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**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**  
GASTON CAPERTON  
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**ALICE LILLY**

v.

Docket No. 89-10-436

**FAYETTE COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Alice Lilly, filed a grievance at Level IV August 4, 1989 which stated:

Recommendation that grievant be terminated as teacher at Ansted Elementary School; That grievant be given a Level Four hearing and her record be expunged.

A hearing was held September 19, 1989, at which time the procedural history of the case was developed as follows. During a meeting of the Fayette County Board of Education (Board) held July 21, 1989, Superintendent of Schools Dr. Randall Broyles requested authority to send grievant a letter of termination "with the provision that [she] has the option of a Level IV hearing". Minutes of that meeting reflect that no vote was taken on the request but only that President David Arritt "noted that the Board had received this information and authorized the administration to proceed" (Board's Exhibit 1A).

Grievant received a letter dated July 24, 1989, from Dr. Broyles advising her that "recommendation has been made in regard to your termination due to incompetence". The letter also advised grievant that the recommendation had been made because of her failure to show progress toward the correction of deficiencies identified in a plan of improvement. Dr. Broyles further informed grievant that she could, within five days of receipt of the letter, request a Level IV hearing (Board's Exhibit No.1). An attached certified mail return receipt indicates grievant received this letter August 3, 1989. As previously noted, grievant filed her request the following day.

By letter dated August 18, 1989 (Board's Exhibit No.2), Dr. Broyles notified grievant that she was suspended without pay effective August 29, 1989, the beginning of the 1989-90 school term. Dr. Broyles further noted "[T]his suspension is pending disposition of the charges against you for dismissal as a teacher for the Fayette County Board of Education".

At hearing, following the brief testimony of grievant's supervisor, Mr. Ralph Winter, Principal at Ansted Elementary School, Dr. Broyles testified that the Board, during the July 21, 1989 meeting, had merely authorized him to send a letter indicating recommendation for termination. After a review of the minutes of that meeting the parties were advised that the case was not properly before the West Virginia Education and State Employees Grievance Board since the Board had not dismissed grievant. Counsel for the Board took objection to this ruling and was advised to submit a brief setting forth the Board's

position. Counsel for grievant then moved for her immediate reinstatement and backpay. The undersigned deferred a ruling on this motion and advised counsel to also brief the issues raised therein. Submissions were made by October 4, 1989.

Although the parties raise several legal questions, the only one that can be properly addressed is the Board's contention that final action on a superintendent of school's recommendation to dismiss an employee is not required by applicable law when the employee files a request for a Level IV hearing within five days of receipt of the superintendent's recommendation. This issue was addressed in Duncan v. Lincoln County Board of Education, Docket No. 89-22-044 (March 27, 1989) wherein it was held a grievance does not arise until a county board of education acts upon a superintendent's recommendation for dismissal. This Grievance Board is thus without jurisdiction to consider the matter or take action other than dismissing the case from its docket. See id.

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

#### FINDINGS OF FACT

1. Grievant, Alice Lilly, is employed by the Fayette County Board of Education as a classroom teacher at Ansted Elementary School.

2. By letter dated July 24, 1989, grievant was advised by Dr. Randall Broyles that a recommendation for her dismissal had been made.

3. Grievant received Dr. Broyles' letter on August 3, 1989 and filed an appeal at Level IV August 4, 1989.

4. As of September 19, 1989 the Board had never taken action to dismiss the grievant.

#### 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.

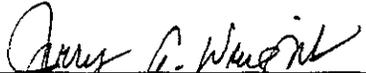
2. Charges that a school staff member is incompetent may be presented to the employing county board of education for action thereon. W.Va. Code §18A-2-8.

3. Until a county board of education acts upon recommendations or charges presented to it to dismiss an employee, a grievance does not arise. W.Va. Code §§18-29-2(a), 18A-2-8; Duncan v. Lincoln County Board of Education, Docket No. 89-22-048 (March 27, 1989). In the absence of such action, this Grievance Board is without jurisdiction to take action other than dismissing the case from its docket. A ruling on grievant's motion for

reinstatement and backpay pending Board action is therefore precluded.

Accordingly, the grievance is **DISMISSED** and **STRICKEN** from the docket of the West Virginia Education and State Employees Grievance Board.

Either party may appeal this decision to the Circuit Court of Fayette County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-28-7. 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.

  
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JERRY A. WRIGHT  
Chief Hearing Examiner

Dated: November 28, 1989