THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

SHELIA NESTOR,
Grievant,

v. **Docket No. 2012-0149-CONS**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/HOPEMONT HOSPITAL,
Respondent.

DISMISSAL ORDER

Grievant, Shelia Nestor, worked for Hopemont Hospital until her termination in December 2011. She grieved her termination on December 20, 2011, and a Decision for that grievance was issued on August 29, 2012. The appeal period for challenging Grievant's termination grievance, 2012-0652-DHHR, has now passed. Prior to her dismissal, Grievant filed a number of grievances which were docketed and held in abeyance pending the outcome of the termination grievance, and were all consolidated into the above docket number. Grievant appeared by her representative, Gordon Simmons, UE Local 170, West Virginia Public Workers Union. Respondent appeared by its counsel, James "Jake" Wegman, Assistant Attorney General.

Synopsis

The issues raised in the other grievances 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, all grievances under this consolidated docket number are dismissed.

The following findings of fact are based upon the record of the grievances.

Finding of Facts

1. Grievant was employed by Respondent until December 2011, when she was dismissed from her job.

2. Prior to being dismissed from her employment, Grievant filed different grievances challenging her job description, challenging an improvement plan, and challenging the denial of a union representative during a meeting that could have allegedly resulted in discipline. These grievances were filed throughout 2011. Her other grievances challenging disciplinary measures taken by Respondent were addressed by the undersigned by Decision after a level three hearing.

3. The undersigned issued a Decision on August 29, 2012, upholding Respondent's decision to terminate Grievant's employment. No appeal of this Decision was filed by Grievant.

Discussion

The Respondent has requested that these grievances be dismissed because the relief requested by the Grievant is moot due to her 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 order requiring Respondent and its agents to prevent such treatment of Grievant in the future 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 has been fully litigated. Because Grievant would gain no concrete remedy from these grievances, they are 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]

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[1]156 C.S.R. 1 § 6.11.

Because Grievant is no longer employed by the Hopemont Hospital, any prospective relief that might be available is moot. Accordingly, the grievances fail to raise a claim on which relief can be granted and they are dismissed.

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 these grievances would merely be an advisory opinion.

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

Accordingly, the grievances under this consolidated docket number are **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 (2008).

Date: December 4, 2012

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Ronald L. Reece
Administrative Law Judge