WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

JESSICA L. CAMPBELL,

Grievant,

v. **Docket No. 2011-1443-RalED**

RALEIGH COUNTY BOARD OF EDUCATION,

Respondent.

DISMISSAL ORDER

Grievant, Jessica Campbell, was employed as a substitute teacher for the Respondent, Raleigh County Board of Education ("Board"). Ms. Campbell filed a level three[1] grievance form dated April 8, 2011, alleging the following:

> In a letter of suspension dated 3/25/11, Charlotte Hutchens informed me of a negative evaluation she claims was received by RCBOE 2/17/11. This negative evaluation was allegedly from Shady Spring High School. According to Policy C.2.7, "The Personnel Office shall schedule a conference with the affected substitute within five work days of receipt of the unsatisfactory evaluation." Hutchens and the Raleigh County BOE violated Policy C.2.7.

As relief, Grievant Campbell seeks:

> Disciplinary action against Charlotte Hutchens. Formal apology from Raleigh County BOE. Revocation of wrongful suspension and expungement from personnel file. Conference/Hearing regarding negative evaluation allegedly received from Shady Spring High School 2/17/11.

Respondent filed a Motion to Dismiss the grievance dated July 1, 2011, alleging that Grievant lacked standing to file the grievance because she voluntarily resigned her employment as a substitute teacher before filing the grievance.

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[1] Because the grievance is contesting a termination of employment, Grievant was authorized by W. VA. CODE § 6C-2-4(a)(4) to file directly at level three.

A level three hearing was conducted in Beckley, West Virginia on July 8, 2011. Grievant appeared *pro se* and Respondent was represented by Gregory W. Bailey, Esquire. Respondent renewed its Motion to Dismiss at the hearing and brief arguments were heard from both parties. The motion was held in abeyance and evidence was taken on the termination of Grievant's employment. At the conclusion of the hearing, the parties agreed to submit Proposed Findings of Fact and Conclusions of Law to be placed in the mail no later than July 30, 2011. Grievant did not submit a fact/law proposal and the Respondent's proposal was received by the West Virginia Public Employees Grievance Board on August 1, 2011. This matter became mature for decision on that date.

Synopsis

Grievant was given a written notice that her employment as a substitute with the Raleigh County Board of Education may be terminated. Grievant voluntarily resigned her employment with the Respondent the day before she filed her grievance contesting the possible dismissal. In order to have standing to process a grievance, a person must be employed by the public employer she alleges has committed a grievable act. Because Grievant was not an employee of the Respondent at the time she filed her grievance she has no standing and the grievance is dismissed.

The following facts are found to be proven by a preponderance of the evidence based upon an examination of the entire record developed in this matter.

Findings of Fact

1. Grievant Campbell has been employed by the Respondent Board as a substitute teacher.

2. By certified letter dated March 25, 2011, Grievant Campbell was notified by the Superintendent of Raleigh County Schools, Charlotte Hutchens, that Grievant was suspended and that Ms. Hutchens would recommend the termination of Grievant's substitute teacher contract at the next Board meeting.

3. On April 7, 2011, Grievant submitted a written resignation which stated: "I hereby resign my position as substitute teacher for Raleigh County Schools effective immediately. (Emphasis in original). The resignation was stamped as received by Respondent's agent on that date. Motion to Dismiss, Respondent's Exhibit 1.

4. Grievant filed a grievance form dated April 8, 2011, contesting her suspension. The form was stamped as received by the Grievance Board on April 11, 2011.

5. The Respondent Board voted to accept Grievant's resignation at its regular meeting on April 14, 2011.

6. Grievant made no effort to rescind her resignation and does not wish to be reinstated to employment with the Board.[2]

Discussion

Respondent asserts that Grievant is not an "employee" within the meaning of WEST VIRGINIA CODE § 6C-2-2, and therefore has no standing to pursue her grievance. When the employer asserts an affirmative defense, it must be established by a preponderance of the evidence. *See Lewis v. Kanawha County Bd. of Educ.*, Docket No. 97-20-554 (May 27, 1998); *Lowry v. W. Va. Dep't of Educ.*, Docket No. 96-DOE-130 (Dec. 26, 1996); *Hale v. Mingo County Bd. of Educ.*, Docket No. 95-29-315 (Jan. 25, 1996). *See generally Payne*

[2] Statement of Grievant at Level three hearing.

v. Mason County Bd. of Educ., Docket No. 96-26-047 (Nov. 27, 1996); *Trickett v. Preston County Bd. of Educ.*, Docket No. 95-39-413 (May 8, 1996).

The Public Employees Grievance Procedure was established to allow public employees and their employer to reach solutions to problems which arise within the scope of their respective employment relationships. W. VA. CODE § 6C-2-1(a); *See Wilson v. Dep't of Health and Human Res.*, Docket No. 2011-1769-DHHR (Oct. 31, 2011); *Farley v. Morgan County Bd. of Educ.*, Docket No. 01-32-615DEF (April 30, 2002). The grievance procedure is only available to challenge the actions taken by a current employer. *Chang v. Berkeley County Bd. of Educ.*, Docket No. 2008-0174-BerEDDEF (April 28, 2008); *Mascaro v. Marion County Bd. of Educ.*, Docket No. 2008-0299-MrnED (Nov. 24, 2008). WEST VIRGINIA CODE § 6C-2-2(e)(1) defines "employee" for the purposes of the grievance procedure, as follows :

> (1) "Employee" means any person hired for permanent employment by an employer for a probationary, full- or part-time position.

WEST VIRGINIA CODE § 6C-2-2(g) defines "employer" for the purposes of the grievance procedure, as follows:

> [A] state agency, department, board, commission, college, university, institution, State Board of Education, Department of Education, county board of education, regional educational service agency or multicounty vocational center, or agent thereof, **using the services of an employee** as defined in this section. (Emphasis added.)

Grievant voluntarily ended her employment relationship with the Raleigh County Board of Education when she resigned her employment on April 7, 2011. In her resignation letter she emphasized that she meant for her employment relationship to end immediately. Once Grievant tendered her resignation, she ceased to be an employee of the Respondent

for purposes of the statutory grievance procedure. The Grievance Board has consistently dismissed grievances once the grievant is no longer employed by the respondent. *See Marsicano v. Marion County Bd. of Educ.*, Docket No. 2009-0500-MrnED (April 23, 2009). *Fizer v. Dep't of Health and Human Res.*, Docket No. 2008-1698-DHHR (Mar. 4, 2009); *Bragg v. Dep't of Health and Human Res.*, Docket No. 03-HHR-348 (May 28, 2004). Grievant lacks standing to pursue her grievance. *Mills v. Wayne County Bd. of Educ.*, Docket No. 06-50-415 (Mar. 5, 2007); *Chang v. Berkeley County Bd. of Educ.*, Docket No. 2008-0174-BerEDDEF (April 28, 2008). Accordingly, the grievance is DISMISSED.

Conclusions of Law

1. When the employer asserts an affirmative defense, it must be established by a preponderance of the evidence. *See Lewis v. Kanawha County Bd. of Educ.*, Docket No. 97-20-554 (May 27, 1998); *Lowry v. W. Va. Dep't of Educ.*, Docket No. 96-DOE-130 (Dec. 26, 1996); *Hale v. Mingo County Bd. of Educ.*, Docket No. 95-29-315 (Jan. 25, 1996). *See generally Payne v. Mason County Bd. of Educ.*, Docket No. 96-26-047 (Nov. 27, 1996); *Trickett v. Preston County Bd. of Educ.*, Docket No. 95-39-413 (May 8, 1996).

2. The Public Employees Grievance Procedure was established to allow public employees and their employer to reach solutions to problems which arise within the scope of their respective employment relationships. W. VA. CODE § 6C-2-1(a); *See Wilson v. Dep't of Health and Human Res.*, Docket No. 2011-1769-DHHR (Oct. 31, 2011); *Farley v. Morgan County Bd. of Educ.*, Docket No. 01-32-615DEF (April 30, 2002). The grievance procedure is only available to challenge the actions taken by a current employer. *Chang v. Berkeley County Bd. of Educ.*, Docket No. 2008-0174-BerEDDEF (April 28, 2008); *Mascaro v. Marion County Bd. of Educ.*, Docket No. 2008-0299-MrnED (Nov. 24, 2008).

3. The Grievance Board has consistently dismissed grievances once the grievant is no longer employed by the respondent. *See Marsicano v. Marion County Bd. of Educ.*, Docket No. 2009-0500-MrnED (April 23, 2009). *Fizer v. Dep't of Health and Human Res.*, Docket No. 2008-1698-DHHR (Mar. 4, 2009); *Bragg v. Dep't of Health and Human Res.*, Docket No. 03-HHR-348 (May 28, 2004).

4. Because Grievant voluntarily severed her employment relationship by resigning her substitute teaching position with Respondent prior to filing this grievance, she lacks standing to pursue her grievance. *Mills v. Wayne County Bd. of Educ.*, Docket No. 06-50-415 (Mar. 5, 2007); *Chang v. Berkeley County Bd. of Educ.*, Docket No. 2008-0174-BerEDDEF (April 28, 2008).

Accordingly, the grievance is DISMISSED.

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: NOVEMBER 18, 2011

WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE