THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

DON NARKEVIC,
Grievant,

v. **Docket No. 2009-0846-MAPS**

DIVISION OF CORRECTIONS/HUTTONSVILLE
CORRECTIONAL CENTER and
DEPARTMENT OF HEALTH AND HUMAN RESOURCES,
Respondents.

DISMISSAL ORDER

Don Narkevic ("Grievant") filed this grievance at level one with the Department of Health and Human Resources ("DHHR") on December 30, 2008. The grievance seeks to challenge his non-selection for the position of Teacher 1 at Sharpe Hospital pursuant to posting #SHRP08100. Grievant asks to be offered the Teacher 1 position at Sharpe Hospital as his relief. This grievance was dismissed at level one on January 14, 2008, by Christopher B. Amos, Manager, DHHR Grievance Management Unit, because Grievant is not an employee of DHHR. Grievant filed a level two appeal on February 25, 2009, requesting mediation by an Administrative Law Judge. In the interim, the Division of Corrections ("DOC") filed a Motion to Dismiss this grievance on January 22, 2009. Thereafter, DHHR filed a Motion to Dismiss this grievance on April 22, 2009. Grievant responded to the dismissal requests by DHHR and DOC on April 13, 2009. The DHHR appears by B. Allen Campbell, Senior Assistant Attorney General. The DOC appears by Charles P. Houdyschell, Jr., Senior Assistant Attorney General. Grievant appears pro se.

This matter is now mature for ruling on Respondents' requests that this grievance be dismissed.

Synopsis

Grievant, an employee of the DOC, applied for a position with the DHHR at its Sharpe Hospital location and was not selected. He then filed a grievance with the DHHR. Grievant's requested relief, placement in a position with a different employer, is beyond his current employer's authority and cannot be grieved. This grievance states a claim upon which relief cannot be granted. Accordingly, this grievance is dismissed.

The following material facts are undisputed:

Findings of Fact

1. Grievant made application for a Teacher 1 position at Sharpe Hospital pursuant to DHHR posting #SHRP08100.

2. Grievant was interviewed by the DHHR, but was not selected for the position.

3. Grievant filed this grievance challenging that decision on December 30, 2008.

4. This grievance was denied at level one on January 14, 2009, because Grievant is not an employee of the DHHR.

5. Grievant acknowledges he was not an employee of the DHHR at the time of making application for the teaching position; he seeks to continue in the prosecution of this grievance as an employee of the DOC.

Discussion

It is undisputed that Grievant was an employee of the DOC at its Huttonsville Correctional Center location at the time he applied for the position which is the subject of this grievance. He contends that, as an employee of the DOC, he has standing to file a

grievance against DHHR.[1] 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(l). Only an employee may file a grievance. W. VA. CODE § 6C-2-2(a)(1).

There is no question that DHHR is not "using the services" of Grievant, nor has the DHHR ever hired Grievant for employment.[2] 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

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[1]In all fairness to Grievant, this belief seems to be based on information that was provided to him by Human Resources at Huttonsville Correctional Center. Grievant's e-mail communication, April 13, 2009.

[2]Grievant's most recent grievance form, filed on March 3, 2009, relfects that he is classified as a Correctional Counselor 2.

means a state agency using the services of an employee. In any event, Grievant is an employee of DOC, and the grievance procedure is only available to him to challenge the actions taken by his employer.

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 be offered the teaching position at Sharpe Hospital, is not something within the authority of DOC. 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).

The following conclusions of law are appropriate.

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 giveable. *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 purpose 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 multicounty 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 Corrections, and his employer has no authority regarding selection for positions with the Department of Health and Human Resources.

4. This grievance fails to state a claim upon which relief may be granted. Rules of Practice and Procedure of the W. Va. Public Employees Grievance Bd., 156 C.S.R. 1 § 6.11 (2008).

Accordingly, this grievance is **DISMISSED** from the docket of this Grievance Board.

This Order is final upon the parties and is enforceable in the Circuit Court of Kanawha County. Any party may appeal this Order 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 § 6.20 (2008).

Date: April 29, 2009

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Ronald L. Reece
Administrative Law Judge