



**Members**

James Paul Geary  
Orton A. Jones  
David L. White

**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.  
Governor

**Offices**

240 Capitol Street  
Suite 508  
Charleston, WV 25301  
Telephone: 348-3361

MANMOHAN S. JAWA

v.

Docket No. 33-86-198-4  
33-86-199-4

MCDOWELL COUNTY BOARD OF EDUCATION

DECISION

On August 1, 1986, the above-styled grievances were assigned to this hearing examiner for disposition. On several occasions these grievances were set for hearing and were ultimately heard on December 15, 1986.<sup>1</sup> The parties were directed to file proposed

---

<sup>1</sup> The procedural history of these grievances is extensive and complex. The record reflects, among other things, that several notices of hearings were issued following which continuances were requested and granted. Additionally, there was a motion to recuse this hearing examiner and an Order was entered by the members of the West Virginia Education Employees Grievance Board denying the motion. While the aforementioned items are by no means exhaustive, it is apparent to this examiner that to fully describe the procedural history of these grievances would unnecessarily obfuscate the purpose of this decision. Therefore, many of the procedural matters are not set forth with particularity as they ultimately had little bearing on the merits or this outcome.

findings of fact and conclusions of law on or before January 10, 1987.<sup>2</sup> These findings and conclusions were considered in arriving at this decision.

Notably, in both of these grievances, there were no prior level two or level three hearings. At the level four hearing, counsel for the respondent board represented that there were no such hearings because the grievant asserted that neither the superintendent nor the designee would/should have the authority to act and requested that any level two hearing be waived.<sup>3</sup> Counsel for the respondent board further represented that the board subsequently waived consideration of these grievances to level four.

Additionally, it is noted that the grievant pursued a written request to be furnished certain documents, namely:

Under the law please provide me and each board member (and Level IV) 3 days before hearing(s)

---

<sup>2</sup> The parties complied with this direction; however, the grievant has continued through February 27, 1987, to file additional matters including appeals to this examiner's "family inherited sense of justice"...together with his hope that my decision would protect children and the grievant who are victimized.

<sup>3</sup> Counsel's remarks for the respondent board were corroborated by the grievant's signed request attached to his grievance.

the following: For Mr. Bennett Church, Mr. Jim Jones, Ms. Paitsel Lockhart, Dr. M.S. Jawa & Ms. Linda Loundman provide: 1. Name, 2. Salary for each year from 1979/80 to 1985/6, 3. Title and job assignment(s) for each year from 1979/80 to 1985/86, 4. Salary classification; degree(s) held, years of credited service for salary raisers, 5. Certificate(s) permit(s) duration of each, specific endorsement(s) with date(s) of issue of each. For Mr. Floyd Blizzard, Mr. Chester Hall, Mr. Ernest Mullins and Mr. Tom Fanning please provide me and each board member (and Level IV) 3 day(s) before hearing(s) the following of each: 1. Name, 2. Salary for each year from 1979/80 to 1985/6, 3. Detail(s) of education school, college diploma(s) and/or degree(s) held.

In complying with this request, the respondent notified the grievant by letter dated July 8, 1986, that the information was available and would be turned over to the grievant upon payment of costs totaling \$283.02.<sup>4</sup>

The grievant contends that W.Va. Code, 18-29-6 requires the respondent to produce the documents without cost and without resort to any other statute, i.e., Freedom of Information Act (W.Va. Code,

---

<sup>4</sup> An itemized statement accompanied the July 8, 1986, letter (Grievant's Exhibit #1) which contained the following:

Cost of preparing documents for Dr. M. Jawa:

Secretary salary for 12 hours @ \$8.88	= \$106.56
Asst. Director salary for 6 hours @ \$18.11	= \$108.66
Treasurer salary for 4 hours @ \$16.40	= \$ 65.60
Total salary costs	= \$280.82
22 sheets @ 10¢ per copy	= \$ 2.20
Total Amount	= \$283.02

29B-1-1, et seq.) or a subpoena duces tecum.<sup>5</sup>

The pertinent portion of W.Va. Code, 18-29-6 provides:

The institution that is party to the grievance shall produce prior to such hearing any documents, not privileged, and which are relevant to the subject matter involved in the pending grievance, that has been requested by the grievant, in writing.

Based upon this section of the West Virginia Code, the grievant "moved" that the respondent be found guilty of a "cover-up" and asserted that respondent's counsel violated DR-1-102 of the Code of Professional Responsibility.

It is pertinent to note that the issue of the reasonableness/ amount of the cost was never developed by the grievant and that the information requested by the grievant was apparently obtained by other means. Additionally, the grievant acknowledged that he wanted to proceed with the hearing and desired only that the respondent not be permitted to put on evidence.

---

<sup>5</sup> Respondent's counsel encouraged the grievant to seek those documents pursuant to W.Va. Code, 29B-1-1, et seq. This hearing examiner repeatedly suggested to the grievant that he request a subpoena duces tecum and rely on the assistance of his representative; however, the grievant chose to ignore these suggestions.

In effect, the grievant pointed out his right to information but refused to implement it.<sup>6</sup>

For his grievance #33-86-198-4, the grievant complains that:

- 1) Please list specific statutes, policies, rules, regulations, or agreements claimed to have been violated, misapplied or misinterpreted: WV Code Chap. 18, Art. 29, 18A-1-1, 18A-2-1, 11-8-29, 11-8-30 and/or 11-8-31 (as amended 1985) and related laws, rules, regulations and policies.
- 2) What occurred? Continuing discrimination, favoritism, fraud and/or misrepresentation in salaries and/or raises. Mr. Church, \$48,000.00; Mr. Jones, \$45,898.68; Ms. Lockhart, \$37,366.40; Ms. Loundman, \$35,145.60. These and others have not been holding certificates for their jobs.
- 3) How were you affected? As employee, child advocate, and taxpaying citizen.
- 4) Who was involved? The board, superintendent(s), official(s), and/or employee(s).
- 5) What would resolve this grievance? Retroactive \$48,000.00 salary with interest. Remove all such persons. Salaries and expenses with interest be paid back to state treasury from board member, superintendent(s), official(s), and employee(s) pocket(s) with other criminal and/or civil penalties provided by law.

In grievance #33-86-199-4, the grievant complains that:

- 1) Please list specific statutes, policies, rules,

---

<sup>6</sup> Throughout the proceedings, the grievant had access to his representative for advice but declined to rely upon him or otherwise cooperate with him in the preparation and presentation of this grievance.

regulations, or agreements claimed to have been violated, misapplied or misinterpreted: W.Va. Code, Chap. 18, Art. 29, 18A-1-1, 18A-2-1, 18A-3-6, 11-8-29, 11-8-30, 11-8-31 (as amended 1985) and/or related laws, rules, regulations and/or policies.

2) What occurred? Unlawful practice of profession(s) fraud, misappropriation, misrepresentation and/or policies.

3) How were you affected? As employee, child advocate, and taxpaying citizen.

4) Who was involved? Mr. Clinton Henry, Superintendent(s), official(s) and/or the McDowell County Board of Education.

5) What would resolve this grievance? Removal from office of all person(s) involved with revocation of certificate(s) held. Salaries and expense with interest be paid back to state treasury from board member(s), superintendent(s), official(s), and Mr. Henry's pocket(s) with other criminal and civil legal penalties. Removal of my evaluation by Mr. Henry from record. <sup>7</sup>

In response, the respondent denies any wrongdoing and asserts that this board has no authority to remove the county superintendent or to require repayment of monies to the State Treasury and that the grievant sought none of the jobs which he alleges were filled by unqualified people.

Succinctly stated, the grievant alleges that the named school officer(s) and employees are not properly certified/qualified to perform their jobs, and therefore, are unlawfully practicing their professions and are being shown favoritism based on their salaries, which amounts to fraud and misappropriation of public monies.

---

<sup>7</sup> The grievant also alleges harassment, which will be dealt with in the decision of Docket No. 33-86-234-4, which was submitted on the record contemporaneously with this hearing.

By way of evidence to support his allegations, the grievant introduced numerous documents in his attempt to show the named individuals were not properly trained or certified to perform their respective jobs.<sup>8</sup> Not at any time did the grievant assert that he had applied for and was thereafter denied any of the jobs in question.

While the grievant may believe that named employees are not qualified, the statutory requirements would seem to have been met. In addressing the question of training and certification, the State Superintendent of Schools responded (as per Grievant's Exhibit #3) by saying that "whether the persons mentioned had proper training and certification is not a state decision but a local one."

Those persons mentioned in Grievant's Exhibit #3 were the county superintendent, three assistant superintendents and two curriculum specialists. The qualifications of a county superintendent of schools are established by the provisions of WV Code §18-4-2, which in pertinent part, provides:

The superintendent at the time of his election shall hold a certificate valid in West Virginia and an approved bachelor's degree including at least twelve semester hours in school administration and supervision, and at least five years' experience in public school teaching and/or supervision: . . .

---

<sup>8</sup> No evidence was introduced concerning the qualifications of the county board members and this decision does not attempt to treat that allegation.

Similarly, the qualifications of assistant superintendents are also established by statute, namely, WV Code §18-5-32, which in pertinent part, provides:

Rules and regulations for qualifications of assistant superintendents, and directors and supervisors of instruction and of other educational activities shall be fixed by the state board of education: Provided, however, that the qualifications required for any assistant superintendent shall in no event be higher than those required for the superintendent: Provided, further, that such rules do not affect the status of any incumbent nor his right to succeed himself in his assigned position; . . .

Thus, it appears that grievant's allegations regarding the qualifications of Superintendent Church, and Assistant Superintendent Jones are unfounded in that the grievant has shown by his own evidence that they possess the required qualifications.<sup>9</sup>

The remaining two named individuals in the grievant's complaint, Ms. Loundman and Ms. Lockhart, are coordinators of special education. As such, they are "central office administrators" as that term is defined by WV Code §18A-1-1. Ms. Lockhart and Ms. Loundman have a permanent teaching certificate and the grievant failed to show that they were unqualified.

---

<sup>9</sup> Grievant's Exhibit #10 reveals that Superintendent Church holds two permanent certificates, namely, a professional administrator's certificate and a professional teaching certificate. Similarly, Assistant Superintendent Jones holds the same two permanent/professional certificates.

To the extent that the grievant contests his evaluation(s) by Clinton Henry, because of Mr. Henry's qualifications or lack thereof, it appears that Mr. Henry has a Masters degree with certificates as follows:

<u>Certificate</u>	<u>Date of Issue</u>	<u>Duration</u>
Social Studies 7-12	1973	Permanent
Mental Retardation (Ungraded)	1975	Permanent
Principal 7-12	1979	30 June, 1988
Principal 1- 9	1979	30 June, 1988

Mr. Henry also has a temporary license as supervisor in special education (K-12). It also appears that Mr. Henry has the responsibility of coordination of the special education program and the duty to evaluate the grievant.<sup>10</sup> While this does not sit well with the grievant, who holds a doctorate degree, it is not prohibited by law.

The grievant failed to provide any evidence to show that the salaries paid to persons named in the grievance amounted to discrimination or favoritism as those terms are defined by W.Va. Code, 18-29-2(m) and (o). No evidence was presented by the grievant to show that he was being harassed as defined by W.Va. Code, 18-29-2(n).

In addition to the foregoing, the following findings of fact and conclusions of law are incorporated herein.

---

<sup>10</sup> While the record is silent, it would appear that this "management system" was approved by the West Virginia Supreme Court of Appeals in the case of Jawa v. Board of Education of McDowell County, 324 S.E.2d 161 (W.Va. 1984), wherein the grievant appeared pro se contesting, among other things, the authority of the county superintendent to implement a new management system.

### FINDINGS OF FACT

1. The grievant is a psychologist employed by the McDowell County Board of Education.
2. The grievant requested that respondent produce certain documents pursuant to WV Code §18-29-6.
3. The respondent prepared the requested documents and informed the grievant of their availability upon payment of \$283.02 costs as per an itemized statement given to the grievant.
4. The grievant requested that this hearing examiner order the respondent to give the grievant the documents without cost.
5. The grievant was advised to seek assistance from his representative or legal counsel and consider the use of a subpoena duces tecum.
6. The grievant did not cooperate with his representative and obtained the sought after information from other sources.
7. The grievant did not raise or allow pursuit of the reasonableness of the costs assessed by the respondent for the documents which were requested.
8. The grievant obtained, prior to hearing, the information he sought from the respondent through means other than the documents he requested.
9. The persons alleged by the grievant to be unqualified, namely, Bennett Church, James Jones, Paitsel Lockhart, Linda Loundman and Clinton Henry, are, in fact, qualified to act in their respective capacities.

11. Clinton Henry had among his several certifications, a temporary license as supervisor in special education.

12. Clinton Henry, as supervisor in special education, was designated by the respondent to evaluate the grievant.

#### CONCLUSIONS OF LAW

1. A grievant is required to prove by a preponderance of the evidence the essential elements of the grievance. Stanton v. Jefferson County Board of Education, Docket No. 19-86-071; Miller v. Mason County Board of Education, Docket No. 26-86-183-1.

2. The grievant herein has failed to prove by a preponderance of the evidence any basis for relief. Whelley v. Jefferson County Board of Education, Docket No. 19-86-272-2.

3. W.Va. Code, 18-29-1, et seq., did not create a separate statutory proceeding whereby school employees can remove a superintendent from office through the grievance procedure. Jawa v. McDowell County Board of Education, Docket No. 33-86-192-4.

4. Pursuant to W.Va. Code, 18-4-2, Bennett Church held the necessary certificate(s) to be qualified to act as a county superintendent of schools.

5. Pursuant to W.Va. Code, 18-5-32, James Jones held the necessary certificate(s) to be qualified to act as an assistant superintendent of schools at the county level.

6. The grievant has failed to demonstrate as a matter of law or regulation that his evaluation as conducted by Clinton Henry, while acting in the capacity as supervisor of special education, was improper.

For the foregoing reasons, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of McDowell County or the Circuit court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (WV 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.

  
JOHN M. RICHARDSON  
Hearing Examiner

DATED:

May 12, 1987