THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

LARRY GENE HOSKINS,
Grievant,

v. **Docket No. 2013-0750-DOT**

DIVISION OF HIGHWAYS,
Respondent.

DISMISSAL ORDER

On November 6, 2012, Larry G. Hoskins, Grievant, filed this grievance against Division of Highways, Respondent, at Level One of the Grievance procedure, stating as follows:

"Respondent refused to abide by settlement agreement for home study training."

As relief sought, Grievant seeks:

"To be made whole, including abiding by agreement."

On December 5, 2012, Sandra Castillo, Level One Grievance Evaluator for Respondent, submitted an *Order Waiving Grievance to Level Two*. In this order, Ms. Castillo stated that the above-styled grievance matter resulted from a Level Three Decision issued by the Public Employees Grievance Board on August 28, 2012. *Larry Gene Hoskins v. Division of Highways*, Docket No. 2011-1386-DOT (Aug. 28, 2012).

On November 19, 2012, Respondent, by counsel, filed a *Motion to Dismiss* on the grounds that the remedy sought by Grievant is unavailable. Grievant did not submit a response to the Motion to Dismiss.

Synopsis

Grievant seeks to have the Public Employees Grievance Board enforce an agreement between the Respondent and himself. This relief is not available as a matter of law through the grievance procedure.

The following Findings of Fact are made based on the documentation submitted with the Grievance Form and the Motion to Dismiss.

Findings of Fact

1. Grievant, Larry Gene Hoskins, was employed by Respondent as a Transportation Worker II.

2. Grievant filed a grievance on March 28, 2011, in Docket Number 2011-1386-DOT, requesting "To be made whole including offer of crew leader training."

3. ALJ Billie Thacker Catlett granted the relief requested by Decision dated August 28, 2012, stating, in part; "Respondent is **ORDERED** to provide equivalent crew leader training to Grievant prior to hiring the next crew leader in District 3, but no later than six months from the entry of this order, regardless."

4. The August 28, 2012 Decision allows the Respondent six months to provide equivalent crew leader training to Grievant, which time-period has not yet expired.

5. Grievant filed this grievance against Respondent stating that the Respondent refused to abide by the settlement for home study training. He is requesting the Grievance Board force Respondent to abide by said settlement.

Discussion

Grievant seeks an Order from the Grievance Board to either enforce an agreement reached between Grievant and Respondent to implement a Level Three decision, or to enforce the Level Three decision. The Grievance Board is without authority to grant the relief requested. W. VA. CODE § 6C-2-4(b) (2) provides that agreements reached in settlement of grievances "are binding and enforceable in this state by a writ of mandamus." Additionally, W. VA. CODE §6C-2-7 provides that:

> Any employer failing to comply with the provisions of this article may be compelled to do so by a mandamus proceeding and may be liable to a prevailing party for court costs and reasonable attorney's fees to be set by the court.

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

Conclusions of Law

1. W. VA. CODE §§ 6C-2-4(b) (2) and 6C-2-7 provides that agreements reached by the parties to a grievance and Grievance Board decisions may be enforced in Circuit Court by mandamus.

2. "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).

3. 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).

4. Because the relief sought by Grievant 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: January 9, 2013.

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William B. McGinley
Administrative Law Judge