did not oppose the motion. (See footnote 1) Because the undersigned finds that the Respondent is correct in its assertion, it is not necessary to remand the case per W.Va. Code §29-6A-4 and Grievance Board practice.

The grievant's testimony establishes that she works at Pipestem only from May 28 to November 28 and is essentially hired and laid off each year with no guarantee of employment the ensuing year. It further establishes that she does not accrue sick or vacation leave; is not provided a state health insurance plan; and does not contribute to a state retirement fund.

W.Va. Code §29-6A-2(e) defines "employee" for purposes of access to the grievance procedure for state employees as,

> "any person hired for permanent employment, either full or part-time, by any department, agency, commission or board of the state created by an act of the Legislature, except those persons employed by the board of regents or by any state institution of higher education, members of the department of public safety, any

employees of any constitutional officer unless they are covered under the civil service system and any employees of the Legislature.

Clearly, the grievant is a full-time employee but she is not "hired for permanent employment" within the meaning of the statute. Indeed, from the grievant's testimony, it appears that there is no permanence to any aspect of her employment with Pipestem. (See footnote 2)

Accordingly, the grievance is **DISMISSED** from the docket of the Education and State Employees Grievance Board for want of jurisdiction.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: April 11, 1995

Footnote: 1The grievant appeared pro se at the hearing. The undersigned provided her copies of the statutory provisions discussed herein and attempted to elicit her responses to counsel's assertions. She acknowledged that she understood the motion. The grievant also candidly acknowledged that she had no reason to doubt that counsel was correct given her employment status with the Respondent. From her further statements it appears that the grievant filed the complaint knowing that it would most likely be dismissed and that she did so in the hopes that it would establish some dialogue with the Respondent over her evaluation.

Footnote: 2The agency also cites W.Va. Code §29-6-4(15) which, in pertinent part, provides, "[N]otwithstanding any provision of law to the contrary, seasonal employees shall not be considered full-time employees." The undersigned finds this language somewhat supportive of the Respondent's position but, because the evidence and Code §29-6A-2(3) are dispositive of the case, declines to make specific rulings thereon.