

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

LISA E. SAYRE,
Grievant,

v.

Docket No. 2022-0634-MISC

ENTERPRISE RESOURCE PLANNING BOARD,
Respondent.

DISMISSAL ORDER

On February 22, 2022, Grievant, Lisa E. Sayre, filed a grievance against Respondent, the Enterprise Resource Planning Board, alleging the Board had failed to accommodate Grievant's request for remote work. After review of the grievance filing and the relevant statutes, the undersigned, by letter dated February 28, 2022, notified Grievant that it appeared the Grievance Board lacked jurisdiction to hear the grievance. The letter further notified Grievant that she was required to file a response by March 14, 2022, if she still believed she had the right to pursue this grievance. Grievant did not file a response.

Synopsis

Grievant is employed by the Enterprise Resource Planning Board and protests the alleged failure of the Board to accommodate her request for remote work. The Enterprise Resource Planning Board consists of the Governor, Auditor, and Treasurer of the State of West Virginia, all of whom are constitutional officers. Employees of constitutional officers cannot avail themselves of the West Virginia Public Employees Grievance Procedure unless the employee is otherwise covered under the civil service system. As it does not appear the Grievant is covered under the civil service system, the

Grievance Board lacks jurisdiction in this matter. Accordingly, the grievance must be dismissed. The undersigned makes the following Findings of Fact:

Findings of Fact

1. Grievant is employed by the Enterprise Resource Planning Board.
2. Grievant filed this grievance on February 22, 2022, alleging failure of the Board to accommodate her request for remote work.
3. The Enterprise Resource Planning Board consists of the Governor, Auditor, and the Treasurer, all of whom are constitutional officers of the State of West Virginia.

Discussion

“Each administrative law judge has the authority and discretion to control the processing of each grievance assigned such judge and to take any action considered appropriate consistent with the provisions of W. VA. CODE § 6C-2-1 *et seq.*” W.VA. CODE ST. R. § 156-1-6.2 (2018). The Grievance Board may “take notice of lack of jurisdiction at any time or at any stage of the litigation pending therein.” Syl. Pt. 2, *In re Boggs' Estate*, 135 W.Va. 288, 63 S.E.2d 497 (1951). “The urgency of addressing problems regarding subject-matter jurisdiction cannot be understated because any decree made by a court lacking jurisdiction is void.” *State ex rel. TermNet Merch. Servs., Inc. v. Jordan*, 217 W.Va. 696, 700, 619 S.E.2d 209, 213 (2005); *State ex rel. Universal Underwriters Ins. Co. v. Wilson*, 239 W. Va. 338, 346, 801 S.E.2d 216, 224 (2017). Although not a court, the same reasoning applies to the Grievance Board as an adjudicating body. The administrative law judge may dispose of a grievance through an appealable dismissal order. W.VA. CODE ST. R. § 156-1-6.19.3.

“Administrative agencies and their executive officers are creatures of statute and delegates of the Legislature. Their power is dependent upon statutes, so that they must find within the statute warrant for the exercise of any authority which they claim. They have no general or common-law powers but only such as have been conferred upon them by law expressly or by implication.” Syl. Pt. 4, *McDaniel v. W. Va. Div. of Labor*, 214 W. Va. 719, 591 S.E.2d 277 (2003) (citing Syl. Pt. 3, *Mountaineer Disposal Service, Inc. v. Dyer*, 156 W. Va. 766, 197 S.E.2d 111 (1973)). “The purpose of [the grievance statute] is to provide a procedure for the resolution of employment grievances raised by the public employees of the State of West Virginia, except as otherwise excluded in this article.” W. VA. CODE § 6C-2-1(a). “‘Employee’ means any person hired for permanent employment by an employer for a probationary, full- or part-time position.” W. VA. CODE § 6C-2-2(e)(1). “‘Employee’ does not mean an employee of a Constitutional officer unless he or she is covered under the civil service system. . . .” W. VA. CODE § 6C-2-2(e)(3).

Grievant is employed by the Enterprise Resource Planning Board and protests the alleged failure of the Board to accommodate her request for remote work. The Enterprise Resource Planning Board consists of the Governor, Auditor, and Treasurer, all of whom are all constitutional officers of the State of West Virginia. W. VA. CODE § 12-6D-1(c); W.VA. CONST. art. VII, § 1. By statute, employees of Constitutional officers are excluded from the West Virginia Public Employees Grievance Procedure unless the employee is covered under the civil service system. As the Enterprise Resource Planning Board is comprised entirely of constitutional officers it appears that Grievant would be considered a Constitutional officer employee for purposes of the West Virginia Public Employees Grievance Procedure. Nothing within the Enterprise Resource Planning Board’s

authorizing legislation confers coverage under the civil service system to the Board's employees. Therefore, Grievant is not a covered employee as defined by the West Virginia Public Employees Grievance Procedure. As the Grievance Board lacks jurisdiction in this matter, the grievance must be dismissed.

The following Conclusions of Law support the dismissal of this grievance:

Conclusions of Law

1. "Each administrative law judge has the authority and discretion to control the processing of each grievance assigned such judge and to take any action considered appropriate consistent with the provisions of W. VA. CODE § 6C-2-1 *et seq.*" W.VA. CODE ST. R. § 156-1-6.2 (2018).

2. "Administrative agencies and their executive officers are creatures of statute and delegates of the Legislature. Their power is dependent upon statutes, so that they must find within the statute warrant for the exercise of any authority which they claim. They have no general or common-law powers but only such as have been conferred upon them by law expressly or by implication." Syl. Pt. 4, *McDaniel v. W. Va. Div. of Labor*, 214 W. Va. 719, 591 S.E.2d 277 (2003) (citing Syl. Pt. 3, *Mountaineer Disposal Service, Inc. v. Dyer*, 156 W. Va. 766, 197 S.E.2d 111 (1973)).

3. "The purpose of [the grievance statute] is to provide a procedure for the resolution of employment grievances raised by the public employees of the State of West Virginia, except as otherwise excluded in this article." W. VA. CODE § 6C-2-1(a).

4. "'Employee' means any person hired for permanent employment by an employer for a probationary, full- or part-time position." W. VA. CODE § 6C-2-2(e)(1).

5. “‘Employee’ does not mean an employee of a Constitutional officer unless he or she is covered under the civil service system. . . .” W. VA. CODE § 6C-2-2(e)(3).

6. The Enterprise Resource Planning Board consists of the Governor, Auditor and Treasurer, all of whom are all constitutional officers of the State of West Virginia. W. VA. CODE § 12-6D-1(c); W.VA. CONST. art. VII, § 1.

7. As Grievant is not a covered employee as defined by the West Virginia Public Employees Grievance Procedure, the Grievance Board lacks jurisdiction in this matter and the grievance must be dismissed.

Accordingly, this 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 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* W. VA. CODE ST. R. § 156-1-6.20 (2018).

DATE: April 6, 2022

Billie Thacker Catlett
Chief Administrative Law Judge