WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

ROBIN BOHN,
Grievant,

v. **Docket No. 2010-0675-HarEd**

HARRISON COUNTY BOARD OF EDUCATION,
Respondent.

DISMISSAL ORDER

On November 16, 2009, Grievant Robin Bohn filed a grievance against her employer, Harrison County Board of Education, alleging the following:

> The Harrison County Board of Education has approved and intends to replace my current contract with one which is in violation of WV Code 18A-4-16.

As relief, Grievant seeks "to be provided a contract which is in compliance with WV Code 18A-4-16." Respondent moves to dismiss this grievance because it fails to state a claim upon which relief can be granted. Pursuant to Respondent's Motion to Dismiss this matter, a telephonic hearing was conducted on January 8, 2010, during which Grievant was represented by Mary Snelson, WVEA representative, and Respondent was represented by Denise Spatafore, Esquire, Supervisor of Personnel.

For reasons highlighted below coupled with facts set forth in Respondent's Motion to Dismiss dated December 1, 2009, the undersigned concludes that this grievance is premature and consequently fails to state a claim upon which relief can currently be granted.

Based on a preponderance of the evidence, the undersigned finds the following material facts have been established:

Findings of Fact

1. Grievant is employed as a music teacher at Bridgeport High School ("BHS").

2. Since 2004, Grievant Bohn has been employed at BHS as a full-time music teacher, which position specifically includes choral and theater classes,[1] along with holding extracurricular contracts as Choral Director, Show Choir Director, and Assistant Band Director.

3. During the spring/summer of 2009, it came to the attention of Harrison County administrators that there were inconsistencies in various music and other extracurricular contracts,[2] such as some having maximum hours and others not. Meetings were convened at which several employees from each group, along with central office administrators, discussed possibilities for resolving the inconsistencies in the contracts, improving salaries, and updating job descriptions. A comprehensive proposal was developed. Said proposal combined the input of the employees, principals, and central office administrators, for altering the various extracurricular contracts, salary supplements, and job descriptions.

4. Subsequent to an October 5, 2009 meeting of Respondent, affected employees were sent a letter explaining new contract provisions, along with a request that a waiver of transfer rights be signed, so that the new contracts could be retroactive to the beginning of the 2009-2010 school year. Employees were advised that, if any person in a job title did not agree, the contracts would not be retroactively implemented, and employees would be placed on transfer for next year to accomplish the proposed and approved revisions.

5. Of the 66 individual contracts/job descriptions proposed for modification, six individuals refused to agree to the changes and would not sign the waiver or new contracts. This included Grievant and five other employees.

6. Grievant is currently working under the contract she executed when she was initially hired for her current position. No changes have been made to her previous contract or salary.

7. Pursuant to the Board's vote on October 5, 2009, it is Respondent's intention to place Grievant and other employees who did not agree to the new contracts on transfer for the 2010-2011 school year.

---

[1] The position was posted as "music teacher, schedule to include choral and theater classes."

[2] The groups involved included band directors, assistant band directors, choir directors, show choir directors, majorette sponsors, yearbook sponsors, newspaper sponsors, academic coaches and play sponsors.

8. At the present time, Grievant has not been placed on transfer and continues to be employed under the same contract to which she agreed five and ten years ago, respectively.

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).

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).

For all the above reasons, the undersigned finds that at this time there has been no grievable event for which any relief would be appropriate. Grievant continues to work under her previous employment contract, salary and job description. Although the Board does intend to propose a transfer for Grievant for next year, that event has not yet occurred, so any ruling on the propriety of such transfer would be premature at this time. Moreover, any ruling on that issue could constitute a declaratory judgment on the part of this Grievance Board. When there is no case in controversy, the Grievance Board will not issue advisory opinions. *Brackman v. Div. of Corr./Anthony Corr. Center,* Docket No. 02-CORR-104 (Feb. 20, 2003); *Gibb v. W. Va. Div. of Corr.,* Docket No. 98-CORR-152 (Sept. 30, 1998). A Grievant must show "an injury-in-fact, economic or otherwise" to have what "constitutes a matter cognizable under the grievance statute."(cites omitted) The injury Grievant alleges has not yet occurred, and the relief she requests is speculative in nature, which is beyond the jurisdiction of this Grievance Board. *See Pritt, et al., v. Dep't of Health and Human Res.,* Docket No. 2008-0812-CONS (May 30, 2008).

Accordingly, this grievance is hereby **DISMISSED and STRICKEN** from the Grievance Board docket.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public 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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (2008).

Date: January 27, 2010

Landon R. Brown
Administrative Law Judge