LOLA LILLY,

Grievant,

v. DOCKET NO. 93-45-399

SUMMERS COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Lola Lilly (Grievant) filed a grievance on June 21, 1993 contending:

> that her non-renewal of employment as a probationary employee is erroneous as she contends that she is an employee with continuing contract status. Grievant alleges a violation of W. Va. Code §18A-2-6 and requests reinstatement of employment, payment of retroactive wages and benefits, and reinstatement of regular employee seniority.

The facts are not in dispute. Grievant was hired as a probationary employee, assigned as a cook, and has the following pertinent work history with Respondent:

1989-1990

1/2 time regular cook at Hinton High 177 days

1990-1991

full time regular cook at Bellepoint 200 days

1991-1992 substitute cook at Talcott 128.5 days

1/2 time regular cook at Bellepoint 51

		days
1992-1993	regular cook at Talcott	178 days

Grievant received probationary contracts of employment for each of the school years indicated above. The contract for the 1991-1992 school year was entitled "3rd Probationary Contract of Employment." The contract for the 1992-1993 school year was also entitled "3rd Probationary Contract of Employment." Grievant alleges she should have received a continuing contract of employment for the 1992-1993 school year.

Grievant testified at Level II that she wondered why she was being given another "3rd" probationary contract to sign at the beginning of the 1992-1993 year "because everybody else got a third year and then it was continuing." She also testified that she did not file a grievance at that time. Tr., pp. 22-23.

Grievant received notice on April 27, 1993 that, pursuant to W. Va. Code § 18A-2-8a, the superintendent had not recommended her for rehire for the ensuing 1993-1994 school year. Grievant requested a hearing before Respondent, which was conducted on May 28, 1993. Grievant informed Respondent at that hearing that she should have received a continuing contract of employment for the 1992-1993 school year based on three years' acceptable employment, and that the board had, therefore, not complied with the provisionsof W. Va. Code § 18A-2-6 concerning reductions-in-force for employees holding continuing contracts.

Respondent raised a timeliness defense at Level II on the ground that grievant should have filed her grievance within fifteen days after executing her 1992-1993 probationary contract if she believed she was then entitled to a continuing contract of employment.

The grievance was denied at Level II on the timeliness issue, and Respondent waived participation at Level III. A Level IV hearing was held on April 22, 1994. Post-hearing briefs were filed on June 2, 1994, at which time this case became mature for decision.

Conclusions of Law

1. The event upon which this grievance is based was the issuance of a probationary contract, rather than a continuing contract, on September 25, 1992. No good cause was shown for Grievant's

delay in pursuing this matter until June 21, 1993. Therefore, Grievant's claims are time-barred pursuant to W. Va. Code § 18A-29-4(a)(1).

2. Respondent complied with the notice and hearing requirements for employees holding probationary contracts of employment. W. Va. Code § 18A-2-8a. See Miller v. Bd. of Educ. of County of Boone, 437 S.E.2d 591 (W. Va. 1993).

Accordingly, this grievance is **DENIED**.

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MARY JO ALLEN

Administrative Law Judge

Dated: June 16, 1994