THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

SAMUEL J. PERRIS,
Grievant,

v.

Docket No. 2009-0903-DOT

WEST VIRGINIA DIVISION OF HIGHWAYS,
Respondent.

DISMISSAL ORDER

Grievant initiated this grievance on January 16, 2009, alleging an improper upgrade. His Statement of Grievance provides, in part, the following:

> Improper upgrade in District 4 Construction. The applicant did not meet thee criteria set forth by the Division of Personnel for a Transportation Engr. Technician-Sr. Yet he was interviewed and upgraded.

Grievant's Statement of Relief indicates the following:

> I am requesting a salary adjustment that is equitable to the current salary being paid to the new upgrade. This person is currently making $6,360.00 more on the year and does not meet the criteria for which he is being paid.

After a denial at level one, this matter was appealed to level two for mediation. However, before mediation could be scheduled, Respondent filed a Motion to Dismiss this grievance on March 27, 2009. Grievant objected to the Motion via email. A phone conference was scheduled for May 6, 2009. Grievant represented himself in this particular grievance. Respondent is represented by Barbara L. Baxter, Esq. The matter became mature for decision on the Motion to Dismiss after the May 6, 2009, phone conference.

The following material facts are undisputed:

Findings of Fact

1. Grievant is employed by DOH as a Engineer Technologist, Senior ("TRET SR).

2. Mitch Martin was promoted to TRET SR, the same classification as Grievant.

3. Both Grievant and Mr. Martin work in the same district.

4. When the TRET SR position was posted, Grievant did not apply for the position because he was already classified as a TRET SR.

5. Mr. Martin's promotion did not place him over Grievant in any supervisory capacity. Instead, Mr. Martin's promotion placed him in a position equal to Grievant.

6. Mr. Martin no longer holds the position of TRET SR.

Discussion

Pursuant to the Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 156-1-6 6.11(2007), "[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." [Previously codified at W. Va. 156 C.S.R. 1 § 4.12 (2004).]

Grievant asserts Mr. Martin was not qualified for the position and should not have been promoted. During much of his argument, Grievant set forth what he believed to be Mr. Martin's qualifications. To ensure complete understanding of the nature of the grievance, the undersigned specifically inquired as to whether Grievant had applied for Mr. Martin's position. Grievant explained that he was already a

TRET SR, and did not apply for the position. Nor did Mr. Martin's promotion place him in a supervisory capacity over Grievant. Grievant continually made references to the importance of the position and Mr. Martin's inability to handle the duties that came along with it.

When asked what harm he feels he has suffered, Grievant stated that, upon Mr. Martin's promotion to TERT SR, Mr. Martin was paid over $6,000 more yearly. Grievant said that as a result, he was ridiculed by co-workers.

Respondent asserts Grievant suffers no direct harm from Mr. Martin's promotion. Respondent avers Grievant is not paid less as a result of Mr. Martin's promotion, and Grievant makes no claim of harm or impact from Mr. Martin's promotion other than requesting a comparable salary.

A grievant must show an injury-in-fact, economic or otherwise, to have what constitutes a matter cognizable under the grievance statute. *Milbert v. Division of Corrections/Northern Regional Jail*, Docket No. 99-CORR-516 (May 5, 2000); *Dooley v. W. Va. Dept. of Transp.*, Docket No. 94-DOH-255 (Nov. 30, 1994). As the statement of grievance is written, Grievant has not alleged an injury-in-fact with respect to Mr. Martin's promotion. Therefore, the undersigned finds Grievant has no standing to grieve Mr. Martin's promotion.

Conclusions of Law

1. Pursuant to the Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 156-1-6 6.11(2007), "[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." [Previously codified at W. Va. 156 C.S.R. 1 § 4.12 (2004).]

2. A grievant must show an injury-in-fact, economic or otherwise, to have what constitutes a matter cognizable under the grievance statute. *Milbert v. Division of Corrections/Northern Regional Jail*, Docket No. 99-CORR-516 (May 5, 2000); *Dooley v. W. Va. Dept. of Transp.*, Docket No. 94-DOH-255 (Nov. 30, 1994).

3. Grievant does not have standing to grieve Mr. Martin's promotion.

Based upon the foregoing, the "Motion to Dismiss" is **GRANTED** and the above- styled action is **DISMISSED** due to Grievant requesting a remedy which is wholly unavailable.

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 § 6.19 (eff. Dec. 27, 2007).

Date: May 26, 2009

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Wendy A. Campbell
Administrative Law Judge