DAVID GILLISPIE,

Grievant,

v. **Docket No. 98-20-216**

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

David Gillispie (Grievant), a Principal employed by Respondent Kanawha County Board of Education (KCBE), filed this grievance pursuant to W. Va. Code §§ 18-29-1, et seq., on July 14, 1997. Grievant sought compensation at the regular rate of pay for all McKinley Junior High School professional staff members (See footnote 1) who were required to attend "Tools for Schools" training on July 7-11, 1997. The grievance was elevated to Level II on August 5, 1997, because Grievant's immediate supervisor did not have authority to resolve the issue. Following a Level II hearing on October 1, 1997, the grievance was denied by the Superintendent's designee, Linda Winter, in a written decision issued on October 15,1997. Grievant appealed to Level III, (See footnote 2) and, on May 18, 1998, KCBE reversed the Level II decision, voting to "pay staff members who participated in [the] training at their regular contract rate." Grievant has appealed to Level IV because KCBE did not include prejudgment interest in its award, a remedy explicitly requested in Grievant's initial grievance statement. Grievant indicated that this matter could be decided upon the record developed through Level III. The parties were afforded an opportunity to supplement the record with written arguments, but neither party made any further submission. This matter became mature for decision on August 14, 1998, upon receipt of a transcript of the proceedings before KCBE at Level III.

DISCUSSION

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

Ordinarily, the relief provided to a grieving employee under the education grievance procedure involves a "make-whole" remedy, intended to restore the employee to his or her rightful place as an employee of the county board. See W. Va. Code § 18-29-5(b); Graf v. W. Va. Univ., 189 W. Va. 214, 429 S.E.2d 496 (1992); Sanders v. Putnam County Bd. of Educ., Docket No. 97-40-459 (Dec. 3, 1997). See also W. Va. Dep't of NaturalResources v. Myers, 191 W. Va. 72, 443 S.E.2d 229 (1994); Monteith v. Bd. of Educ., 180 W. Va. 31, 375 S.E.2d 209 (1988). See generally Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975); Newman v. Piggie Park Enterprises, 390 U.S. 400 (1968); W. Va. Inst. of Technology v. W. Va. Human Rights Comm'n, 181 W. Va. 525, 383 S.E.2d 490 (1989). Grievant is contending that the employees are not being made whole unless they receive interest on the back pay they are to receive as a result of the school board's ruling in their favor. (See footnote 3)

This Grievance Board has previously recognized that back pay damages are essentially wages which the employee would have received had the employer not wrongfully deprived the employee of such wages and the opportunity to benefit from their use. Stickley v. Berkeley County Bd. of Educ., Docket No. 95-02-573 (Feb. 20, 1998); Yokum v. Randolph County Bd. of Educ., Docket No. 97-42-299 (Jan. 14, 1998). Accordingly, this Board has determined that “full reimbursement is not accomplished unless prejudgment interest is received.” Stickley, supra; Yokum, supra. Accord, Blankenship v. W. Va. Dep't of Health & Human Resources, Docket No. 90-H-438 (Sept. 30, 1991), rev'd on other grounds, 189 W. Va. 342, 431 S.E.2d 681 (1993). Because this grievance involves the amount of wages the employees were entitled to receive for attending mandatory training, the affected employees should be paid interest at the prevailing rate on the back wages they were awarded by the school board, calculated fromthe date they would have been paid for attending the training at issue until the date KCBE issued their back wages. See Gribben v. Kirk, 195 W. Va. 488, 466 S.E.2d 147 (1995); Weimer-Godwin v. Bd. of Educ., 179 W. Va. 423, 369 S.E.2d 726 (1988).

In addition to the foregoing discussion, the following Findings of Fact and Conclusions of Law are appropriate in this matter.

FINDINGS OF FACT

1. Grievant is employed by the Kanawha County Board of Education (KCBE) as Principal of McKinley Junior High School.

2. On July 14, 1997, Grievant filed a grievance under W. Va. Code §§ 18-29-1, et seq., alleging that the professional staff at McKinley Junior High School had not been properly compensated for attending “Tools for Schools” training during the summer months when they were not working pursuant to their employment contracts.

3. The professional staff members were each paid $100 for each day of training attended, an amount which is less than their regular contract rate. Grievant sought compensation for the difference between those rates, plus interest.

4. On October 15, 1997, a grievance evaluator serving as the Superintendent's designee denied the grievance at Level II, indicating that the grievance was not timely filed and that the training was not mandatory.

5. Following a Level III hearing before KCBE on March 26, 1998, the school board “voted at its May 18th meeting to reverse the Level II decision . . . and to pay staff members who participated in that training at their regular contract rate.”

6. Staff members were not awarded interest on their back pay.

CONCLUSIONS OF LAW

1. In a nondisciplinary grievance, the grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

2. "School personnel laws and regulations are to be construed strictly in favor of the employee." Syl. Pt. 1, Morgan v. Pizzino, 163 W. Va. 454, 256 S.E.2d 592 (1979).

3. Hearing examiners at Level IV of the grievance procedure for education employees are authorized to "provide such relief as is deemed fair and equitable." W. Va. Code § 18-29-5(b). See Graf v. W. Va. Univ., 189 W. Va. 214, 429 S.E.2d 496 (1992).

4. Ordinarily, the relief provided to a grieving employee under the education grievance procedure, W. Va. Code §§ 18-29-1, et seq., involves a "make-whole" remedy, intended to restore

the employee to his or her rightful place as an employee. See W. Va. Code § 18-29-5(b); Graf v. W. Va. Univ., 189 W. Va. 214, 429 S.E.2d 496 (1992); Sanders v. Putnam County Bd. of Educ., Docket No. 97-40-459 (Dec. 3, 1997). See also W. Va. Dep't of Natural Resources v. Myers, 191 W. Va. 72, 443 S.E.2d 229 (1994); Monteith v. Bd. of Educ., 180 W. Va. 31, 375 S.E.2d 209 (1988). See generally Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975); Newman v. Piggie Park Enterprises, 390 U.S. 400 (1968); W. Va. Inst. of Technology v. W. Va. Human Rights Comm'n, 181 W. Va. 525, 383 S.E.2d 490 (1989).

5. Back pay damages are essentially wages which the employee would have received had the employer not wrongfully deprived the employee of such wages and the opportunity to benefit from their use. In such circumstances, a grievant is not made wholeunless prejudgment interest is received. Stickley v. Berkeley County Bd. of Educ., Docket No. 95-02-573 (Feb. 20, 1998); Yokum v. Randolph County Bd. of Educ., Docket No. 97- 42-299 (Jan. 14, 1998). See Gribben v. Kirk, 195 W. Va. 488, 466 S.E.2d 147 (1995); Weimer-Godwin v. Bd. of Educ., 179 W. Va. 423, 369 S.E.2d 726 (1988).

Accordingly, this Grievance is **GRANTED**. Respondent Kanawha County Board of Education is hereby **ORDERED**, in accordance with this decision, to award prejudgment interest at the statutory rate (W. Va. Code § 56-6-31) on the back pay previously awarded to those McKinley Junior High School staff members who attended “Tools for Schools” training during the summer of 1997.

Any party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

LEWIS G. BREWER

ADMINISTRATIVE LAW JUDGE

Dated: August 26, 1998

Footnote: 1

KCBE did not challenge Grievant's standing to file a grievance in behalf of other employees who did not elect, in writing,

to join the grievance as provided in W. Va. Code § 18-29-2(a).

Footnote: 2

Grievant was represented by counsel, J. David Cecil, of Armada and Cecil. Respondent was represented by its General Counsel, Gregory W. Bailey.

Footnote: 3

KCBE's position on paying interest is not apparent, as that issue was not addressed in the Level III record, or any correspondence implementing the school board's Level III decision. At Level III, the administration contended the grievance was neither timely nor supported by the facts, contentions adjudicated in Grievant's favor by KCBE.