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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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MANMOHAN S. JAWA

v.

DOCKET NO. 33-86-192-4

McDOWELL COUNTY BOARD OF EDUCATION

DECISION

On June 4, 1986 grievant, Dr. Manmohan S. Jawa, an employee of McDowell County Schools, forwarded a grievance appeal form to the Education Employees Grievance Board advising that on May 22, 1986 he had requested certain documents and other evidence from the McDowell County Board of Education and it had not been provided. Grievant requested the issuance of subpoenas to obtain this evidence and the hearing examiner forwarded grievant's request to Bennett E. Church, Superintendent of School of McDowell County.¹ On June 16 counsel for the McDowell

¹This request included: details of Superintendent Church's professional certificates, date he was appointed superintendent, copy of posting of vacancy of superintendent's position, copy of board minutes when Mr. Church was given one year term expiring on June 30, 1986, copy of minutes of board meeting in 1986 when Mr. Church's contract was extended, date of Mr. Church's first appointment as director of Title I Programs, copy of Mr. Church's job description as director of Title I Programs, etc., and copies of other relevant material.

County Board of Education objected to the filing of the grievance on the grounds that none of the allegations were the proper subject matter for the Education Employees Grievance Board and that the grievance was not timely. Because of the jurisdictional questions raised by the grievance itself and in the motion to dismiss, a pre-hearing conference was held on July 24, 1986 by the hearing examiner.

At the hearing the grievant acknowledged that the object of the grievance was to remove Superintendent Church from his position as Superintendent of Schools of McDowell County for the following reasons:

1. The position was not posted or advertised when Superintendent Church was initially appointed and/or elected by the board of education in 1985 or thereafter.
2. Superintendent Church does not have a valid certificate as required by law.
3. Superintendent Church was not certified when he supervised the Title I Program in McDowell County in 1985.
4. Superintendent Church and the president of the board of education of McDowell County violated the election laws of this State by sending campaign letters to school employees during the board of education election in 1986.²

²Dr. Jawa admitted that the position had been posted prior to the election of Superintendent Church in 1985 because he had seen the posting. Counsel for the board contended it was not posted at the renewals of the contract because there was no vacancy. The "political" letter had been written on Mr. Church's personal stationery on April 10, 1986 on off-duty time without the use of school personnel. The letter was signed "Benny" and urged grievant to vote for incumbent board members Cassady and Harmon. (Grievant's Exhibit No. 1). Grievant stated he did not report the alleged violation to the Secretary of State.

Grievant contends there are five procedures for dismissing or removing a county superintendent from office and one is via Code, 18-29, et. seq., the new grievance procedure, in that education employees have the right to examine the hiring process of a superintendent to prevent the hiring of incompetents; that Code, 18-29-2(a) defines "grievance" as "any" claim by an employee alleging a violation of the statutes under which employees work and that "any" is all-inclusive.³

Superintendent Church testified that he last worked in the Title I Program on February 5, 1985 when he was appointed interim superintendent until July 1, 1985; he was then elected by the board of education for a one year term expiring July 1, 1986.⁴

³Grievant asserts that the other procedures involved are Code, 18-4-3 (removal by the county board of education), Code, 18-3-4 (removal by the State Superintendent of Schools), Code, 6-6-1 (removal of "officers" for enumerated reasons) and Code, 6-6-7 (procedure for removal of county officials). Grievant contends that the Court, in Hall v. Pizzino, 263 S.E.2d 886 (W.Va. 1980), stated that these procedures did not offer citizens an effective procedure to remove a county superintendent; that, therefore, a remedy was provided by Code, 18-29, et. seq. However, it will be noted that the Court in Hall did hold that Code, 6-6-7 provided an effective and expedient procedure for removing the county superintendent of schools.

⁴It is to be noted that grievant ostensibly could challenge the educational qualifications of the superintendent in an appropriate proceeding. See, Rowan v. Logan County Board of Education, 125 W.Va. 406, 24 S.E.2d 583 (1943). Presumably, this could be done under Code, 6-6-7. (Lookabill v. Board of Education of Wyoming County, 304 S.E.2d 678 (W.Va. 1983), holding a county superintendent to be an "officer" and not an "employee".) Cf. Hall v. Pizzino, supra. The Lookabill case also cites Code, 18-4-1 and refers to the discretion of the board of education in selecting a county superintendent.

Counsel for the board contends that once the superintendent has been elected by the board and the State Superintendent notified of the results the Education Employees Grievance Board does not have the authority to remove the superintendent but that he is subject to be impeached and/or removed; that if the election laws have been violated it is incumbent for grievant to pursue the matter with the Secretary of State, the chief election officer; that the instant grievance is neither timely nor cognizable under Code, 18-29, et. seq.

In addition to the foregoing factual recitation the following specific findings of fact are appropriate.

FINDINGS OF FACT

1. Grievant is an employee of the McDowell County Board of Education.
2. Grievant filed a grievance seeking to remove the Superintendent of Schools of McDowell County on several grounds.
3. Grievant has not initiated any judicial proceeding to remove Superintendent Church and asserts that Code, 18-29, et. seq., empowers the Education Employees Grievance Board to remove the superintendent.
4. Superintendent Church was director of the Title I Program until February 5, 1985, when he was appointed interim superintendent until July 1, 1985; he was thereafter appointed superintendent for the 1985-86 school year.

5. Superintendent Church wrote grievant a personal letter on April 10, 1986 urging grievant to vote for incumbent board of education members Cassady and Harmon. Grievant did not report this alleged violation to the secretary of state.


CONCLUSIONS OF LAW

1. Code, 18-29, et. seq., did not create a separate statutory proceeding whereby school employees can remove a superintendent from office in the grievance procedure.
2. The matters asserted in the grievance are either barred as having been untimely filed or as not being within the purview of Code, 18-29, et. seq.⁵

⁵In Jawa v. Board of Education of McDowell County, 324 S.E.2d 161 (W.Va. 1984) the Court held that Dr. Jawa's claim of employment discrimination was more appropriately addressed in an EEOC proceeding or the Human Rights Commission and that he had not shown that his superiors were employed in violation of state law.

For the foregoing reasons the motion to dismiss the grievance is granted and the grievance is dismissed.

Either party may appeal this decision to the Circuit Court of McDowell County or to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



LEO CATSONIS
Hearing Examiner

Dated: July 24, 1986