THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

INA GOFF, et al.,
Grievants,

v. **Docket No. 2013-0513-CONS**

DEPARTMENT OF HEALTH AND HUMAN RESOURCES/
WILLIAM R. SHARPE, JR. HOSPITAL and
DIVISION OF PERSONNEL,
Respondent.

DISMISSAL ORDER

Grievants, filed a Level One grievance in September 2012, against Respondent, Department of Health and Human Resources/William R. Sharpe, Jr. Hospital stating "Pay grade 8 is inappropriate for LPN given education & certification requirements." As relief, Grievants seek "To be made whole including raise of pay grade to 9 or higher." On September 25, 2012, Respondent submitted a Notice of Level One Waiver. By Grievance Board Order dated October 1, 2012, Respondent, Division of Personnel, was added as an indispensable party to this matter. A Level Two mediation was conducted on March 8, 2013, and Grievants perfected their appeal to Level Three on March 19, 2013.

Subsequent to the scheduling of the Level Three hearing; on April 26, 2013, Respondent, Division of Personnel, filed a Joint Motion to Dismiss on the grounds the relief sought by Grievants is not available from the Grievance Board.

The following Findings of Fact are made based on the documentation submitted and the lower level record.

Findings of Fact

1. Grievants file a Level One grievance in September 2012, all reading identically as "Pay grade 8 is inappropriate for LPN given education & certification requirement." As relief Grievants all indicate "To be made whole including raise of pay grade to 9 or higher."
2. W. Va. Code R. § 143-1-5.2 states, "[a]fter consultation with the appointing authorities and State fiscal officers and after a public hearing, the Director and the Board shall prepare and submit to the Governor for his or her approval any revision of the pay plan. The pay plan shall include salary schedules containing multiple pay grades with minimum and maximum rates of pay for each grade and a plan of implementation..."
3. There is a Classification Plan and a Compensation Plan in place for the classified service of the State of West Virginia. These Plans comply with the requirements of W. Va. Code R. § 143-1-5 et seq.
4. There is currently no instrument by which Grievants can be granted the relief they are seeking. Changes to the State Classification and Compensation Plans require actions by the State Personnel Board and by the Governor's Office.
5. The Grievance Board does not have the authority to change the State Classification or Compensation Plans.

Discussion

The Grievance Board is without authority to grant the relief requested. "A grievance may be dismissed, in the discretion of the administrative law judge, if no claim on which relief can be granted is stated or a remedy wholly unavailable to the grievant is

requested." Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 6.11 (2008).

"When there is no case in controversy, the Grievance Board will not issue advisory opinions. *Brackman v. Div. of Corr./Anthony Corr. Center,* Docket No. 02-CORR-104 (Feb. 20, 2003); *Gibb v. W. Va. Div. of Corr.*, Docket No. 98-CORR-152 (Sept. 30, 1998). In addition, the Grievance Board will not hear issues that are moot. 'Moot questions or abstract propositions, the decisions of which would avail nothing in the determination of controverted rights of persons or property, are not properly cognizable [issues].' *Bragg v. Dept. of Health & Human Res.,* Docket No. 03-HHR-348 (May 28, 2004); *Burkhammer v. Dep't of Health & Human Res.,* Docket No. 03-HHR-073 (May 30, 2003); *Pridemore v. Dep't of Health & Human Res.*, Docket No. 95-HHR-561 (Sept. 30, 1996)." *Pritt, et al., v. Dep't of Health and Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008).

In situations where "it is not possible for any actual relief to be granted, any ruling issued by the undersigned regarding the question raised by this grievance would merely be an advisory opinion. 'This Grievance Board does not issue advisory opinions. *Dooley v. Dep't of Transp.,* Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd. of Educ.,* Docket No. 91-35-229/239 (Nov. 27, 1991).' *Priest v. Kanawha County Bd. of Educ.,* Docket No. 00-20-144 (Aug. 15, 2000)." *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002). "[R]elief which entails declarations that one party or the other was right or wrong, but provides no substantive, practical consequences for either party, is illusory, and unavailable from the Grievance Board." *Miraglia v. Ohio County Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993). Because

the relief sought be Grievant is not available from the Grievance Board, the grievance must be Dismissed.

Conclusions of Law

1. "A grievance may be dismissed, in the discretion of the administrative law judge, if no claim on which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested." Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 6.11 (2008).

2. In situations where "it is not possible for any actual relief to be granted, any ruling issued by the undersigned regarding the question raised by this grievance would merely be an advisory opinion. 'This Grievance Board does not issue advisory opinions. *Dooley v. Dep't of Transp.,* Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd. of Educ.,* Docket No. 91-35-229/239 (Nov. 27, 1991).' *Priest v. Kanawha County Bd. of Educ.,* Docket No. 00-20-144 (Aug. 15, 2000)." *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002).

3. The Grievance Board does not have the authority to change the State Classification or Compensation Plans.

4. Because the relief sought by Grievants is not available from the Grievance Board, the grievance is moot and must be dismissed pursuant to Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 6.11 (2008).

Accordingly, the grievance is **DISMISSED.**

Any party may appeal this Dismissal Order 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 appealing party must also provide the Board with the civil action number so that the certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. *See also* 156 C.S.R. 1 § 6.20 (2008).

DATE: October 22, 2013.

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Ronald L. Reece
Acting Chief Administrative Law Judge