HOBERT MUNCEY,

Grievant,

v. **DOCKET NO. 96-33-297**

MCDOWELL COUNTY BOARD OF EDUCATION,

Respondent, and,

PHYLLIS RICE,

Intervenor.

D E C I S I O N

This grievance was filed by Grievant Hobert Muncey against the McDowell County Board of Education ("MBOE") on May 7, 1996. He grieves the action of MBOE in filling the position of MBOE Treasurer without posting the vacancy, which he alleges was in violation of West Virginia Code § 18A-4-7a, and seeks as relief that the position be posted. (See footnote 1) The following finding of fact has been properly made from the Level II record, and is dispositive of this grievance.

Finding of Fact

Grievant is employed by MBOE as a teacher at Bartley Elementary. Level I Grievance Form, Administration Exhibit No. 1.

Discussion

For many years MBOE Director of Finance, Melvin L. Dillon, Jr., was appointed MBOE's Treasurer each year, without the position of Treasurer being posted. Grievant was, in fact, a member of MBOE when Mr. Dillon was first appointed Treasurer. Mr. Dillon became ill, and Phyllis Rice, an Accountant in the Finance Office of MBOE, began performing Mr. Dillon's Treasurer duties in September 1995. When Mr. Dillon died in February 1996, Ms. Rice was appointed, temporarily, as MBOE Treasurer. Sometime prior to May 1, 1996, MBOE Superintendent J. Kenneth Roberts recommended that Ms. Rice be appointed Treasurer of MBOE. On May 1, 1996, MBOE approved

the recommendation without posting the position, and approved that Ms. Rice be paid a salary of $1500.00 per month in addition to her salary as an Accountant III. Mr. Dillon's position as Director of Finance has not been filled.

Grievant argues MBOE was required to post the position of Treasurer of MBOE pursuant to W. Va. Code § 18A-4-7a (or § 18A-4-8b if it is a service personnel position). He does not argue that Ms. Rice is not qualified for, or otherwise could not fill the position. MBOE argues that Treasurer of MBOE is not a position within the meaning of those Code Sections, and W. Va. Code § 18-9-6 vests authority with MBOE to appoint the Treasurer without posting. The undersigned, unfortunately, cannot address this interesting issue of first impression, because even if the position were posted, Grievant could not be appointed to be Treasurer.

W. Va. Code § 18-9-6 provides, in pertinent part, as follows:

> On or before the first Monday in May each county board of education shall upon recommendation of the county superintendent appoint a treasurer for the board. Such treasurer shall be the fiscal officer of the board, or an employee commonly designated as the person in charge of the financial affairs of the county board, or the county sheriff: Provided, That once a board of education has appointed a treasurer other than the sheriff, the sheriff shall not be named treasurer of the board in a subsequent year. Upon appointment this person shall be titled and referred to as treasurer of the board of education. For the faithful performance of this duty, such treasurer shall execute a bond, to be approved by the board of education, in the penalty to be fixed by the board of education, not to exceed the amount of school funds which it is estimated the treasurer will handle within any period of two months. The premium on such bond shall be paid by the board of education. (Emphasis added.)

Prior to enactment of this Code Section in 1973, the county sheriff was the ex officio Treasurer of county boards of education. See State ex rel. Bd. of Educ. v. Melton, 157 W. Va. 154, 198 S.E.2d 130 (1973). This Code Section allows county boards of education to select from only three categories in appointing a Treasurer: the county sheriff, "the fiscal officer of the board, or an employee commonly designated as the person in charge of the financial affairs of the county board." Grievant is a classroom teacher. He presented no evidence that he falls within any of the three categories from which a Treasurer may be chosen. Accordingly, if this were a position which had been posted and Grievant had in fact applied, he could not have been placed in the position; therefore, he was not affected (harmed) in any way by MBOE's failure to post. He has no personal stake in the outcome, and therefore, does not have standing to challenge whether MBOE was required to post. This Grievance Board's precedent requires that grievants have standing to pursue the issues raised. See Farley, et al., v. Wayne County Bd. of Educ., Docket No. 96-50-272 (Feb. 28, 1997); Mullins v.

Kanawha County Bd. of Educ., Docket No. 94-20-364 (Dec. 29, 1994). While Grievant may have other avenues to pursue this issue, he cannot use the grievance process.

Conclusions of Law

1. The burden of proof is upon Grievant to establish his allegations by a preponderance of the evidence. Canterbury v. Putnam County Bd. of Educ., Docket No. 40-86- 325-1 (Jan. 28, 1987).

2. A county board of education is limited by W. Va. Code § 18-9-6 to choosing its Treasurer from three categories. The three categories are: (1) the fiscal officer of the board; (2) an employee commonly designated as the person in charge of the financial affairs of the county board; and (3) the county sheriff.

3. An employee such as Grievant, whose only position with the board of education is a teaching position, is not within any of the three categories from which a Treasurer may be selected, and cannot by statute be appointed Treasurer of MBOE. W. Va. Code § 18-9-6.

4. Employees who are not qualified for a position do not have standing to grieve the failure to post the position. Farley, et al., v. Wayne County Bd. of Educ., Docket No. 96-50-272 (Feb. 28, 1997); Mullins v. Kanawha County Bd. of Educ., Docket No. 94-20-364 (Dec. 29, 1994).

Accordingly, this grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of McDowell 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 intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the ap propriate court.

BRENDA L. GOULD

Administrative Law Judge

Dated: May 19, 1997

Footnote: 1

The immediate supervisor was unable to grant relief at Level I. The grievance was denied at Level II on June 14, 1996, following a hearing held on June 5, 1996. The grievance was denied at Level III on July 1, 1996, and Grievant appealed to Level IV on July 11, 1996. Grievant and Respondent submitted this matter for decision on the record developed at the Level II hearing, and declined to submit written argument at Level IV. This matter was transferred to the undersigned for administrative reasons on March 26, 1997, and became mature for decision on April 17, 1997, after the Intervenor was notified that she had the opportunity to submit written argument and availed herself of this opportunity.