# WEST VIRGINIA PUBLIC EMPLOYEES

# GRIEVANCE BOARD

**BILLIE J. PRITT, et al.,**

**Grievants,**

**v. Docket No. 2008-0812-CONS**

**DEPARTMENT OF HEALTH AND**

**HUMAN RESOURCES/MILDRED**

**MITCHELL-BATEMAN HOSPITAL,**

**Respondent.**

## DISMISSAL ORDER

Grievants (Billie J. Pritt, Larry B. Lanham, Teresa Thompson, Cheryl Chaffin, and Donald Duncan) initiated this proceeding on July 16, 2007. The grievances were denied at level one for failure to state a grievable issue on July 25, 2007. Grievants appealed to level two on or about August 6, 2007. Due to legislative changes affecting the grievance procedure and the Grievance Board, level two proceedings were not immediately scheduled.

While the grievance was still pending at level two, on January 9, 2008, Respondent's counsel filed a Motion to Dismiss with Acting Chief Administrative Law Judge Janis Reynolds. (See footnote 1) Grievants were notified by e-mail that they should respond to the motion by March 25, 2008. After the retirement of Judge Reynolds, this matter was reassigned to the undersigned administrative law judge on April 15, 2008. Because it appeared from the documents in the file that some of the email messages sent to Grievants were returned as “undeliverable,” the undersigned notified the grievants by mail that if they would like tofile any response to the Motion to Dismiss, it should be filed by May 16, 2008. No response has been filed by Grievants, who are representing themselves in this matter.

## Synopsis

Grievants are employed in the Admissions Office of Mildred Mitchell-Bateman Hospital. They initiated this grievance following the suspension of a co-worker, contending that they should not have been required to train three temporary employees who were placed in that position. As relief, Grievants requested that the position be filled permanently.

Subsequent to the filing of this grievance at level two, Respondent filed a Motion to Dismiss, stating that the suspended employee had been terminated, his position had been posted, and interviews were being conducted to select a permanent employee to fill it. Grievants were given two opportunities to respond to the motion, spanning over two months, but filed no response. Because the requested relief has apparently been provided by the employer, this grievance has been rendered moot. Therefore, the motion to dismiss is granted.

## Findings of Fact

1. Grievants are employed at Mildred Mitchell-Bateman Hospital ("MMB") in the Admissions Office. The grievance documents indicate that Grievant Pritt's classification is Office Assistant 3, but the job titles of the other grievants is unknown. 2. Beginning on October 21, 2006, another employee of the Admissions Office was suspended indefinitely without pay, pending the outcome of criminal charges against him. (See footnote 2)

3. After the employee was suspended, Respondent hired a 90-day temporary employee, who was "let go" on February 6, 2007. Another temporary employee was hired on March 12, 2007. As of the date that this grievance was initiated, there was a temporary employee serving in the position. (See footnote 3)

4. Grievants contend in their grievance statement that they have had to train too many temporary employees, and seek as relief "to be able to hire a permanent employee for this position." In an attachment to their grievance form, they speculated that, in order to cover 24-hour shifts, some Admissions employees could lose scheduled vacation time and be forced to work overtime hours.

5. On an unspecified date after this grievance was filed, the suspended employee was terminated after being convicted, and his position was posted. As of early January 2008, interviews were being conducted and the position was going to be filled with a permanent

employee. 6. Grievants have not disputed the facts stated in Finding of Fact No. 5, above, nor have they contended that their grievance should not be dismissed as a result of these events.

**Discussion**

Respondent contends that, because a permanent employee was being (and presumably has now been) hired to replace the suspended employee, Grievants have received the relief requested, rendering this grievance moot. As set forth above, Grievants have had ample opportunity to respond to the Motion to Dismiss and explain why the grievance is still viable, which they have not done.

When there is no case in controversy, the Grievance Board will not issue advisory opinions. *Brackman v. Div. of Corr./Anthony Corr. Center,* Docket No. 02-CORR-104 (Feb. 20, 2003); *Gibb v. W. Va. Div. of Corr.*, Docket No. 98-CORR-152 (Sept. 30, 1998). In addition, the Grievance Board will not hear issues that are moot. "Moot questions or abstract propositions, the decisions of which would avail nothing in the determination of controverted rights of persons or property, are not properly cognizable [issues]." *Bragg v. Dept. of Health & Human Res.,* Docket No. 03-HHR-348 (May 28, 2004); *Burkhammer v. Dep't of Health & Human Res.,* Docket No. 03-HHR-073 (May 30, 2003); *Pridemore v. Dep't of Health & Human Res.*, Docket No. 95-HHR-561 (Sept. 30, 1996). Because the relief requested--the hiring of a permanent employee--has apparently been granted, there are no further issues to be decided in this grievance.

In addition, as determined by the level one grievance evaluator, Grievants in this case have failed to allege a grievable event which has personally harmed them. As definedby statute, a “grievance” must allege “a violation, a misapplication or a misinterpretation of the statutes, policies, rules or written agreements applicable to the employee.” W. Va. Code § 6C-2-2(g)(1). 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). The grievance form and its attachments alleged only speculative harm, such as the possibility of employees (not necessarily Grievants) of the Admissions Office losing scheduled vacation time or being required to work over. It appears that none of these events occurred, and Grievants have failed to allege any violation, statutory or otherwise, which has resulted from the events at issue.

Accordingly, the undersigned concludes that this grievance is moot and must be dismissed.

Respondent's motion is, therefore, granted.

## Conclusions of Law

1. When there is no case in controversy, the Grievance Board will not issue advisory opinions. *Brackman v. Div. of Corr./Anthony Corr. Center,* Docket No. 02-CORR- 104 (Feb. 20, 2003); *Gibb v. W. Va. Div. of Corr.*, Docket No. 98-CORR-152 (Sept. 30, 1998).

2. "Moot questions or abstract propositions, the decisions of which would avail nothing in the determination of controverted rights of persons or property, are not properly cognizable [issues]." *Bragg v. Dept. of Health & Human Res.,* Docket No. 03-HHR-348 (May 28, 2004); *Burkhammer v. Dep't of Health & Human Res.,* Docket No. 03-HHR-073(May 30, 2003); *Pridemore v. Dep't of Health & Human Res.*, Docket No. 95-HHR-561 (Sept. 30, 1996).

3. 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).

4. Grievants have not stated a grievable issue, and the relief requested has been granted, rendering this grievance moot.

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

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Order. *See* W. Va. Code § 6C-2-5. 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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.19 (eff. Dec. 27, 2007).

**Date: May 30, 2008**

_____

**DENISE M. SPATAFORE**

**Acting Chief Administrative Law Judge**

---

Footnote: 1

*Respondent was represented by Jennifer K. Akers, Assistant Attorney General.*

---

Footnote: 2

*Although not entirely clear from the documents in the grievance file, it appears that this individual was some sort of "admissions clerk."*

---

Footnote: 3

*Apparently, there had been some discussion of hiring this temporary employee on a permanent basis, which did not work out for some reason. Nevertheless, it appears that Grievants were satisfied with this person's work and were upset about the prospect of losing him/her.*