



Members
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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

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MULLINS, et al.

v.

Docket No. 22-86-022

LINCOLN COUNTY BOARD OF EDUCATION

DECISION

On July 2, 1985 Jerry Mullins, Barbara S. Mullins, Thomas Zackory Millins and others filed a civil action in the Circuit Court of Lincoln County against David Kiser and the Lincoln County Board of Education seeking, inter alia, a hearing before the Lincoln County Board of Education and subsequent removal of a teacher employed by the board. On August 12, 1985 Judge Cook entered an Order requiring the Lincoln County Board of Education to hold a hearing within sixty days and on September 25, 1985 the Superintendent of Schools of Lincoln County forwarded the complaint and Order to this office requesting that a hearing examiner be assigned. Judge Cook subsequently entered another Order requiring a hearing by a hearing examiner pursuant to Code, 18-29-1, et seq.

A pre-hearing conference was conducted on January 24, 1986 at which time counsel for the parties advised the hearing examiner that the action was instituted by parents of a seventeen year old student at Lincoln County Vocational School alleging that the teacher, David Kiser, had caused their son to be held hostage in order to coerce a confession to the theft of a pair of tennis shoes. The parents sought to remove Mr. Kiser from his position as teacher but the board of education had declined to act.¹

FINDINGS OF FACT

1. Complainants are parents of a student at Lincoln County Vocational School who filed a civil action in the Circuit Court of Lincoln County to remove a teacher in the employment of the Lincoln County Board of Education.

2. The Circuit Court of Lincoln County entered an Order requiring the Education Employees Grievance Board to conduct a hearing on the complaints of the parents.

¹ The matter had been to the West Virginia Supreme Court on a certified question as to whether a teacher was a "public officer" for removal as contemplated by Code, 6-6-7 and the Court had responded in the negative. Mullins v. Kiser, 331 S.E.2d 494 (W.Va. 1985). The Court also noted that a school board had a duty to act on citizens' complaints of this nature and could be compelled to do so.

3. The record does not disclose any action by the Lincoln County Board of Education on these complaints.

CONCLUSIONS OF LAW

1. Code, 18-29-1 provides for an education employees' grievance procedure between employees and employers to reach solutions to problems which arise between them within the scope of their respective employment relationship.

2. Code, 18-29-2 defines "grievance" as a claim by one or more affected employees involving work related matters and does not contemplate matters arising between persons outside the employment relationship in the field of education.

3. Code, 18-29-1, et seq., does not confer jurisdiction upon the Education Employees Grievance Board to process complaints by parents of a student enrolled in the school system of this State against a teacher thereof. The Education Employees Grievance Board does not acquire jurisdiction until the county board of education acts thereon.

For the foregoing reasons, it is ordered that the grievance is dismissed for lack of jurisdiction.

The Lincoln County Board of Education may appeal this decision to the Circuit Court of Kanawha County or Lincoln County and such appeal must be filed within thirty 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
Chief Hearing Examiner

Dated: August 7, 1986