



**Members**  
James Paul Geary  
Chairman  
Orton A. Jones  
David L. White

**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**  
**GASTON CAPERTON**  
Governor

**Offices**  
240 Capitol Street  
Suite 515  
Charleston, WV 25301  
Telephone 348-3361

**BARBARA DUNCAN**

**v.**

**Docket No. 89-22-048**

**LINCOLN COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant Barbara Duncan is employed as a classroom teacher by Respondent Lincoln County Board of Education. She originated this grievance at Level IV on February 7, 1989, alleging

[v]iolation of. . .[W.Va. Code §] 18A-2-8 in regard to her dismissal for insubordination and willful neglect of duty,

and explaining

[G]rievant had tendered her resignation before the charges were made. . .[and she] seeks relief by having the letter and charges removed from her personnel files.

On March 3, 1989, Level IV hearing was conducted. During that hearing, it was revealed that Grievant had never been dismissed by Respondent; instead, Grievant's dismissal had merely been recommended to Respondent by Stephen Priestley, Superintendent of Schools for Lincoln County.

Under questioning, Respondent explained that it was attempting "to adhere to the steps outlined by [then-State Superintendent of Schools] Dr. [Tom] McNeel" in a memorandum of February 22, 1988,\* in pertinent part as follows (footnotes in original, emphasis supplied):

[W.Va. Code §18A-2-8 authorizes a county board of education to. . .dismiss an employee for one of the six grounds stated therein. Either the county superintendent or the board can initiate. . .dismissal proceedings; however, the board [of education] must approve any such action. . . The procedure below should be followed in cases of dismissal for cause.

1. Prepare written recommendation and statement of charges and file with board [of education].<sup>1</sup>
  2. Serve or given written charges to employee within 2 days after presentation to board [of education], and obtain signed receipt.<sup>2</sup>
- [No number 3 in original].
4. Board [of education] conducts hearing upon proposed dismissal, at which time the reasons for dismissal must be proven.<sup>3</sup>
  5. Board [of education] approves or rejects dismissal.
  6. Employee is notified of board [of education] action.

[Footnotes]

1 If employee is suspended pending a hearing, the board [of education] must approve the action within 30 days or extend the period of suspension pending a hearing.

2 Within 5 days after receiving the written charges, the employee may make written request for a Level IV hearing before an examiner of the [West Virginia] Education [and State] Employees Grievance Board. This removes the hearing from the county board [of education's] jurisdiction, unless

---

\* The first sentence of this memorandum states that these steps are "suggested" guidelines.

[Footnotes continued]

subsequently remanded<sup>\*\*</sup> by the hearing officer.  
If remanded, the case proceeds to step 4.

- 3 Even though the Legislature deleted the requirement for a hearing before the county board of education when it amended [§]18A-2-8 in 1983, the United States Supreme Court, in Cleveland Board of Education v. Loudermill, 470 U.S. \_\_\_, 105 S.Ct. 1487 (1985), held that public employees who can duly be discharged for cause must be given notice and an opportunity to present reasons why the proposed action should not be taken.

[End of memorandum excerpt].

W.Va. Code §18A-2-8 provides, in pertinent part:

Notwithstanding any other provision of law, a board [of education] may. . .dismiss any person in its employment at any time for: . . .insubordination. . .[and/or willful neglect of duty, but the charges shall be stated in writing served upon the employee within ten days of presentation of said charges to the board [of education]. The employee so affected shall be given an opportunity, within five days of receiving such written notice, to request, in writing, a level four hearing. . .pursuant to. . .[W.Va. Code §18-29-1 et seq.]. . .

Code §18A-2-7 provides, in pertinent part:

The [county school] superintendent, subject only to approval of the [county] board [of education], shall have authority. . .to recommend. . .[the] dismissal [of school personnel]. . .

Code §18-29-2(a) provides, in pertinent part:

"Grievance" means any claim by. . .an affected employee [] of. . .[a] county board[] of education. . .alleging a violation, a misapplication or a misinterpretation of the statute, policies, rules, regulations or written agreements under which such employees work. . .

---

<sup>\*\*</sup> The undersigned notes there would be no forum to which such a "case" could be remanded since it would not have then been previously considered by any other adjudicative body.

The remainder of this Decision will be presented as formal findings of fact and conclusions of law.

#### FINDINGS OF FACT

1. Grievant is employed as a classroom teacher by Respondent.

2. On January 30, 1989, Stephen Priestley, Superintendent of Schools for Lincoln County, recommended that Respondent dismiss Grievant from employment for insubordination and willful neglect of duty, related to her failure to appear for work January 23-27, 1989.

3. On February 7, 1989, Grievant filed a Level IV grievance challenging this recommendation, alleging she had resigned her position with Respondent effective January 23, 1989.

4. Respondent has not, to date, chosen to act upon Priestley's recommendation.

#### CONCLUSIONS OF LAW

1. A county superintendent of schools may recommend to his/her county board of education that one of its employees be dismissed. W.Va. Code §18A-2-7.

2. Charges that a school staff member is insubordinate, or guilty of willful neglect of duty, may be presented

to the employing county board of education for action thereon. Code §18A-2-8.

3. West Virginia law pertaining to school personnel (Code §§18A-1-1 et seq.) and education employee grievances (Code §§18-29-1 et seq.) must be read in pari materia. See Gabbert v. Greenbrier Co. Bd. of Educ., Docket No. 13-88-187 (Dec. 12, 1988).

4. In a case such as the instant one, a "grievance" does not arise until the board of education acts upon recommendations or charges presented to it to dismiss the affected employee. Code §§18-29-2(a), 18A-2-8.\*\*\* To hold otherwise would be to interpret §18A-2-8 so literally as to obtain an absurd result, which practice is precluded in the law, State ex rel. McLaughlin v. Morris, 128 W.Va. 456, 461 (1946), since no actual relief would at that point be available from this Grievance Board. It would also be contrary to the underlying philosophy of West Virginia education employee grievance law, which is to encourage the resolution of personnel disputes at the lowest possible level. Code §18-29-1.

5. In this case, Respondent has denied itself and Grievant the benefit of the opportunity to adopt or reject

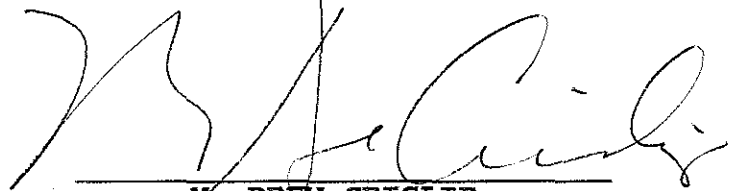
---

\*\*\* The undersigned is aware that Code §18A-2-8, prior to the establishment of the West Virginia Education [and State] Employees Grievance Board, expressly provided for a hearing on dismissal recommendations by a county board of education.

Priestley's recommendation, and this circumstance likewise thwarts the purpose of the law. See id.

Accordingly, this Grievance Board lacks jurisdiction to consider this case and it is **DISMISSED** and **STRICKEN** from the docket. This dismissal should in no way be construed to limit Grievant's ability to pursue any related claims in appropriate forums, including this Grievance Board.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln 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.

A handwritten signature in dark ink, appearing to read 'M. Drew Crislip', is written over a horizontal line.

**M. DREW CRISLIP**  
**HEARING EXAMINER**

**Dated:** March 27, 1989