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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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CLIFFORD YOUNG

v.

Docket No. 26-86-066

WV DEPARTMENT OF EDUCATION

DECISION

The grievant, Clifford Young, has been employed by the Department of Education since December 1, 1984 as a school psychologist assigned to Lakin State Hospital. At the time he accepted this position the grievant held a Master's degree and had completed an additional thirty hours of graduate work. As the grievant failed to request the higher level certificate, his employment was approved and salary established based on his Master's degree only. On December 6, 1984 the grievant filed an application for and verification of the advanced graduate credit. On February 8, 1985, the Department of Education issued the grievant a professional service certificate with a salary classification of Master's degree plus thirty hours. The effective date of the certificate was July 1, 1984.¹

¹ It is the practice of the Department of Education to issue all certificates for the period of July 1 through June 30 regardless of the actual date of issuance.

The grievant continued to receive a salary based on the Master's degree classification until July 1, 1985. The grievant is now asking for the difference in salary between the Master's degree and the Master's degree plus thirty hours classifications for the period of December 1, 1984 through June 30, 1985.

The Department of Education has denied this request with the explanation that salary reclassifications for state employees must be approved by the West Virginia Board of Education and the Governor. The record indicates the Board of Education approved the reclassification in April, 1985 with the salary increase to be effective May 1, 1985, and forwarded the matter to the Governor's office for approval. The Governor took no action prior to the end of the fiscal year and the grievant's salary adjustment became effective July 1, 1985.²

The Department of Education contends retroactive pay to state employees is prohibited by Article 6, Section 38 of the West Virginia Constitution and West Virginia Code, Chapter 6, Article 7, Section 7.

²In a letter to the grievant dated August 9, 1985, State Superintendent McNeel states the Governor had taken no action prior to the end of the fiscal year. Respondent's brief submitted at level four indicates action was taken with the effective date of July 1, 1985.

Article 6, Section 38 of the West Virginia Constitution states:

"No extra compensation shall be granted or allowed to any public officer, agent, servant or contractor, after the services shall have been rendered or the contract made;...".

West Virginia Code, §6-7-7 reaffirms the Constitution by providing: "No extra compensation shall be granted or allowed to any public officer, agent, servant or contractor, after the services shall have been rendered, nor shall the salary of any public officer be increased or diminished during his term of office."

The purpose of these provisions is to establish certainty to the salaries of public officers as it is deemed as a general proposition that better service will be rendered if the matter of salary is laid at rest at the outset; and it protects the independence, security and efficiency of the occupant of public office. Springer v. Board of Education, 117 W.Va. 413, 185 S.E.692 (1936); Harbert v. County Court, 129 W.Va. 54, 39 S.E.2d 177 (1946).

Individuals such as the grievant are in a unique position. While employed by a state agency they are subject to the same employment conditions as county school personnel. They are required to receive the same training, hold the same teaching certification, have the same employment term and salaries are

based on the state minimum plus the equivalent of the supplement paid to like-qualified personnel in the school system in which the facility is located.

Although technically public employees, these individuals are also subject to those laws affecting school personnel.

Both public employees and school personnel salaries are definite and certain. West Virginia Code, Chapter 18A, Article 4 sets forth the state training classification and the minimum salary schedule. Any salary supplements offered by the individual counties is a matter of public record.

School personnel differ from most public employees in that they may upgrade their training and salary classifications by completing college credits. The state encourages this advancement by offering salary increases at set intervals. This system provides financial as well as academic incentive for educators to advance their training; benefits the students who receive instruction from more knowledgeable instructors and benefits the state in upgrading of credentials of professional personnel.

In order for any of these benefits to accrue the individual must first invest his time, money and effort into completing the credit hours. In exchange for this investment the legislature has provided a statutory minimum salary schedule which requires additional compensation for individuals who complete a set number of credits. W.Va. Code, 18A-4-6 specifically states:

"[U]pon the change of the training classification of any teacher,

his salary shall be made to comply with the requirements of this article and of any county schedule, where such exist, based upon his new classification and allowable years of experience."

While the grievant entered into a contract for services at a stated salary, it is a contract subject to modification as established by the statutory training and salary classifications. Therefore, the grievant does not request "extra compensation" as referred to by the respondent but rather compensation to which he was statutorily entitled.

This board has previously ruled that an employee must share the responsibility of assuring his proper training/salary classification.³ The employee must provide verification of additional credits earned before he may be reclassified. Mr. Young did not provide this verification prior to assuming his duties but did furnish all required information by the end of January, 1985.

While consideration must be allowed in that the salary reclassification must receive formal approval twice, it is unreasonable to allow a delay in excess of five months. The Department of Education has a responsibility to its employees to process reclassifications with all due speed at the agency level and to facilitate, in any possible manner, the Governor's approval.⁴

³Robert L. Turner v. McDowell County Board of Education, Docket No. 33-86-049.

⁴Superintendent McNeel acknowledges this responsibility in a letter to the grievant dated August 9, 1985.

Approval of salary reclassification should be completed within ninety days after the employee has provided all required documentation.

Therefore, it is the finding of this examiner that the grievant is entitled to any additional income which he would have earned as a result of reclassification for the period of May and June, 1985.⁵

FINDINGS OF FACT

1. At the time of his employment in December, 1984 the grievant possessed a Master's degree and had completed an additional thirty hours of graduate credit.
2. The grievant entered into a contract which calculated his salary based on a Master's degree classification.
3. The grievant applied for reclassification in December, 1984 and provided verification of his additional credits by the end of January, 1985.
4. Grievant's salary increase had to be approved by both the State Board of Education and the Governor before it became effective.

⁵Due to a memorandum issued by the State Auditor on May 2, 1979 regarding retroactive raises for employees, it may be that the grievant's remedy will be in the W. Va. Court of Claims. See Jeffrey A. Richard v. W. Va. Department of Education, Docket No. 20-86-158-1 decided June 4, 1986.

5. The Board of Education did not approve the grievant's reclassification until April, 1985.

6. The grievant did not receive a salary increase until the new fiscal year, July 1, 1985.

CONCLUSIONS OF LAW

1. Upon the change of the training classification of any teacher his salary shall be made to comply with the requirements of W. Va. Code, 18A-4-2 and of any existing county schedule.

2. Grievant is entitled to a salary adjustment and reclassification within a reasonable time after completion by grievant of all the necessary paper work but is also subject to the same fiscal process as other employees of the Department of Education. Because of these fiscal restraints on state employees in relation to retroactive pay it is incumbent upon employers to be diligent and to expedite, when possible, the process by which teachers employed by the Department of Education obtain salary adjustment for enhancing their educational credentials.

3. Due to the lack of diligence of the Department of Education grievant is entitled to compensation for the advanced certification for the period of May and June, 1985. However, it may be that the grievant's remedy will be in the Court of Claims.

In consideration of the foregoing the grievance is denied in part and granted in part.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mason 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: August 29, 1986

Sue Keller

SUE KELLER
Hearing Examiner