

11-0748

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED

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CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

RONALD J. HICKS,
ROBERT J. CLAUS, JR.,
BENSON B. FLANAGAN,
and TERRY NICHOLS,
on their own behalves and on
behalf of retired West Virginia
State Troopers similarly situated,

Petitioners,

v.

Civil Action No. 10-C-1502
Honorable James C. Stucky

ERICA M. MANI, Director, West Virginia
Consolidated Public Retirement Board;
WEST VIRGINIA CONSOLIDATED PUBLIC
RETIREMENT BOARD, a West Virginia
state agency and public corporate body;
and STATE OF WEST VIRGINIA,

Respondents.

ORDER DISMISSING PETITION FOR INJUNCTIVE RELIEF

On November 22, 2010, came the Petitioners by counsel, Marvin W. Masters, and came the Respondents, Executive Director Erica M. Mani and the Consolidated Public Retirement Board, by counsel, J. Jeanen Legato, and Respondent, West Virginia State Police, by counsel, John A. Hoyer and Virginia Grottendieck Lanham, pursuant to a hearing on Petitioners' *Petition for Injunctive Relief* and Respondents' *Joint Motion to Dismiss Petition for Injunctive Relief*.

Upon reviewing the pleadings and hearing the arguments of counsel, the Court finds and Orders as follows.

The Petitioners filed a *Petition for Injunctive Relief* requesting that this Court enjoin the Respondent, West Virginia Consolidated Public Retirement Board, from administering the

current version of the disability re-certification statute and related procedural rule which requires them to submit to a medical examination to determine whether their disabilities have terminated and enjoin Respondent from discontinuing disability benefits until the Petitioners have had the opportunity for a hearing.

At the time of the hearing, all of the named Petitioners had passed their medical re-certifications; however, counsel for the Petitioners submitted evidence that two other disability retirants, Clay Hupp and Jeffrey Bowles, who were not named Petitioners, had received notification from the Board that they had not passed re-certification, that their disability annuities were being terminated effective the first day of the following month, and that they had the right to appeal this decision to the Retirement Board's Hearing Officer. None of the Petitioners, named or referenced, had sought relief through the administrative process either by filing an administrative appeal or a declaratory action with the Board prior to seeking extraordinary relief from this Court.

The Court finds that the West Virginia Administrative Procedures Act governs the review of contested administrative decisions. The Court finds that the general rule with respect to the exhaustion of administrative remedies provides "that where an administrative remedy is provided by statute or by rules and regulations having the force and effect of law, relief must be sought from the administrative body, and such remedy must be exhausted before the courts will act." Syllabus Point 2, *Strum v. Kanawha County BOE*, 672 S.E. 2d 606 (2008). Pursuant to the Administrative Procedures Act, receipt of the final order by a party adversely affected by the Board's final decision triggers a statutory right to judicial review that is codified in West Virginia Code §29A-5-4(b). Until the issuance of a final order or decision, or initiation of judicial review,

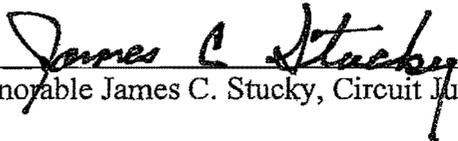
the Board retains jurisdiction over the matter. In this case, the Court lacks jurisdiction in this matter because the Petitioners have failed to exhaust their administrative remedies.

The Court finds that extraordinary relief is not an appropriate remedy for contesting the administrative action in this case. The Court further finds that West Virginia Code §29A-5-1 *et seq.*, the West Virginia Procedures Act, outlines the appropriate manner for contesting an agency's actions.

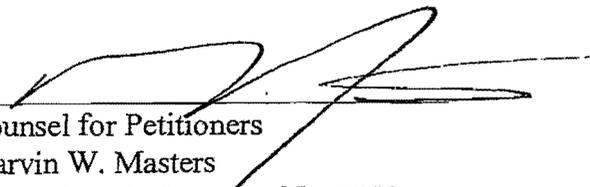
Wherefore, the Court hereby finds that this Court lacks jurisdiction because the Petitioners have failed to exhaust their administrative remedies. Therefore, the Court **GRANTS** Respondents' *Motion to Dismiss* and further **DISMISSES** the Petitioners' *Petition for Injunctive Relief*.

The Court notes counsel for Petitioners' objection to this ruling and further directs the Clerk to send a copy of this Order to all counsel of record.

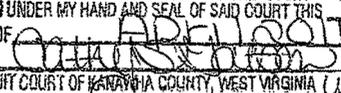
ENTERED this 30 day of March, 2011.


Honorable James C. Stucky, Circuit Judge

Submitted by:


Counsel for Petitioners

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STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF THE CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 1st
DAY OF MARCH 2011
 CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA USA