WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

LIBBY KOWALSKY
Grievant,

v. **Docket No. 2008-1099-MnrED**

MONROE COUNTY BOARD OF EDUCATION,
Respondent.

D E C I S I O N

Grievant, Libby Kowalsky, a secretary assigned to the central office, filed a grievance against Respondent, Monroe County Board of Education (MCBOE), on January 22, 2008,[1] protesting the agency's decision not to grant her back pay for the prior school year (2006-2007).[2] The Statement of Grievance provides in part:

> Grievant contends that she is entitled to additional years of increment for prior work experience pursuant to the local policy and West Virginia Code §§ 18A-4-5b & 6C-2-2(g)(1). She has been awarded this experience prospectively. She contends that she is entitled to back pay for a year in conformity with West Virginia Code § 6C-2-3(c)(3).

Grievant's request for relief provides:

> Grievant seeks one year of back pay, i.e., for the 2006-2007 school year, for the additional years of experience or years of increment for prior work experience that she was granted prospectively by the board of education. Grievant also seeks interest on this sum.

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[1] Grievant initially filed the grievance on an improper form. She filed the corrected form on January 25, 2008.

[2] This would be the difference between Grievant's salary for the 2006-2007 school year and the amount she would have been paid if she had received credit for the additional five years of experience under the 2006-2007 salary schedule retroactively.

A level one conference was held on February 7, 2008. A level one decision issued February 22, 2008, by Dr. Lyn Guy, Respondent's chief administrator, denied the grievance at that level. Grievant appealed to level two on March 5, 2008. The parties thereafter requested a waiver to level three which was granted on or about May 8, 2008. A level three hearing was convened before the undersigned Administrative Law Judge on June 30, 2008, in Beckley, West Virginia. Grievant was represented by John Roush, Esquire, of the West Virginia School Service Personnel Association, and Respondent was represented by Gregory W. Bailey, Esquire, Bowles Rice McDavid Graff & Love, LLP. This case became mature for decision on July 28, 2008, the mailing deadline for the submission of the parties' proposed findings of fact and conclusions of law. Both parties have submitted proposed findings of fact and conclusions of law.

Synopsis

Grievant requested five years of experience credit pursuant to an obscure Board policy and Respondent granted her request. The heightened degree of experience credit had the effect of increasing Grievant's salary. MCBOE established the salary increase effective July 1, 2007. Subsequently, Grievant requested that she be granted retroactive salary, the difference between her salary then and the amount she would have been paid if she had received credit for the additional five years of experience the prior school year.

Respondent declined to grant Grievant additional compensation. Respondent maintains the denial of a request for additional relief, not previously requested, after being granted the relief originally sought, does not serve to renew or extend the time for initiating a grievance. Grievant's actions with regard to initiating a claim for back pay (retroactive compensation) was untimely. It is incumbent upon a Grievant to initiate a grievance within

the statutory prescribed time period of becoming aware of the facts giving rise to her grievance. This grievance is denied.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Libby Kowalsky, Grievant, is employed by Respondent, Monroe County Board of Education, as a secretary assigned to the central office. Grievant was initially employed as a secretary by the Respondent in September of 1992.

2. Monroe County Policy GDD, ("Policy GDD"), was adopted by Respondent on November 6, 1978. This policy grants experience credit for work performed by school service employees for prior employers. The original wording of Policy GDD, adopted in 1978, states:

> SUPPORT STAFF EXPERIENCE
> (Work Experience Policy)
>
> The Monroe County Board of Education will accept work experience for those service and auxiliary personnel from other county or State agencies for the purpose of salary classification, if work experience is closely related to the assignment by the Board of Education.

3. The policy was reviewed, revised and re-adopted by Board action, July 24, 2007. The revised language of Policy GDD states; SUPPORT STAFF HIRING (Work Experience Policy); Upon the recommendation of the superintendent, the Monroe County Board of Education may accept work experience for those service and auxiliary personnel from other county or State agencies for the purpose of salary classification, if work

experience is closely related to the assignment by the Board of Education. Monroe County Policy GDD Reviewed, Revised and Re-adopted by Board Action, 7-24-07.

4. The existence, application and effect of Monroe County Policy GDD came to the attention of Dr. Lyn Guy, Superintendent, Monroe County Schools in December 2006, with regard to the salary of two other county employees, whose salaries seemed out of line with State reimbursement. Upon investigation, it was learned that both employees had presented their experience to the payroll clerk at the time of hiring, and their pay had been figured based upon the application of Monroe County Policy GDD.[3]

5. The number of years of experience credited to a school service personnel effects the salary received by the employee.[4]

6. In August 2007, Grievant and another employee, both secretaries, having been made aware of Policy GDD, requested that they be granted experience credit under policy based on their work before they were hired as employees for Monroe County School.

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[3] The auditor reviewing the Fiscal Year 2006 documents, discovered that two employees, one a secretary and one a clerk were receiving pay for additional experience earned outside of the school system. One employee was hired in October 2005 and the other in January 2006. It was decided by MCBOE, at its July 24, 2007 meeting, to continue paying these employees as they had been paid, and in other action to revise the policy to require the superintendent to review individual's experience and to present a recommendation to the Board prior to applying Policy GDD. Superintendent Guy was also directed to determine a method that would eliminate the policy entirely because of its liability to the county, both because of its vague language and the county's limited ability to pay a local supplement. Further, as revised, the policy lent itself to a potential for too much discretion with its application. *See Kowalsky v. Monroe Bd. Of Educ.,* level one, Post Conference Decision.

[4] The state pay scale embodied in W. VA. CODE § 18A-4-8a provides that an employee receives an additional thirty-two dollars for each year of experience possessed by a school service employee. At several points in the pay scale, the year increment is thirty-three dollars.

7. By letter dated August 16, 2007, Grievant made the following request:

> Monroe County Board of Education Policy GDD has recently come to my attention.
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> I was employed by the Monroe County Commission as secretary to the Prosecuting Attorney beginning in January 1977, and ending November 1978. I was employed as Deputy Circuit Clerk (secretary to the Clerk) beginning November 1982, and ending September 1985.
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> I respectfully ask you add five (5) years to my years of service with the Monroe County Board of Education.

8. Grievant made no request for retroactive compensation in August of 2007.

9. During its meeting conducted on September 4, 2007, the MCBOE approved the request of Grievant to be granted experience credit. Respondent approved a grant of five-year experience credit to Grievant. This grant was made effective July 1, 2007.

10. Grievant was aware that an adjustment had been made for the experience credit she sought upon receiving her September 15, 2007 pay check.

11. Grievant was informed of this decision by letter from the Superintendent dated October 26, 2007. The Grievant received actual notice of the Board's decision in the form of a September 15, 2007 pay check (and subsequent pay checks) that reflected the additional experience credit increments that had been requested by Grievant.

12. Sometime before November 6, 2007, Grievant had a conversation with Ben Barkey of the West Virginia Education Association (WVEA) concerning her entitlement/ claim for back pay. The WVEA is a Labor Organization representing employees involved in public education, including professional and service personnel employed by county boards of education and higher education institutions throughout West Virginia.

13. On November 6, 2007, Ben Barkey contacted Superintendent Guy by telephone concerning the issues of back pay with regard to Grievant and another employee.[5]

14. On or around November 6, 2007, Grievant was informed by Mr. Barkey that the request for back pay expressed to Superintendent Guy was unsuccessful.

15. Grievant did not initiate a grievance seeking retroactive compensation in the month of October, November or December 2007.

16. Grievant appeared at the MCBOE meeting on December 4, 2007. Grievant requested that she be granted the difference between her salary for the 2006-2007 school year and the amount she would have been paid if she had received credit for the additional five years of experience under the 2006-2007 salary schedule retroactively (back pay).

17. During the MCBOE meeting on December 17, 2007, the Board went into executive session and considered Grievant's request to be paid for the prior year based on experience. Upon returning from an executive session, the Board tabled the issue until the next meeting.

18. At the next Board meeting on January 8, 2008, the issue of Grievant's back pay was listed under "Old Business." Following the executive session and discussion of

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[5] Generally speaking, the West Virginia Education Association and the West Virginia School Service Personnel Association are competing labor organizations which represent, among others, school service personnel. Mr. Barkey's communication with Superintendent Guy did, by design, encompass Grievant's interest, but the official nature of his professional relationship with Grievant during the fall of 2007 is not clear. Grievant is currently represented by John Roush, Esquire, of the WVSSPA. Nevertheless, it is readily admitted that Mr. Barkey spoke to Superintendent Guy regarding back pay for Grievant and another employee and timely reported the results of the communication to Grievant.

the issue, no Board member made a motion to approve or deny Grievant's request for back pay.

19. On January 9, 2008, Superintendent Guy wrote to Grievant indicating that no action was taken the previous evening by MCBOE regarding her issue. Superintendent Guy advised Grievant that the failure of Respondent to act on the request for back pay constituted a *de facto* answer of no. Grievant concurred with this assessment by Superintendent Guy.

20. Grievant initiated a grievance seeking retroactive compensation on or about January 25, 2008.

21. Respondent abolished Policy GDD on July 24, 2008.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *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). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486

(May 17, 1993). Where the evidence equally supports both sides, the employee has not met her burden. *Id*.

Respondent contends this grievance is untimely filed, as it was not initiated within the prescribed time period specified by West Virginia Code and applicable case law. When an employer seeks to have a grievance denied on the basis that it was not timely filed, the employer has the burden of demonstrating such untimely filing by a preponderance of the evidence. Once the employer has demonstrated a grievance has not been timely filed, the employee has the burden of demonstrating a proper basis to excuse her failure to file in a timely manner. *Higginbotham v. W. Va. Dep't of Pub. Safety*, Docket No. 97-DPS-018 (Mar. 31, 1997); *Sayre v. Mason County Health Dep't*, Docket No. 95-MCHD-435 (Dec. 29, 1995), *aff'd,* Circuit Court of Mason County, No. 96-C-02 (June 17, 1996). *See Ball v. Kanawha County Bd. of Educ*., Docket No. 94-20-384 (Mar. 13, 1995); *Woods v. Fairmont State College*, Docket No. 93-BOD-157 (Jan. 31, 1994); *Jack v. W. Va. Div. of Human Serv*., Docket No. 90-DHS-524 (May 14, 1991).

Respondent granted Grievant five years of experience credit pursuant to Policy GDD during its meeting conducted on September 4, 2007. This heightened degree of experience credit had the effect of increasing Grievant's salary (MCBOE established the salary increase effective July 1, 2007). Subsequently, Grievant requested that she be granted the difference between her salary for the 2006-2007 school year and the amount she would have been paid if she had received credit for the additional five years of experience under the 2006-2007 salary schedule retroactively (one year back pay).

The question raised by this grievance is whether or not Grievant timely filed the grievance challenging the refusal of Respondent to grant her a year's worth of retroactive wages.

Pertinent language of W. VA. CODE § 6C-2-3(c)(2) (2007)provides:

> Back Pay. -- A one-year statute of limitations applies to the recovery of back pay. In the case of a willful violation by the employer in which it can be shown by a preponderance of the evidence that the employer acted in bad faith in concealing the facts giving rise to the claim for back pay, an eighteen-month statute of limitations applies. Further, a grievant's right to back pay tolls from the time that the grievant has actual or constructive knowledge of his or her right to back pay.

It is clear that an employee may grieve for back pay for a period of up to a year or in some cases a year and a half.[6] Grievant, by Counsel, maintains she timely filed the instant grievance. Counsel argues the event giving rise to the grievance is Respondent's refusal to grant to her a year's worth of retroactive wages and Grievant was notified of this event, by Superintendent Guy, by letter dated January 9, 2008. Grievant initiated the grievance on January 22, 2008, which Grievant maintains is within the fifteen working day time limit prescribed by statute for initiating a grievance.[7]

W. VA. CODE § 6C-2-3(a)(1) requires an employee to "file a grievance within the time limits specified in this article." The time period for filing a grievance ordinarily begins to run

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[6] The one year statutory limitation on back pay applies in this grievance. Grievant cannot go back further unless she can demonstrate that Respondent acted in bad faith in concealing facts which gave rise to her claim for back pay. In the instant matter, Grievant has presented no evidence to show that any facts were concealed from her or that there was any bad faith involved in what has transpired. *See* W. VA. CODE § 6C-2-3(c)(2)(2007).

[7] W. VA. CODE §§ 6C-2-4(a)(1) and 6C-2-2(c) (2007). January 25, 2008 is also within the fifteen working day time limit.

when the employee is unequivocally notified of the decision being challenged. *Kessler v. W. Va. Dep't of Transp.*, Docket No. 96-DOH-445 (July 28, 1997); *See Rose v. Raleigh County Bd. of Educ.*, 199 W. Va. 220, 483 S.E.2d 566 (1997); *Naylor v. W. Va. Human Rights Comm'n*, 180 W. Va. 634, 378 S.E.2d 843 (1989). W. VA. CODE § 6C-2-4(a)(1) identifies the time lines for filing a grievance and states:

> Within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date upon which the event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, an employee may file a written grievance with the chief administrator stating the nature of the grievance and the relief requested and request either a conference or a hearing. . . .

The knotty question is when, in the facts of this case, did the time period for Grievant to initiate the instant grievance begin.

Respondent highlights that Grievant was aware of the facts giving rise to her grievance sometime between July 24, 2007, and August 16, 2007, when she asserts she became aware of Policy GDD. Respondent maintains the denial of a request for additional relief, not previously requested, after being granted the relief originally sought, does not serve to renew or extend the time for initiating a grievance. Respondent asserts it was incumbent upon Grievant to initiate a grievance seeking retroactive compensation within 15 days of becoming aware of the facts giving rise to her grievance (she neglected to request this foreseeable relief and in doing so waived the benefit).

The foundation of Respondent's argument is persuasive. But, the undersigned is not wholly in agreement with all of the contentions as presented. Respondent avers the granting of experience credit and the issue of associated back pay are inextricably intertwined and cannot be separated. This point is intriguing but is not necessarily correct

in all circumstances. The degree to which the request for retroactive compensation is an independent, and wholly unique grievance issue, distinct from the issue of experience credit, needs to be explored.

Grievant testified that she was aware, upon receiving her September 15, 2007 pay check, that an adjustment had been made for the experience credit she sought (no significant back pay payment was forthcoming).[8] Grievant admitted that she was aware of and discussed her back pay claim with a WVEA representative sometime prior to November 6, 2007. This information is importance. It resolves any doubts that Grievant was unaware of the facts giving rise to a grievance well in advance of her appearance before the Board in December 2007 or the initiation of her written grievance. While Grievant was hopeful of finding an alternative solution/response, through dialog with Respondent, this does not toll the time restraints for filing a grievance.

Spahr v. Preston County Board of Education, 182 W. Va. 726, 391 S.E.2d 739 (1990), in discussion of the discovery rule, states "the time in which to invoke the grievance procedure does not begin to run until the grievant knows of the facts giving rise to the grievance."[9] The record establishes, and Grievant admits, conscious consideration of the

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[8] Grievant also testified that she assumed that no back pay payment would be forthcoming.

[9] The quoted language of *Spahr v. Preston County Board of Education*, 182 W. Va. 726, 391 S.E.2d 739 (1990), addressed the discovery rule exception of W. VA. CODE § 18-29-4(a)(1), now repealed and replaced with W. VA. CODE §§ 6C-2-1 et seq. In *Spahr*, several vocational teachers who were inadvertently not paid a salary supplement beginning with the 1982-83 school year were awarded back pay. The *Spahr* grievants did not have actual knowledge that other similarly-situated teachers were receiving a salary supplement until they met with their WVEA representative in the fall of 1986, and they filed their grievance in October 1986, within fifteen days of this meeting. The West Virginia Supreme Court concluded under the discovery rule exception, the time limits on invoking the

facts giving rise to the grievance. The time period for filing this grievance began when Grievant was aware that back pay was not granted to her in association with her newly accredited experience seniority. This occurred on September 15, 2007, or shortly thereafter.[10] Grievant received constructive and actual notice of Respondent's decision to grant additional experience credit *without* additional back pay pursuant to a September 15, 2007 pay check, a October 26, 2007, correspondence, and through direct communication relayed by a Union representative regarding the issue (after discussion with Superintendent Guy, November 6, 2007). Grievant did not file her grievance until January 22, 2008, choosing instead to pursue other avenues of reconsideration. While Grievant's actions were legitimate courses of action, such action did not toll the running of the statutory time limit for filing a grievance. Respondent granted Grievant experience credit and compensated her (effective date of July 1, 2007). Grievant did not formally challenge Respondent's action through the grievance procedure for two to four months. No one told Grievant to delay filing her grievance. Further, no agent of Respondent induced Grievant to not file by implying they would take care of this matter.

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grievance procedure do not begin to run "until the grievant knows of the facts giving rise to a grievance." In the absence of such knowledge, the limitation period for filing a grievance is tolled. In the text of *Spahr*, the Court also spoke of the grievants' lack of actual knowledge of their "entitlement to the supplement" until they met with their WVEA representative. In *Spahr*, the Court found the "fact" giving rise to the grievance was the knowledge that similarly-situated teachers were receiving a salary supplement but the grievants were not. Once the grievants confirmed that similarly-situated teachers were being paid the supplements, they were thus clearly made aware that their rights had been violated. The discovery of the facts in *Spahr* made the grievants aware of their rights.

[10] Arguably, Grievant could justifiably rely on the letter she received from the Superintendent on October 26, 2007, as notice that retroactive compensation had not been awarded. Nevertheless, Grievant took no timely action following either event to initiate a formal grievance for retroactive compensation. *See* Finding of Fact 11, supra.

> In *Steele v. Wayne County Bd. of Educ.*, Docket No. 50-87-062-1 (Sept. 29, 1987), it was held that, "An employee who makes a good faith, diligent effort to resolve a grievable matter with school officials and relies upon the representations of those officials that the matter will be rectified will not be barred from pursuing the grievance pursuant to *W.Va. Code* §18-29-1, *et seq.*, upon denial thereof." The West Virginia Supreme Court of Appeals, in *Naylor v. W.Va. Human Rights Comm'n*, 378 S.E.2d 843 (1989), defined the types of representations made by employers which would bar a subsequent claim of untimely filing. The Court held that estoppel was available to the employee only when the untimely filing "was the result either of a deliberate design by the employer or actions that an employer should unmistakably have understood would cause the employee to delay filing his charge."

Davisson v. Lewis County Bd. of Educ., Docket No. 05-21-112 (July 27, 2005). No representations were made to Grievant which should have caused her to delay filing a grievance.[11] Grievant's personal appearance before the Board in December 2007 did not toll the time period for filing the grievance.

If the undersigned were to accept the fact that the only unequivocal notification that Grievant received was the January 9, 2008 correspondence[12] from the Superintendent, then it could arguably be interpreted that Grievant never received a definitive reply. The letter informed Grievant of *a de facto* determination. After the issue had been on the agenda of the December 18, 2007 and the January 8, 2008 meetings, with discussion, the item died for lack of a motion. *Arguendo*, Grievant to

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[11] To the contrary, Grievant was timely informed that the request for back pay expressed to Superintendent Guy was unsuccessful. See Finding of Facts 12 through 14, supra.

[12] This ALJ is not persuaded that the January 9, 2008, letter is the unequivocal notification of MCBOE's determination regarding Grievant's entitlement to back pay. It was additional confirmation. *See generally*, *Rose v. Raleigh Co. Bd. Of Educ.*, 199 W.Va. 220, 483 S.E.2d 566 (1997)(recognizing the concept of "additional confirmation" in the context of timeliness).

this day could contend she has never received a definitive answer to her request. This is not the case. Grievant received constructive and actual notice of the Board's decision. Retroactive compensation for the prior school year was not awarded to Grievant. Grievant was uniquely aware of this fact and her contingent entitlement to the compensation. The Board considered Grievant's request for experience credit and the awarding of compensation as a result of Policy GDD. The Board established the effective date of Grievant's experience credit as July 1, 2007. The denial response regarding retroactive compensation was evident in the Board's refusal to grant Grievant the additional compensation, indeed, and its inaction with regard to her repeated request for reconsideration communicated to the Superintendent and the Board.

When Grievant requested an increase of experience credit, it would have been prudent to also request any causally connected back pay. She neglected to request this foreseeable benefit and then further failed to timely pursue the issue after the relief was not forthcoming. Grievant, in effect, waived the benefit. Grievant failed to properly pursue the issue. The undersigned agrees with Respondent in that inaction upon Grievant's request for additional compensation, after her request for prospective experience credit was approved, does not, in the fact pattern of this case, serve to perpetually renew or extend the time for initiating a grievance.

Grievant initiated formal grievance proceedings on about January 22, or 25, 2008, a substantial period of time (months) post constructive and actual knowledge that Respondent was not granting her retroactive compensation associated with her heightened

degree of experience credit. It has been established, by a preponderance of the evidence, that the grievance was not timely filed. Further, Grievant has not offered a viable explanation or exception for her delay in filing the instant grievance.

This grievance was not timely filed. Accordingly, this grievance is denied.

Conclusions of Law

1. In a non-disciplinary matter, Grievant has the burden of proving her case by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990); *See 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).

2. "Within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date upon which the event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, an employee may file a written grievance with the chief administrator stating the nature of the grievance and the relief requested and request either a conference or a hearing." W. VA. CODE § 6C-2-4(a)(1).

3. Generally, a one-year statute of limitations applies to the recovery of back pay. Further, a grievant's right to back pay tolls from the time that the grievant has actual or constructive knowledge of his or her right to back pay. W. VA. CODE § 6C-2-3(c)(3).

4. "A grievant is excused for his delay in filing a grievance when the untimely filing 'was the result either of a deliberate design by the employer or actions that an

employer should unmistakably have understood would cause the employee to delay filing his charge.' *Naylor v. W.Va. Human Rights Comm'n*, 378 S.E.2d 843 (1989)." *Davisson v. Lewis County Bd. of Educ.*, Docket No. 05-21-112 (July 27, 2005).

5. Grievant was not prevented from filing a grievance for protential back pay by any deliberate design or action of Respondent that unmistakably would be understood to cause Grievant to delay filing her claim.

6. The time period for filing a grievance ordinarily begins to run when the employee is unequivocally notified of the decision being challenged. *Kessler v. W. Va. Dep't of Transp.*, Docket No. 96-DOH-445 (July 28, 1997); See *Rose v. Raleigh County Bd. of Educ.*, 199 W. Va. 220, 483 S.E.2d 566 (1997); *Naylor v. W. Va. Human Rights Comm'n*, 180 W. Va. 634, 378 S.E.2d 843 (1989). *Spahr v. Preston County Board of Education*, 182 W. Va. 726, 391 S.E.2d 739 (1990) Syllabus Point 1 states, "the time in which to invoke the grievance procedure does not begin to run until the grievant knows of the facts giving rise to the grievance." The time period for filing this grievance began when Grievant had actual or constructive knowledge of Respondent's decision regarding payment of back pay.

7. The time period for filing a grievance was not tolled by Grievant's reiteration of her request for retroactive compensation.

8. Grievant did not timely file a grievance for back pay after her actual or constructive knowledge of her right to back pay.

9. This grievance was not filed within the prescribed time period for filing a grievance.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (2008).

Date: May 4, 2009

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Landon R. Brown
Administrative Law Judge