THE WEST VIRGINIA PUBLIC EMPLOYEES

GRIEVANCE BOARD

CHERYL EVANS, et al.,

Docket No. 07-HHR-168

Grievants,

v.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

and DIVISION OF PERSONNEL,

Respondents.

DISMISSAL ORDER

Grievants, all employees of the Department of Health and Human Resources ("DHHR"), filed grievances with the West Virginia Education and State Employees Grievance Board on various dates prior to July 2007. The matters have been consolidated at the Grievance Board level of the grievance process. (See footnote 1) The underlying grievance claims that Grievants are discriminated against compared to classifications of DHHR employees providing social and protective services. Grievants seek the $2,004 salary increase provided to classifications of employees involved in the direct delivery of social and protective services.

All grievances involve an April 25, 2007, DHHR memo sent to all DHHR employees regarding salary increases. The memo stated that salary increases for DHHR employeeswould be effective July 1, 2007. The memo noted that most DHHR employees would receive a 3.5% salary increase promulgated by the Legislature and Governor Manchin. The memo also explained that the Legislature approved a $2,004 salary increase to a certain classification of employees in the Division of Corrections, Division of Juvenile Services, and the Regional Jail & Correctional Facility Authority.

In an effort to address salary inequities in various departments and state agencies, the Governor allowed the DHHR to match the $2,004 increase in classifications of a comparable nature to the aforementioned agencies. Consequently, the Governor approved a $2,004 salary increase for classifications of employees involved in the direct delivery of social and protective services. No additional funds were appropriated to DHHR by the Legislature for the $2,004 salary increases. Funding for the difference in cost between the 3.5% increases and the $2,004 increases was secured by controlling staffing levels in the affected bureaus.

Respondents have filed various Motions to Dismiss, asserting Grievants have failed to state a claim upon which relief can be granted. Respondents contend that the Governor's office approved discretionary raises for particular classifications to address salary inequities in various Departments and Agencies. In addition, DHHR and the Division of Personnel have no authority to grant Grievants the relief they seek as all discretionary raises are controlled by the Governor's office.

Pursuant to the Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 156-1-6 6.11(2008), “[a] grievance may be dismissed, in the discretion of the administrative law judge, if no claim upon which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested.”

The Grievance Board has no jurisdiction to issue a decision in a grievance relatingto “[a]ny pension matter or other issue relating to public employees insurance, retirement, or any other matter in which authority to act is not vested with the employer.” W. Va. Code § 29-6A-2(i). (See footnote 2)

Here, the relief Grievants seek is not available through the Grievance Procedure. The Grievance Board does not have authority to order the Division of Personnel to deviate from its statutory mandate, nor to compel the Governor's office to authorize salary adjustments within the DHHR for other classifications of employees. Based upon the lower level record and pleadings submitted by the Grievants, the grievances fail to state a claim upon which relief can be granted.

For the foregoing reasons, the Motion to Dismiss is hereby **GRANTED**, and this matter is hereby **DISMISSED** from the docket of the Grievance Board.

Any party, or the West Virginia Division of Personnel, may appeal this decision 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. *See* W. Va. Code § 29-6A-7 (*See Footnote 1, supra)*. 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. 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: December 30, 2008

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Ronald L. Reece

Administrative Law Judge

Footnote: 1

In 2007, the Legislature, 2007 Acts ch. 207, abolished the West Virginia Education and State Employees Grievance Board, replacing it with the Public Employees Grievance Board. W. Va. Code §§ 18-29-1 to 18-29-11 and W. Va. Code §§ 29-6A-1 to 29-6A-12 were repealed and replaced by W. Va. Code §§ 6C-2-1 to 6C-2-7 and W. Va. Code §§ 6C- 3-1 to 6C-3-6 (2007). Grievances which were pending prior to July 1, 2007, are decided under the former statutes, W. Va. Code §§ 18-29-1 to 18-29-11, for education employees, and W. Va. Code §§ 29-6A-1 to 29-6A-12, for other state and higher education employees. See Executive Order No. 2-07, May 8, 2007.

Footnote: 2

W. Va. Code § 6C-2-2(g)(2) provides that, "'Grievance' does not mean any pension matter or other issue related to public employees insurance in accordance with article sixteen, chapter five of this code, retirement or any other matter in which the authority to act is not vested with the employer."