

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

BEVERLY ANN CANTRELL,

Grievant,

v.

Docket No. 2022-0793-MISC

TUCKER COUNTY COMMISSION,

Respondent.

DISMISSAL ORDER

On May 18, 2022, Grievant, Beverly Ann Cantrell, filed a grievance against Respondent, Tucker County Commission, stating, "On May 11, 2022, I was made aware that a nude photo of myself had been passed around my place of employment while I was on vacation. This employee then went to EMS and told them about the photo. This photo was posted online by another person and criminal charges have been brought against him." By letter dated May 26, 2022, the undersigned notified the parties that the Tucker County Commission did not appear to be an employer subject to the grievance procedure. The undersigned instructed Grievant to respond, in writing, by June 10, 2022, stating why the grievance should not be dismissed for lack of jurisdiction. Grievant did not file a response to the May 26, 2022 letter.

Synopsis

Grievant is employed by the Tucker County Commission and protests the actions of a fellow employee. While the Grievance Board has authority to hear grievances filed by employees of a state commission, county commissions are not named as an employer in the statute. The Tucker County Commission is not an "employer" as defined by West

Virginia Code § 6C-2-2(g) and is not 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 Tucker County Commission as the Director of 911.
2. Grievant filed the instant grievance against her employer protesting the actions of a fellow employee.

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) (emphasis added).

Grievant is employed by the Tucker County Commission as the Director of 911. She filed this grievance to protest the actions of a fellow employee. While the Grievance Board has authority to hear grievances filed by employees of a state commission, county commissions are not named as an employer in the statute. The Tucker County Commission 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).

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. While the Grievance Board has authority to hear grievances filed by employees of a state commission, county commissions are not named as an employer in the statute.

5. As the Tucker County Commission is not an “employer” as defined by West Virginia Code § 6C-2-2(g) and is not subject to the grievance procedure.

Accordingly, this grievance is **DISMISSED**.

Any party may appeal this decision to the Intermediate Court of Appeals.¹ Any such appeal must be filed within thirty (30) days of receipt of this decision. W. VA. CODE

¹ On April 8, 2021, Senate Bill 275 was enacted creating the Intermediate Court of Appeals. The act conferred jurisdiction to the Intermediate Court of Appeals over “[f]inal judgments, orders, or decisions of an agency or an administrative law judge entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County pursuant to §29A-5-4 or any other provision of this code[.]” W. VA. CODE § 51-11-4(b)(4). The West Virginia Public Employees Grievance Procedure provides that an appeal of a Grievance Board decision be made to the Circuit Court of Kanawha County. W. VA. CODE § 6C-2-5. Although Senate Bill 275 did not specifically amend West Virginia Code § 6C-2-5, it appears an appeal of a decision of the Public Employees Grievance Board now lies with the Intermediate Court of Appeals.

§ 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 named as a party to the appeal. However, the appealing party is required to serve a copy of the appeal petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b).

DATE: August 15, 2022

Billie Thacker Catlett
Chief Administrative Law Judge