



Members
James Paul Geary
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone 348-3361

DAVID LANCASTER

vs.

Docket No. 20-86-161-1

WV DEPARTMENT OF EDUCATION

DECISION

Grievant, David Lancaster, is employed by the State Department of Education as an Aide at the Colin Anderson Center in St. Marys, West Virginia. He was initially employed on March 15, 1984 as an Aide II and on December 17, 1985 he completed six hours of course work at Parkersburg Community College and had the transcripts sent to his principal at Colin Anderson, Mr. Donald W. Rice. These additional credits would qualify grievant to be reclassified as an Aide III with corresponding salary increases.¹

By memorandum dated January 22, 1986, within a few days of receipt of the transcript of credits from Parkersburg Community College, Mr. Rice forwarded a request to Mr. Robert Sturey, assistant director of special education

¹ Grievant states that the reclassification would increase his monthly salary by \$49.20 per month; Grievant's Exhibit No. 2 indicates the reclassification would increase his annual salary by \$600.00 for 240 days.

in the Department of Education, to reclassify grievant to an Aide III. On February 28, 1986, when the salary increase did not appear in grievant's check, he filed a grievance seeking salary adjustment effective February 1, 1986. On March 3, 1986, Mr. Rice, grievant's immediate supervisor, responded that grievant's reclassification had been approved by the State Board of Education and sent to the Governor's office on January 31, 1986; that as of March 3, 1986 approval had not been obtained from the Governor's Office.

Grievant requested an appeal to level two and an evidentiary hearing was conducted on March 21, 1986. A decision was rendered on March 24, 1986 by Superintendent McNeel denying the grievance on the basis of a ruling of the State Auditor dated May 2, 1979 holding that state employees were not entitled to salary increases until such increases were authorized and approved by all necessary persons or offices resulting in the issuance of a check.² Grievant requested a level four hearing and an evidentiary hearing was conducted on April 16, 1986.

² Superintendent McNeel's decision noted that although the pay scale for support personnel at the health facilities such as Colin Anderson was geared to conform to the corresponding pay of like-classified service personnel employed by the board of education of the county in which the health facility was located, the approval of pay reclassifications of the state employees differed from that of county school employees. It is noted that the decision did not include findings of fact and conclusions of law as required by Code, 18-29-6. Grievance evaluators are urged to include these findings and conclusions in their decisions to avoid remand for compliance therewith. See, 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).

At the level four hearing grievant reiterated his evidence and contended that the 1979 ruling of Auditor Gainer was rendered prior to the time that education employees such as grievant were employees of the State Department of Education and was not applicable; that, in any event, it was incumbent upon the State Department of Education to challenge, in court, the ruling of the State Auditor.³ He sought back pay retroactive to February 1, 1986.

The State Department of Education agreed that morally grievant had a point to make concerning the inordinate delay in receiving the salary adjustment but that the Department was bound by the ruling of the State Auditor and was not legally bound to challenge his ruling in a court proceeding. In effect, the Department of Education was in agreement that grievant had qualified for the reclassification and was entitled to the salary readjustment within a reasonable time after the required paper work was completed by the grievant but could do nothing to assist grievant except to make periodic status requests on the salary increase to the Governor's office.

Mr. Robert Sturey testified that he authorized the reclassification and salary adjustment on January 28, 1986 and sent it to the personnel office where a WV-11 form was

³ Grievant tendered H.B. 1670, enacted by the 1986 Legislature, which provided that professional education personnel in health facilities such as Colin Anderson Center who earned advanced classification of training after the effective date of the statute would be paid the advanced salary from the date such classification of training was earned. (Code, 18A-4-17). However, this legislation was vetoed by Governor Moore.

was prepared and sent to the Governor's office on February 5, 1986. (Respondent's Exhibits Nos. 1 and 2). He stated that it is his understanding that pay raises are generally effective once a year and that such raises were effectuated upon approval of the Governor's office. Further, that there was no delay or problem attributable to the West Virginia Department of Education.

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

1. Grievant is employed at Colin Anderson Center as an Aide III and is an employee of the West Virginia Department of Education.

2. On December 17, 1985 he became eligible for a reclassification and corresponding salary adjustment by completing six hours of college course work.

3. Within a few days of receiving the transcript of credits from Parkersburg Community College grievant's principal at Colin Anderson forwarded the request for reclassification to Mr. Robert Sturey at the West Virginia Department of Education.

4. On January 28, 1986 Mr. Sturey had completed his part of the paperwork and forwarded it to the personnel office, where the WV-11 was prepared and forwarded to the Governor's Office on February 5, 1986.

5. Ostensibly, the WV-11 form has been in the Governor's office since February 5, 1986 awaiting approval and the

Department of Education has made periodic checks on the status thereof.

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 provision 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. Grievant has not shown by a preponderance of evidence that the West Virginia Department of Education was in any way derelict or otherwise responsible for the non-payment of grievant's salary increase.

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


6. 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.

7. 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.

DATED: June 4, 1986


LEO CATSONIS
Hearing Examiner