

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

JEFF BRADLEY,
Grievant,

v.

Docket No. 2019-0271-MISC

**CENTRAL WEST VIRGINIA REGIONAL
AIRPORT AUTHORITY,**
Respondent.

DISMISSAL ORDER

On August 17, 2018, the Grievance Board received a *Grievance Form for Levels 1, 2, and 3* filed by Mr. Bradley, by representative, against the Central West Virginia Regional Airport Authority stating, “Unsafe working conditions, retaliation for reporting them.”

By letter dated August 21, 2018, the undersigned notified Mr. Bradley and his representative that the Central West Virginia Regional Airport Authority appeared to be a county or municipal organization not subject to the grievance procedure. The undersigned instructed Mr. Bradley’s representative to respond, in writing, by September 5, 2018, stating why the grievance should not be dismissed for lack of jurisdiction. Neither Mr. Bradley nor his representative responded to the letter.

Synopsis

Grievant is employed by the Central West Virginia Regional Airport Authority, a county or municipal public corporation, which is not one of the listed employers subject to the grievance procedure. The Grievance Board lacks jurisdiction in this matter. Accordingly, the grievance is dismissed.

The undersigned makes the following Findings of Fact:

Findings of Fact

1. Grievant is employed by the Central West Virginia Regional Airport Authority and grieves unsafe working conditions and retaliation.
2. Regional airport authorities are public corporations created by any two or more municipalities or counties, or some combination thereof.
3. Regional airport authorities are governed by a board whose members are appointed by the municipalities and/or counties that created it.

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 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 is an employee of the Central West Virginia Regional Airport Authority and filed this grievance to protest unsafe working conditions and retaliation. Regional airport authorities are public corporations created by any two or more municipalities or counties, or some combination thereof. W. VA. CODE § 8-29-1; W. VA. CODE § 8-29-2. Regional airport authorities are governed by a board whose members are appointed by the municipalities and/or counties that created it. W. VA. CODE § 8-29-4. Therefore, the Central West Virginia Regional Airport Authority is a county or municipal public corporation that is not one of the listed employers subject to the grievance process.

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 (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). "'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. Regional airport authorities are public corporations created by any two or more municipalities or counties, or some combination thereof. W. VA. CODE § 8-29-1; W. VA. CODE § 8-29-2. Regional airport authorities are governed by a board whose members are appointed by the municipalities and/or counties that created it. W. VA. CODE § 8-29-4.

5. As Grievant's employer is a county or municipal public corporation that is not one of the listed employers subject to the grievance process, 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: October 15, 2018

Billie Thacker Catlett
Chief Administrative Law Judge