BRENDA YOKUM,

Grievant,

v. **DOCKET NO. 97-42-299**

RANDOLPH COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Brenda Yokum, Grievant, filed this grievance against her employer, the Randolph County Board of Education, Respondent. She asserts:

> Grievant, a regularly employed [S]ecretary II, accrued eight years of experience with the Respondent on January 25, 1997. Grievant contends that the Respondent failed to reclassify her as a [S]ecretary III on that date in violation of West Virginia Code §18A-4-8.

As relief, "Grievant seeks reclassification, wages, benefits and seniority retroactive to January 25, 1997 and interest on all monetary sums."

Grievant was denied relief at Levels I and II of the grievance procedure. Pursuant to W. Va. Code §18-29-4(c), Grievant waived the submission of her grievance to Level III, and the Level II decision was appealed directly to Level IV. A Level IV evidentiary hearing was held at the Grievance Board's office in Elkins, West Virginia, on September 9, 1997. This case became mature for decision on October 23, 1997, with receipt of Grievant's post-hearing submission.

The parties have stipulated to the following facts:

1. [Grievant] is employed by the Randolph County Board as Secretary II/Accountant II at Harman School.

2. [Grievant] was hired on January 27, 1988 as a Secretary II.

3. [Grievant] was granted a leave of absence for one year, September 1991 to June 1992.

4. January 27, 1997,[1] was the eighth-year anniversary date of [Grievant's] employment.

5. Grievant had not completed eight full years (as defined by 133 working days) of employment with Respondent on January 27, 1997.

ISSUE

This case presents a purely legal question which is: What is the appropriate effective date for the reclassification of a Secretary II to a Secretary III based upon his/her completion of eight years of service?[2]

DISCUSSION

Respondent asserts that in accordance with W. Va. Code §18A-4-8, ¶94, it reviews the classifications of its employees annually,

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[1]In 1997, January 25 was a Saturday. January 27, 1997 was the first work day after January 25, 1997.

[2]W. Va. Code §18A-4-8, ¶84, in pertinent part, provides:

> Secretary III means ... any personnel who have served in a position which meets the definition of 'Secretary II' or 'Secretary III' herein for eight years.

every spring.[3] If a reclassification of an employee's status is required, it will become effective July 1. Respondent also asserts that it cannot reclassify employees during the school year because it would be too burdensome to reclassify a few employees every month during the school year, and that "[t]he Legislature clearly intended that these reclassification decisions be done on an annual basis in order to avoid mass confusion and grievances ..." .

While it is true that a county board of education must annually review the classifications of its school service employees, Respondent's method (in the instant case) reclassifies Grievant seven months after she has met the requirements of the advanced classification (that of Secretary III). The record will not support Respondent's assertion that to reclassify employees effective on the date they accrue the requisite experience would be too burdensome. The undersigned could find only two other classifications (Cook II and Aide III) in W. Va. Code §18A-4-8 which require reclassification based on experience.

Grievant cites Bellotte v. Harrison County Bd. of Educ., Docket No. 89-17-295 (Sept. 20, 1987). In Bellotte, the grievant transferred into a special education Aide II position in early

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[3]W. Va. Code §18A-4-8, ¶94, in pertinent part, provides:

> The county boards shall review each service personnel employee job classification annually and shall reclassify all service employees as required by the job classifications.

November 1987. In early November 1988, the board of education reclassified the grievant as an Aide III based on the following language in W. Va. Code §18A-4-8, "Aide III means those personnel referred to in the Aide I classification who ... are employed as an aide in a special education program and have one year's experience as an aide in special education."

The grievant in Bellotte contended that as a result of working more than 133 days in the 1987-1988 school year he gained a full year of experience in special education, and was entitled to reclassification to Aide III at the beginning of the 1988-1989 year. The Grievance Board rejected this logic, held that the grievant was not entitled to the Aide III title or pay prior to early November 1988, and stated that the number of days an employee works in a given school year is important in some determinations but not in the case at hand. Compare Harkins v. Ohio County Bd. of Educ., 179 W. Va. 373, 369 S.E.2d 224 (1988).

Therefore, Grievant in her Proposed Findings of Fact and Conclusions of Law concludes:

> The application of Bellotte to the present case is obvious. An employee is due reclassification based on years of experience on the date they accrue the requisite experience. An employee does not gain a full year of experience as a result of working 133 days in a school year for these purposes as in Bellotte, nor does an employee receive zero years of experience if the employee works less than 133 days in a school year as in the current case.

The undersigned agrees with Grievant's conclusion. Moreover,

W. Va. Code §18A-4-8, in pertinent part, provides:

> Upon the change in classification or upon meeting the requirements of an advanced classification of or by any employee, the employee's salary shall be made to comply with the requirements of this article, and to any county salary schedule in excess of the minimum requirements of
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> this article, based upon the employee's advanced classification and allowable years of employment.

Emphasis added.

Clear and unambiguous language ordinarily must be applied not construed. Miller v. Bd. of Educ. of County of Boone, 190 W. Va. 153, 437 S.E.2d 591 (1993). Moreover, it is well established that the word "shall," in the absence of language in the statute showing a contrary intent on the part of the Legislature, should be afforded a mandatory connotation. See Syl. Pt. 1, Nelson v. Public Employees Insurance Bd., 171 W. Va. 445, 300 S.E.2d 86 (1982).

Therefore, an employee is due reclassification based on years of experience effective on the date he or she accrues the requisite experience. An employee does not gain a full year of experience as a result of working 133 days in a school year for these purposes (as in Bellotte), nor does an employee receive zero years of experience if the employee works less than 133 days in a school year as in the current case.

CONCLUSIONS OF LAW

1. In a nondisciplinary action, Grievant has the burden of proving her case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995).

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

3. Pursuant to the provisions found in W. Va. Code §18A-4-8, an employee is to be reclassified based on years of experience effective on the date they accrue the requisite experience.

4. Grievant proved, by a preponderance of the evidence, that Respondent should have reclassified her as a Secretary III effective on January 27, 1997.

5. Given that back pay damages essentially are wages which Grievant would have received, and that the goal is to place the prevailing party in the same position she would have been, had she not been deprived of the sum owed her, and had benefitted from the full use of the money during the period of deprivation, full reimbursement is not accomplished unless prejudgment interest is received. See Gribben v. Kirk, 195 W. Va. 488, 466 S.E.2d 147 (1995); Weimer-Godwin v. Bd. of Educ. Upshur County, 179 W. Va. 423, 369 S.E.2d 726 (1988).

Accordingly, the grievance is **GRANTED**. Respondent is **ORDERED** to change Grievant's reclassification date as a Secretary III to January 27, 1997, and to award her all benefits provided for by law, including (but not limited to) back pay and interest, from that date.

Any party may appeal this DECISION to the Circuit of Kanawha County or to the Circuit Court of Randolph 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.

DATED: January 14, 1998.

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JEFFREY N. WEATHERHOLT
ADMINISTRATIVE LAW JUDGE