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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

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GREGORY BRENT ALLEN

vs.

Docket No. 20-86-152-1

WV DEPARTMENT OF EDUCATION

DECISION

Grievant, Gregory Brent Allen, is employed by the State Department of Education as a special education teacher at the Colin Anderson Center in St. Marys, West Virginia. He was employed on April 15, 1985 and on August 15, 1985 he obtained an M.A. degree; on October 11, 1985 he received a professional teaching certificate with a Masters classification from the West Virginia Department of Education.¹ On October 24, 1985 Robert Sturey, Supervisor of the Health Center facilities at the Department of Education, initiated the paper work incident to the reclassification and salary adjustment process and on November 4, 1985 the State Board of Education approved the request and it was forwarded to the Governor's office for approval. Grievant received his salary adjustment

¹ The transmittal letter was from Robert E. Gabrys, coordinator of the Educational Personnel Certification division of the State Department of Education, advising grievant that his application for certification and/or advanced salary classification had been approved.

in his December 30, 1985 paycheck.

On January 7, 1986 grievant filed a grievance alleging that payment for the Master's degree classification should be made retroactive to August 15, 1985 in the amount of \$423.50. On January 13, 1986 grievant's immediate supervisor, Donald W. Rice, principal of the Colin Anderson facility, responded that retroactive salary adjustments could not be made retroactive to state employees.²

Grievant requested a level two hearing and an evidentiary hearing was conducted on March 10, 1986. On March 14, 1986 Superintendent McNeel issued a decision denying the grievance on the basis of a 1979 administrative ruling by the State Auditor that state employees were not entitled to a salary increase until the increase had been authorized and approved by all necessary persons or offices resulting in the issuance of a check which contained the salary increase.³ Grievant

² Grievant's contention is that in the Employee Handbook he was given it is stated that salary would be based on the salary schedule of the county board of education of the county in which the facility is located; that Pleasant County teachers receive retroactive pay and grievant is entitled to the same treatment as county teachers. (Grievant's Exhibit 1). It should perhaps be noted in this handbook that state education employees are subject to different fiscal controls than are county employees.

³ Supt. McNeel also held that although the pay scale at the health facilities such as Colin Anderson was geared to conform to the corresponding pay of their professional counterparts employed by the county board of education the approval of pay reclassification was different. It is noted that the decision did not include findings of fact and conclusions of law as required by Code, 18-29-6. See, e.g. Burks v. McNeel, 264 S.E. 2d 651 (W.Va. 1980); Golden v. Harrison Co. Bd. of Educ., 285 S.E. 2d 665 (W.Va. 1981).

requested a level four hearing and an evidentiary hearing was conducted on April 16, 1986.

At the level four hearing grievant relied upon the evidence presented at the level two hearing and contended that in 1979 teachers were not employed at the state health facility by the West Virginia Department of Education and the ruling of Auditor Gainer was not applicable; that grievant was entitled to the same treatment as that received by teachers in Pleasants County.⁴

The evidence of the Board of Education revealed that grievant's application for certification was approved on October 11, 1985, the request for reclassification was sent to the personnel department on October 24, 1985, the WV-11 form was sent to Governor Moore's office on November 4, 1985 and the approval given at his office on November 18, 1985.⁵

⁴ Grievant referred to H.B. 1670, enacted by the 1986 Legislature, which provided payment of increased salary to professional and service personnel at health facilities from the date the classification of training was earned. However, this legislation was vetoed by Governor Moore.

⁵ It is incumbent upon the employee seeking certification and/or salary reclassification to present all the necessary paper work, such as transcripts of credits, etc., to the Certification Division of the State Department of Education and otherwise satisfy their requirements.

In addition to the foregoing factual recitation the following specific findings of fact are appropriate.

1. Grievant is an employee of the State Department of Education and classified as a special education teacher at the Colin Anderson Center in St. Marys, Pleasants County, West Virginia.

2. On August 15, 1985 grievant received a Masters Degree from West Virginia University and on October 4, 1985 received certification in Special Education with specialization in Severe/Profound Handicaps.

3. Thereafter, grievant requested salary reclassification, which the State Department of Education initiated on October 24, 1985.

4. Superintendent McNeel's office transmitted the request to Governor Moore's office on November 4, 1985 and approval was granted on November 18, 1985.

5. Grievant commenced receiving the salary adjustment as of December 1, 1985 and filed a grievance seeking back pay in the amount of \$432.50.

6. There is no evidence of dereliction or negligence on the part of the Department of Education in the processing of grievant's reclassification form and salary adjustment based thereon.

CONCLUSIONS OF LAW

1. Code, 18-29-2(a) defines "grievance" as any claim by one or more affected employees of the state board of

education alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules, regulations or written agreements under which such employees work, including any violation, misapplication or misinterpretation regarding compensation.

2. Code, 18-29-2(a) provides that pension matters, issues relating to the state teachers retirement system and any other matter in which authority to act is not vested with the employer shall not be the subject of any grievance filed in accordance with the provisions of Article 29, the grievance procedure.

3. The grievant has not raised any issue herein cognizable as a "grievance" as defined by Code, 18-29-2(a) or demonstrated his grievance to be a matter in which authority to act is vested with the West Virginia Department of Education.

4. While grievant is entitled to salary adjustment and reclassification within a reasonable time after completion by grievant of all the necessary paper work, grievant is subject to the same fiscal process as other employees of the West Virginia Department of Education.

5. Because of the fiscal restraints imposed upon state employees relative to retroactive pay it is incumbent upon employers to expedite the process by which teachers employed by the Department of Education obtain salary adjustment for enhancing their educational credentials.

6. Code, 18-29-6 provides that every decision pursuant to a hearing shall be in writing and shall be accompanied by findings of fact and conclusions of law. This is a mandatory provision with which grievance evaluators must comply.

For the foregoing reasons the grievance is denied.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Pleasants County and such appeal must be filed within thirty (30) days of receipt of this decision. (Code, 18-29-7) Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



LEO CATSONIS
Hearing Examiner

Dated:

June 4, 1986