THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

NORMAN STEPP,

Grievant,

v. **Docket No. 06-DOH-215**

DEPARTMENT OF TRANSPORTATION/
DIVISION OF HIGHWAYS,

Respondent.

DISMISSAL ORDER

Grievant, Norman Stepp, filed a grievance against his employer, Division of Highways ("DOH"), on February 27, 2006, alleging:

Grievant was involuntarily transferred to Logan County and removed as Mingo County supervisor without cause and for political, retailitory [sic] reasons.

Relief sought:

Reinstatement and to be made whole.

This grievance was denied at Levels I and II. A Level III hearing was held, and Respondent filed a Motion to Dismiss for Mootness and Lack of Standing at Level III. Grievant responded. Respondent's Motion was granted at Level III, and Grievant appealed to Level IV. Grievant is represented by Michael T. Clifford, Esq., and Respondent is represented by Barbara Baxter, Esq. At Level IV, Respondent renewed the Motion to Dismiss for Mootness and Lack of Standing. Grievant then filed a

copy of his Response from Level III. After reviewing the documents in this matter, the undersigned makes the following findings of fact.

Findings of Fact

1. Grievant is employed by DOH in District Two, Mingo County.
2. On February 15, 2006, Grievant was involuntarily reassigned to Logan County for a number of reasons.
3. This transfer did not affect Grievant's pay or classification, and was intended to be temporary.
4. Grievant grieved the temporary transfer on February 28, 2006.
5. On May 5, 2006, Grievant was returned to his original post in Mingo County.
6. Grievant does not wish to voluntarily withdraw this grievance.

Discussion

This Grievance Board has continuously refused to deal with issues when the relief sought is "speculative or premature, or otherwise legally insufficient." *Dooley v. Dep't. of Trans./Div. of Highways*, Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd. of Educ.*, Docket No. 91-35-229/239 (Nov. 27, 1991). Typically, a Grievant must show "an injury-in-fact, economic or otherwise" to have what "constitutes a matter cognizable under the grievance statute." *Lyons v. Wood County Bd. of Educ.*, Docket No. 89-54-601 (Feb. 28, 1990); *Dunleavy v. Kanawha County Bd. of Educ.*, Docket No. 20-87- 102-1 (June 30, 1987).

Grievant's statement of relief sought indicates he wanted to be reinstated and made whole. This has occurred. His involuntary transfer did not result in a decrease of salary, and it did not change his classification. It was a temporary transfer. Grievant, however, asserts he has sustained a loss to his reputation and incurred attorney fees. The allegeddamage to his reputation is not an injury-in-fact that constitutes a cognizable matter under the grievance statute. With respect to claim of attorney fees, the undersigned has no authority to award attorney fees. *Chafin v. Boone County Health Dep't. and Div. of Personnel*, Docket No. 95-BCHD-362 (June 21, 1996); *See e.g., Smarr v. Wood County Bd. of Educ*., Docket No. 54-86-062 (June 16, 1986).

Because Grievant has received his requested relief at the hands of Respondent, this case is hereby moot.

Conclusions of Law

1. This Grievance Board has continuously refused to deal with issues when the relief sought is "speculative or premature, or otherwise legally insufficient." *Dooley v. Dep't. of Trans./Div. of Highways*, Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd. of Educ.*, Docket No. 91-35-229/239 (Nov. 27, 1991). Typically, a Grievant must show "an injury-in-fact, economic or otherwise" to have what "constitutes a matter cognizable under the grievance statute." *Lyons v. Wood County Bd. of Educ.*, Docket No. 89-54-601 (Feb. 28, 1990); *Dunleavy v. Kanawha County Bd. of Educ.*, Docket No. 20-87-102-1 (June 30, 1987).

2. The undersigned has no authority to award attorney fees. *Chafin v. Boone County Health Dep't. and Div. of Personnel*, Docket No. 95-BCHD-362 (June 21, 1996); *See e.g., Smarr v. Wood County Bd. of Educ*., Docket No. 54-86-062 (June 16, 1986).

3. Grievant has suffered no injury which can be remedied by the undersigned.

Accordingly, this grievance is **DISMISSED**. Any party may appeal this decision to the Circuit Court of Kanawha County or 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 (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: October 27, 2006

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Wendy A. Campbell

Administrative Law Judge