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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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SECOND ANNUAL REPORT

TO THE

GOVERNOR AND THE LEGISLATURE

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Submitted by:

JAMES PAUL GEARY, Chairman

ORTON A. JONES, Member

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FOREWARD

Effective July 1, 1985 the Legislature created the Education Employees Grievance Board and charged it with the responsibility of administering the grievance procedure at level four - the hearing examiner stage of the procedure. (W.Va. Code, 18-29-1, et seq.). Two hearing examiners were hired in December, 1985 and stationed in Elkins and Charleston. The first level four evidentiary hearing was held in December, 1985 and approximately 120 level four grievances which had been in process but not decided by the State Superintendent of Schools or pending in circuit courts were transferred to the Education Employees Grievance Board at that time for disposition. On February 7, 1986 the Education Employees Grievance Board submitted its First Annual Report to the Governor and Legislature and since then has hired two additional hearing examiners and opened offices in Beckley and Wheeling.¹

In accordance with W.Va. Code, 18-29-5 the Education Employees Grievance Board conducted an open hearing in Charleston on January 9, 1987 and invited all education institutions, school superintendents, employee organizations and all grievants participating in level four grievances in 1986 to attend or submit written data. The purpose was to receive input on the level four grievance process and the performance of the hearing examiners during 1986 to enable the Education Employees Grievance Board to prepare this Evaluation and Report.

¹ The Beckley office was opened and staffed in August, 1986; however, due to the inability to find adequate office space the Wheeling office did not become operational until January, 1987. Hearings are being held in the Wheeling office but a secretary has not yet been employed.

It will be noted that in addition to the Evaluation made in this report the Education Employees Grievance Board has made certain recommendations it believes to be vital to the continued success of the grievance procedure. These recommendations are mandated by the experience gained in the previous full year of operation and by the introduction of House Bill 2217 and Senate Bill 160, which transforms the Education Employees Grievance Board into the Education and State Employees Grievance Board and imposes the same duties and responsibilities upon the Board relative to state employees as W.Va. Code, 18-29-1 imposes as to education employees.² Enactment of this legislation will bring West Virginia into line with several other States having a statutory grievance procedure for most state and county employees. This Board will then be executing the legislative intent of providing a procedure to resolve the employment problems that would arise between nearly 55,000 employees of the education system and 35,000 employees of state government and their respective employers.

² Similar legislation (HB 1176) was introduced and passed by the House of Delegates in 1986 and was tabled in the Senate.

The 1987 legislation is very similar to W.Va. Code, 18-29-1 et seq., and permits state employees and agencies to appeal from the decisions of the Civil Service Commission to a hearing examiner at level four in the same manner education employees/employers are permitted to appeal. The comments relative to HB 2217 and SB 160 would be rendered irrelevant, however, by passage of SB 181 or HB 2269, part of the Executive legislative package providing for employment of hearing examiners by the Civil Service Commission.

EVALUATION

In 1986, 377 grievances were received by the Education Employees Grievance Board and disposition was made of 194: 150 by written decisions and 44 by remands and dismissals. The breakdown by office is as follows:

	No. of decisions	No. of level four hearings
Charleston	60	57
Elkins	56	45
Beckley	23	23
Wheeling	11	8

A synopsis of grievance outcomes reveals that:

50 grievances were granted

86 grievances were denied

14 grievances were granted in part and denied in part³

³ Of the 150 decisions 45 were appealed to circuit courts; two were reversed and one was remanded to the hearing examiner. One of the reversals is being appealed to the Supreme Court of Appeals by the grievant.

Forty three counties participated in the level four grievance process and the most active county was Kanawha with thirty decisions; eighty four of the decisions were from counties in close proximity to Kanawha.

There were 155 grievances pending at level four as of December 31, 1986 and an average of 30 grievances were received each month. The average case load per hearing examiner is 40 grievances and an average of twelve evidentiary hearings are scheduled by the hearing examiners each month; however, an average of six are actually held due to continuances requested by the grievant or school board.⁴

Based upon the comments and criticisms at the open hearing and from other sources the Board is pleased to report a general satisfaction with the level four grievance procedure in 1986. As could be expected, the common complaint of grievants and their representatives was a reluctance of the Education Employees Grievance Board to assume more responsibility in the administration of school affairs and the converse complaint of school administrators that the Education Employees Grievance Board was encroaching upon and assuming authority peculiarly within the province of school authorities. However, for varied reasons, both parties to the procedure perceive it as a vast improvement over the previous grievance procedure and are especially pleased with the objectivity and consistency of the decisions. The common complaint is the

⁴ For obvious reasons suspensions and dismissals are given priority on the hearing docket and disposition.

In addition to the evidentiary hearings and case work involved in the disposition of a grievance, it appears that a hearing examiner can issue an average of 5.5 decisions per month and continue to maintain the level of professionalism established by the Board. A large number of the grievances are submitted upon the record of the level two or level three hearing eliminating the need for an evidentiary hearing at level four; other grievances are submitted on the record and oral argument, etc.

time involved in the overall grievance process and especially in the time required to obtain the level four written decision, which will be treated in the recommendations that follow.

Similarly, the participants in the level four grievance procedure are generally satisfied with the performance of the hearing examiners except as to the number of decisions rendered and the time involved therein. Admittedly, the addition of two hearing examiners did not result in a proportionate increase in productivity but this deficiency will also be treated in the ensuing recommendations.⁵

⁵ With the exception of the Wheeling office, which has not yet employed a secretary, each of the offices is staffed by a hearing examiner and a secretary. However, the majority of the secretarial time is spent on preparation of transcripts for appeals to the circuit courts and inadequate time is available for the decision process.

The satellite offices are not equipped with any legal reference material except the West Virginia Code and the West Virginia Reports; the Charleston office has the last hundred volumes of Southeastern Reporter.

RECOMMENDATIONS

The existing structure, composition and process of selection of board members should be preserved in order to ensure the maintenance of the integrity, continuity and consistency of the operation of the level four grievance procedure. However, because of the increasing responsibilities and demands upon board members it is essential that the position of Director be established either by legislation or board order. The director should serve at the will and pleasure of the board and would be charged with the responsibility of the management of the agency and the execution of the directives of the Board. This position would, of course, be a full time position and require a minimum annual salary of \$45,000.⁶

Due to existing budget constraints and other administrative considerations the Board intends to close the three satellite offices located in Elkins, Wheeling and Beckley and return the hearing examiners to the central office in Charleston. This can be accomplished either by legislative amendment and/or board action. More specifically, W.Va. Code, 18-29-5 provides that the Education Employees Grievance Board employ hearing examiners who reside in different regional educational service agency (RESA) areas until the number of hearing examiners exceeds the number of such areas, (8), at which time two hearing examiners may be from the same RESA

⁶ The Board created the position of chief hearing examiner in 1986 but the contemplated director position would, of necessity, relieve the director of most, if not all, hearing and decision writing duties. This conclusion is based upon the increased amount of administrative and supervisory functions required of the chief hearing examiner under existing circumstances.

area. After one full year of operation it has become apparent that the number of hearing examiners should be increased to six (6) and the statutory requirement that hearing examiners reside in the RESA areas eliminated. Returning the hearing examiners to a central location would maximize efficiency and productivity while reducing the duplicity of the operational costs such as rent, support services, reference libraries, copy equipment, etc. This central office concept would also permit the random selection of hearing examiners and would enable the director to assign case loads according to the peculiar nature of the grievance(s) and/or the expertise of the individual hearing examiners.

Under this system parties to the grievance procedure would be given the option of having their evidentiary hearing conducted in Charleston or requesting that the hearing examiner travel to the county of origin. The amount of time involved in travel will more than be offset by the increased efficiency and productivity realized by a single secretarial pool expediting the drafting and preparation of decisions and the obvious benefits derived from group effort.⁷

⁷ Experience has shown that many, if not a majority, of the grievants prefer to have the evidentiary hearing conducted at a site other than the county of origin. The representative organizations appear also to favor the centralization concept for most of the reasons set out in this Report.

It is to be noted that HB 2217 does not have a residency requirement similar to W.Va. Code, 18-29-5 and it is anticipated that the two hearing examiners added by HB 2217 will be stationed in Charleston.

Finally, it is also essential that the salary range for hearing examiners be increased to enable the Board to attract qualified and competent lawyers of proven ability. Our recruiting experience has clearly demonstrated that the majority of experienced lawyers interviewed in the last round of interviews would not consider these positions on any basis other than a part time basis for the salary involved; others would not consider the areas selected by the Board for location of the satellite offices.⁸ This inadequacy seriously handicapped the Board in recruitment efforts and is a disincentive to the retention of the dedicated lawyers presently carrying the burden of the day to day operations.

⁸ The Education Employees Grievance Board hearing examiners should continue to be full time and serve at the will and pleasure of the Board. The Board should have the discretion of increasing the salaries of these hearing examiners to \$35,000.00 annually and, for obvious reasons, they should be excluded from the provisions of HB 2217 and SB 160.

CONCLUSION

During 1986 notable progress was made in fulfilling the objective of Governor Moore and the Legislature in the creation of a viable education employees grievance procedure. A body of decisional education law is developing and being utilized increasingly to resolve grievances at the lower levels of school administration. The Circuit Courts have been relieved of the necessity of evidentiary hearings in hundreds of cases and are now functioning as appellate tribunals in the grievance procedure. For most part and with its shortcomings, the level four grievance procedure has come of age and earned the recognition it has received in 1986.

It is imperative, however, that the recommendations contained in this Report be given very careful consideration for they were made only after a full year of experience and serious deliberation. In our considered opinion it is essential to the continued successful operation of this Board that they be initiated.

A P P E N D I X

APPENDIX A
FY 1986-87 APPROPRIATION REQUEST
SPENDING UNIT ACCOUNT SUMMARY

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Education Employees Grievance Board

6015-05

Appropriated State Account Number

Appropriated Federal Account Number

Spending Unit	FY 1984-85 Actual State	FY 1985-86 Leg Digest State	FY 1985-86 Budgeted				FY 1986-87 Current Level Request				Recommendation	
			State	Federal	Other	Total	State	Federal	Other	Total	Federal	State
Number of Positions			6			6	12			12		
PERSONAL SERVICES			50,081			50,081	208,750			208,750		
Number of Positions							2			2		
ANNUAL INCREMENT							720			720		
TOTAL PERSONAL SERVICES			50,081			50,081	209,470			209,470		
CURRENT EXPENSES												
10-Cy Ser. Pub Emp Ins & Ret Fees												
11-Social Security Matching												
12-Pub Emp Ins Premium												
13-Other Health Insurance												
14-Workers' Compensation			200			200	1,000			1,000		
15-Unemp Comp												
16-Pen & Retmt. Cont.												
20-Office, Post. & Frt Exp			5,000			5,000	12,500			12,500		
21-Printing & Binding			1,500			1,500	3,500			3,500		
22-Rental Expenses (Building)			8,000			8,000	28,500			28,500		
23-Utilities												
24-Telephone & Telegraph			6,000			6,000	14,500			14,500		
25-Contractual & Professional			1,752			1,752	10,000			10,000		
26-Travel			2,000			2,000	15,000			15,000		
27-ISSD												
30-Rental (Machine & Misc.)			3,200			3,200	4,000			4,000		
31-Association Dues												
32-Fire, Auto, Bond. & Oth. Ins.												
33-Food Products												
34-Cloth. & Household Sup.												
35-Advertising			200			200	250			250		
36-Vehicle Expense												
37-Research, Ed. & Med.												
38-Maintenance Contracts			-0-			-0-	300			300		
39-Manufacturing Supplies												
40-Merchandise for Resale												
41-Security Service												
42-Hospitality												
43-Ed. Training (Stipends)												
44-Promotional												
45-Farm Expense												

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6015-05

Percent Change from FY 85-86 for Federal and State Funds

**FY 1986-87 APPROPRIATION REQUEST
DIVISION FINANCIAL SUMMARY**

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Education Employees Grievance Board

6015-05

Central Office (Chas.)

Spending Unit		Appropriated State Account Number				Appropriated Federal Account Number				Division		
	FY 1985-86 Legislative Digest		FY 1985-86 Budgeted				FY 1986-87 Current Level Request			Recommendation		
	State	Federal	State	Federal	Other	Total	State	Federal	Other	Total	Federal	State
Number of Positions			5			5	6			6		
PERSONAL SERVICES			32,581			32,581	75,250			75,250		
Number of Positions			-0-			-0-	2			2		
ANNUAL INCREMENT			-0-			-0-	720			720		
TOTAL PERSONAL SERVICES			32,581			32,581	75,970			75,970		
CURRENT EXPENSES												
Workers' Compensation			128			128	394			394		
Other Employee Benefits												
Office Expenses			4,000			4,000	6,000			6,000		
Rental (Bldg.)			5,000			5,000	10,500			10,500		
Utilities												
Telephone & Telegraph			4,000			4,000	7,000			7,000		
Contractual & Professional			1,052			1,052	6,000			6,000		
Travel			1,500			1,500	7,000			7,000		
ISSD												
Other Current Expenses			4,400			4,400	8,425			8,425		
TOTAL CURRENT EXPENSES			20,080			20,080	45,319			45,319		
REPAIRS & ALTERATIONS												
EQUIPMENT			9,782.50			9,782.50	5,050			5,050		

unclassified

Percent Change from FY 85-86 for Federal and State Funds

AR 87-3

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Elkins
Hearing Examiner

Division

Percent Change from FY 85-86 for Federal and State Funds

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6015-05

Hearing Examiner

Spending Unit

Appropriated State Account Number

Appropriated Federal Account Number

Division

Percent Change from FY 85-86 for Federal and State Funds

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Hearing Examiner

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Percent Change from FY 85-86 for Federal and State Funds.