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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
ARCH A. MOORE, JR.
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BERNARD POOLE

v.

Docket No. 34-88-162

NICHOLAS COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Bernard Poole, was employed by the Nicholas County Board of Education (Board) as Director of School Plant Planning until his resignation on June 30, 1987. He filed a grievance on April 26, 1988 alleging the Board had improperly denied him compensation for twenty and one-half (20½) accrued vacation days. A Level II hearing was held May 27, 1988 and the Board waived Level III proceedings on August 3, 1988.¹ A Level IV hearing was held September 19, 1988.

¹No recording was made of the Level II proceedings and grievant and Superintendent of Schools Robert Bailey merely had an informal discussion of the merits of the grievance at that Level. Mr. Bailey subsequently issued a decision in which he indicated he was unable to resolve the matter at Level II.

Grievant submitted a letter of resignation dated May 15, 1987 to Mr. James Hinkle, President of the Nicholas County Board of Education, which noted that the effective date of his resignation would be June 30, 1987. The letter also notified Mr. Hinkle that grievant had accumulated a number of days of vacation leave for which he would be reimbursed between July 1 and July 23, 1987. (Employee's Exhibit No. 1) On May 29, 1987 during a special meeting, the Board voted to accept grievant's resignation. (Employee's Exhibit No. 3) At a meeting held August 5, 1987 the Board considered a request by the grievant that it waive a policy which restricted compensation for a retiring employee to no more than eighteen (18) vacation days and the request was unanimously denied. (Employee's Exhibit No. 5) By letter dated October 5, 1987 counsel for grievant notified the Board that he felt the denial was contrary to law and Board policy. (Employee's Exhibit No. 10)

Grievant contends his letter of resignation contained a contingency which, once accepted, bound the Board to deviate from its policy and pay him for thirty-eight and one-half (38½) vacation days. The Board asserts that when Mr. Poole forwarded his Level I grievance form on April 26, 1988 to the Superintendent of Schools at that time, Mr. Ronald Welty, he was no longer an employee of the Board and could not legally proceed through the

grievance procedure contained in W.Va. Code §§18-29-1, et seq.²
The Board further asserts that it nevertheless complied with the procedures contained therein and if it were conceded that grievant was an employee at the time of the filing, his letter of resignation contained no contingencies for payment of excess vacation leave.

Implicit in the Board's assertion that grievant was no longer an employee when he filed the grievance on April 26, 1988 is a contention that it was not filed in accordance with the timeliness requirements of W.Va. Code §18-29-4. Those requirements are as follows:

(1) Before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant or the designated representative shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought.

²Although the Board's primary argument at the Level IV hearing concerned the question of the jurisdiction of the West Virginia Education and State Employees Grievance Board in a matter where the grievant had ended his contractual relationship, its proposed findings of fact and conclusions of law also address the issue of timeliness. Because this issue is dispositive of the grievance, the question of whether or not grievant was an employee of the Board at the time of filing is not addressed herein.

The West Virginia Education and State Employees Grievance Board has previously held that a failure to timely pursue a redress of a possible violation of rights without valid reason for the delay constitutes laches and precludes consideration of the matter. Earls v. Cabell County Board of Education, Docket No. 06-86-360-1 (April 7, 1987); Zban v. Cabell County Board of Education, Docket no. 06-87-010 (July 7, 1987); Mayo v. Harrison County Board of Education, Docket No. 17-88-014-2 (August 31, 1988); Smith v. West Virginia School of Osteopathic Medicine, Docket No. BOR-88-051-4 (September 29, 1988). Grievant, by his own admission, was fully aware of the action taken by the Board on August 5, 1987 and yet he did not initiate grievance proceedings pursuant to the provisions of W.Va. Code §§18-29-1, et seq. until April 26, 1988. (T.__) Grievant did attempt to protest the action through a citizen's grievance procedure on December 12, 1987 but even that action was taken four months after the Board decided to deny him the requested compensation.³ Mr. Poole

³This action was filed in accordance with West Virginia Board of Education Policy 7211 and a decision of the State Superintendent of Schools, Tom McNeel, dated March 30, 1988 held that Policy inapplicable in grievant's circumstances and noted that, "it appears to be an employee grievance hearable under the employee grievance procedure established in W.Va. Code §18-29-1, et seq." (Board's Exhibit No. 3). After receiving this decision, grievant still waited twenty-seven (27) days before initiating proper grievance procedures.

provided no reasonable explanation for the long delay in making known his objection to the Board's decision.⁴

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

FINDINGS OF FACT

1. Grievant, Bernard Poole, was employed by the Nicholas County Board of Education as Director of School Plant Planning until his resignation on June 30, 1987.

2. Mr. Poole filed a grievance pursuant to the provisions of W.Va. Code §§18-29-1, et seq. on April 26, 1988.

3. Grievant provided no explanation for the excessive delay in filing except his erroneous assumption that he should proceed through the citizen's grievance procedure contained in West Virginia Board of Education Policy 7211.

⁴As previously noted, counsel for grievant notified the Board by letter dated October 5, 1987 that he felt its actions were in violation of school law and even if this letter could be construed as the initial step in the proper grievance procedure, it too was two months after the Board's action.

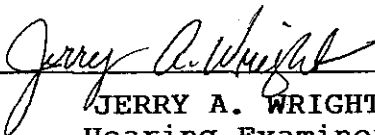
CONCLUSIONS OF LAW

1. A failure to timely pursue a redress of a possible violation of rights without valid reason for the delay constitutes laches and precludes consideration of the matter by the West Virginia Education and State Employees Grievance Board. Earls v. Cabell County Board of Education, Docket No. 06-86-360-1 (April 7, 1987); Zban v. Cabell County Board of Education, Docket No. 06-87-010 (July 7, 1987); Mayo v. Harrison County Board of Education Docket No. 17-88-014-2 (August 31, 1988); Smith v. West Virginia School of Osteopathic Medicine, Docket No. BOR-88-051-4 (September 29, 1988).

2. Grievant's failure to timely file a grievance in accordance with the provisions of W.Va. Code §18-29-4 over the Board's decision to deny him compensation for 20½ days accrued vacation leave or provide a valid reason for the delay constitutes laches.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Nicholas County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code §18-29-7) Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.



JERRY A. WRIGHT
Hearing Examiner

Dated: December 6, 1988