PUBLIC EMPLOYEES GRIEVANCE BOARD

GLENN COOK,

Grievant,

v. **Docket No. 2008-1102-DOC**

DIVISION OF NATURAL RESOURCES/

LAW ENFORCEMENT SECTION,

Respondent.

DISMISSAL ORDER

Grievant, Glenn Cook, filed this grievance on January 26, 2008, concerning the alleged failure of the Division of Natural Resources ["DNR"] to post a position. He asserted a position was recently filled in Hardy County without proper posting. The relief sought was to post the position and allow him to apply for this position and "[c]ease harassment, discrimination, and reprisals."

This grievance was filed to level one. On January 28, 2008, a Motion to Dismiss was filed with this Grievance Board by Will Valentino, Assistant Attorney General. Grievant represented himself and responded on February 4, 2008.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant is employed as a Conservation Officer by DNR.

2. On December 16, 2006, Grievant filed a grievance to rescind his disciplinary transfer from Hardy County to Kanawha County, *Cook I*. In that grievance, he asked for the following relief, "[c]ease harassment, discrimination, and reprisals." Grievant also requested that he be returned to

Hardy County.

3. On January 22, 2008, Grievant entered into a settlement agreement with DNR to resolve his first grievance, *Cook I*. This settlement agreement stated Grievant could apply for "a lateral transferred to any available posted county," "there [was] no guarantee such request will be granted," and "this agreement shall resolve all further action, civil or otherwise related to this matter." An important consideration in this settlement agreement was the Respondent's decision to disregard several acts of substantiated misconduct by Grievant that had resulted in his disciplinary transfer. The settlement agreement amended the letter of transfer "for need," took out the "for cause" language and a long list of violations, and the discussion of Grievant's two prior suspensions.

4. On January 6, 2008, Grievant became aware that a Conservation Officer had been transferred to Hardy County on December 26, 2007. This position was not posted as DNR has the right to transfer Conservation Officers as needed. Grievant did not file a grievance over this issue until January 25, 2008, and not until after he had signed a settlement agreement on January 22, 2008.

5. *Cook I* was dismissed as settled by the Grievance Board on January 23, 2008.

6. By grievance form mailed January 24, 2008, and received by the Grievance Board on January 25, 2008, Grievant filed a second grievance alleging a position in Hardy County had been improperly posted. The relief Grievant sought was for the position to be posted, to allow him to apply, and to "[c]ease harassment, discrimination, and reprisals." (*Cook 2*). 7. While this Motion to Dismiss was under advisement at the Grievance Board, the Level I decision was issued denying the grievance noting DNR's statutory authority to transfer its employees.

Discussion

Respondent asserts the issues raised by Grievant have been resolved by the settlement agreement. He may apply for a "posted" position, but there is no guarantee that his request would be granted. Indeed, Grievant was well aware at the time he signed this settlement agreement that another officer had been assigned/transferred to Hardy County a month before. Grievant, as a long-term DNR employee, was well aware at the time the settlement agreement was signed, that the likelihood of another posting within a few months was improbable. Additionally, Grievant could certainly have included this issue in his settlement agreement.

It would appear Grievant decided to take the settlement offered him, as it removed disciplinary action from his transfer letter, and he then filed this second grievance to obtain the relief sought from the first grievance - return to Hardy County.

Grievant asserts DNR entered into the settlement agreement in "bad faith" because it filled the position in which he was interested a month prior to entering into the settlement agreement. The undersigned Administrative Law Judge cannot see how this could be an act of bad faith, as Grievant was well aware of the other officer's assignment.

The person guilty of bad faith here is Grievant. Grievant entered into the settlement agreement in January 2008 knowing he would be filing a grievance over the otheremployee's transfer in December 2007. (See footnote 1) Grievant knew another officer had been assigned to Hardy County the month before, Grievant took the deal, and Grievant then filed a grievance on the same issue. *See Turner v. Logan County Bd. of Educ.*, Docket No. 98- 23-473 (Sept. 27, 2000).

The law favors and encourages resolution of controversies by contracts of compromise and settlement rather than by litigation, and the law will uphold and enforce such contracts if they are fairly made and not in contravention of some law or public policy. *McDowell County Bd. of Educ. v. Stephens*, 191 W. Va. 711, 447 S.E.2d 912 (1994). This Grievance Board recognizes this principle, and settlement agreements are upheld unless it is proven by a preponderance of the evidence that the settlement was not fairly made or was in contravention of some law or public policy. *Hedrick v. Dep't of Health and Human Res.*, Docket No. 05-HHR-226 (Nov. 8, 2005); *Adkins v. Logan County Bd. of Educ.*, Docket No. 97-23-216 (Sept. 29, 1997); *Vance v. Logan County Bd. of Educ.*, Docket No. 95-23-190 (Mar. 15, 1996).

Here, Grievant did not ask for the settlement agreement to be rescinded, even though he asserted DNR acted in bad faith when they signed the agreement. What he wants is for the terms of the settlement agreement to be upheld, and to file another grievance to obtain the relief originally sought.

Respondent's assertion that the language of the settlement agreement encompasses Grievant's current claims is correct. Grievant was aware of the transfer atthe time, did not raise the issue, but instead chose to blindside Respondent after he accepted the terms of this settlement agreement. *Strawser v. Dep't of Health and Human Res.*, Docket No. 99-HHR-414 (Mar. 6, 2000). *See Lowe v. W. Va. Div. of Corr.*, Docket No. 99-CORR-095 (June 10, 1999).

Additionally, Grievant's reiteration of the same claims of harassment, discrimination, and retaliation as in the first grievance make it clear Grievant is attempting to relitigate the issues encompassed in the settled grievance. The mere filing of the instant grievance breaches the terms of the settlement agreement. *Kyle v. W. Va. Div. of Corr.*, Docket No. 99-CORR-077D (Aug. 3, 1999). Accordingly, he is not entitled to any relief in this grievance, and the Motion to Dismiss is GRANTED.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. The law favors and encourages resolution of controversies by contracts of compromise and settlement rather than by litigation, and the law will uphold and enforce such contracts if they are fairly made and not in contravention of some law or public policy. *McDowell County Bd. of Educ. v. Stephens*, 191 W. Va. 711, 447 S.E.2d 912 (1994). *See Strawser v. Dep't of Health and Human Res.*, Docket No. 99-HHR-414 (Mar. 6, 2000).

2. Because Grievant entered into a settlement agreement encompassing the claims asserted in this grievance, he is precluded from grieving the transfer of another officer to the Hardy County position which occurred prior to his entering the settlement agreement. *Strawser, supra*. 3. Grievant has acted in bad faith, and he has violated the terms of his settlement agreement. *Kyle v. W. Va. Div. of Corr.*, Docket No. 99-CORR-077D (Aug. 3, 1999).

Accordingly, Respondent's Motion to Dismiss is **GRANTED**, and this case is **DISMISSED** from the docket of the Grievance Board.

This decision is final upon the parties and is enforceable in the Circuit Court of Kanawha County. Any party may appeal this decision to the Circuit Court of Kanawha County within thirty days of receipt of the decision. This decision is not automatically stayed pending the outcome of the appeal. W. Va. Code § 6C-2-5(c). Neither the West Virginia Public Employees Grievance Board nor any of its administrative law judges is a party to such appeal and should not be so named.

JANIS I. REYNOLDS

ACTING CHIEF ADMINISTRATIVE LAW JUDGE

Dated: March 31, 2008

Footnote: 1

The undersigned Administrative Law Judge saw Grievant completing a grievance form at the Grievance Board's front desk while his attorney was in the conference room working on a settlement agreement.