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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**

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SAMUEL BELLOTTE

v.

Docket No. 89-17-295

HARRISON COUNTY BOARD OF EDUCATION

DECISION

Samuel Bellotte is employed as an Aide III by Respondent Harrison County Board of Education. On June 28, 1989, he submitted the following grievance at Level IV:

Violation of. . .[W.Va. Code] §18A-4-8. I worked over 133 days in 1987 as a Special Education Aide II. I was re-employed in the same position for the 1988-89 school year. The Board of Education did not consider me as an Aide III until my anniversary date of being assigned as a Special Education Aide.

The remedy I seek is to be paid as an Aide III from the beginning of the 1988-89 employment term to my anniversary date.

The claim had previously been denied at Levels I and II¹ and waived at Level III before arriving at Level IV. The parties

¹ According to the Level IV form, this grievance was "filed directly at Level II." It is established that employee complaints may not bypass Level I unless two
(Footnote Continued)

having agreed to resolution on the record of proceedings below and other information as presented by them by September 19, the case is mature for disposition.²

The facts of this case are essentially undisputed, see n. 1. Grievant was first employed as an aide by Respondent on July 16, 1987. That position was a half-time kindergarten assignment.³ In early November 1987, he transferred into a full-time Aide II (Special Education) slot. He was reclassified as an Aide III effective November 9, 1988.⁴

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

"Aide I" means those personnel selected and trained for teacher-aide classifications such as monitor aide, clerical aide, classroom aide or general aide.

(Footnote Continued)

criteria are met: there must be no authority there to grant the relief sought, and there must exist written consent from the Level I evaluator. Bumgardner et al. v. Ritchie Co. Bd. of Educ., Docket Nos. 89-43-222, etc. (June 12, 1989). In the instant case, it will be presumed that the proper procedure was followed and that the claim was denied at Level I due to lack of jurisdiction to award the desired remedy.

² Grievant's proposed findings of fact and conclusions of law were filed August 25, Respondent's, September 18. The Level II transcript and its attendant exhibits were submitted on September 19. The parties had originally been given until September 26 to complete the record, but inasmuch as the same was accomplished by September 19, the undersigned will proceed to decision.

³ Grievant concurrently served Respondent as a half-time custodian.

⁴ Although it appears Grievant did not file this grievance until Spring 1989, Respondent has chosen to not raise the defense of timeliness; thus, such will not be considered, following the rule of Isaacs v. Lincoln Co. Bd. of Educ., Docket No. 22-88-122 (Sept. 28, 1988), and other cases.

"Aide II" means those personnel referred to in the "Aide I" classification who have completed a training program approved by the state board of education, or who hold a high school diploma or have received a general educational development certificate. Only personnel classified in an Aide II class title shall be employed as an aide in any special education program.

"Aide III" means those personnel referred to in the "Aide I" classification who hold a high school diploma or a general educational development certificate, and have completed six semester hours of college credit at an institution of higher education or are employed as an aide in a special education program and have one year's experience as an aide in special education.

The remainder of this Decision will be presented as formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant was first employed as a special education aide, with the classification "Aide II," in early November 1987.

2. In early November 1988, his classification was upgraded to "Aide III."

CONCLUSIONS OF LAW

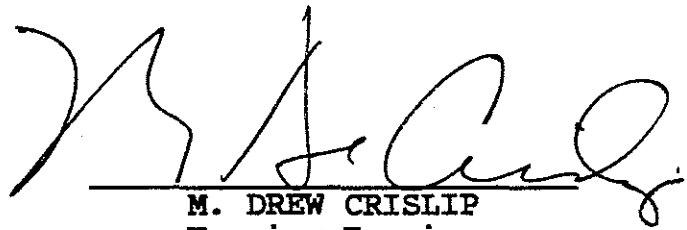
1. An aide working in the area of special education must at least have the status "Aide II." W.Va. Code §18A-4-8.

2. "Aide II" personnel "employed. . .in a special education program. . .[with] one year's experience as an aide in special education" should be reclassified to "Aide III." Id.⁵

3. Grievant was unentitled to the "Aide III" title or pay prior to early November 1988.

Accordingly, this grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Harrison County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of said decision. W.Va. Code §18-29-7. Neither the West Virginia Education or State Employee Grievance Board is a party to such appeal and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.


M. DREW CRISLIP
Hearing Examiner

Dated: September 20, 1989

⁵ While the number of days worked in a given school year is relevant to some determinations as to pay and tenure, see, e.g., Harkins v. Ohio Co. Bd. of Educ., 369 S.E.2d 224 (W.Va. 1988), the same has no applicability herein.