THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

SHARON D. WHITMORE,
Grievant,

v. **Docket No. 2010-0069-DHHR**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/MILDRED MITCHELL-BATEMAN HOSPITAL,
Respondent.

DISMISSAL ORDER

Grievant Sharon D. Whitmore filed a grievance on July 24, 2009, against Respondent. Her statement of grievance reads:

> Special Session passed a bill to give MMBH nurses, nurse managers, psychiatrist, clinical nursing staff raises. I did not receive any increase and I am an RN with a masters degree, a nurse practitioner and I work in the units seeing patients. I am a nurse clinician and should be included in the pay raise.

Her relief sought is, "Salary increase/adjustment."

This grievance was dismissed at level one. Grievant appealed, and currently this case is at level two in the grievance procedure. However, prior to mediation being held, Respondent filed a Motion to Dismiss.

Findings of Fact

1. Grievant is employed by Respondent and works as a nurse practitioner at Mildred Mitchell-Bateman.

2. The West Virginia Legislature passed West Virginia Code §5-5-4a, allowing raises to be given to physicians, physician specialists, nurses, nursing directors, health service workers, health service assistants, health service associates or other positions at

Mildred Mitchell-Bateman Hospital and William R. Sharpe, Jr. Hospital. This pay raise was to assist with recruitment and retention.

3. Grievant did not receive a raise.

Discussion

West Virginia Code §5-5-4a(c) states:

> Funding for the pay rates and employment requirements shall be provided from the appropriation of the Department of Health and Human Resources. Due to the limits of funding, the implementation of the pay rates and employment requirements shall not be subject to the provisions of article two, chapter six-c of this code. The provisions of this section are rehabilitative in nature and it is the specific intent of the Legislature that no private cause of action, either express or implied, shall arise pursuant to the provisions or implementation of this section.

This statute specifically prohibits the filing of grievances and civil complaints. Grievant asserts a number of Constitutional arguments, specifically Article III, §10 of the West Virginia Constitution which states, "No person shall be deprived of life, liberty, or property, without due process of law and the judgment of his peers." Grievant argues that the legislature has essentially created a statute that runs afoul of the basic tenants of our legal system.

While the Grievant has a very valid argument, the undersigned does not have authority under the statute to hear this grievance. Therefore, this grievance must be DISMISSED.

Conclusions of Law

1. West Virginia Code §5-5-4a prohibits the filing of a grievance and civil complaints regarding this statute.

2. The undersigned is without authority to hear this grievance.

Accordingly, this grievance is **DISMISSED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Dismissal 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* 156 C.S.R. 1 § 6.20 (2008).

DATE: January 28, 2010

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Wendy A. Elswick
Administrative Law Judge