THOMAS MANCINO,

Grievant,

v. Docket No. 96-BEP-402

BUREAU OF EMPLOYMENT PROGRAMS/

DIVISION OF LEGAL SERVICES

and DIVISION OF PERSONNEL,

Respondents.

D E C I S I O N

Grievant, Thomas Mancino, stated he was "working out of class[.] It is my contention I have been working in a Claims Deputy (senior) position for over 1 yr[.]" He requested as relief "reclass to Claims Deputy (Senior)." This grievance was filed on April 4, 1996 and was waived at Levels I and II. At Level III, the grievance was granted, and Grievant was reallocated from a Paralegal, Pay Grade 9, to a Claims Deputy, Pay Grade 11, in October 1996, the first pay period after the Level III decision. (See footnote 1) **This reallocation resulted in a ten percent pay increase.**

Grievant then appealed to Level IV grieving the Bureau of Employment's ("BEP") failure to make this reallocation retroactive to June 1994, when he was hired. A Level IV hearing was held on December 12, 1996. This case became mature for decision on thatdate, as the parties did not wish to submit proposed findings of fact and conclusions of law.

The only issue remaining to resolve is whether Grievant should receive backpay, and if so, what is the correct time period for this compensation. Grievant requests that he receive backpay to June 1994, and if not then he avers he should receive compensation from the time he began the appeal procedure with the Division of Personnel. He argues the case of Spahr v. Preston County Board of Education, 182 W.Va. 726, 391 S.E.2d 739 (1990), is applicable because he did not know he was due backpay until the Grievance Evaluator ruled he had been misclassified. BEP states because Grievant did not request backpay, and had stated he was not interested in reclassification to receive additional compensation, that the lower level

ruling is correct. In the alternative, Respondent argues if Grievant is to receive this additional compensation, it should run only from ten days before he filed his grievance following the precedent set by other Grievance Board decisions.

This case is interesting because during the Level III hearing, Grievant made the following statements:

"This is not a pay issue." Level III trans. at 66.

"[Pay] is not an issue." Level III trans. at 68.

"I just want it understood it is not a pay issue." Level III Trans. at 68.

BEP states Grievant received the relief he requested, and he is not entitled to more. In fact, if Grievant had been reclassified as he requested, he would not have received a payincrease, because his salary was above the entry level compensation for a Claims Deputy.

"Any change in relief sought by the grievant shall be consented to by all parties or may be granted at level four within the discretion of the hearing examiner." W. Va. Code § 29-6A-3(k). At the Level IV hearing, BEP did not agree to this change in Grievant's relief, but this change was granted at the discretion of the undersigned.

Prior Grievance Board rulings have stated a reclassified state employee is entitled to reclassification and monetary relief in the form of backpay, from ten days prior to filing. Easterly v. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 96-HHR-053 (July 25, 1994); See also Haley v. Dept. of Transp./ Div. of Personnel, Docket No. 93-DOH-148 (Apr. 29, 1994). Although this case is somewhat different, it appears the proper, equitable relief is granting Grievant backpay retroactive to ten days prior to filing his grievance on April 4, 1996, as he was found to have been performing the duties of a Claims Deputy since the beginning of his employment. See Deel v. W. Va. Bureau of Employment/Div. of Personnel, Docket No. 96-BEP-361 (Mar. 11, 1997).

The above-discussion will be supplemented by the following Findings of Fact and Conclusion of Law.

Findings of Fact

1. This grievance was filed on April 4, 1996.

2. As the result of a lower level grievance ruling, Grievant was reallocated to a Claims Deputy. 3. Grievant did not receive backpay as a result of this grievance, but did receive a ten percent increase in his rate of pay.

Conclusion of Law

1. Grievant is entitled to reallocation and backpay retroactively from ten days prior to filing his grievance on April 4, 1996. Easterly v. Dept. of Health and Human Resources/Div. of Personnel, Docket No. 96-HHR-053 (July 25, 1994); See Deel v. W. Va. Bureau of Employment/Div. of Personnel, Docket No. 96-BEP-361 (Mar. 11, 1997); See also Haley v. Dept. of Transp./Div. of Personnel, Docket No. 93-DOH-148 (Apr. 29, 1994).

Accordingly, this grievance is GRANTED, in part, and DENIED, in part. BEP is directed to pay Grievant as a Claims Deputy from ten days prior to filing his grievance.

Any party or the West Virginia Division of Personnel may appeal this decision to the circuit court of the county in which the grievance occurred, and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal, and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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JANIS I. REYNOLDS

Administrative Law Judge

Dated: April 30, 1997

Footnote: 1

Although not discussed any where in the record, it appears there is no Claims Deputy (senior) classification.