

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

**RYAN ADAMS, et al.,
Grievants,**

v.

DOCKET NO. 2017-1666-CONS

**DIVISION OF CORRECTIONS/NORTHERN
CORRECTIONAL CENTER,
Respondent.**

DISMISSAL ORDER

Twelve Grievants¹ filed grievances against their employer, the Division of Corrections, on February 10, 11, and 15, 2017. The grievances assert that the conversion from twice monthly pay to bi-weekly pay will result in Grievants not being paid all they were due as annual salaries, and the grievances were consolidated at level one of the grievance procedure. As relief, Grievants seek to be paid the remainder of their annual salaries, and “a complete and thorough audit of all employees time and pay at NCC.”

A hearing was held at level one on March 2, 2017, and the grievance was denied at that level on March 10, 2017. Grievants appealed to level two on various dates in March and April 2017. A mediation session was held on June 12, 2017, and Grievants appealed to level three on various dates in August 2017.

A level three hearing was held before the undersigned Administrative Law Judge on October 30, 2017, at the Grievance Board’s Westover office. Grievants appeared *pro se*, and Respondent was represented by John H. Boothroyd, Assistant Attorney General.

¹ The Grievants are Ryan Adams, Kristine Chalk, Letty Coast, David Elliott, Dale W. Griffith, Brandy Miller, Denny R. Morris, II, Cecelia Palmer, Tricia L. Triplett, David Young, Sharon Yahnke, and James L. Greathouse.

This matter became mature for decision on receipt of the last of the parties' written argument, on November 30, 2017.

Synopsis

Grievants assert that the change from twice monthly pay to bi-weekly pay has caused them to be paid less than their annual salary. The West Virginia State Auditor's Office and Treasurer's Office are the entities charged with assuring that state employees are paid their salaries, not Respondent, and it is the Enterprise Resource Planning Board which required the change in the pay cycle. The grievance procedure is in place to allow grievants to pursue grievances against the agency which employs them. Inasmuch as Respondent is not responsible for the action about which Grievants complain, and has no authority to resolve the grievance, this grievance will be dismissed.

The following Findings of Fact are properly made from the record developed at levels one and three.

Findings of Fact

1. None of the Grievants are employed by the Enterprise Resource Planning Board, the West Virginia Governor's Office, the West Virginia State Auditor's Office, or the West Virginia State Treasurer's Office.

2. Respondent does not issue, or direct the issuance of, payroll to its employees. The issuance of payroll is the responsibility of the West Virginia State Treasurer and the West Virginia State Auditor. Neither the State Treasurer nor the State Auditor is under the direction or control of Respondent.

3. The West Virginia Governor, the West Virginia State Auditor and the West Virginia State Treasurer are Constitutional Officers.

4. The Enterprise Resource Planning Board (“ERP”) made the decision to convert payroll for state employees from twice monthly to bi-weekly pay, and thereafter this change was authorized by a change in statute enacted by the West Virginia Legislature, and signed into law by the Governor. The ERPB is comprised of the Governor, the State Auditor, and the State Treasurer, and a 16-member steering committee. See, *WVOASIS website, Frequently Asked Questions*.

Discussion

During the 2014 Legislative Session, the West Virginia Legislature amended WEST VIRGINIA CODE § 6-7-1, which sets forth when state employees must be paid. Prior to the amendment, this CODE SECTION provided that state employees “shall be paid twice per month.” After the amendment, this CODE SECTION states that state employees “shall be paid at least twice monthly.” While this CODE SECTION does not require that state employees be paid on a bi-weekly schedule, it authorizes this action, making it legal for employees to be paid bi-weekly. The ERPB then went forward with the plan to convert all state payroll to bi-weekly. Grievants’ employer was not involved in this decision, nor has Respondent been offered the option to decline to have its employees paid on a bi-weekly schedule.

An employee may only file a grievance against his or her employer. W. VA. CODE § 6C-2-2(a)(1). The term 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(a)(3).

WEST VIRGINIA CODE § 6C-2-2(g) defines “employer” for the purposes of the grievance procedure, as follows:

[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 turn, the same statute, in subsection (e)(1), defines “[e]mployee” as “any person hired for permanent employment by an employer for a probationary, full- or part-time position.”

A “Grievance” is “a claim by an employee.” W. VA. CODE § 6C-2-2(i). As established by statute, any matter in which authority to act is not vested with the state department, board, commission, or agency utilizing the services of the grievant is not grievable. *Brining v. Div. of Corrections*, Docket No. 05-CORR-284 (Dec. 7, 2005); *Rainey v. Div. of Motor Vehicles*, Docket No. 2008-0278-DOT (Mar. 11, 2008).

The Public Employees Grievance Board is an administrative agency, established by the Legislature, to allow a public *employee* and his or her *employer* to reach solutions to problems which arise within the scope of their employment relationship. W. VA. CODE § 6C-2-1(a); See *Farley 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 Env'tl. 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.* The grievance procedure is only

available to the grievant to challenge the actions taken by his employer. *Posey v. W. Va. Univ.*, Docket No. 2009-0745-WVU (Apr. 10, 2009); *Narkevic v. Div. of Corr. and Dep't of Health & Human Res.*, Docket No. 2009-0846-MAPS (Apr. 29, 2009).

Since none of the Grievants is an employee of the ERPB, the Office of the Governor, the Office of the Treasurer or the Office of the Auditor, and Grievants' employer is not vested with the authority to change Grievants' pay cycle, the Grievance Board does not have jurisdiction to adjudicate this dispute. Therefore, the grievance must be dismissed. *Price, et al., v. Dep't of Health and Human Res., et al.*, Docket No. 2016-0653-CONS (Aug. 16, 2016); *Thompson v. Div. of Corr.*, Docket No. 2014-0386-MAPS (Dec. 3, 2014); *Monroe v. Dep't of Admin./Real Estate Div. and Legislative Servs./Employee Suggestion Award Bd.*, Docket No. 2012-0873-DOA (May 14, 2012); *Clutter v. Dep't of Agric.*, Docket No. 2009-1372-AGR (May 28, 2009); *Brining, supra*; *Rainey, supra*.

The following conclusions of law support the dismissal of this grievance.

Conclusions of Law

1. As established by statute, any matter in which authority to act is not vested with the state department, board, commission, or agency utilizing the services of the grievant is not grievable. *Brining v. Div. of Corrections*, Docket No. 05-CORR-284 (Dec. 7, 2005); *Rainey v. Div. of Motor Vehicles*, Docket No. 2008-0278-DOT (Mar. 11, 2008).

2. For the purposes of the grievance procedure, an "employer" is the "state agency, department, board, commission, college, university, institution, State Board of Education, Department of Education, county board of education, regional educational

service agency or multi-county vocational center, or agent thereof, using the services of an employee.” W. VA. CODE § 6C-2-2(g).

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

4. "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 Env'tl. 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 under WEST VIRGINIA CODE §§ 6C-2-1, *et seq.*

5. The Public Employees Grievance Board does not have jurisdiction to resolve a dispute between Grievants and the ERPB, the Governor of West Virginia, the West Virginia State Auditor, or the West Virginia State Treasurer. *Price, et al., v. Dep't of Health and Human Res., et al.*, Docket No. 2016-0653-CONS (Aug. 16, 2016); *Thompson v. Div. of Corr.*, Docket No. 2014-0386-MAPS (Dec. 3, 2014); *Monroe v. Dep't of Admin./Real Estate Div. and Legislative Servs./Employee Suggestion Award Bd.*, Docket No. 2012-0873-DOA (May 14, 2012); *Clutter v. Dep't of Agric.*, Docket No. 2009-1372-AGR (May 28, 2009); *Brining, supra*; *Rainey, supra*.

Accordingly, this grievance is **DISMISSED**.

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).

Date: December 18, 2017

BRENDA L. GOULD
Deputy Chief Administrative Law Judge