



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 RABER

vs.

Docket No. 20-86-146-1

WV DEPARTMENT OF EDUCATION

DECISION

Grievant, David Raber, is employed by the West Virginia Department of Education at the Colin Anderson Center in St. Marys and classified as a teacher and behavior specialist.¹ Effective August 15, 1985 he completed the course work for a Masters degree in Severe/Profound Handicaps from West Virginia University and on November 15, 1985 was informed that his request for reclassification was approved. He requested salary adjustment for the Masters classification and on December 2, 1985 Robert Sturey, Institutional Unit Coordinator with the Department of Education, initiated the necessary action to effectuate the reclassification and salary adjustment. On December 5, 1985 State Superintendent of Schools Tom McNeel forwarded the request to Governor Moore's office for approval. Not having received the salary increase in the paycheck of February 28, 1986, Mr. Raber

¹ He became an employee of the State Department of Education on December 1, 1984 after the Department of Education became responsible for the Medley programs at Colin Anderson; prior thereto he was an employee of the Department of Health at Colin Anderson.

filed a grievance with his immediate supervisor, seeking back pay from August, 1985. The grievance was denied at level one and a level two hearing was conducted on March 10, 1986.

On March 14, 1986 a decision was rendered by Superintendent McNeel reiterating an administrative ruling by State Auditor Glen Gainer on May 2, 1979 that state employees were not entitled to salary increases until such increases had been authorized and approved by all necessary persons or offices resulting in the issuance of a check containing the salary increase; that grievant was a state employee and could not receive retroactive salary increases. The grievant appealed to level four and an evidentiary hearing was conducted on April 16, 1986.²

At the level four hearing grievant testified that he had received his Masters degree effective August 16, 1985 and on November 15, 1985 received notification from Robert E. Gabrys of the Educational Personnel Certification division of the Department of Education that his application for certification and/or advanced salary classification had been approved. The State Board of Education approved his salary to reclassification and sent it to the Governor's Office on December 5, 1985 but it was returned because the salary figures thereon

² At the level four hearing the transcript of evidence of the level two hearing was admitted into evidence as a joint exhibit for consideration by the hearing examiner. There were no findings of fact and conclusions of law in the level two decision as required by Code, 18-29-6. Grievance evaluators are urged to include these findings and conclusions to avoid remand of the grievance. 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).

were incorrect. Grievant contends that the Personnel Division of the Department of Education held the application until March 21, 1986 when an amended request was sent to the Governor's Office; that it is his understanding that he would receive the salary increase in April, 1986 partly because of his several telephone inquiries to the Governor's Office as to the status of the salary adjustment. He further contends that the effect of the 1979 ruling by the State Auditor discriminates against teachers and would most probably not be applicable today since there were no teachers on the state payroll in 1979. Grievant concludes that he agrees somewhat with the Department of Education that it is not entirely at fault in the delay but that there was at least some inefficiency in processing his claim; that he is, at least, entitled to backpay from January, 1986.³

Robert Sturey, Unit Coordinator with the Department of Education, testified that he had not been aware that there was an error on the salary reclassification paperwork until the level two hearing on March 10, 1986 and that he immediately filed an amended form and sent it to the Governor's Office; however, this was not the reason the request was not

³ He stated that he commenced his application for reclassification and salary adjustment a week after Gregory Brent Allen, who received his pay increase in December, 1985 (See Allen v. W.Va. Dept. of Education, Docket No. 20-86-152-1), and the Department obviously did not do his paper work in a timely fashion as recommended by Auditor Gainer in the 1979 ruling. Grievant also submitted H.B. 1670, which was vetoed by Governor Moore.

approved earlier. He stated that these were the first four employees to go through the reclassification process and they were advised it might be a lengthy process.⁴ He concluded that the Department of Education was not at fault in the delay and wanted these employees to receive the salary to which they were entitled but could do nothing to expedite the process.

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

1. Grievant is an employee of the Department of Education and classified as a teacher and behavior specialist at Colin Anderson Center.

2. In August, 1985 grievant completed the course work at West Virginia University for a Masters degree and his credentials were approved on November 15, 1985.

3. Approval of grievant's reclassification and salary adjustment was given by the State Board of Education and on December 5, 1985 the request for approval was sent to the Governor's office.

4. There was an error in the salary figures on the personnel forms and an amended form was prepared and sent to the Governor's office on March 20, 1986

⁴ Mr. Sturey had reference to the four grievants from Colin Anderson who filed grievances on the delay in receiving their salary adjustments, i.e., grievants Raber, Lancaster, Allen and Richard. Each of them had separate hearings at level two and at level four.

5. The amended form containing the correct salary amount was approved by the official in the Governor's Office effective April, 1986.

6. Other than the error in computation of the salary adjustment there is no showing of such dereliction on the part of the Department of Education which could be attributed to the failure of grievant to receive the salary adjustment in a more timely fashion.

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 the evidence that the negligence of the Department of Education in preparing the WV-11 or other form initially sent to the Governor's office was the sole proximate cause of the grievant's failure to receive the salary adjustment in a more timely fashion.

5. While grievant is entitled to a 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.

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.



LEO CATSONIS
Hearing Examiner

Dated: _____

June 4, 1986