

THIRD ANNUAL REPORT

TO THE

GOVERNOR AND THE LEGISLATURE

January 26, 1988

Submitted by:

EDUCATION EMPLOYEES GRIEVANCE BOARD



Members
James Paul Geary
Chairman
Orton A. Jones
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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
ARCH A. MOORE, JR.
Governor

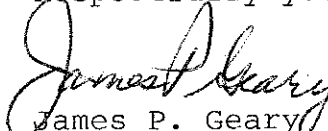
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January 26, 1988

TO THE GOVERNOR AND THE LEGISLATURE

In accordance with W. Va. Code, 18-29-5, it is my honor to submit to you the third annual report of the WV Education Employees Grievance Board for the calendar year 1987.

Respectfully yours,


James P. Geary
Chairman

I N D E X

FOREWARD.....1
EVALUATION.....3
RECOMMENDATIONS.....9
CONCLUSION.....13

APPENDIX

Fiscal Summary
FY 1988-89 Appropriation Request
Request for Appropriation Improvement
Above Current Level FY 1988-89
Map of Hearing Examiner's Regions

FOREWARD

In December 1987 the Education Employees Grievance Board completed its second full year of operation, having been created by the Legislature in 1985 as the hearing examiner level of the four step grievance procedure to serve the 55,000 employees of the state education system (W.Va. Code, 18-29-1 et seq.).¹ This legislation provides a procedure for employees of the board of regents, state board of education, county boards of education, regional educational service agencies and multi-county vocational centers and their employers to resolve employment disputes. The Education Employees Grievance Board (Board) commenced operation with two hearing examiners, one in Elkins and Charleston, and the first evidentiary hearing was conducted in December 1985. In July 1986 two additional hearing examiners were employed and offices in Wheeling and Beckley were added.

¹ Level one contemplates an informal conference with the employees' immediate supervisor and thereafter the filing of a written grievance with a written decision from the supervisor; level two provides for an evidentiary type hearing with the county superintendent or chief administrator or their designees and level three provides for a discretionary hearing before the county board of education. (W.Va. Code, 18-29-4).

The Education Employees Grievance Board is required to administer the procedure only at level four and appoints the hearing examiners to serve at its will and pleasure. (W.Va. Code, 18-29-5).

In accordance with W.Va. Code, 18-29-5 the Board conducted an open hearing in Charleston on January 4, 1988 and invited all education institutions, school superintendents, employee organizations and all grievants participating in level four grievances in 1987 to attend or submit written data concerning their experience(s) with the level four process. The purpose of this meeting and solicitation of written comment was to receive input on the operation of the level four procedure and the performance of the hearing examiners during 1987 to enable the Board to prepare this Evaluation and Report as required by law.

Over four hundred notices were mailed and in response thereto twenty-one written statements were received and twelve persons attended the open meeting: five grievants, one county school superintendent, six representatives of employee organizations, i.e., West Virginia School Service Personnel Association (WVSSPA) and West Virginia Education Association (WVEA), and one representative from the Department of Education. Of the twenty-one written responses, eight were critical, seven were complimentary, and six were in the nature of recommendations to improve the grievance procedure.

Of those persons appearing at the open hearing and offering comment, one grievant was favorable, three grievants were critical either of the hearing examiners

or their own representative or lawyer, one four member delegation from WVSSPA was highly critical of their win-loss ratio and of what was perceived as a employer oriented philosophy of the hearing examiners, one representative of the WVEA was critical of the win-loss ratio but complimentary of the level four process and the representative of the State Department of Education was critical of the Board assuming jurisdiction over the Department in the grievance procedure; five of the twelve persons in attendance did not offer comments.

EVALUATION

Based upon the comments and criticisms received at the open hearing, the written responses to the notices and oral comments from other sources, the Board can report a general satisfaction with the level four grievance procedure in 1987. In addition to the criticisms voiced by the officials of WVSSPA concerning the win-loss ratio and its concern that the hearing examiners were becoming philosophically attuned to employer arguments, there were several comments relating to the time required to resolve a grievance. This concern focused on the time involved in the overall grievance process as well as the time required to obtain the level four written decision, which latter point will be treated in more detail in

the Recommendations that follow.²

Normally, a written decision is issued thirty to forty-five working days from the date of the level four hearing depending, in part, upon the parties' desire to file proposed findings of fact and conclusions of law. However, this schedule was disrupted somewhat by the vacancy in the hearing examiner position in Beckley for five months in 1987 requiring the other three hearing examiners to absorb the Beckley grievance load. Notwithstanding, in 1987, 340 grievances were received by the Board and disposition was made of 309: 229 by written decision and 82 by remands and dismissals. The breakdown of activity of each hearing examiner by office is as follows:

	Decisions issued	Level four hearings	
		Scheduled	Held
Charleston	71	159	82
Elkins	60	164	50
Beckley	46	83	40
Wheeling	<u>52</u>	<u>111</u>	<u>35</u>
	229	517	207

Of the 229 decisions rendered in 1987 fifty-four were appealed to the circuit courts and of the results reported to the Board, thirteen decisions were affirmed,

² This was also a common complaint during 1986 and was noted in the 1986 Report to the Governor and Legislature dated January 28, 1987. (See pages, 4-5).

In that Report the Board recommended, inter alia, that the number of hearing examiners be increased to six (6) and that the salary be increased to a potential of \$35,000.00. (Id., pp.7,8).

six decisions were reversed, one decision was remanded and five appeals were withdrawn. The six reported decisions reversed by the circuit courts all involved professional employees and four of the reversals involved grievances wherein the grievant had prevailed before the hearing examiner.³ According to school service personnel association officials, of eight reported appeals by service personnel one hearing examiner decision was reversed and seven were affirmed. Thus, the decisions of the hearing examiners were affirmed in seventy-five percent of the reported grievances appealed to the circuit courts.⁴

An average of thirty (30) grievances were filed each month and the average caseload per hearing examiner is thirty-five (35) grievances. One hundred fifty-three

³ One of the decisions, Leonard Bonfantino v. Marion County Board of Education, Docket No. 24-86-079, was appealed by WVEA to the Supreme Court of Appeals and is on the docket for argument on January 26, 1988. Another one of the four decisions, Alice DeFazio, v. Harrison County Board of Education, Docket No. 42-86-054-2, was appealed to the Supreme Court on January 19, 1988.

⁴ W.Va. Code, 18-29-7 provides that the decision of the hearing examiner shall be final upon the parties and is enforceable in circuit court but that either party may appeal to the circuit court of Kanawha County or to the county in which the grievance occurred. The appeal must be filed within thirty days of the receipt of the decision of the hearing examiner.

(153) grievances were carried over from the 1986 docket and a list of the grievances filed by county employees, decided or otherwise disposed of by dismissal or remand⁵ in 1987 by county breakdown is as follows:

	<u>Filed</u>	<u>Decisions</u>	<u>Dismissals</u>	<u>Remands</u>
Barbour	5	6	0	0
Berkeley	13	7	3	0
Boone	5	3	1	0
Braxton	0	0	0	0
Brooke	3	3	0	0
Cabell	20	7	3	1
Calhoun	2	0	2	0
Clay	0	0	0	0
Doddridge	1	1	0	0
Fayette	4	7	1	0
Gilmer	11	3	1	1
Grant	0	0	0	0
Greenbrier	4	2	1	0
Hampshire	3	1	0	0
Hancock	3	7	0	0
Hardy	2	0	2	0

⁵ Grievances are dismissed or remanded upon motion of the parties or by the hearing examiner when the parties have compromised the claim, have failed to conduct a hearing at the lower level, etc. The indications are that more grievances are being compromised at the lower levels by utilizing the body of decision law that has been developed by the hearing examiners. Our records also reflect that thirty-eight grievances were resolved after having been docketed for hearing at level four.

	<u>Filed</u>	<u>Decisions</u>	<u>Dismissals</u>	<u>Remands</u>
Harrison	22	9	3	0
Jackson	3	3	0	0
Jefferson	0	2	0	0
Kanawha	27	30	3	1
Lewis	2	1	0	0
Lincoln	9	7	1	0
Logan	10	4	4	2
Marion	4	3	1	0
Marshall	6	5	1	0
Mason	20	13	0	0
McDowell	6	6	0	0
Mercer	3	3	0	0
Mineral	2	0	0	0
Mingo	17	8	6	3
Monongalia	1	2	0	0
Monroe	0	1	0	0
Morgan	1	1	0	0
Nicholas	2	2	0	0
Ohio	7	4	1	0
Pendleton	0	0	0	0
Pleasants	1	0	0	0
Pocahontas	0	1	0	0
Preston	4	3	1	0
Putnam	4	5	1	0
Raleigh	5	6	1	0
Randolph	2	3	2	0
Ritchie	13	3	8	0
Roane	1	1	0	0
Summers	10	4	4	0
Taylor	2	1	0	0
Tucker	1	2	0	0
Tyler	0	0	0	0

	<u>Filed</u>	<u>Decisions</u>	<u>Dismissals</u>	<u>Remands</u>
Upshur	1	3	0	0
Wayne	8	8	2	0
Webster	1	2	0	0
Wetzel	1	4	0	0
Wirt	2	0	2	0
Wood	11	7	5	0
Wyoming	<u>13</u>	<u>10</u>	<u>2</u>	<u>0</u>
Total	298	212	62	8

One grievance was filed by and two decisions were rendered involving employees of the West Virginia Department of Education in 1987 and the following data involves grievances of employees of the Board of Regents:

	<u>Filed</u>	<u>Decisions</u>	<u>Dismissals</u>	<u>Remands</u>
West Virginia University	19	13	9	1
Marshall University	12	1	7	0
West Virginia Northern Community College	5	1	0	0
Shepherd	1	0	0	0
West Liberty	4	0	0	0
Parkersburg Community College	1	0	0	0
Potomac State	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
Total	42	15	16	

Under the circumstances, the Board is again pleased to report an overall satisfaction with the functioning of the level four grievance process and the performance of the hearing examiners in 1987. The majority of criticisms and compliments received were those normally expected of litigants involved in any type of adversarial proceeding and consistent with the common complaint that the Board should assume more responsibility in the administration of school affairs and the converse complaint of school administrators that the Board is encroaching upon its territory. The impressive comments were those received from participants who did not prevail in the level four grievance but considered their level four treatment as fair and professional. This is further borne out by the extremely high rate of hearing examiner decisions being affirmed by the various circuit courts and the positive comments received from individual circuit judges.

Recommendations

As noted in the Report of last year it is the considered opinion of the Board that the existing structure, composition and process of selection of the 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. Also, as the level four procedure matures the responsibilities and demands upon the board members increases and as noted in the Report last year it is essential that the position of director be established either by legislation or board order. In July 1986 the Board created the position of chief hearing examiner but the increased number of administrative and supervisory duties placed upon the chief hearing examiner renders it difficult, if not impossible, for that examiner to also conduct hearings, write decisions and otherwise accommodate the needs of the most active office in the level four system. The director would serve at the will and pleasure of the Board, would be charged with the responsibility of the day-to-day management of the agency and the execution of the directives of the Board and would conduct hearings only as necessary.

The Board also recommends that the number of hearing examiners be increased to six (6), inclusive of the director, to ensure that the current level of operation is maintained and to meet the growing demands of the agency.⁶

⁶ The Board is aware that there is another effort underway at this session of the Legislature to enact a grievance procedure for state employees similar to W.Va. Code, 18-29-1 et seq. These recommendations do not contemplate the addition of such a system to the present structure of the Education Employees Grievance Board and further consideration of the figures included herein would have to be made if the Legislature combines (footnote continued)

The necessity thereof was acknowledged by the budget officials conducting our budget hearing on October 26, 1987.⁷ In addition to the evidentiary hearings and routine casework involved in the disposition of a grievance such as motions, etc., 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. Accordingly, it is not possible to improve upon the time required to make final disposition of a grievance at level four with the present number of hearing

(footnote continued)

the two systems under the jurisdiction of this Board. It is to be noted, however, that the level four system in place would accommodate the addition of public employees with modest variations of the existing system.

⁷ Also acknowledged at the budget hearing was the absolute necessity of a computer system for the agency. Since the creation of this Board the hearing examiners have written 379 decisions involving complex legal issues and handled nearly 500 grievances. Much valuable time is expended in the effort to maintain continuity by application of the principle of administrative stare decisis.

Attached to this Report, in the Appendix, is a Fiscal Summary, a Fiscal Year 1988-89 Appropriation Request and a copy of the Request for Appropriation Improvement Above Current Level FY 1988-89 which elaborates upon the financial aspect of this Report.

examiners.⁸ Finally, it is essential that the Board be given the discretion of increasing the salaries of the hearing examiners to \$35,000.00 and that of the director to \$45,000.00, in order to attract and retain experienced personnel.

⁸ The amount of time involved in the evidentiary hearings at level four varies from several hours to several days, especially in dismissals for cause pursuant to W.Va. Code, 18A-2-8. Dismissals and suspensions are given priority on the hearing docket and the number of this type of grievances increased significantly in 1987. Since the creation of the Education Employees Grievance Board in 1985 the Board has decided 24 dismissal cases and 9 suspension cases.

CONCLUSION

The experience of 1987 serves as cumulative evidence of the wisdom of Governor Moore and the Legislature in the creation of the level four grievance procedure for education employees. The primary body of education law being developed via the decisions of the Education Employees Grievance Board continues to grow and to be utilized in the disposition of disputes at lower levels of the grievance procedure. The circuit courts are no longer burdened with the inordinate number of these evidentiary hearings on court dockets and, instead, are able to decide the cases on appeal upon the record made up before the hearing examiner.

Accordingly, it is with a sense of accomplishment and pride that the Board respectfully tenders its 1987 Annual Report to the Governor and the Legislature.

Respectfully,

JAMES PAUL GEARY
Chairman

ORTON A. JONES
Member

DAVID L. WHITE
Member

APPENDIX

FISCAL SUMMARY

An initial allotment of \$100,000 was appropriated to this agency by the 1985 Legislature and the first two offices of the Education Employees Grievance Board were established. Based on expenditures occurring in Fiscal Year 1985-86 it was estimated that approximately \$70,000 per year would be needed to operate each field office and \$120,000 to operate the Charleston office. Our fiscal year 1986-87 appropriation of \$322,970 reflected our total operating needs, taking into account start up costs for two additional offices and completion of the two existing offices.⁹

An unclassified budget of \$282,977 was appropriated for this agency for fiscal year 1987-88. This amount reflected a reduction of \$28,000 from the initial request. The spending level at all locations has been scrutinized and this agency will be able to complete this year of operation within the appropriation and maintain an accept-

9

With the exception of the Charleston office which has three employees, i.e., a secretary, administrative assistant and chief hearing examiner, each of the offices is staffed by a hearing examiner and a secretary. The satellite offices are equipped with the West Virginia Code and the West Virginia Reports for legal reference material; the Charleston Office also has the last hundred volumes of the Southeastern Reporter and the current volumes of West's Education Law Reporter and provides copies of current Supreme Court decisions, etc., to the satellite offices.

table level of operation; our ability to accomplish this is due mainly to the temporary loss of personnel this agency experienced during the year. (See pg. 4, supra).

Presuming that we would maintain a full complement of staff throughout the ensuing fiscal year, an appropriation request of \$377,452 was submitted. In consideration of the current caseload of the hearing examiners two additional hearing examiners were proposed enabling this agency to remain at current level. Attached to the appropriation request was an improvement level package of \$21,000 allowing for the purchase of the computer equipment which is now deemed vital to the continued effectiveness of this office. The improvement level package is, for the most part, a one time expenditure that will only require future appropriations for software.

EDUCATION EMPLOYEES GRIEVANCE BOARD
SPENDING UNIT

6015
APPROPRIATED STATE ACCOUNT NUMBER

APPROPRIATED FEDERAL ACCOUNT NUMBER

	FY 1986-87		FY 87-88 LEG		FY 1987-88 BUDGETED			FY 1988-89 CURRENT-LEVEL REQUEST			RECOMMENDATION	
	ACTUAL STATE	DIGEST STATE	STATE	FEDERAL	OTHER	TOTAL	STATE	FEDERAL	OTHER	TOTAL	FEDERAL	STATE
NUMBER OF POSITIONS	12.00		12.00			12.00	14.00			14.00		
PERSONAL SERVICES	192,869		219,526			219,526	292,750			292,750		
INCREMENT POSITIONS	XXXXXXXXXXXX	XXXXXXXXXXXX	4.00			4.00	4.00			4.00		
ANNUAL INCREMENT	720		1,188			1,188	1,371			1,371		
TOTAL PERSONAL SERVICES	193,589		220,714			220,714	294,121			294,121		
CURRENT EXPENSES	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX
10-CIV SER. PUB EMP INS & RET FEES												
1-SOCIAL SECURITY MATCHING												
2-PUB. EMPLOYEE INSURANCE PREMIUM												
3-OTHER HEALTH INSURANCE												
4-WORKERS COMPENSATION	760		750			750	1,000			1,000		
5-UNEMPLOYMENT COMPENSATION												
6-PENSION & RETIREMENT CONTRIB.												
0-OFFICE EXPENSES, POSTAL & FREIGHT	18,679		7,200			7,200	15,000			15,000		
1-PRINTING & BINDING	1,303		500			500	500			500		
2-RENTAL EXPENSES (BUILDING)	20,380		24,517			24,517	25,000			25,000		
3-UTILITIES												
4-TELEPHONE & TELEGRAPH	17,890		15,500			15,500	16,000			16,000		
5-CONTRACTUAL & PROFESSIONAL							5,000			5,000		
5-TRAVEL	7,739		5,296			5,296	8,500			8,500		
7-ISSD												
1-CONSULTANTS AND CONSULTING FEES												
1-VEHICLE RENTAL												
1-RENTAL (MACHINE & MISCELLANEOUS)	3,684		3,300			3,300	3,631			3,631		
-ASSOCIATION DUES												
-FIRE, AUTO, BONDING, & OTHER INS												
-FOOD PRODUCTS												
-CLOTHING & HOUSEHOLD SUPPLIES												
-ADVERTISING												
-VEHICLE MAINTENANCE EXPENSE												
-RESEARCH, EDUCATIONAL & MEDICAL												
-MAINTENANCE CONTRACTS												
-MANUFACTURING SUPPLIES												
-MERCHANDISE FOR RESALE												
-SECURITY SERVICE												
-HOSPITALITY	36		200			200	50			50		
-EDUCATIONAL TRAINING (STIPENDS)												

1988-89 APPROPRIATION REQUEST
 SPENDING UNIT ACCOUNT SUMMARY

EDUCATION EMPLOYEES GRIEVANCE BOARD
 SPENDING UNIT

6015
 APPROPRIATED STATE ACCOUNT NUMBER

APPROPRIATED FEDERAL ACCOUNT NUMBER

UNCLASSIFIED ITEMS	FY 1986-87		FY 1987-88 LEG	FY 1987-88 BUDGETED			FY 1988-89 CURRENT-LEVEL REQUEST			RECOMMENDATION		
	ACTUAL STATE	DIGEST STATE		STATE	FEDERAL	OTHER	TOTAL	STATE	FEDERAL	OTHER	TOTAL	FEDERAL
ALANCE FORWARD	289,843	262,977	282,977			282,977	377,452			377,452		
DEPARTMENTAL IMPROVEMENT REQUESTS:												
EQUIPMENT							21,000			21,000		
SUB-TOTAL DEPARTMENTAL IMPROVEMENT REQUEST							21,000			21,000		
SS TOTAL	XXXXXXXXXX	XXXXXXXXXX	282,977			282,977	XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX
S REAPPROPRIATIONS	XXXXXXXXXX	XXXXXXXXXX					XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX
TOTAL	289,843	282,977	282,977			282,977	398,452			398,452		

REQUEST FOR APPROPRIATION
IMPROVEMENT ABOVE CURRENT LEVEL
FY 1988-89

PRIORITY NUMBER 1

Education Employees Grievance Board

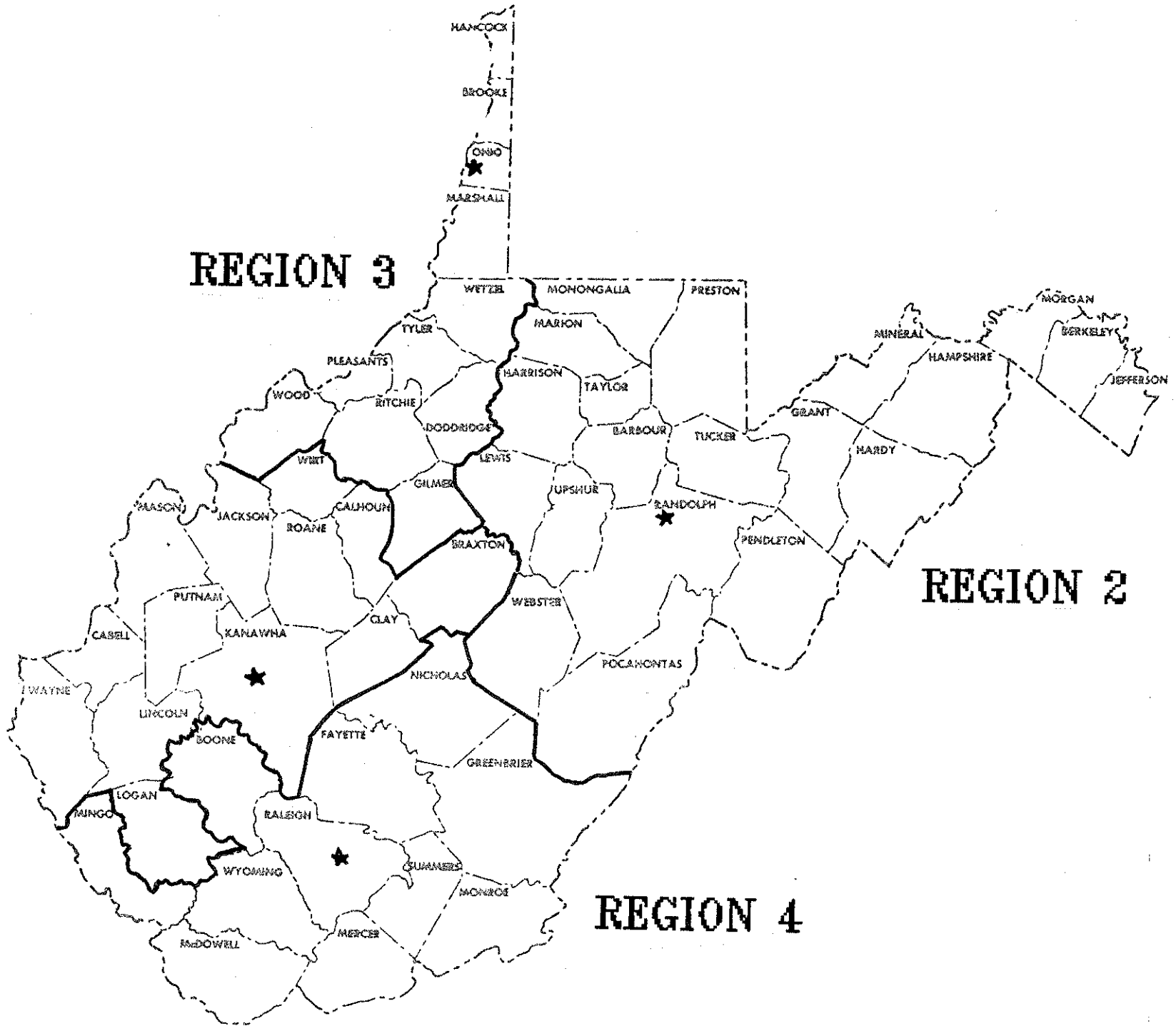
6015

Spending Unit

Appropriated State Account Number

Appropriated Federal Account Number

BY ITEMS OF APPROPRIATION	State	Federal	Other	Total	JUSTIFICATION
Number of Positions					<p>Equipment Purchases to include:</p> <p>3 computer terminals and 3 software packages compatible with the system used in the Charleston office - \$18,000</p> <p>Computer support furniture - \$3,000</p> <p>The initial purchase of this equipment will be a one time expenditure as the system proposed to us by I.S.S.D. has the capacity to expand with our needs. The average number of decisions rendered on a monthly basis by this agency is twenty-four. To date, more than 300 decisions have been formally issued, exclusive of dismissal and remand orders. We are now at a point where the simple indexing method that we utilize is not effective and there is increased probability that the hearing examiners will issue conflicting decisions on the same issue simply due to an inability to recall every grievance acted on and the final outcome. Additionally, the amount of time it takes to review, page by page, previously issued decisions to find one that is similar in nature utilizes time that can be more effectively spent writing decisions and conducting hearings.</p>
Personal Services					
Number of Positions					
Annual Increment					
Total Personal Services					
Current Expenses					
Repairs and Alterations					
Equipment	21,000				
Other					
TOTAL	21,000				



REGION 3

REGION 2

REGION 4