THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

ANTHONY WAYNE THACKER,
Grievant,

v. **Docket No. 2010-0036-DHHR**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/MILDRED MITCHELL-BATEMAN HOSPITAL,
Respondent.

DISMISSAL ORDER

Grievant Anthony Wayne Thacker filed a grievance on July 13, 2009, against Respondent. His statement of grievance reads:

> As of July 1, 2009 a pay increase was approved for physician specialists involved in direct patient care at Bateman and Sharpe Hospitals to comply with a law passed by the West Virginia legislature (House bill 106 and Senate bill 1002). I was denied this pay raise despite being classified as a physician specialist while the other physician specialists at Bateman were given the raise. I am a specialist in Family Medicine having gone through 3 years of residence and passing the specialty board exam. I am involved in direct patient care – doing History and Physicals, 6 month physicals, medical review of forensic patients, consults, and management of acute and chronic medical problems.

His relief sought is, "I am requesting a salary increase equal to that given to the other physician specialists at Bateman and Sharpe Hospitals (the higher of $25,000 or a 16.67% raise) with back pay and interest on that back pay dating back to the date the other physicians received their raise (July 1, 2009). Also I am requesting all court costs and attorney's fees related to this matter be paid."

This grievance was dismissed at level one. Grievant appealed, and currently this case is at level two in the grievance procedure. However, prior to mediation being held, Respondent filed a Motion to Dismiss. Grievant filed an objection to the Motion to Dismiss,

and a phone conference was held on August 26, 2009, whereby the parties were given an opportunity to expand on their written filings.

Findings of Fact

1. Grievant is employed by Respondent and works as a physician specialist at Mildred Mitchell-Bateman.

2. The West Virginia Legislature passed West Virginia Code §5-4-4a, allowing raises to be given to physicians, physician specialists, nurses, nursing directors, health service workers, health service assistants, health service associates or other positions at Mildred Mitchell-Bateman Hospital and William R. Sharpe, Jr. Hospital. This pay raise was to assist with recruitment and retention.

3. Grievant did not receive a raise.

Discussion

West Virginia Code §5-4-4a(c) states:

> Funding for the pay rates and employment requirements shall be provided from the appropriation of the Department of Health and Human Resources. Due to the limits of funding, the implementation of the pay rates and employment requirements shall not be subject to the provisions of article two, chapter six-c of this code. The provisions of this section are rehabilitative in nature and it is the specific intent of the Legislature that no private cause of action, either express or implied, shall arise pursuant to the provisions or implementation of this section.

This statute specifically prohibits the filing of grievances and civil complaints. Grievant asserts a number of Constitutional arguments, specifically Article III, §10 of the West Virginia Constitution which states, "No person shall be deprived of life, liberty, or property, without due process of law and the judgment of his peers." Grievant argues that the legislature has essentially created a statute that runs afoul of the basic tenants of our legal system.

While the Grievant has a very valid argument, the undersigned does not have authority under the statute to hear this grievance. Therefore, this grievance must be DISMISSED.

Conclusions of Law

1. West Virginia Code §5-4-4a prohibits the filing of a grievance and civil complaints regarding this statute.

2. The undersigned is without authority to hear this grievance.

Accordingly, this 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 Dismissal 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: January 15, 2010

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Wendy A. Elswick
Administrative Law Judge