THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

DELORES MULLINS and

ELLISSA MUNSEY,

Grievants,

v. DOCKET NO. 06-HHR-241D

DEPARTMENT OF HEALTH AND

HUMAN RESOURCES/WELCH

COMMUNITY HOSPITAL,

Respondent.

DISMISSAL ORDER

Grievants filed this grievance on July 17, 2006, asserting the elimination of the sixteen hour shift at Welch Community Hospital had been misapplied. Their relief sought was to continue to have the ability to work sixteen hour shifts without "continued, yearly threats of having the removed." Grievants filed at Level IV claiming Respondent defaulted at Level I. Prior to a hearing on the default, Respondent filed a Motion to Dismiss alleging the sixteen hour shifts have not been eliminated, and Respondent currently has no plans to eliminate these shifts. Upon receipt of Respondent's Motion, a phone conference was held. Grievants appeared *pro se*, and Respondent was represented by Jennifer Akers, Assistant Attorney General.

Based on a preponderance of the evidence, I find the following material facts have been proven:

Findings of Fact

1. Grievants are employed by Respondent and work at Welch Community Hospital.
2. Both Grievants currently work a sixteen hour shift.
3. At the time these grievances were filed, the sixteen hour shift had not yet been eliminated.

Discussion

"Without some allegation of personal injury, a grievant is without standing to pursue the grievance." *Lyons v. Wood County Bd. of Educ.*, Docket No. 89-54-501 (Feb. 28, 1990); *Beard v. Bd. of Directors/Shepherd College*, Docket No. 99-BOD-268 (Apr. 27, 2000); *Elliott v. Randolph County Bd. of Educ.*, Docket No. 98-42-304 (May 26, 1999); *Farley v. W. Va. Parkways Econ. Dev. Auth.*, Docket No. 96-PEDTA-204 (Feb. 21, 1997). A general claim of unfairness or an employee's philosophical disagreement with a policy does not, in and of itself, constitute an injury sufficient to grant standing to grieve. *See Olson v. Bd. of Trustees/Marshall Univ.*, Docket No. 99-BOT-513 (Apr. 5, 2000), citing *Skaff v. Pridemore*, 200 W. Va. 700, 490 S.E.2d 787 (1997)." *Vance v. Jefferson County Bd. of Educ.*, Docket No. 02-19-030R (Nov. 20, 2002).

Grievants filed this grievance alleging the elimination of the sixteen hour shift is a personal violation. However, Respondent chose to continue that shift, and Grievants are currently working sixteen hours. In this instance, there is no allegation of personal injury, as the grievance appears to be premature.

For relief, Grievants seek to continue working the sixteen hour shift without the "continued, yearly threats of having them removed." The undersigned cannot order Respondent to cease reviewing its day-to-day operation and prevent it from making changes deemed necessary. This Grievance Board has continuously refused to deal with issues when the relief sought is "speculative or premature, or otherwise legally insufficient." *Dooley v. Dept. of Trans./Div. of Highways*, Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd. of Educ.*, Docket No. 91-35-229/239 (Nov. 27, 1991). Typically, a Grievant must show "an injury-in-fact, economic or otherwise" to have what "constitutes a matter cognizable under the grievance statute." *Lyons v. Wood County Bd. of Educ.*, Docket No. 89-54-601 (Feb. 28, 1990); *Dunleavy v. Kanawha County Bd. of Educ.*, Docket No. 20-87-102-1 (June 30, 1987). Therefore, because Respondent has not eliminated the sixteen hour shifts, and currently has no plans to do so, it is concluded that this case is not yet ripe for decision.

Accordingly, this grievance is **DISMISSED** from the docket of this Board.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the circuit court of the county in which the grievance occurred, and such appeal must be filed within thirty (30) days of receipt of this Decision. *W. Va. Code* § 29-6A-7 (1998). 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. However, the appealing party is required by *W. Va. Code* § 29A- 5-4(b)

to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

DATE: February 8, 2007

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Wendy A. Campbell

Administrative Law Judge