WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

SPIRO MITIAS,
Grievant,

v. **Docket No. 05-PSC-107R**

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA,
Respondent.

DISMISSAL ORDER

Grievant Spiro Mitias filed a grievance on March 3, 2005, against his employer, Public Service Commission of West Virginia ("PSC"), following his receipt of a written reprimand from his supervisor, Franklin Crabtree, Director of the Transportation Division at that time. Grievant denies he engaged in any act of insubordination and asserts Respondent engaged in discrimination. For relief, Grievant seeks removal of the written reprimand from his personnel file.

Procedural History

Because of the lengthy history of this grievance, the undersigned feels it is important to chronicle the procedural history. As stated above, this grievance was originally filed in a timely manner on March 3, 2005.[1] Grievant waived Levels I and II of the grievance procedure, and on March 22, 2005, a Level III evidentiary hearing was conducted and the

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[1]In 2007, the Legislature, 2007 Acts ch. 207, abolished the West Virginia Education and State Employees Grievance Board, replacing it with the Public Employees Grievance Board. W. VA. CODE §§ 18-29-1 to 18-29-11 and W. VA. CODE §§ 29-6A-1 to 29-6A-12 were repealed and replaced by W. VA. CODE §§ 6C-2-1 to 6C-2-7 and W. VA. CODE §§ 6C-3-1 to 6C-3-6 (2007). Grievances which were pending prior to July 1, 2007 are decided under the former statutes, W. VA. CODE §§ 18-29-1 to 18-29-11, for education employees, and W. VA. CODE §§ 29-6A-1 to 29-6A-12, for other state and higher education employees. *See* Executive Order No. 2-07, May 8, 2007. References in this decision are to the former statutes, which continue to control the proceedings in this case.

grievance was subsequently denied. On April 5, 2005, Grievant then appealed to Level IV. Following numerous delays, a Level IV hearing was held on February 28, 2007. Neither Grievant nor his counsel appeared at the hearing.[2] The decision on the case was rendered based solely on the record developed at Level III. Grievant then appealed to the Circuit Court alleging his case should be reversed and the matter remanded for a full evidentiary hearing, as he nor his counsel received proper notice of the Level IV hearing. On July 1, 2009, this case was remanded to the West Virginia Public Employees Grievance Board with instructions to conduct a properly noticed administrative hearing.

On June 14, 2010, a Level IV hearing was conducted at the Grievance Board's Charleston office. Grievant was represented by Robert F. Williams, Esq., and Respondent was represented by Belinda Jackson, Esq.[3] This case became mature for decision on August 12, 2010, upon the parties submissions of findings of fact and conclusions of law.[4]

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[2]Grievant's counsel in 2007 was not the same counsel as represented him at the Level IV hearing on remand.

[3]At the remand hearing, Respondent chose to rest on the record developed from Level III on March 22, 2005. Grievant's counsel objected. As is the practice of the Grievance Board, the lower level record is incorporated into the record at Level IV.

[4]Grievant's counsel has objected to the fact that the proposed findings of fact and conclusions of law are simultaneous submissions, and responses to the proposals between the parties will not be entertained by the undersigned. In an email to the Grievance Board, Grievant's counsel indicated that he believed the undersigned had provided a briefing schedule for reply briefs. This is incorrect. The date of August 12, 2010, was the date simultaneous submissions were due from the parties, as has always been the practice of the Grievance Board.

Synopsis

Grievant challenges a written reprimand for insubordination. PSC argues Grievant had been directed three times to put license plates on the front of his state-issued vehicle, but had not done so.

Grievant asserts he did not act insubordinate, but instead had a valid and justifiable explanation as to why the front license plate was not on his state-issued vehicle. Grievant further avers he was being discriminated against.

In Respondent's proposed findings of fact and conclusions of law, Ms. Jackson notes that Grievant retired as of June 30, 2010, and therefore this grievance is moot. Grievant's attorney filed a response alleging this information is outside the record, and the grievance is not moot as Grievant may, at some point in the future, wish to return to state employment either on a full-time or contract basis.

This grievance is dismissed.

Findings of Fact

1. Grievant has been employed by the PSC as Manager of the Coal Reporting Department in Weight Enforcement Section of the Transportation Division.

2. Grievant received a written reprimand on February 23, 2005, for not having a front license plate on his state-issued vehicle, as is required by W. VA. CODE §17A-3-23.

3. On June 15, 2010, one day after the hearing in this matter, Grievant gave notice that he would be retiring.

4. Grievant's last day of employment at the PSC was June 30, 2010.

Discussion

In Respondent's proposed findings of fact and conclusions of law, it noted that Grievant voluntarily retired on June 30, 2010. It is Respondent's contention that Grievant's voluntary retirement thereby renders this grievance moot. Grievant asserts the issues in the grievance remain ripe for decision.

> "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. Dep't 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).

Pritt, et al., v. Dep't of Health & Human Res., Docket No. 2008-0812-CONS (May 30, 2008); *Spence v. Div. of Natural Res.*, Docket No. 2010-0149-CONS (Oct. 29, 2009).

This Grievance Board has dismissed several grievances as moot due to voluntary retirement in several cases. *See Komorowski v. Marshall Co. Bd. of Educ.*, Docket No. 08-25-007 (March 23, 2007); *King v. Dep't of Transp.*, Docket No. 06-DOH-020 (Oct. 20, 2006); *Jones v. Cabell Co. Bd. of Educ.*, Docket No. 97-06-041 (Aug. 6, 1997).

Grievant asserts that, despite his retirement, the written reprimand remains part of his personnel file. He further argues there is nothing to prohibit Grievant from returning to state employment, and as such, his past work history with the State remains relevant should he seek re-employment with the State.

Grievant's argument is full of speculation. The undersigned acknowledges Grievant may return to State employment. However, it is speculative to suggest the written reprimand would prevent or harm him from future employment. It is also mere speculation to even suggest a state agency would be aware of such reprimand.

Comparing the speculation to the real effect of the written reprimand had Grievant remained employed, it is clear the written reprimand could have been used as a basis for progressive disciplinary sanctions. However, since he is retired, there is no longer that concern. Therefore, in essence, all Grievant seeks is a declaration that he was right, and Respondent was not. The Grievance Board has routinely held that, "Relief which entails declarations that one party or the other was right or wrong, but provides no substantive, practical consequences for either party, is illusory, and unavailable from the [Grievance Board]." *Miraglia v. Ohio Co. Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993).

"The purpose of the grievance procedure is to provide a forum for the resolution of employment problems, with the goal that the employer and employee will be able to work out a solution." *Petty v. Kanawha Co. Bd. of Educ.*, Docket No. 00-20-154 (May 2, 2002). Given Grievant's retirement, there is no remaining problem for the employer and employee to resolve. "Because it is not possible for any actual relief to be granted, any ruling issued by the undersigned regarding the question raised by this grievance would merely be an advisory opinion. 'This Grievance Board does not issue advisory opinions. *Dooley v. Dep't of Transp.*, Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd. of Educ.*, Docket No. 91-35-229/239 (Nov. 27, 1991).' *Priest v. Kanawha County Bd. of*

Educ., Docket No. 00-20-144 (Aug. 15, 2000)." *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002); *Spence*, *supra*.

Accordingly, this grievance is DENIED.

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). 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. Dep't 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).

Pritt, et al., v. Dep't of Health & Human Res., Docket No. 2008-0812-CONS (May 30, 2008); *Spence v. Div. of Natural Res.*, Docket No. 2010-0149-CONS (Oct. 29, 2009).

2. "Relief which entails declarations that one party or the other was right or wrong, but provides no substantive, practical consequences for either party, is illusory, and unavailable from the [Grievance Board]." *Miraglia v. Ohio Co. Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993).

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4. "Because it is not possible for any actual relief to be granted, any ruling issued by the undersigned regarding the question raised by this grievance would merely

be an advisory opinion. 'This Grievance Board does not issue advisory opinions. *Dooley v. Dep't of Transp.*, Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd. of Educ.*, Docket No. 91-35-229/239 (Nov. 27, 1991).' *Priest v. Kanawha County Bd. of Educ.*, Docket No. 00-20-144 (Aug. 15, 2000)." *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002); *Spence*, *supra*.

5. This case is moot because Grievant voluntarily retired.

Accordingly, this grievance is **DISMISSED**.

Any party, or the West Virginia Division of Personnel, may appeal this decision to the Circuit Court of Kanawha County, or to the "circuit court of the county in which the grievance occurred." Any such appeal must be filed within thirty (30) days of receipt of this decision. *See* W. VA. CODE § 29-6A-7 (*See Footnote 2)*. 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 appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

DATE: September 22, 2010

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Wendy A. Elswick
Administrative Law Judge