

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**STEPHEN THOMPSON,
Grievant,**

v.

Docket No. 2020-1436-MISC

**WINFIELD POLICE DEPARTMENT,
Respondent.**

DISMISSAL ORDER

On May 12, 2020, Grievant filed a grievance against Respondent, alleging, "Hostile work environment that caused dures [sic] while signing the demotion paperwork. I feared that I would lose my job if I did not sign the paperwork 5-8-20. I have been wrongfully placed on probation and the proper proceedings to demote me are not being taken - WV State Code 8-14a-3(c). There are clear cases of favoritism and nepotism for the Powell's that has casued [sic] issues for all other officers." For relief, Grievant requests, "I would like to have the wrongful demotion and probation removed from my record and a signed document from all parties stating that they will not speak of this to any other department I may apply to in the future. I want to keep my position and rank without fear that I wil [sic] be wrongfully demoted in the future."

By letter dated May 14, 2020, the Grievance Board notified Grievant that the "Winfield Police Department" is a municipal agency not subject to the West Virginia Public Employees Grievance Procedure and instructed Grievant to respond, in writing, by June 5, 2020, stating why the grievance should not be dismissed for lack of jurisdiction. Grievant did not respond.

Synopsis

Grievant is employed as an officer by Respondent, the Winfield Police Department, a municipal agency under the authority of the City of Winfield. Respondent is not an employer subject to the grievance procedure. The Grievance Board therefore 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 as an officer by Respondent, the Winfield Police Department, a municipal agency under the authority of the City of Winfield.

2. Grievant filed the instant grievance against Respondent, alleging that Respondent had wrongfully placed him on probation and demoted him while treating others more favorably.

3. The Public Employees Grievance Board is an administrative agency established pursuant to W. VA. CODE § 6C-2-1 *et seq.*

4. By letter dated May 14, 2020, the Grievance Board notified Grievant that it appeared the Grievance Board lacked jurisdiction to hear his claim and instructed him to respond by June 5, 2020, stating why his grievance should not be dismissed for lack of jurisdiction. Grievant has not responded.

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 (2018).

"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 filed this grievance against his employer, the Winfield Police Department. As a municipal agency, the Winfield Police Department 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 (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 (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. The Winfield Police Department is a municipal agency and is therefore not subject to the grievance procedure. As such, 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: June 18, 2020

Joshua S. Fraenkel
Administrative Law Judge