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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**

GASTON CAPERTON
Governor

OFFICES:

240 Capitol Street
Suite 515
Charleston, WV 25301
Telephone: 558-3361

ERNIE CHAFIN

v.

DOCKET NO. 92-HHR-132

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES/
DIVISION OF HEALTH/BOONE COUNTY
HEALTH DEPARTMENT**

DECISION

This grievance was filed by Ernie Chafin (hereinafter Grievant) against the West Virginia Department of Health and Human Resources/Division of Health (hereinafter HHR) and the Boone County Health Department (hereinafter BCHD) on March 30, 1992. The grievance was denied at Levels one and two based upon a lack of authority, and a Level three hearing was scheduled for May 1, 1992. Because the Level three hearing was scheduled to take place a few days beyond the statutory time-frames established in W.Va. Code §29-6A-3(a), Grievant advanced her claim to this Grievance Board on April 20, 1992. A Decision (Ordering Remand) to Level three was issued by Administrative Law Judge M. Drew Crislip on May 8, 1992.

On May 20, 1992, Grievant received a letter from Ona Jane Howell, Chairman of the BCHD, which stated that Grievant's Level three hearing was canceled. This letter stated that the grievance procedure for state employees does not apply to the

employees of BCHD because they are not state employees of the West Virginia Department of Health and Human Resources.¹ Grievant again appealed to Level four on May 22, 1992.

A Motion to Dismiss for lack of jurisdiction was filed by the BCHD on June 17, 1992, and a preliminary hearing was held on that Motion on June 23, 1992.² BCHD argues in support of its Motion to Dismiss that the grievance procedure for state employees, W.Va. Code §§29-6A-1, et seq., was not meant to include within its jurisdiction the employees of county boards of health formed pursuant to W.Va. Code §§16-2A-1, et seq. BCHD argues that Code §16-2A-4 empowers it to hire, supervise and pay employees such as Grievant with the consent and approval of the county commission; therefore, Grievant is not a state "employee" as defined by Code §29-6A-2(e) nor is BCHD an "employer" as defined by Code §29-6A-2(g).³ Grievant argues she should be able to avail herself of the grievance procedure for state

¹Before this case was transferred to the undersigned's docket, ALJ Crislip discussed with West Virginia Deputy Attorney General Jeffrey K. Matherly the fact that Mr. Matherly, who typically represents HHR, did not believe that BCHD was his client. What transpired after that is not clear from the file; however, BCHD subsequently obtained the services of private counsel, Tim Conaway.

²Grievant was unrepresented at the preliminary hearing.

³The representative from the BCHD stated that the BCHD was created pursuant to Code §16-2A-1, which establishes an alternative method for the creation of local boards of health. The language of this Code section, in pertinent part, is as follows:

Any county . . . may in its discretion . . . create, establish and maintain a county board of health . . . organized pursuant to, and with the powers and duties prescribed by, the provisions of this article. Such county board of health may be created and established by the county court. . . .

employees because individuals hired by BCHD are initially approved for hiring by the West Virginia Division of Personnel (hereinafter Personnel). Secondly, she argues that because she was hired to work under a position specification included in the classified plan created by Personnel, she is a classified employee and should be granted the same rights as other members of the classified service, including the right to file a grievance. See, Administrative Regulations of Personnel, Section 23.01.⁴

The statutory provision which grants this Grievance Board jurisdiction to hear and decide employment-related complaints for state employees is Code §29-6A-1, and the pertinent language of that statutory provision is as follows:

The purpose of this article is to provide a procedure for the equitable and consistent resolution of employment grievances raised by non-elected state employees who are classified under the State Civil Service System, or employees in any department, other governmental agencies, or by independent boards or commissions created by the Legislature, with the exception of employees of the Board of Regents, State Institutions of Higher Education, the Legislature, any employees of any constitutional officer unless they are covered under the Civil Service System, and a member of the Department of Public Safety.

This issue of whether local county boards of health are considered "employers" within the definition of Code §29-6A-2(g),

⁴This section states, "An employee may file with the Education and State Employees Grievance Board as provided for in Chapter 29-6A of the Code of West Virginia, as amended." An "employee" is defined in these regulations as "[a]ny person who lawfully occupies a position in an agency and who is paid a salary or wage." Further, an "agency" is defined as "[a]ny administrative department of state government established by law or executive order."

and whether their employees were intended to be included within the definition of "employee" contained in Code §29-6A-2(e), was addressed by this Grievance Board in Seddon v. W.Va. Dept. of Health/Kanawha-Charleston Health Dept., Docket No. 90-H-115 (June 8, 1990). It was held in Seddon that the Kanawha-Charleston Health Department was "a department created by the legislature within the meaning of the state employees grievance procedure statute, W.Va. Code [§]§29-6A-1, et seq., and consequently the Grievance Board has jurisdiction over grievances filed by its employees." Id., Conc. Law 1, p. 15.

The Administrative Law Judge in Seddon based this holding upon the theory that the Kanawha-Charleston Health Department was intended to be included in the language "boards or commission created by the Legislature . . ." contained in Code §29-6A-1. It was further stated in Seddon that "[I]t is concluded that the Grievance Board has jurisdiction in this case. KCHD [Kanawha-Charleston Health Department] owes its existence to state law and was created under the authority of an act of the Legislature to perform a State function." Id. at p. 4. The discussion in Seddon failed to take into account the entire language of Code §§29-6A-1, 29-6A-2(e) and (g).

As previously cited, the specific language of Code §29-6A-1, which defines those individuals who are to be covered under the state employee grievance procedure states, "the purpose . . . is to provide for the . . . resolution of employment grievances raised by non-elected state employees . . . classified under the

State Civil Service System, . . ." (emphasis added). It is concluded that it is not reasonable to construe the clause "or employees in any department, other governmental agencies, or by independent boards or commissions created by the legislature," to encompass county health departments. Such an interpretation is at odds with the stated purpose of the legislation and is inconsistent with the specific definitions of "employer" and "employee."

Code §29-6A-2(e) defines an "employee" under the grievance procedure as "any person hired for permanent employment, either full or part-time, by any department, agency, commission or board of the state created by an act of the legislature . . ." (emphasis added). Surely this definition was drafted with the intent to limit those employees covered by the grievance procedure to only those employees hired by a state department, agency, commission or board created by the Legislature and not local governmental departments, agencies, commissions or boards which can ultimately trace their formulation back to an act of the Legislature. Further, Code §29-6A-2(g) defines "employer" as "that state department, board, commission or agency utilizing the services of the employee covered under this article" (emphasis added). The key term used in these definitions along with the language contained in Code §29-6A-1, is the word "state." Notice is taken that there exist various individuals within West Virginia who are employed under a position description contained in Personnel's classified plan and work for employers which in

some manner owe their existence to an enactment of the Legislature but are actually formed, organized and supervised by a lower governmental entity than the State. See, e.g., Seddon.

The Grievance Board's ALJs adhere to the principle of stare decisis in order to promote certainty and stability in their decisions issued on labor-management relations and do not overrule previous decisions in the absence of the existence of a serious error of interpretation. See, Dailey v. Bechtel Corp., 157 W.Va. 1023, 207 S.E.2d 169 (1974). Although the conclusion in Seddon may be good public policy, it is not supported by the language of Code §§29-6A-1, et seq. Therefore, consistent with the foregoing discussion, the holding in Seddon that this Grievance Board maintains jurisdiction to hear grievances filed by employees of local county boards of health is overruled.

Grievant's argument that she should be allowed to avail herself of the grievance procedure because she works under a position description which is contained in the civil-service classified plan is without merit. Neither argument provided by Grievant or BCHD at the preliminary hearing effectively established the relationship between Personnel and BCHD. The facts as presented at the hearing indicate that Personnel approves the hiring of those individuals recommended for employment by BCHD and also approves the salary range which can be awarded. However, it was also stated that very often the employees of BCHD are hired and start work before their hiring is officially approved by Personnel. Secondly, the employees are

normally given a job description which is actually different from the job specification developed by Personnel. No further relationship was established between Personnel and BCHD regarding any other aspect of employment generally associated with state employees covered by the civil service system.⁵

Conclusion of Law

The Boone County Health Department is not an "employer" which was "created by an act of the Legislature" and its employees are not "state employees" within the contemplation of W.Va. Code §29-6A-1, et seq. Therefore, this Grievance Board does not have jurisdiction to hear complaints filed by its employees and the ruling in Seddon, to the contrary, is hereby overruled.

Therefore, BCHD's Motion to Dismiss is hereby **GRANTED** and this grievance is **DISMISSED** for lack of jurisdiction.

⁵Code §29-6-17, provides as follows:

(a) Subject to the approval of the Board the director [director of Personnel] may enter into agreements with any municipality or other political subdivision of the state to furnish services and facilities of the division to such municipality or political subdivision in the administration of its personnel on merit principles. Any such agreements shall provide for the reimbursement to the state of the reasonable cost of the services and facilities furnished, as determined by the director.

There was no information provided in this case concerning the relationship, if any, between BCHD and Personnel with regard to Personnel's providing services to BCHD for a reasonable fee.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code, 29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.


ALBERT C. DUNN, JR.
Administrative Law Judge

Date: July 24, 1992