

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**SUSAN L. REED,
Grievant,**

v.

Docket No. 2022-0575-MISC

**REGION 1 WORKFORCE DEVELOPMENT BOARD,
Respondent.**

DISMISSAL ORDER

On January 26, 2022, Grievant filed a grievance against Respondent protesting her termination from employment. By letter dated February 7, 2022, the undersigned notified the parties that, while Grievant had listed her employer as “Region 1 Work Force WV,” her attachments showed she was employed by the Region 1 Workforce Development Board, which did not appear to be an employer subject to the grievance procedure. The undersigned instructed Grievant to respond, in writing, by February 17, 2022, stating why the grievance should not be dismissed for lack of jurisdiction. Grievant did not respond.

Synopsis

Grievant is employed by the Region 1 Workforce Development Board. Grievant grieves the termination of her employment. The regional workforce development boards are created under federal law and are further defined as a local board by state law. Local boards are not employers subject to the West Virginia Public Employees 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 Region 1 Workforce Development Board and grieves her termination from employment.
2. The Region 1 Workforce Development Board is defined as a local board by statute.

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 Grievance Board may “take notice of lack of jurisdiction at any time or at any stage of the litigation pending therein.” Syl. Pt. 2, *In re Boggs' Estate*, 135 W.Va. 288, 63 S.E.2d 497 (1951). “The urgency of addressing problems regarding subject-matter jurisdiction cannot be understated because any decree made by a court lacking jurisdiction is void.” *State ex rel. TermNet Merch. Servs., Inc. v. Jordan*, 217 W.Va. 696, 700, 619 S.E.2d 209, 213 (2005); *State ex rel. Universal Underwriters Ins. Co. v. Wilson*, 239 W. Va. 338, 346, 801 S.E.2d 216, 224 (2017). Although not a court, the same reasoning applies to the Grievance Board as an adjudicating body. 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 Region 1 Workforce Development Board and filed this grievance to protest her termination from employment. The Region 1 Workforce Development Board is a regional workforce development board. The regional workforce development boards are created under federal law by the Workforce Innovation and Opportunity Act, 29 U. S. C. § 3101, *et seq.* Those boards are defined as a “local board” by the West Virginia Workforce Innovation and Opportunity Act. W. VA. CODE § 5B-2B-2. While WorkForce West Virginia is a state agency subject to the West Virginia Public Employees Grievance Procedure, the regional workforce development boards are not an employer covered by the grievance procedure as they are local boards, not state boards.

The Region 1 Workforce Development Board 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. The Grievance Board may “take notice of lack of jurisdiction at any time or at any stage of the litigation pending therein.” Syl. Pt. 2, *In re Boggs' Estate*, 135 W.Va. 288, 63 S.E.2d 497 (1951).

3. “The urgency of addressing problems regarding subject-matter jurisdiction cannot be understated because any decree made by a court lacking jurisdiction is void.” *State ex rel. TermNet Merch. Servs., Inc. v. Jordan*, 217 W.Va. 696, 700, 619 S.E.2d 209, 213 (2005); *State ex rel. Universal Underwriters Ins. Co. v. Wilson*, 239 W. Va. 338, 346, 801 S.E.2d 216, 224 (2017). Although not a court, the same reasoning applies to the Grievance Board as an adjudicating body.

4. The administrative law judge may dispose of a grievance through an appealable dismissal order. W.VA. CODE ST. R. § 156-1-6.19.3.

5. “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)).

6. “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).

7. Respondent is a regional workforce development boards created under federal law by the Workforce Innovation and Opportunity Act, 29 U. S. C. § 3101, *et seq.* Those boards are defined as a “local board” by the West Virginia Workforce Innovation and Opportunity Act. W. VA. CODE § 5B-2B-2.

8. Grievant’s employer is a local board not 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 *a/so* W. VA. CODE ST. R. § 156-1-6.20 (2018).

DATE: April 4, 2022

Billie Thacker Catlett
Chief Administrative Law Judge