ANNA TRAHERN, .

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Grievant, .

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v. . Docket No. 94-BOT-026

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WEST VIRGINIA BOARD OF TRUSTEES .

/ MARSHALL UNIVERSITY, .

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Employer. .

DECISION / ORDER

Anna Trahern is a student at Marshall University who worked as a student assistant until she was dismissed from her student assistant position effective December 10, 1993, by Winston Baker, Director of Marshall's Resident Services Division. The stated reason for Ms. Trahern's dismissal was that she did not maintain two or more credit-hours of academic classes at Marshall while working over twenty hours per week. It is Marshall's contention that because Ms. Trahern was not enrolled in two credit-hours worth of classes, she was not eligible to work as a student assistant. Ms. Trahern filed this complaint almost immediately after being removed from her position contending that her dismissal was basedupon an act of retaliation for having testified on behalf of a co-worker at a grievance hearing.

Ms. Trahern's grievance was denied at level two on January 13, 1994, and an appeal was made to level four by letter dated January 24, 1994. A hearing was held on February 23, 1994, and the parties were asked to file post-hearing briefs on or before March 16, 1994. At the level four hearing, Marshall's counsel made a motion to have the grievance dismissed for lack of jurisdiction based upon the fact that Ms. Trahern was a student assistant, and therefore, she had no statutory right to invoke

the Grievance Procedure for Education Employees, West Virginia Code §18-29-1 et seq. The jurisdictional issue must first be addressed.

Ms. Trahern has been a student at Marshall for approximately seventeen years. At some point, she obtained a Bachelor's Degree from Marshall and had later taken classes toward a Master's Degree in the field of Office Technology. Prior to the 1993-1994 academic year, she dropped out of the master's program because her grade point average was not high enough to allow her to continue within that program. For the 1993-1994 academic year, she was enrolled in a one credit-hour study skills class which was designed to be a self-paced, twenty hour per semester class. Ms. Trahern has worked as a student assistant for Marshall since sometime in the early 1980's. For the 1993-1994 academic year, she worked approximately thirty-five hours per week. No written contract of employment was executed between Marshall and Ms. Trahern for the 1993-1994 school year, even though she had signed employment contracts in the pastas a student assistant. Student assistants at Marshall are not classified employees and they are not eligible for the various work-related benefits offered other Marshall employees. An individual must be a currently enrolled student before they are determined to be eligible to become a student assistant.

The Legislature established the Grievance Procedure in W.Va. Code §18-29-1 et seq., as a means to

> provide a procedure for employees of the governing boards of higher education, state board of education, county boards of education, regional educational service agencies and multi-county vocational centers and their employer or agents of the employer to reach solutions to problems which arise between them within the scope of their respective employment relationships . . . (Emphasis added).

An "employee" is later defined as "any person hired as a temporary, probationary or permanent employee by an institution either full or part time . . .." W.Va. Code §18-29-2(c). The issue to be decided herein is whether the Legislature intended to confer upon student assistants or work-study students the right to participate in the grievance procedure established for "regularly employed" education employees. It is hereby concluded that such was not meant to be the case.

Student assistants or work-study students are, first and foremost, students who are allowed to work at their respective institutions of higher learning in order to facilitate their pursuit of an education. They are not hired to be either part time or full time, permanent employees. Even though student assistants can be described as temporary employees, said temporary status is often not

determined by the needs of the employer but by the lengthof time the individual is a student. This is not to say that student assistants do not perform work which is necessary; however, employers often hire temporary help to fill voids in staffing during short periods of time when their normal work force is not sufficient to ensure that the necessary workload is completed. Student assistants are not hired for the same purposes or under the same circumstances. Further, the term "temporary employee" is not ordinarily used within the arena of labor law to refer to student workers. In conclusion, nothing within the provisions of Code §18-29-1 et seq. is supportive of the proposition that the Legislature intended for students to be able to file grievances against their respective state owned and operated universities or colleges. Based upon this holding, the merits of the case shall not be addressed.
The foregoing discussion of the facts of the case and of the law applicable to those facts is hereby supplemented by the following appropriate conclusion of law.

Conclusion of Law

Anna Trahern was a student assistant at Marshall University and, as such, did not possess the statutory right to file a grievance against Marshall University pursuant to the provisions of West Virginia Code §18-29-1 et seq. Therefore, this Grievance Board lacks jurisdiction over Ms. Trahern's claim.

This grievance is hereby **ORDERED DISMISSED** for lack of jurisdiction and the Respondent's Motion to Dismiss is hereby **GRANTED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Cabell County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. 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.

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ALBERT C. DUNN, JR.

Administrative Law Judge

June 22, 1994