

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

KERRI A. SWAGER,
Grievant,

v.

Docket No. 2018-0018-MISC

HAMMOND PUBLIC SERVICE DISTRICT,
Respondent.

DISMISSAL ORDER

On July 7, 2017, Grievant filed a grievance against Respondent, Hammond Public Service District, alleging wrongful termination. By letter dated July 26, 2017, the undersigned notified the parties that the Hammond Public Service District did not appear to be an employer subject to the grievance procedure. The undersigned instructed Grievant to respond, in writing, by August 8, 2017, stating why the grievance should not be dismissed for lack of jurisdiction. Grievant did not file a response to the July 26, 2017 letter.

Synopsis

Grievant was employed by the Hammond Public Service District. The Hammond Public Service District is a public corporation created by a county commission that is a political subdivision of the State, which does not meet the definition of an employer subject to the grievance procedure. The Grievance Board lacks jurisdiction in this matter, and the grievance must be dismissed.

The undersigned makes the following Findings of Fact:

Findings of Fact

1. Grievant was employed by the Hammond Public Service District and grieves action taken against her by her employer.

2. The Hammond Public Service District is a public corporation created by a county commission and is a political subdivision of the State.

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 (2008). 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). “‘Employer’ means 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.” W. VA. CODE § 6C-2-2(g).

Grievant was an employee of the Hammond Public Service District and filed this grievance to protest action taken against her by her employer. The Hammond Public Service District is a public service district. Public service districts are public corporations created by a county commission and are a political subdivision of the State. W. VA. CODE § 16-13A-3. The Hammond Public Service District is not an “employer” as defined by West Virginia Code § 6C-2-2(g) and is not subject to the grievance procedure. Therefore, the Grievance Board lacks jurisdiction in this matter, and 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 (2008).

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). “‘Employer’ means 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.” W. VA. CODE § 6C-2-2(g).

4. Public service districts are public corporations created by a county commission and are a political subdivision of the State. W. VA. CODE § 16-13A-3.

5. As a political subdivision is not an employer subject to the 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 (2008).

DATE: October 4, 2017

Billie Thacker Catlett
Chief Administrative Law Judge