RUSSELL MCELROY,

Grievant,

v. **Docket No. 01-30-020**

MONONGALIA COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Russell McElroy ("Grievant") initiated this proceeding on November 27, 2000, challenging the multi-classification of Duane Prickett, School Bus Supervisor and Bus Operator. As relief, Grievant requests that Mr. Prickett no longer be allowed to function as both a bus driver and supervisor. The grievance was denied at level one, and a level two hearing was held on December 18, 2000. A level two decision, denying the grievance, was issued on January 3, 2001. Level three consideration was bypassed, and Greivant appealed to level four on January 15, 2001. After several continuances granted for good cause shown, (See footnote 1) a level four hearing was held in the Grievance Board's office in Westover, West Virginia, on July 25, 2001. Grievant was represented by counsel, John E. Roush, and Respondent was represented by counsel, Kelly J. Kimble. This matter became mature for consideration upon receipt of the parties' final fact/law proposals on August 27, 2001.

The following findings of fact are made from a preponderance of the evidence of record.

Findings of Fact

1. Grievant is employed by Respondent Monongalia County Board of Education ("MCBOE") as a bus operator.

2. Duane Prickett is employed by MCBOE as school bus supervisor/bus operator.

3. Mr. Prickett's duties as supervisor include planning bus routes, assigning runs, calling substitutes, and evaluating bus operators. He is the immediate supervisor of MCBOE's bus operators, including Grievant. He performs his supervisory duties on a daily basis from 5:00 a.m. until 1:00 p.m.

4. Because he is also classified as a bus operator, Mr. Prickett is included in the rotation for

extra duty bus runs. According to the procedure voted upon by MCBOE bus drivers, trips under three hours are assigned by Mr. Prickett, according to whose schedule can accommodate the run. Trips of over three hours are posted, bid upon, and awarded by seniority.

5. Mr. Prickett only participates in the rotation of “long” extra duty runs which are posted and assigned according to seniority.

6. Mr. Prickett currently performs an evening extracurricular run (a “Kaleidoscope run”). Because his normal work hours consist of a 40-hour week, he always receives overtime pay when he performs his extracurricular run or any other extra duty runs.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden ofproving his claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

Grievant has posited this grievance in the form of several “questions” he has regarding Mr. Prickett's dual functions as supervisor and bus operator. They are:

1. How can Mr. Prickett drive a Kaleidoscope bus run and take extra trips as a bus driver with School Bus Supervisor's pay and with the addition of time and one half?

2. How can Mr. Prickett, while working as a bus driver, give orders as a Bus Supervisor?

3. Is a Bus Supervisor on call 24 hours per day, and if he is on a bus trip how can he be available to do the Bus Supervisor duties?

4. How can Mr. Prickett be a bus driver or supervisor after he has finished his shift?

5. How can Mr. Prickett be in charge of trips when he is the one that schedules the extra trips?

Most of Grievant's concerns were, in fact, addressed by Mr. Prickett in his testimony. Mr. Prickett shares his supervisory responsibilities with Richard Gemas, Supervisor of Transportation. If emergencies arise after Mr. Prickett's supervisory hours are over at 1:00 each day, they are addressed by Mr. Gemas if Mr. Prickett is not available. As to the distribution of bus runs, there is no evidence that Grievant or any other bus operator has been treated unfairly as a result of Mr. Prickett's participation in the assignment of extra runs. In short, Grievant has made no allegation that he has personally suffered in any respect because of Mr. Prickett's multi-classification and job duties, nor has he stated a violation of any law, policy, rule or regulation. "Standing, defined simply, is a legal requirement that a party must have a personal stake in the outcome of the controversy." Wagner v. Hardy County Bd. of Educ., Docket No. 95-16-504 (Feb. 23, 1996). In order to have a personal stake in the outcome, a grievant must have been harmed or suffered damages. The grievant "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). 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). See also, Smith v. W. Va. Parkways Econ. Dev. Auth., Docket No. 97-PEDTA-484 (Apr. 17, 1998); Farley, supra; Jarrell v. Raleigh County Bd. of Educ., Docket No. 95-41-479 (July 8, 1996); McDonald v. Hancock County Bd. of Educ., Docket No. 15-88-055-3 (Sept. 30, 1988). Even if the employer has misapplied a statute or its own policies, where the grievant is not personally harmed, there is no cognizable grievance. Elliott, supra; Farley, supra; Cremeans v. Bd.of Trustees/Marshall Univ., Docket No. 96-BOT-099 (Dec. 30, 1996); Pomphrey v. Monroe County Bd.

of Educ., Docket No. 94-31-183 (July 1, 1994).

In the instant case, it is clear that Grievant simply does not have standing to challenge Mr. Prickett's multi-classification, in the absence of any personal harm to Grievant. Grievant's "questions," if answered in this Decision, would effectively result in the issuance of a merely advisory opinion regarding the impact of Mr. Prickett's two job titles. The Grievance Board has repeatedly refused to issue advisory opinions. Baker v. Bd. of Directors/Concord College, Docket No. 97-BOD-265 (Oct. 8, 1997); Wagner v. Hardy County Bd. of Educ., Docket No. 20-87-102-1 (Feb. 23, 1996); Bandy v. Summers County Bd. of Educ., Docket Nos. 91-45-468/92-45-065 (Feb. 16, 1994); Miraglia v. Ohio County Bd. of Educ., Docket No. 92-35-270 (Feb. 19, 1993); Adkins v. Lincoln County Bd. of Educ., Docket No. 89-22-323 (Aug. 21, 1989). Accordingly, it is not possible to grant Grievant any relief in this case. (See footnote 2)

The following conclusions of law support the decision reached.

Conclusions of Law

1. In a non-disciplinary matter, Grievant has the burden of proving his claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6. 2. "Standing, defined simply, is a legal requirement that a party must have a personal stake in the outcome of the controversy." Wagner v. Hardy County Bd. of Educ., Docket No. 95-16-504 (Feb. 23, 1996).

3. Grievant does not have standing to challenge the multi-classification of his supervisor, Duane Prickett, and he is not entitled to any relief in this grievance.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Monongalia 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. 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: September 17, 2001 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

The hearing was continued at least once due to misinformation regarding whether or not Grievant was represented.

Footnote: 2

Due to the outcome of this Decision, it is not necessary to address Grievant's or Respondent's arguments regarding Mr. Prickett's overtime pay or Respondent's allegation that the issues in this grievance have previously been decided in another case.