ALBERT ROCHECK

v. DOCKET NO. 93-02-542

JAMES RUMSEY TECHNICAL INSTITUTE

DECISION

Grievant, Albert Rocheck, filed a level one grievance dated November 18, 1993, in which he alleged violations of W.Va. Code §18A-4-7a and Berkeley County Policy GBC when he did not receive the position of Vocational Education Special Population Resource Instructor at the James Rumsey Technical Institute (James Rumsey or Respondent). Under cover letter dated December 1, 1993, James Spears, Director of James Rumsey, returned the grievance form and advised Grievant that it was proper to file the level one complaint with his immediate supervisor. Mr. Spears further noted that it appeared the matter had not been timely filed. Grievant subsequently appealed to levels two and three; the matter was advanced to level four on December 23, 1993, when a hearing was not scheduled at any lower level. By Order dated January 11, 1994, the grievance was Remanded to level two by the undersigned for initial consideration.

Respondent's counsel subsequently filed a Motion to Reconsider the Remand, asserting that it would be necessary to resolve a jurisdictional issue prior to any consideration on the merits of the grievance. The Motion was granted and the grievance reinstated at level four for the limited purpose of reviewing the preliminary matter. Both parties submitted Memoranda in support of their positions and replies thereto by March 15, 1994. Following a brief conference call which was convened at the request of the undersigned for the purpose of confirming certain information, the matter became mature for decision.

The issue to be addressed herein is whether Grievant has standing to file a complaint against James Rumsey pursuant to W.Va. Code §§18-29-1, et seq. A review of the record establishes the following facts:

1. The James Rumsey Technical Institute is a multi- county vocational center created pursuant to W.Va. Code §18- 2B-2.

2. The Berkeley County Board of Education serves as fiscal agent for James Rumsey pursuant to Title 126 C.S.R. 71-2.1. 3. Grievant has been at all relevant times herein an

employee of the Berkeley County Board of Education.

4. Although Grievant's assigned work area has been within the James Rumsey facility for a period of time he concurs that he is not now, and has never been, an employee of James Rumsey.

5. In October 1993 James Rumsey posted a position vacancy for Vocational Education Special Populations Resource Instructor.

6. The position was subsequently filled by the James Rumsey Administrative Council.

Respondent asserts that the grievance procedure may be used only when (1) there is an employee/employer relationship between the parties to the grievance, and (2) the grievance pertains to a problem which arose between the parties within the scope or context of their employment relationship. Respondent argues that Grievant does not meet the definition of "employee" and it does not meet the definition of "employer" as set forth in W.Va. Code §§18-29- 1, et seq.; therefore, neither of the requirements have been met and the grievance must be dismissed.

Respondent further argues that the fact that Berkeley County Board of Education serves as the fiscal agent for James Rumsey is of no significance in this matter inasmuch as Title 126 C.S.R. 71-2.1, clearly provides that the fiscal agent cannot initiate action on behalf of, control, or otherwise direct the vocational center. These actions remain within the sole discretion of the Institute's Administrative Council. Respondent additionally asserts that the decision to use the Berkeley County Board of Education's policies with respect to its operations is noncontrolling in this matter. Utilizing policies which mirror those of Berkeley County is permissible pursuant to regulations and does not affect, in any way, the independence of a multi-county vocational center as an educational entity.

Grievant contends that an employment relationship between himself and James Rumsey has been established through any one or a combination of the following:

1. James Rumsey is a tri-county vocational school whose Administrative Council is composed of the school superintendents of Berkeley, Jefferson and Morgan counties.

2. James Rumsey has no independent policy making body and operates under the policies of the Berkeley County Board of Education.

3. The position of Vocational Education Special Population Resource Instructor had been filled by Grievant as a Berkeley County teacher. (See footnote 1) While he occupied thatposition, he was exclusively under the administrative control of James Rumsey. During his assignment there, he provided substitute coverage for absent teachers at the direction of the James Rumsey

administration.

4. James Rumsey has Berkeley County teachers on its staff as of this date. (See footnote 2)

5. The position of Vocational Education Special Population Resource Instructor was never abolished by James Rumsey or the Berkeley County Board of Education when Grievant was transferred out of it by the Berkeley County Board of Education.

6. The position of Vocational Education Special Population Resource Instructor was and is now either completely or partially funded by tax from the Berkeley County Public Schools' budget.

7. The successful candidate for the position of Vocational Education Special Population Resource Instructor was employed by the Berkeley County Board at the time of his selection.

Grievant's argument, that he has attained standing through various connections between his employer, the Board, and James Rumsey, is not persuasive. Area, or multi-county vocational centers are independent educational institutions separate and apart from the county boards of education which exist in the geographic area served by the vocational center. W.Va. Code §18-2B-2 specifies in pertinent part:

...the state board of education is designated as the state board of vocational education serving and meeting as the sole agency responsible for the administration of vocational education and for supervision of the administration thereof by local educational agencies and is hereby authorized and empowered to establish, operate and maintain area vocational educational programs....The state board of vocational education may delegate for such period of time as it may determine its operational authority for multi-county vocational centers to an administrative council composed of equal representation from each of the participating county boards of education, the superintendent of schools from each participating county, and the state director of vocational education or his representative.

By necessity, an area vocational center will have numerous ties to the county boards of education which it serves. These connections; however, are the result of the cooperating functions performed by a dual educational program and do not affect the independent status of either entity, as applied to the current grievance. Neither the composition of the Administrative Council, the source of the vocational center's financial support, nor any of the other factors cited by Grievant alter the fact that he is, by his own admission, an employee of the Berkeley County Board of Education. Because he has been assigned to work at the vocational center for several years it is understandable that

Grievant may perceive himself to have rights and interests in obtaining the position in question; however, the controlling factor herein is that Grievant is not an employee of James Rumsey and therefore, he has no standing to file a grievance against that institution.

In addition to the foregoing facts and narration it is appropriate to make the following conclusions of law.

CONCLUSIONS OF LAW

1. The James Rumsey Technical Institute is a multi- county vocational center created by, and functioning under, the provisions of W.Va. Code §§18-2B-1, et seq. 2. A multi-county vocational center has, by statutory provision and as a function of necessity, certain ties with the boards of education of the counties which it serves.

3. Individuals employed by multi-county vocational centers may utilize the grievance procedure set forth in W.Va. Code §§18-29-1, et seq. Employees of said area vocational centers must process a complaint through the center and not through the county in which it is located or in any of the counties which it serves.

4. Employees of county boards of education who are assigned to work at multi-county vocational centers remain employees of the county. Their employment status is not altered by either their worksite or any other administrative or financial ties which exist between the board and the vocational center.

5. At all times relevant to the pending matter Grievant has been an employee of the Berkeley County Board of Education.

6. As an employee of the Berkeley County Board of Education, Grievant has no standing, under W.Va. Code §§18- 29-1, et seq., to file a grievance against the James Rumsey Technical Institute.

Accordingly, the Motion to Dismiss is Granted and this matter is Ordered stricken from the docket of the West Virginia Education and State Employees Grievance Board.

April 24, 1994 SUE KELLER SR ALJ

Footnote: 1

In a letter to Grievant dated November 9,1993, Director Spears referred to Grievant's employment history noting that "Six of the years you taught, you were a Berkeley County Special Educationteacher stationed at James Rumsey." Grievant's references to his
holding the position in question and/or working as a substitute are not confirmed or otherwise addressed in the record.

Footnote: 2

Respondent's counsel confirmed during the telephone conference that James Rumsey is staffed with its own employees and with employees of the the participating county boards of education.