THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

RONALDO DIXON,
Grievant,

v. **DOCKET NO. 2012-1031-CONS**

WEST VIRGINIA UNIVERSITY,
Respondent.

DISMISSAL ORDER, CONSOLIDATION ORDER, AND ORDER RETURNING GRIEVANCES TO LEVEL THREE

On March 15, 2012, Grievant filed a grievance directly to level three of the grievance procedure, assigned Docket No. 2012-0963-WVU, contesting the termination of his employment by Respondent, West Virginia University. In his statement of grievance, Grievant admits that he was hired as a temporary employee.

On March 22, 2012, Grievant filed a second grievance directly at level three of the grievance procedure, assigned Docket No. 2012-0995-WVU, contesting Respondent's action in denying him access to the personnel files maintained on him by Respondent, after his employment was terminated.

On March 22, 2012, Grievant filed a third grievance directly at level three of the grievance procedure, assigned Docket No. 2012-0998-WVU, regarding Respondent's action in denying him access to his work email account after the termination of his employment.

On March 28, 2012, Docket Nos. 2012-0995-WVU and 2012-0998-WVU were Ordered transferred to level one of the grievance procedure.

On March 29 and 30, 2012, Respondent filed Motions to Dismiss Docket No. 2012-0998-WVU and Docket No. 2012-0963-WVU, respectively, on the grounds that Grievant is a temporary employee, and as such, has no standing to file a grievance. No Motion to Dismiss Docket No. 2012-0995-WVU has been received by the Grievance Board.

The following facts have been admitted by Grievant in his statements of grievance, and are accepted as true for purposes of ruling on the Motions to Dismiss:

Findings of Fact

1. Grievant was hired by Respondent, West Virginia University ("WVU"), on November 7, 2011, as a temporary employee. Grievant understood he was a temporary employee.

2. Grievant's employment was terminated by WVU, effective March 11, 2012.

3. At the time his employment was terminated by WVU, Grievant was a temporary employee.

Discussion

WEST VIRGINIA CODE § 6C-2-2(e)(1) defines "employee" for the purposes of the grievance procedure, as follows:

> (1) "Employee" means any person hired for permanent employment by an employer for a probationary, full- or part-time position.

To qualify as an employee within the meaning of the grievance statute the employee must have permanent employment status. The Grievance Board has held that temporary employees, even if employed on a full-time basis, are not hired for "permanent employment" and, accordingly, are not eligible to file grievances. *Lilly v. Div. of Natural Res.*, Docket No. 98-DNR-011 Mar. 26, 1998); *Edmond et al. v. Div. of Juvenile Servs.*, Docket No. 99-DJS-

293 (Feb. 22, 2000); *Gill v. Div. of Natural Res.*, Docket No. 2009-1598-CONS (May 22, 2009).

Grievant was hired as a temporary employee, he knew he was a temporary employee and agreed to be employed by Respondent as a temporary employee, and no action was taken by Respondent to change Grievant's employment status. At the time his employment was terminated, Grievant was a temporary employee. As a temporary employee, Grievant was not covered by the grievance procedure, and had no statutory right to file any of the three grievances.

Respondent has requested that the Grievance Board dismiss Docket No. 2012-0998-WVU, even though it has been transferred to level one. The undersigned concludes that it would be a waste of resources to allow any of these matters to proceed at level one of the grievance procedure, and that all three must be dismissed for lack of jurisdiction, even without a Motion to Dismiss Docket No. 2012-0995-WVU. Accordingly, the Orders transferring Docket No. 2012-0995-WVU and Docket No. 2012-0998-WVU to level one are revoked, and these grievances are **ORDERED** dismissed from the level one docket and returned to the level three docket. The three grievances are further **ORDERED** consolidated into Docket No. 2012-1031-CONS.

The following Conclusions of Law support the dismissal of these grievances.

Conclusions of Law

1. To qualify as an "employee," within the meaning of the grievance statute, the employee must have permanent employment status. W. VA. CODE § 6C-2-2(e)(1).

2. The Grievance Board has held that temporary employees, even if emon a full-time basis, are not hired for "permanent employment" and, accordingly, are not eligible to file grievances. *Lilly v. Div. of Natural Res.*, Docket No. 98-DNR-011 Mar. 26, 1998); *Edmond et al. v. Div. of Juvenile Servs.*, Docket No. 99-DJS-293 (Feb. 22, 2000); *Gill v. Div. of Natural Res.*, Docket No. 2009-1598-CONS (May 22, 2009).

3. Because Grievant was a temporary employee, he is not covered by the grievance statutes. Grievant had no statutory right to file a grievance, and the Grievance Board has no jurisdiction to hear and decide these grievances.

Accordingly, this grievance, Docket No. 2012-1031-CONS, is **ORDERED DISMISSED** from the docket of the Grievance Board.

Any party may appeal this Dismissal Order 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 appealing party must also provide the Board with the civil action number so that the certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. *See also* 156 C.S.R. 1 § 6.20 (2008).

BRENDA L. GOULD
Administrative Law Judge

Date: April 6, 2012