THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

JACK LANE POSEY
Grievant,

v. **Docket No. 2009-0745-WVU**

WEST VIRGINIA UNIVERSITY
Respondent.

DISMISSAL ORDER

Jack Lane Posey ("Grievant") filed a level one grievance with West Virginia University ("Respondent") on November 26, 2008. The grievance seeks to challenge his non-selection for the position of Maintenance Worker 2 pursuant to posting #36. Grievant asks to be selected for the posting as his relief. This grievance was dismissed at level one on December 4, 2008, by Order of Sue Keller, Chief Grievance Administrator, because Grievant is not an employee of the University. Grievant filed a Motion to Reinstate Grievance on December 9, 2008. This pleading was treated as a level two appeal in the grievance process. Thereafter, Respondent renewed its request to have the grievance dismissed by letter dated December 12, 2008. Grievant responded to this dismissal request by Respondent on April 1, 2009. Respondent appears by its Associate General Counsel, Shea Browning. Grievant appears by his representative, Gordon Simmons, Steward, UE Local 170. This matter is now mature for ruling on Respondent's "Motion to Dismiss."

Synopsis

Grievant, an employee of the Department of Motor Vehicles, applied for a position with West Virginia University and was not selected. He then filed a grievance with West

Virginia University. 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. This grievance is DISMISSED.

The following material facts are undisputed:

Findings of Fact

1. Grievant made application for a Maintenance Worker 2 position pursuant to Respondent's posting #36.

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

3. Grievant filed this grievance challenging that decision on November 26, 2008.

4. This grievance was denied at level one on December 4, 2008, because Grievant is not an employee of West Virginia University.

5. Grievant acknowledges he was not an employee of West Virginia University at the time of making application for the maintenance position; he seeks to continue in the prosecution of this grievance as an employee of the State of West Virginia.

Discussion

It is undisputed that Grievant is an employee of the Division of Motor Vehicles ("DMV") and was at the time he applied for the position which is the subject of this grievance. However, he contends that, as an employee of the DMV, he has standing to file a grievance against any state employer. 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."

There is no question that Respondent is not "using the services" of Grievant, nor has the University ever hired Grievant for employment. 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 a state agency is listed as a separate employer than a university. In any event, Grievant is an employee of DMV, 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 placed in the position at West Virginia University, is not something within the authority of DMV. 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 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 "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 Motor Vehicles, and his employer has no authority regarding selection for positions with West Virginia University.

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 10, 2009

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Ronald L. Reece
Administrative Law Judge