JA'NAYE CORBIN,

Grievant,

v. **Docket No. 05-14-093**

HAMPSHIRE COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Ja'Naye Corbin ("Grievant") seeks removal of seniority credit given to other employees of the Hampshire County Board of Education ("BOE"). The date of the initial filing of this grievance is not reflected in the record. A level two hearing was conducted on February 25, 2005, and the grievance was denied in written decision rendered on or about March 13, 2005. Level three consideration was bypassed, and Grievant appealed to level four on March 18, 2005. A hearing was conducted in Westover, West Virginia, on June 3, 2005. Grievant was represented by counsel, John E. Roush, and Respondent was represented by counsel, Norwood Bentley. This matter became mature for consideration upon receipt of the parties' fact/law proposals on July 8, 2005.

The following material facts have been proven by a preponderance of the evidence.

Findings of Fact

1. Grievant began employment with the BOE on August 21, 2002, as a substitute clerk, after having passed the competency test for that classification. 2. Grievant was hired as a regular clerk on October 8, 2003, which is her regular seniority date.

3. Michelle Lee and Dottie Wood took and passed the clerk test at the same time as Grievant, and they also began substitute employment as clerks in the 2002-2003 school year.

4. Prior to their employment as substitutes, Ms. Lee, Ms. Wood, and others were employed as contract employees by the BOE. They received employment contracts designating them as clerks in a designated program or location "on a contracted services basis," with an hourly rate of pay. These

contracts further stated that these employees would be paid on a monthly basis with no benefits, and they did not earn seniority.

5. Beginning with the 2003-2004 school year, Ms. Lee and Ms. Wood received regular contracts of employment with benefits, and they were credited with regular seniority as of the date they began working as contract employees. Both Ms. Lee and Ms. Wood have seniority dates in 1995.

6. Grievant, Ms. Lee and Ms. Wood have not competed for any posted positions, nor have their seniority dates been an issue in a reduction in force or any other BOE action.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her 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 (2004); 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.

Although Grievant's seniority date (as compared to those of Ms. Wood and Ms. Lee) has not been an issue with regard to any selection, transfer or other decision of the BOE, Grievant contends that, since she is now aware of the issue, this is the appropriate time for the BOE to correct its mistake in crediting these employees with seniority earned as contract employees. However, Respondent contends that Grievant has suffered no harm from this decision as yet, so this grievance is premature. Grievant's 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).

In the instant case, Grievant has suffered no harm as a result of the seniority credit granted to other clerks. She has not been denied a position for which she has applied, nor has she been subjected to a transfer or reduction in force, as a result of her seniority versus the seniority of Ms. Wood and Ms. Lee. Accordingly, at the present time, Grievant has no standing to challenge the seniority dates of these individuals.

Moreover, even if Grievant did have standing to grieve this issue, this Grievance Board has previously ruled on a similar situation. In Ganoe v. Hampshire County Board of Education, Docket No. 97-14-229 (July 30, 1997), the undersigned administrative law judge ruled that it was illegal for the BOE to hire full-time employees for specific positions,pay them on an hourly basis, and deny them seniority and associated benefits. As in the instant case, the contract aides in Ganoe received contracts for the entire school year, designating them as contract employees for a specific position at a particular school. Pursuant to the Supreme Court of Appeals' ruling in State ex rel. Boner v. Kanawha County Board of Education, 197 W. Va. 176, 475 S.E.2d 176 (1996), it was determined that “[t]he contractual scheme of employment for school personnel does not allow for the hiring of hourly-paid employees to perform the full-time, regular duties of school service personnel positions.” Ganoe at Conclusion of Law 2. Accordingly, because “seniority for regular school service employees begins on the date such employee enters upon regular employment duties pursuant to an employment contract with the county board of education,” pursuant to W. Va. Code § 18A-4-8g, Ms. Ganoe was

awarded seniority and all other benefits of regular, full-time employment while she was working as a contract aide. Therefore, the contract clerks employed by the BOE since 1995 are similarly entitled to seniority credit for their time served in those positions.

The following conclusions of law support this Decision.

Conclusions of Law

1. In a non-disciplinary matter, Grievant has the burden of proving her 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 (2004); 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); 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).

3. Grievant has not suffered harm as a result of the seniority granted to other clerks employed by Respondent, so she has no standing to file a grievance regarding that issue.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Hampshire County. Any 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 22, 2005

DENISE M. SPATAFORE

Administrative Law Judge