THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

BRIAN WAYNE WELLS,
Grievant,

v. **Docket No. 2011-0156-HRC**

HUMAN RIGHTS COMMISSION,
Respondent.

DISMISSAL ORDER

Grievant was employed by the Human Rights Commission as an attorney. On August 9, 2010, Grievant filed this grievance seeking removal of a written reprimand from his personnel file, and alleging retaliation. This grievance was denied at level one. Grievant appealed. On September 28, 2010, a grievance was filed challenging Grievant's dismissal from employment effective October 8, 2010, for performance failures, misconduct, and insubordination. This grievance was placed in abeyance pending the outcome of Grievant's termination grievance, styled as *Brian Wayne Wells v. Human Rights Commission*, Docket No. 2011-0435-HRC. On June 22, 2011, the Honorable Jennifer Lea Stollings-Parr, Administrative Law Judge, issued a Decision upholding Respondent's termination of Grievant's employment. The appeal period for that Decision has expired. The issues presented in this grievance are now moot.

Synopsis

The issues of a written reprimand, and retaliation raised in this grievance are a moot point since Grievant is no longer an employee of Respondent. Under these circumstances,

there is no additional relief that could be granted by the Grievance Board even if Grievant were to prevail on the merits. Accordingly, the grievance is dismissed.

The following findings of fact are based upon the record of this grievance.

Findings of Fact

1. Grievant was employed on December 1, 2005, in an Attorney 1 classification, with the working title of General Counsel, for Respondent. Grievant was dismissed from this position on October 8, 2010.

2. Prior to being dismissed from his employment, Grievant filed the instant grievance challenging a written reprimand and claiming retaliation by his employer.

3. On June 22, 2011, the Grievance Board issued a Decision upholding Respondent's decision to terminate Grievant's employment. No appeal was made to the Circuit Court of Kanawha County.

Discussion

The undersigned, *sua sponte*, considers the issue of whether this grievance should be dismissed because the relief requested by the Grievant is moot due to his dismissal. "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]." *Pritt, et al., v. Dep't of Health & Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008). The Grievance Board will not hear issues that are moot. *Cobb, et al. v. Div. of Highways*, Docket No. 2009-1017-CONS (Dec. 31, 2009).

This Board has found that where a grievant is no longer an employee, "a decision on the merits of her grievance would be a meaningless exercise, and would merely

constitute an advisory opinion." *Muncy v. Mingo County Bd. of Educ.*, Docket No. 96-29-211 (Mar. 28, 1997). "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).

Any decision addressing the challenge to a written reprimand and a claim of retaliation would be meaningless since Grievant is no longer employed by Respondent. Furthermore, the determination of whether or not the decision to terminate was for good cause was not appealed by the Grievant. Because Grievant would gain no concrete remedy from this grievance, it is now moot and any ruling would amount to an advisory opinion.

The Procedural Rules for the West Virginia Public Employees Grievance Board state in part that:

> A grievance may be dismissed, in the discretion of the administrative law judge, if no claim on which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested.[1]

Because Grievant is no longer employed by the Human Rights Commission, any prospective relief that might be available is moot. Accordingly, the grievance fails to raise a claim on which relief can be granted and is dismissed.

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[1]156 C.S.R. 1 § 6.11.

The following conclusions of law support the decision reached in this Order.

Conclusions of Law

1. "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]." *Pritt, et al., v. Dep't of Health & Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008). The Grievance Board will not hear issues that are moot. *Cobb, et al. v. Div. of Highways*, Docket No. 2009-1017-CONS (Dec. 31, 2009).

2. "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).

3. When it is not possible for any actual relief to be granted, any ruling issued by the undersigned regarding the questions raised by this grievance would merely be an advisory opinion.

4. Because Grievant is no longer employed by Respondent, any prospective relief that might normally be available to him is moot.

Accordingly, the grievance is **DISMISSED**.

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 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 (eff. July 7, 2008).

Date: September 20, 2011

Ronald L. Reece
Administrative Law Judge