CHARLES DAUGHERTY, FRANK J. HARRAR,

THOMAS HOSTUTLER, GEORGE MURPHY,

and JOSEPH OLEJASZ

v. Docket No. 93-BOD-295

BOARD OF DIRECTORS/WEST LIBERTY STATE COLLEGE

DECISION

The grievants are employed by West Liberty State College (WLSC) as security guards. They filed a grievance at Level II July 26, 1993 protesting "WLSC's failure to take disciplinary action" against Brady Smith, a fellow officer. The grievance was denied at that Level and the grievants waived consideration of the matter at Level III. Appeal to Level IV was made July 30, 1993. (See footnote 1)

As relief, the grievants seek:

> Immediate convening of a show cause hearing by the President to afford Mr. Smith an opportunity to show why he should not be terminated under the provisions of Section II of West Liberty State Colleges's Personnel Policy and Procedure No. 9.

Because the request was irregular, the undersigned held a conference call on or about October 28, 1993, with the parties'representatives. (See footnote 2) During the call it was clarified that the grievants took exception to several actions of Mr. Smith during the past year which they considered to be unprofessional and/or hazardous to their personal safety and the security of the campus.

Upon being advised that the relief sought was most likely unavailable from the West Virginia Education and State Employees Board, the grievants' spokesperson requested leave to amend the request but indicated that some form of disciplinary action against Mr. Smith would be part of that amendment. The leave to amend was denied per W.Va. Code §18-29-3(k). The parties indicated that they would discuss an alternative means of resolving the case and advise of their progress. A January 6, 1994 written inquiry into the status of the case and several calls to the parties' representatives were unanswered.

"An employee does not ordinarily have standing in the grievance procedure to protest the

employment status of a fellow employee unless harm is shown." Daggett v. Wood County Bd. of Educ., Docket No. 91-54-497 (May 14, 1992). While an employee may be awarded relief on a claim that an employer is aware of and, in effect, "condones" acts of harassment by another employee, see White v. Monongalia County Bd. of Educ., Docket No. 93-30-371 (Mar. 30, 1994), the Grievance Board is without authority, statutory or otherwise, to order that disciplinary action be taken against the employee. Accordingly, the grievance is hereby **DISMISSED** and **STRICKEN** from the docket of the West Virginia Education and State Employees Grievance Board.

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Ohio 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.

_____

JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: April 27, 1994

Footnote: 1 The case was originally assigned to Administrative Law Judge Nedra Koval. For administrative reasons, it was transferred to the undersigned's docket in October 1993.

Footnote: 2 The college was represented by Brentz Thompson, Esq. and the grievants were represented by Grace Norton, who is apparently a consultant with the grievants' employee organization.