THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

ROBERT WAYNE RITTER,
Grievant,

v. **Docket No. 2009-0662-MAPS**

WEST VIRGINIA DIVISION OF
JUVENILE SERVICES,
Respondent

DECISION

Robert Wayne Ritter ("Grievant") is employed by the Division of Juvenile Services ("DJS") and assigned to the J. M. "Chick" Buckbee Juvenile Center in Augusta, West Virginia. On November 4, 2008, he filed a grievance with the DJS contesting the fact that he was not selected for the position of Director of Operations at the West Virginia School for the Deaf and Blind ("WVSD&B").[1] As relief Grievant seeks "to have the job of Director of Operations at the West Virginia School for the Deaf and Blind." On December 15, 2008, and again of March 23, 2009, Grievant sent letters to the Public Employees Grievance Board moving that the WVSD&B be made a party to his grievance.

A telephonic hearing was held on June 18, 2009, at the Charleston office of the Grievance Board, to address Grievant's motion. Grievant attended the hearing telephonically from his home in Springfield, West Virginia and represented himself.[2] DJS was represented by Steven R. Compton, Senior Assistant Attorney General. Heather

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[1] The West Virginia School for the Deaf and Blind is operated by the Department of Education for the West Virginia Board of Education.

[2] When asked if he had a representative, Grievant indicated that he had spoken to an attorney regarding his grievance but confirmed that he was representing his own interests and had no other representative.

Deskins, General Counsel for the Department of Education, appeared on behalf of the WVSD&B. Both attorneys appeared telephonically from their respective offices in Charleston, West Virginia.

During the hearing, DJS moved to be dismissed from the grievance. WVSD&B objected to being joined as a party and, in the alternative, moved that the grievance be dismissed. Counsel for the WVSD&B presented an argument regarding her motion and Grievant was given until June 30, 2009, to make a written response to that argument, if he chose to do so.[3] No additional information or arguments were submitted by any party and this matter became mature for decision on June 30, 2009.

Synopsis

Grievant, an employee of the DJS, applied for a position with the WVSD&B which is operated by the Department of Education and is not under the direction or control of the DJS. Grievant filed a grievance after not being selected for the position and as relief seeks to be placed in the position. Grievant's requested relief is beyond the authority of his present employer and he cannot bring a grievance against a state agency that is not his employer. This grievance fails to state a claim upon which relief may be granted. Consequently, the grievance is dismissed.

The following facts are based upon the record of this grievance and are not disputed.

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[3] Two Grievance Board decisions were specifically cited during WVSD&B's argument. Counsel for DJS forwarded copies of those decisions to Grievant after the telephonic hearing to ensure that he could address them should he choose to do so.

Findings of Fact

1. Grievant Robert Ritter is employed by the DJS and works at the J. M. "Chick" Buckbee Juvenile Center.

2. Grievant applied for the position of Director of Operations at the WVSD&B which is operated by the West Virginia Department of Education under the supervision of the West Virginia Board of Education.

3. Grievant was not selected for the position at the WVSD&B and contests his non-selection in this grievance.

4. Grievant is not an employee of the West Virginia Department of Education, which has sole control over the operation of the WVSD&B.

Discussion

It is undisputed that Grievant was an employee of the DJS at its J. M. "Chick" Buckbee Juvenile Center at the time he applied for the position which is the subject of this grievance. He contends that, as an employee of the DJS, he has standing to file a grievance against the WVSD&B or the West Virginia Department of Education. WEST VIRGINIA CODE § 6C-2-2(g) defines "employer" for the purposes of the grievance procedure, as follows:

> [A] state agency, department, board, commission, college, university, institution, State Board of Education, Department of Education, county board of education, regional educational service agency or multicounty vocational center, or agent thereof, **using the services of an employee** as defined in this section. (Emphasis added.)

In turn, the same statute, in subsection (e)(1), defines "[e]mployee" as "any person hired for permanent employment by an employer for a probationary, full- or part-time position."

A "Grievance" is "a claim by an employee." W. VA. CODE § 6C-2-2(i). An employee may only file a grievance against his or her employer. W. VA. CODE § 6C-2-2(a)(1).

There is no question that neither WVSD&B nor the Department of Education are "using the services" of Grievant. While the grouping of various agencies within larger departments is an administrative management system for state government, this does not mean that an employee of one agency is also employed by other agencies or other employers listed within the definition of an employer. Each defined employer functions separately and independently with regard to management, personnel, and the various policies pertaining to conducting the business of the particular agency, department, college, university, etc. *See generally Rainey v. Div. of Motor Vehicles*, Docket No. 2008-0278-DOT (Mar. 11, 2008). The same logic applies to the instant grievance. In fact, the grievance board statute is careful to point out in the definition cited above that employer means a state agency using the services of an employee. In any event, Grievant is an employee of DJS, and the grievance procedure is only available to him to challenge the actions taken by his employer. *Posey v. W. Va. Univ.*, Docket No. 2009-745-WVU (Apr. 10, 2009); *Narkekic v. Div. of Corr. and Dept. of Health & Human Res.*, Docket No. 2009-0846-MAPS (Apr. 29, 2009).

As established by statute, any matter in which authority to act is not vested with the state department, board, commission, or agency utilizing the services of the grievant is not grievable. *Brining v. Div. of Corrections*, Docket No. 05-CORR-284 (Dec. 7, 2005); *Rainey, supra*. Grievant's requested relief, "to have the job of Director of Operations at the West Virginia School for the Deaf and Blind" is not something within the authority of DJS. Therefore, this grievance states a claim upon which relief cannot be granted and must be

dismissed. Rules of Practice and Procedure of the W. Va. Public Employees Grievance Bd., 156 C.S.R. 1 § 6.11 (2008).

With regard to the WVSD&B and Department of Education, it is undisputed that Grievant is not their employee. The Public Employees Grievance Board is an administrative agency, established by the Legislature, to allow a public *employee* and his or her *employer* to reach solutions to problems which arise within the scope of their employment relationship. W. VA. CODE § 6C-2-1(a); *See Fraley v. Morgan County Bd. of Educ.*, Docket No. 01-32-615D (April 30, 2002). "An administrative agency is but a creature of statute, and has no greater authority than conferred under the governing statutes." *Monongahela Power Co. v. Chief, Office of Water Res., Div. of Envtl. Prot.*, 211 W.Va. 619, 567 S.E.2d 629, 637 (2002) (citing *State ex rel. Hoover v. Berger*, 199 W.Va. 12, 16, 483 S.E.2d 12, 16 (1996)). Consequently, the jurisdiction of the Public Employees Grievance Board is limited to the grant of authority provided in WEST VIRGINIA CODE §§ 6C-2-1 *et seq*. Since Grievant is not an employee of the WVSD&B or the Department of Education, as defined in those sections of the WEST VIRGINIA CODE, the Grievance Board does not have jurisdiction to adjudicate a dispute between Grievant and those entities. Therefore, the grievance must be dismissed with regard to them. *Clutter v. Dept. of Agric.*, Docket No. 2009-1372-AGR (May 28, 2009).

The following conclusions of law are appropriate to this grievance.

Conclusions of Law

1. As established by statute, any matter in which authority to act is not vested with the state department, board, commission, or agency utilizing the services of the grievant is not grievable. *Brining v. Div. of Corrections*, Docket No. 05-CORR-284 (Dec. 7, 2005); *Rainey v. Div. of Motor Vehicles*, Docket No. 2008-0278-DOT (Mar. 11, 2008).

2. For the purposes of the grievance procedure, an "employer" is the "state agency, department, board, commission, college, university, institution, State Board of Education, Department of Education, county board of education, regional educational service agency or multi-county vocational center, or agent thereof, using the services of an employee." W. VA. CODE § 6C-2-2(g).

3. Grievant is an employee of the Division of Juvenile Services, and his employer has no authority regarding selection for positions with the West Virginia School for the Deaf and Blind.

4. A grievance may be dismissed, in the discretion of the administrative law judge, if no claim on which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested. Rules of Practice and Procedure of the W. Va. Public Employees Grievance Bd., 156 C.S.R. 1 § 6.11 (2008). This grievance fails to state a claim upon which relief may be granted against the Division of Juvenile Services.

5. The Public Employees Grievance Board is an administrative agency established by the Legislature to allow a public employee and his or her employer to reach solutions to problems which arise within the scope of their employment relationship. W. VA. CODE § 6C-2-1(a); *See Fraley v. Morgan County Bd. of Educ.*,

Docket No. 01-32-615D (April 30, 2002).

6. "An administrative agency is but a creature of statute, and has no greater authority than conferred under the governing statutes." *Monongahela Power Co. v. Chief, Office of Water Res., Div. of Envtl. Prot.*, 211 W.Va. 619, 567 S.E.2d 629, 637 (2002), (citing *State ex rel. Hoover v. Berger*, 199 W.Va. 12, 16, 483 S.E.2d 12, 16 (1996)). Consequently, the jurisdiction of the Public Employees Grievance Board is limited to the grant of authority under WEST VIRGINIA CODE §§ 6C-2-1 *et seq*.

7. Grievant is not an employee of the West Virginia School for the Deaf and Blind or the Department of Education, as defined by W. VA. CODE §§ 6C-2-1 *et seq*. Therefore, the Public Employees Grievance Board does not have jurisdiction to resolve a dispute between Grievant and those entities.

Accordingly, the grievance is DISMISSED.

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 Decision. *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 § 6.20 (2008).

DATE: August 4, 2009

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WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE