JOHN FINNEGAN, et al.

v. Docket No. 95-BOD-350

BOARD OF DIRECTORS/

WEST LIBERTY STATE COLLEGE

DECISION / ORDER

On or about April 13, 1995, English Professors John Finnegan, John Cole, Sarah Coyne, Jonathan Gold, Virginia Leon ard, and Linda McGinley (Grievants), filed a level one complaint against Respondent West Liberty State College (WLSC) alleging harassment by a former faculty member of the English department and also favoritism and/or discrimination on the part of WLSC relative to the alleged harasser. As relief, Grievants made three broad requests: 1) That WLSC remove the offending person permanently from an office he occupies in the campus' Elbin Library, preclude the person permanently from entering the lower floor of the Elbin Library (English department location) and ban the person for two years from stepping upon WLSC's campus; 2) that the former faculty member be stripped of Professor Emeritus designation and all of the honors and privileges associated with that status; 3) that measures be taken to stop the harassment in the work place upon any WLSC employee by any person. Following a level two hearing, WLSC issued a decision, on or about July 25, 1995, in which it agreed to "establish a practice of applying progressive discipline to any proven har asser[.]" Grievants appealed to level four. By Order dated August 18, 1995, Grievants were asked to show legal cause, in writing, why this grievance should be heard at level four, in stead of being dismissed, because it appeared they had been granted substantial relief in the level two proceeding.

Grievants responded with a "Motion to Hear Appeal Rather Than Dismiss" on or about September 5, 1995. Counsel for the Board of Directors formally replied in writing on or about October 20, 1995.

At issue in this case is whether the Grievance Board may act upon Grievants' request that a non-employee be sanctioned for alleged wrongdoing and/or criminal acts. In the August 18, 1995 Order, the undersigned advised Grievants that, with respect to all of their specific requests for relief, an order to cease and desist harassment [among employees and/or between employer and employee] is the only relief available from the Grievance Board.1 See Helvey v. W.Va. Workers' Compensation Fund, Docket No. 91-WCF-034 (Mar. 30, 1992). See also White v. Monongalia County Bd. of Educ., Docket No. 93-30-371 (Mar. 30, 1994). This relief has already been granted by WLSC at level two. Grievants did not add anything to the issue of harassment in their written

---

1In particular, the Grievance Board has no power or authority to enforce an order to cease and desist harassment should a grievant prevail on such a claim.

response which would justify a hearing or any further proceed ings at level four.2

Additionally, Grievants failed to demonstrate why the issues of favoritism and discrimination were valid causes of action in this grievance. In their grievance statement (over two pages of single-spaced text), Grievants claimed WLSC has acted favorably toward the former department member, to their detriment, and has thus engaged in favoritism and discrimina tion, which are grievable matters under the grievance statute

for education employees.

Favoritism is defined in 18-29-2(o) as "unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees." Discrim ination is defined in W.Va. Code 18-29-2(m) as "any differences in the treatment of employees unless such differences are relat ed to the actual job responsibilities of the employees or agreed to in writing by the employees." Clearly, Grievants complain of alleged actions on WLSC's part which involve a non-employee.3

2In all, Grievants' response was lengthy, seven and a half pages (unpaginated) of single-spaced text.

3The Grievance Board has no jurisdiction over non-employees under W.Va. Code 18-29-1, et seq. See generally, Trahern v. Marshall University, Docket No. 94-BOT-026 (June 22, 1994). Trahern was a grievance filed by a long-time student who also worked as a part-time student assistant. She protested because she was terminated from the assistant's position for failure not to carry a required amount of academic hours. As the grievant was not an employee pursuant to the grievance statute, the case was dismissed for lack of jurisdiction.

Therefore, the issues of favoritism and discrimination, as framed by Grievants in this case, are not grievable matters. Finally, Grievants utterly failed to answer the under signed's advisory that the Grievance Board may not act upon their other requests for relief, as those requests essentially involve the desired punishment of the alleged harasser, a non-employee, matters for which the Grievance Board lacks juris diction.4 Moreover, even if the offending party was a WLSC

employee, "the Grievance Board is without authority, statutory or otherwise, to order that disciplinary action be taken against [an] employee." Daugherty v. West Liberty State College, Docket No. 93-BOD-295 (Apr. 27, 1994).

Accordingly, the grievance is AFFIRMED, but only to the extent that it has already been granted at level two; otherwise, this grievance is hereby ORDERED DISMISSED, as the issues in volved are not proper grievance issues before the West Virginia Education and State Employees Grievance Board.

4In their September 4, 1995, written statement, Grievants stated that there were ongoing criminal investigations concerning some alleged actions and/or activities of the former department member. They claim they are entitled to a level four determination of whether WLSC "had used appropriate standards when applying its policies" in conjunction with those activities. If a determination is made through a criminal investigation that the former faculty member was possibly guilty of criminal acts, Grievants will have an opportunity to press criminal charges via the criminal justice system, the proper forum to adjudicate alleged acts of crime.

Any party may appeal this decision to the Circuit Court of Kanawha County or to 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 appeal and provide the civil action number so that the

record can be prepared and transmitted to the appropriate Court.

_____

NEDRA KOVAL

Administrative Law Judge

Date: October 31, 1995.