CHRISTINE ZIRKLE and JUDY TELLER

v. **Docket No. 96-15-289**

HANCOCK COUNTY BOARD OF EDUCATION

D E C I S I O N

The grievants, Christine Zirkle and Judy Teller, are employed as bus operators for the respondent, Hancock County Board of Education. On or about April 25, 1996, they jointly filed the above-styled grievance alleging that:

> "By [sic] transportation supervisor taking an extra-curricular trip is in violation of WV Code 18A-4-8a - 18A-4-8b."

The grievance was denied at the lower levels. An appeal to Level IV was made on or about July 5, 1996, and was assigned to the undersigned for disposition on or about November 4, 1996. The parties agreed to the submission of the case on the lower level record and it became mature for decision November 19, 1996. There were no findings of facts and conclusions of law submitted.

The testimony at the Level II hearing held May 21, 1996[1], is substantially all that is available as evidence.

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[1]References to such transcript will be referred to as L-2, at __.

Findings of Fact

1. The grievants, Christine Zirkle and Judy Teller, are employed by the Hancock County Board of Education as bus operators.

2. Elbert Allison is employed by the Hancock County Board of Education as Supervisor of Transportation and is also certified as a bus operator.

3. On April 2, 1996, during the evening hours, a group of 11 adults, consisting of a school building committee, an architectural firm, and Dr. Chandler, Superintendent, made a field trip, an activity which was authorized and promoted school business.

4. Mr. Allison, planning to attend the trip, volunteered to drive the school bus with the participants rather than divide the group by taking separate cars. He did not receive compensation.

5. Mr. Allison did not regard the field trip as an extracurricular activity under W.Va. Code §18A-4-16 nor as an extra-duty activity under W.Va. Code §18A-4-8b and therefore, did not post a notice or otherwise advise bus operators of this activity.

6. An extracurricular activity requires the posting of a notice, providing information of the availability of extra work to those on the "trip list".

7. An extra-duty assignment does not require posting but does require selecting the employee in a rotational manner with the order of rotation being determined by seniority.

8. There was no evidence as to whether either grievant was situated or placed upon the "trip list" so that it is unknown whether either of them would have gotten the contract for the activity.

DISCUSSION

The issue of standing is dispositive. A grievant, as any plaintiff or petitioner, in order to sue, must have been harmed or suffered damages. "In order to have standing to sue, a party must allege an injury in fact, either economic or otherwise, which is the result of the challenged action and shows that the interest he seeks to protect by way of the institution of legal proceedings is arguably within the zone of interests protected by the statute, regulation or constitutional guarantee which is the basis for the lawsuit." Shobe v. Latimer, 162 W.Va. 779, 253 S.E.2d 54 (1979).

Have the grievants suffered damages or been harmed in some way by the grievable conduct? They have requested as a remedy that they be "Compensated for the time trip (sic) had taken."[2] However, that would presume that they would have been awarded the contract for the activity, thereby incorporating the presumption that they were positioned properly on the "trip sheet", (L-2, at 6). The first eligible candidate or the one at the top of the list would be the most senior bus operator who had not had an opportunity to bid on an extracurricular activity. The list rotates until all have had an opportunity and then begins again. Thus it would be awarded to the most senior operator, next on the list, who wanted the contract.

The grievant bears the burden of proving by a preponderance of the evidence all aspects of her case. Runyon v. Mingo County Bd. of Educ., Docket No. 93-29-481 (Apr. 4, 1993). Without this evidence that either grievant was at the top of the trip sheet, neither cannot show that they have been harmed and has the necessary legal standing. They have failed to do so.

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[2]Quote stated is from the original Level IV grievance form.

The following Conclusions of Law are supported by the evidence.

CONCLUSIONS OF LAW

1. In a non-disciplinary matter, the grievant has the burden of proving each element of her complaint by a preponderance of the evidence. Runyon v. Mingo County Bd. of Educ., Docket No. 93-29-481 (Apr. 4, 1993).

2. The grievants must prove that they have standing; that they have been harmed or suffered damages as a result of the grievable action.

3. Neither grievant has shown that she would have been placed on the list such that, if the activity were an extracurricular or an extra duty activity, she would have bid successfully. Panrell and Marsh v. Monongalia County Bd. of Educ., Docket No. 94-30-586 (Mar. 24, 1995).

4. Neither grievant proved that she had been harmed or suffered damages as a result of the failure to post the bus trip as an extracurricular activity.

5. Without such a showing, any damages would be only speculative in nature and not proven by a preponderance of the evidence.

6. As a result, neither grievant has standing to properly litigate this grievance.

Accordingly, this Grievance is **DENIED**.

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

JAMES D. TERRY
Administrative Law Judge

DATE: February 13, 1997