THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

TONYA BROWN-STOBBE and

CHRISTY RIGGS,

Grievants,

v. **Docket No. 06-HHR-313**

Sue Keller

Senior Administrative Law Judge

DEPARTMENT OF HEALTH & HUMAN RESOURCES/

BUREAU FOR CHILDREN & FAMILIES/OFFICE OF MATERNAL, CHILD AND FAMILY HEALTH,

Respondent.

DISMISSAL ORDER

Tonya Brown-Stobbe and Christy Riggs ("Grievants"), employed by the Department of Health & Human Resources ("DHHR") filed individual level one grievances in April and May 2005, alleging workplace harassment by a supervisor. They both requested the supervisor be subject to appropriate disciplinary action. Although the requested relief was apparently granted, the grievances proceeded to levels two and three where the requested relief was amended to include damages, attorney fees, and an apology. Upon appeal to level four, DHHR counsel, B. Allen Campbell, Senior Assistant Attorney General, filed a "Motion To Dismiss." A conference call with Grievants' attorney, Joan A. Mooney, was conducted on November 16, 2006, to address the pending Motion.

DHHR offered several arguments in support of the Motion To Dismiss. First, because neither Grievant presently works for DHHR, the grievance is moot. Second, the remaining demands for relief, including damages, attorney fees, and letters stating the actions were inappropriate, are not available through the grievance process. Finally, DHHR argues that the Grievance Board does not have jurisdiction over this matterbecause it is not a grievance as defined by statute. Grievants respond that the grievance was pursued based on a directive from an Administrative Law Judge in an unidentified agency, to take their grievances through the employee process. Grievants assert their right to

continue the grievance inasmuch as they have been subject to constructive discharge. The following facts essential to this claim are undisputed.

Findings of Fact

1. Grievant Riggs was employed by DHHR as an Adoption Specialist, and Grievant Brown-Stobbe was employed by DHHR at the Office of Maternal, Child and Family Health as a Nurse III.

2. Grievants, who are domestic partners, wanted to assist foster children and secured a home study from a private agency to facilitate that endeavor. Children placed in their home were subsequently removed due to Grievants' sexual orientation and/or based on an unwritten policy that DHHR employees were ineligible to act as foster parents.

3. When information regarding Grievants' sexual orientation was disclosed to other persons in the department, they filed grievances alleging they were subject to a hostile work environment, suffered due to a breach of confidentiality and improper application of an unwritten policy.

4. At level three, Grievants amended their request for relief to include copies of the Equal Employment Opportunity Commission and Office of Inspector General reports, that training be provided for DHHR employees, policies regarding foster care be changed, damages for emotional distress, attorney fees, and a letter of apology. (See footnote 1) 5. Grievants have since resigned their positions with DHHR.

6. At level four, the relief requested by Grievants was limited to mandatory and ongoing training on sexual harassment for staff, supervisors and managers, damages in the amount of $600,000.00 each, attorney fees, and letters from DHHR stating that the supervisor's actions had been inappropriate.

7. DHHR currently provides training to all employees relating to sexual harassment.

Discussion

The Grievance Board has previously issued rulings on these forms of relief. First, *W. Va. Code* § 29-6A-5(b) allows for the provision of “fair and equitable” relief which has been interpreted by the Grievance Board to encompass such issues as back pay, travel reimbursement, and overtime, but not to include punitive or tort-like damages for pain and suffering. *Spangler v. Cabell County Bd. of Educ*., Docket No. 03-06-375 (Mar. 15,2004). Therefore, the request for punitive damages to compensate Grievants for their emotional distress may not be awarded by the Grievance Board.

Second, addressing attorney fees, *W. Va. Code* § 29-6A-10 states in its entirety:

If an employee appeals to a circuit court an adverse decision of a hearing examiner rendered in a grievance proceeding pursuant to provisions of this article or is required to defend an appeal and the person substantially prevails, the adverse party or parties is liable to the employee, upon final judgment or order, for court costs, and for reasonable attorney's fees, to be set by the court, for representing the employee in all administrative hearings and before the circuit court and the supreme court of appeals, and is further liable to the employee for any court reporter's costs incurred during any administrative hearings or court proceedings: Provided, That in no event shall such attorney's fees be awarded in excess of a total of one thousand five hundred dollars for the administrative hearings and circuit court proceedings nor an additional one thousand dollars for supreme court proceedings: Provided, however, That the requirements of this section shallnot be construed to limit the employee's right to recover reasonable attorney's fees in a mandamus proceeding brought under section nine of this article.

Thus, the undersigned is without authority to award attorney fees at level four. *Chafin v. Boone County Health Dep't*, Docket No. 95-BCHD-362 (June 21, 1996).

Finally, a letter stating that actions of certain employees were inappropriate is in the nature of a request for an apology, which is not available from this Grievance Board. *Hall v. W. Va. Div. of Corr.*, Docket No. 89-CORR-687 (Oct. 19, 1990). *Emrick v. Wood County Bd. of Educ.*, Docket No. 03-54-300 (Mar. 9, 2004). (See footnote 2)

Conclusion of Law

The relief requested by Grievants is unavailable at level four of the Grievance Board.

For all of the foregoing reasons, the Motion To Dismiss is **GRANTED**, and the grievance is Ordered Dismissed and stricken from the docket of the Education and State Employees Grievance Board.

Any party, or the West Virginia Division of Personnel, may appeal this dismissal order to the Circuit Court of Kanawha County, or to the "circuit court of the county in which the grievance occurred." Any such appeal must be filed within thirty (30) days of receipt of this decision. *W. Va. Code* § 29-6A-7 (1998). 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. However, the appealing party is required by *W. Va. Code* § 29A-5-4(b) to serve a copy of the appeal

petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

DATE: NOVEMBER 30, 2006

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Grievants request $600,000.00 each for emotional distress caused by harassment in the workplace, and their loss of opportunity to foster and adopt children.

Footnote: 2

Given the changes in Grievants' request for relief during the conference call, DHHR's remaining arguments need not be addressed.