THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

SARA MCCOY,
Grievant,

v. **Docket No. 2010-1343-MU**

MARSHALL UNIVERSITY,
Respondent.

DISMISSAL ORDER

Grievant Sara McCoy was employed by Marshall University Research Corporation ("MURC")[1] on July 17, 2009. Grievant's employment with MURC was terminated on March 23, 2010. Ms. McCoy filed a grievance on April 9, 2010 contesting her dismissal. On April 27, 2010, Respondent Marshall University[2] filed a Motion to Dismiss the grievance alleging that MURC is a separate legal entity from Marshall University and that MURC is not a state agency or institution of higher education subject to the West Virginia Public Employees Grievance Procedure. On April 28, 2010, an Order was entered giving Grievant until June 1, 2010, to show cause why the Motion to Dismiss should not be granted. On April 27, 2010, Grievant sent an e-mail to Jendonnae L. Houdyschell, Senior Assistant Attorney General who is serving as counsel for Respondent Marshall University in this matter[3]. Grievant stated in that e-mail that she had provided a copy of the grievance to Marshall University by registered mail which was signed for on April 5, 2010. No other documents

---

[1] Grievant was employed in the Rahall Transportation Institute which is part of the MURC.

[2] The grievance was actually filed against MURC because Grievant believed MURC was a part of Marshall University.

[3] A copy of that e-mail was provided to the Grievance Board.

have been received by the West Virginia Public Employees Grievance Board since the entry of the above-referenced Order.

Findings of Fact

1. Grievant Sara McCoy was employed by Marshall University Research Corporation ("MURC") on July 17, 2009.

2. On March 23, 2010, Grievant was dismissed from her job with MURC.

3. Grievant filed a grievance with the West Virginia Public Employees Grievance Board contesting the termination of her employment with MURC.

4. MURC is a private, non-profit, non-stock corporation organized to foster and support research for Marshall University and provide marketing, development, and patenting services for inventions of the faculty of Marshall University.

5. Research corporations such as MURC are authorized to contract with public higher education institutions in West Virginia to facilitate research and grant opportunities for the higher education institutions and must qualify as a tax exempt organization under Section 501 (c) (3) of the Internal Revenue Code of 1986, as amended.

Discussion

The only issue in this matter is whether Grievant's employer, MURC, is an entity subject to the jurisdiction of the West Virginia Public Employees Grievance Board. If it is, the grievance must be set for a hearing on the merits. If it is not, the grievance must be dismissed for lack of jurisdiction.

The Public Employees Grievance Board is an administrative agency, established by the Legislature, to allow public employees and their employers to reach solutions to

problems which arise within the scope of their respective employment relationships. W. VA. CODE § 6C-2-1(a); *See Fraley v. Morgan County Bd. of Educ.*, Docket No. 01-32-615D (April 30, 2002). "An administrative agency is but a creature of statute, and has no greater authority than conferred under the governing statutes." *Monongahela Power Co. v. Chief, Office of Water Res., Div. of Envtl. Prot.*, 211 W.Va. 619, 567 S.E.2d 629, 637 (2002), (citing *State ex rel. Hoover v. Berger*, 199 W.Va. 12, 16, 483 S.E.2d 12, 16 (1996)). Consequently, the jurisdiction of the Public Employees Grievance Board is limited to the grant of authority provided in WEST VIRGINIA CODE §§ 6C-2-1 *et seq*. *Clutter v. Dep't of Agric.,* Docket No. 2009-1372-AGR (May 28, 2009).

For purposes of the Public Employees Grievance Procedure the term "employer" is defined as follows:

> (g) "Employer" means 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.

W. VA. CODE § 6C-2-2 (g). In order for an employer to be subject to the jurisdiction of the West Virginia Public Employees Grievance Board, it must fall within that definition and be a state agency or a public education institution.

MURC is a private, non-profit, non-stock corporation created to provide an entity for Marshall University to contract with in order to meet specific goals outlined by the West Virginia Legislature. *See* W. VA. CODE §§ 18B-12-1 et seq. The Grievance Board has previously held that research corporations, such as MURC, are private entities and are not employers subject to the jurisdiction of the West Virginia Public Employees Grievance

Board. *Chatfield v. W. Va. State Univ.,* Docket No. 06- HE-074 (Jan. 4, 2007); *Ward & Higley v. West Virginia State University,* Docket No. 07-HE-332 (Dec. 20, 2007). Both of these decisions involve a research corporation that contracts with West Virginia State University, but those corporations are created in the same way and for the same purposes as MURC. There is nothing in this grievance to indicate that MURC's relationship with Marshall University is any different than the relationship West Virginia State University has with the research corporation involved in those cases. MURC is not an employer subject to the jurisdiction of the West Virginia Public Employees Grievance Board and the grievance is DISMISSED.

Conclusions of Law

1. The Public Employees Grievance Board is an administrative agency, established by the Legislature, to allow public employees and their employers to reach solutions to problems which arise within the scope of their respective employment relationships. W. VA. CODE § 6C-2-1(a); *See Fraley v. Morgan County Bd. of Educ.*, Docket No. 01-32-615D (April 30, 2002).

2. "An administrative agency is but a creature of statute, and has no greater authority than conferred under the governing statutes." *Monongahela Power Co. v. Chief, Office of Water Res., Div. of Envtl. Prot.*, 211 W.Va. 619, 567 S.E.2d 629, 637 (2002), (citing *State ex rel. Hoover v. Berger*, 199 W.Va. 12, 16, 483 S.E.2d 12, 16 (1996)). Consequently, the jurisdiction of the Public Employees Grievance Board is limited to the grant of authority provided in WEST VIRGINIA CODE §§ 6C-2-1 *et seq*. *Clutter v. Dep't of Agric.,* Docket No. 2009-1372-AGR (May 28, 2009).

3. For purposes of the Public Employees Grievance Procedure the term "employer" is defined as follows:

> (g) "Employer" means 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.

In order for an employer to be subject to the jurisdiction of the West Virginia Public Employees Grievance Board, it must fall within that definition.

4. MURC is a private, non-profit, non-stock corporation created to provide an entity for Marshall University to contract with in order to meet specific goals outlined by the West Virginia Legislature. *See* W. VA. CODE §§ 18B-12-1 et seq. MURC is not an employer as defined in W. VA. CODE § 6C-2-2 (g) and is not subject to the jurisdiction of the West Virginia Public Employees Grievance Board.

Accordingly, the 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 Decision. *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: JUNE 11, 2010.

WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE