KAREN GUMINEY and NANCY JAMISON,

Grievants,

v. **Docket No. 02-30-090**

MONONGALIA COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Karen Guminey and Nancy Jamison ("Grievants") initiated this proceeding in August of 2001, alleging that Respondent has violated the provisions of W. Va. Code § 18A-4-15 in its manner of assignment of substitute secretaries in the central office. As relief, Grievants seek an order requiring Respondent to comply with the statute regarding such positions. After settlement attempts were unsuccessful, a level two hearing was held on February 25, 2001. The grievance was denied in a written level two decision dated March 11, 2002. Level three consideration was waived, and Grievants appealed to level four on April 1, 2002. After a level four hearing was scheduled, the parties elected to have a decision rendered based upon the record developed below. Grievants were represented by counsel, John E. Roush, and Respondent was represented by counsel, Teresa Dumire. This matter became mature for consideration upon receipt of the parties' fact/law proposals on July 19, 2002.

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

Findings of Fact

1. Grievants are regularly employed by Respondent as Secretary IIIs in thecentral office.

2. Since the spring of 2001, Yvonne Witt and Charlene Bowen, employed as substitute secretaries, have been assigned on numerous occasions to work in the central office, sometimes for several weeks at a time.

3. Ms. Witt and Ms. Bowen were not assigned to "fill in" for any absent employees at the

central office, but were called in to help with extra work which needed to be done in the office.

4. The substitute call-out system was not used to assign Ms. Witt and Ms. Bowen to the central office, and the substitute rotation was not followed. Ms. Witt and Ms. Bowen were called to work in the office because of their skills and willingness to work.

5. Grievants are not interested in performing any of the work assigned to these two substitutes. They filed this grievance to protect the interests of other substitute secretaries whom they believe have been denied the opportunity to work, due to Respondent's failure to follow the substitute rotation and call-out system.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their 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. LoganCounty 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.

Respondent challenges Grievants' standing to raise the issue in question, which Grievants appear not to dispute. Grievants admit that they personally have no interest in the work performed by nor the positions (if there are any) occupied by Ms. Witt and Ms. Bowen, but nevertheless believe a ruling on the propriety of Respondent's practice is necessary. Grievants assert that the employees who are adversely affected by Respondent's failure to follow the proper procedure for use of substitute secretaries will not file grievances, due to fear that they will be punished by never being selected for regular employment. Grievants' lack of standing is an affirmative defense asserted by the employer, and 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).

The Grievance Board has previously addressed the issue of standing and stated, "[s]tanding, 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); See

Jarrell v. Raleigh County Bd. of Educ., Docket No. 95-41-479 (July 8, 1996). When an individual is not personally harmed, there is no cognizable grievance. Long v. Kanawha County Bd. of Educ., Docket No. 00-20-308 (Mar. 29, 2001); Cremeans v. Board of Trustees, Docket No. 96-BOT-099 (Dec. 30, 1996);Pomphrey v. Monroe County Bd. of Educ., Docket No. 94-31-183 (July 1, 1994); Mills v. W. Va. Dep't of Transp., Docket No. 92-DOH-053 (Apr. 24, 1992). In order to have a personal stake in the outcome, a grievant must have been harmed or suffered damages. Farley v. W. Va. Parkway Auth., Docket No. 96-PEDTA-204 (Feb. 21, 1997). It is necessary for a grievant to "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). The Grievance Board has frequently ruled that without some allegation of personal injury, a grievant is without standing to pursue the grievance. Lyons v. Wood County Bd. of Educ., Docket No. 89-54-601 (Feb. 28, 1990).

Grievants clearly have no personal stake in the outcome of any decision rendered on this issue. While Grievants' concern for the substitute secretaries employed by Respondent is admirable, it is not within the “zone of interests” protected by the statutory scheme regarding the assignment and use of substitute employees. Grievants are not even substitute employees, whose interests are protected by the applicable statutes. Accordingly, this grievance must be denied.

The following conclusions of law support the decision reached.

Conclusions of Law

1. Grievants have the burden of proving their 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. The Grievance Board has previously addressed the issue of standing and stated, "[s]tanding, 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); See Jarrell v. Raleigh County Bd. of Educ., Docket No. 95-41-479 (July 8, 1996).

3. Grievants have no personal stake in the outcome of any decision issued regarding Respondent's use of substitute secretaries in the central office.

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: July 26, 2002 _____

DENISE M. SPATAFORE

Administrative Law Judge