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**WEST VIRGINIA EDUCATION  
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**MANMOHAN S. JAWA**

**v.**

**DOCKET NO. 33-86-234-4**

**MCDOWELL COUNTY BOARD OF EDUCATION**

**DECISION**

On August 1, 1986 the above-styled grievance was assigned to this hearing examiner for disposition. This grievance was submitted for decision on the existing record from level two and for reasons apparent herein, was not decided until two other grievances filed by this grievant were decided.<sup>1</sup>

During the 1985-86 school year a series of events occurred which relate to this grievance. It appears in the record that the grievant, Dr. Manmohan S. Jawa, Ph.D., a psychologist employed by the McDowell County Board of Education, undertook to file grievances alleging the lack of certification of the county superintendent and other school employees. Believing these persons to be uncertified

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<sup>1</sup>This grievance was one of three grievances assigned to this hearing examiner. The other two grievances, Docket No. 33-86-198-4 and 33-86-199-4, were the subject of a separate decision dated May 12, 1987.

and/or unqualified, the grievant requested that they be removed from their positions and their salaries be repaid to the State Treasury.<sup>2</sup>

Because of the broad nature of the assertions in those grievances, Mr. Clinton Henry, the Coordinator of Special Education and grievant's immediate supervisor, decided at the request of the grievant to waive the grievances to level two. By letters dated May 27, 1986 and May 28, 1986, Jim W. Jones, Assistant Superintendent, remanded the grievances back to level one for the purpose of obtaining clarification of the matters grieved.

It is out of the above recited set of circumstances that this grievance arises.

In this grievance the grievant, for his complaint, states as follows:

1) Please list specific statutes, policies, rules, regulations, or agreements claimed to have been violated, misapplied, or misinterpreted: U.S. Const. Amend. I; W.V. Const. Art. III & 16; W.V. Code 18-29-1, 2, 3 (h)(j)(n), 4; 18-4-3 and/or 18A-2-8 (as amended 1985) and/or related laws and/or regulations.

2) What occurred? Retaliation, harassment and/or conspiracy (Mr. Henry was given written note on May 29, 1986). Unlawful remand of two grievances, phones (sic) to principals, my house interference in professional work, verbal harassment, etc.

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<sup>2</sup>While this hearing examiner attempted to state the basis of the grievant's prior grievances, it is acknowledged that this is an oversimplification of the broad area of matters asserted by the grievant in those prior grievances (see footnote #1).

4) Who was involved? Mr. Bennett Church, Mr. Jim Jones, and Mr. Clinton Henry.

5) What would resolve this grievance? Disciplinary action for insubordination and other relief as deemed fit and proper.

At the outset of the level two hearing of this grievance held on July 10, 1986, the grievant filed a written motion contained in the transcript as "Grievant's Exhibit #1" which states as follows:

MOTION

Mr. Bennett E. Church (or his designee) an accused party has called and started this hearing in violation of W V Code 18-29-6. In previous 3 grievances accused party Mr. Church (or his designee) did not hold any hearing. This hearing should be held by person(s) who meet due process and impartial manner requirements.

Grievant Jawa moves that hearing be cancelled or any decision based on this hearing shall be subject to reversal for one or more violation(s) of due process.

Respectfully Submitted

Thereafter, the transcript reveals that grievant objected to Roger Miller acting as the superintendent's designee; that he (grievant) was not provided with requested information unless costs of \$283.00 were paid and that he did not receive the notice that the hearing would be held until the day before and was not ready to proceed. (T. 3-7) That motion was overruled and the hearing proceeded.<sup>3</sup>

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<sup>3</sup> Admittedly, this motion raised substantial questions as to the  
(footnote cont.)

It is at this point that it should be noted that the grievant objected to the designee of the superintendent. This objection was based upon the belief that the superintendent was uncertified/unqualified to act as a superintendent, and therefore, could not appoint a designee. That matter was resolved in favor of the superintendent by this hearing examiner on May 12, 1987 (footnote #1, supra) as was the question involving the payment of \$283.00 in costs for information which the grievant had requested.

This leaves the matter wherein the grievant complains he had insufficient time to prepare for the level two hearing.

On December 15, 1986, the grievant appeared before this hearing examiner in response to a notice and order duly issued. The purpose for the grievant's appearance was clear in that hearings on the grievances were to proceed. The grievant filed a motion and orally requested that this grievance be submitted for decision on the basis of transcript and exhibits filed at level two. The respondent agreed and the matter was submitted for decision immediately prior to the hearing to be held in the grievances which were decided on May 12, 1987.

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(footnote cont.)

basic fairness of proceeding at that time. However, the grievant, on his appearance at the level four hearing of this grievance, emphatically insisted that he be allowed to submit this grievance on the record. Noting again as I did in the previous decision of May 12, 1987, the grievant had a knowledgeable representative present but would not let him participate in the preparation or presentation of this grievance.

Therefore, it would appear that any objection(s) which the grievant may legitimately have had as to the procedure at level two would be waived in favor of arriving at a decision based upon the merits at level four. In deference to the grievant's lack of legal background, this hearing examiner has extended every effort to examine this record as well as the record of the previous two grievances in order to arrive at a decision.

The grievant claims that his rights were violated through the retaliation, harassment and conspiracy of Bennett Church, Jim Jones and Clinton Henry and is based upon the following revelations in the record:

- 1) The grievant's grievances were sent back from level two to level one for clarification; and,
- 2) That Clinton Henry called or caused to be called by telephone some person(s) who were believed to know the whereabouts of the grievant on a day in which he could not be located at his place of work.

It is uncontested that Assistant Superintendent Jones, upon receipt of the grievant's grievance forms, had them returned to obtain additional information. Upon receipt of those returned forms, Mr. Henry attempted to contact the grievant who had signed out to visit Iaeger Elementary and Iaeger Intermediate Schools. Mr. Henry had each of the principals in those schools contacted. Following the negative response as to the whereabouts of the grievant from the principals, Mr. Henry was informed that Dr. Jawa's automobile was seen in the Wilcox vicinity heading in the direction of grievant's house.

A call was placed to grievant's house where his wife answered.<sup>4</sup> (T. 22) This call, while not appearing to be rude, apparently upset the grievant's wife.<sup>5</sup>

The grievant, upon learning that he was being sought after, decided to go to Mr. Henry's office and arrived there between 10:40 a.m. and 10:50 a.m. that same morning.<sup>6</sup> Mr. Henry did not believe the grievant's explanation and caused a letter to be written to him explaining that his pay was going to be docked for  $\frac{1}{2}$  a day and that he should come in to discuss the matter. The grievant did go into Mr. Henry's office and took a letter from the principal of Iaeger Elementary School that confirmed the grievant was at the kindergarten building approximately one mile from the elementary school on the day in question.

Upon receipt of this information, the matter was dropped and the grievant's pay was not docked. Shortly thereafter, this grievance was filed.

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<sup>4</sup> Apparently the grievant's wife was ill that day and was not working. (T. 22)

<sup>5</sup> Notably, the grievant's wife did not appear or testify to corroborate her being upset by the call. She also did not know where the grievant was at the time the inquiry was made.

<sup>6</sup> It is now conceded by the respondent board that the grievant was at Iaeger Kindergarten which is located approximately one mile from Iaeger Elementary. At the time the principal of Iaeger Elementary School was contacted by Mr. Henry, he was not aware that the grievant was at the kindergarten building.

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

#### FINDINGS OF FACT

1. The grievant, Manmohan S. Jawa, is a psychologist employed by the McDowell County Board of Education.

2. Clinton Henry is the Coordinator of Special Education, and as such, is the grievant's immediate supervisor.

3. Prior to the filing of this grievance, the grievant had filed two other grievances contesting, among other things, the certifications/qualifications of the county superintendent and other employees. Those grievances were returned by Assistant Superintendent Jim Jones (level two) to Clinton Henry (level One) for clarification by the grievant.

4. Clinton Henry attempted to contact the grievant at the schools where the grievant had indicated he was going to visit. At that time neither of the principals contacted knew the whereabouts of the grievant.

5. The grievant produced a letter signed by the principal at Iaeger Elementary School that the grievant was at the kindergarten building on the date and time in question.

6. Based upon the letter produced by the grievant, no disciplinary measures were taken by the respondent.

7. In the attempt to contact the grievant, a call was placed to the grievant's home. There was no evidence that the call was rude or obtrusive.

8.. No evidence of a conspiracy or retaliation by or between Bennett Church, Jim Jones or Clinton Henry was introduced.

#### 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.

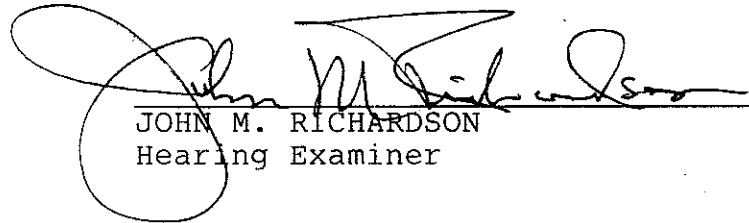
3. The grievant has failed to prove as a matter of law or regulation that the action taken by Clinton Henry, while acting in his capacity as the grievant's immediate supervisor, was improper.

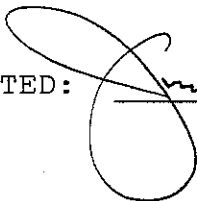
4. The grievant has failed to prove as a matter of law that the action of Assistant Superintendent Jones in remanding the grievances to level one was done for the purpose of violating any rights of the grievant.

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 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.

  
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JOHN M. RICHARDSON  
Hearing Examiner

DATED:  June 8, 1987