



JAMES PAUL GEARY
Chairman

ORTON A. JONES
DAVID L. WHITE
Members

C. RONALD WRIGHT
Director

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

GASTON CAPERTON
Governor

OFFICES:

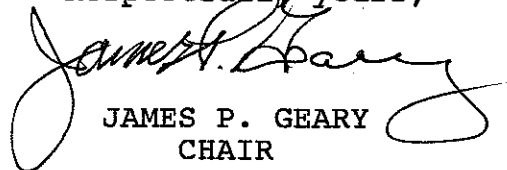
240 Capitol Street
Suite 515
Charleston, WV 25301
Telephone: 558-3361

February 26, 1993

TO THE GOVERNOR AND THE LEGISLATURE

In accordance with W.Va. Code, 18-29-5 and W.Va. Code, 29-6A-5, it is my honor to submit to you the seventh annual report of the West Virginia Education and State Education Employees Grievance Board for the calendar year 1992.

Respectfully yours,


JAMES P. GEARY
CHAIR

ANNUAL REPORT
TO THE
GOVERNOR AND THE LEGISLATURE
FOR CALENDAR YEAR 1992

B A C K G R O U N D

Effective July 1, 1985, the Legislature created a statutory grievance procedure for educational employees¹ and created the West Virginia Education Employees Grievance Board to administer the fourth level of that procedure. W.Va. Code, 18-29-1, et seq.² The

¹ According to the West Virginia Department of Education, county boards of education have in their employ over thirty-eight thousand (38,000) people for the current school year. The Higher Education Central Office advises that there are approximately eleven thousand eight hundred (11,800) higher education employees.

² For education employees, level one of the grievance procedure involves an informal conference with the immediate supervisor of the employee, followed by the filing of a written grievance and a written decision from the supervisor. Level two requires an evidentiary hearing to be held by the county
(continued...)

express goals of this innovative law are the maintenance of good morale, the enhancement of job performance, and the improvement of the school system to better serve the citizens of this State. The Legislature intended the procedure to be a simple, expeditious and fair process for resolving grievances at the lowest possible level.

By 1988, the Board had hired four full-time hearing examiners, a limited secretarial staff and opened offices in Charleston, Elkins, Beckley and Wheeling. During that time period over eleven hundred (1,100) grievances were filed, primarily by county board of education employees.

Effective July 1, 1988, the Legislature enacted a similar grievance procedure statute for state employees³ and changed the Board's title to the West Virginia Education and State Employees Grievance Board. W.Va. Code, 29-6A-1 et seq.⁴ This legislation

²(...continued)
superintendent, chief administrator or a designee, and at level three the County Board of Education may also conduct a hearing. W.Va. Code, 18-29-4. At level four, the final administrative level, a written decision is rendered with findings of fact and conclusions of law after an evidentiary hearing or the submission of the case on the record developed at the lower levels. Any party may appeal the decision, within thirty (30) days of receipt, to either the Circuit Court of Kanawha County or the circuit court of the county in which the grievance arose.

³ According to the West Virginia Division of Personnel, this procedure is available to approximately twenty-one thousand (21,000) state employees. It should be noted that the Grievance Board has ruled that it has no jurisdiction to hear grievances by county health department employees. Chafin v. W.Va. Dept. of Health and Human Resources/Boone County Health Dept., Docket No. 92-HHR-132 (July 24, 1992).

⁴ The multi-level procedure created under the state employee grievance procedure statute closely parallels the steps in the grievance procedure statute for education employees. There are
(continued...)

applies to employees of any department, governmental agency or independent board or commission of State government, with certain exceptions.⁵

Because the Grievance Board's jurisdiction was substantially increased by this new legislation, it increased the number of hearing examiners or administrative law judges (ALJs) from four to six in 1988 and a Director, who also serves as an ALJ in some cases, was employed in 1989. With additional funding provided by the Legislature in 1991, the number of ALJs was increased to seven. The Director and four ALJs are assigned to the Charleston office, while an ALJ and one secretary are assigned to each branch office.

A N N U A L O P E N H E A R I N G

In accordance with the requirements of W.Va. Code, 18-29-5 (1985), and W.Va. Code, 29-6A-5 (1988), the Board, after proper notice, conducted its annual open hearing in Charleston on January 25, 1993, inviting all state agencies, educational institutions, county superintendents, employee organizations, the Director of the Division of Personnel and all grievants who had participated in

⁴(...continued)

some significant differences, however, as the result of the 1992 amendments to education employees grievance procedure law. For example, an education employee can now prevail by default, if the grievance evaluator fails to make a required response within the time required by the grievance procedure.

⁵ Employees of constitutional officers are not covered, unless they are in the classified service and protected by state personnel laws. According to the West Virginia Division of Personnel, none of these employees is in the classified service. Employees of the Legislature and uniformed members of the Department of Public Safety are also excluded.

level four proceedings during the 1992 calendar year to attend or to submit written comments. The purpose of the open meeting and the solicitation of comments is to obtain information to assist in its evaluation of the level four grievance process and the performance of its hearing examiners. The Board mailed over six hundred notices to participants in the level four process. Seven people attended the hearing and twenty-eight (28) submitted written comments. Unlike previous years, no governmental employer or employee organizations appeared at the meeting; those persons who appeared were individuals who had filed grievances.

1992 CALENDAR YEAR

OPERATIONAL DATA AND MAJOR ACTIVITIES

During calendar year 1992, the Board received five hundred eight (508) grievances, for an average of approximately forty-two (42) grievances a month. This is sixteen (16) fewer grievances than in calendar year 1991. Two hundred seventeen (217) grievances were filed by state employees, two hundred sixty-one (261) by county board of education employees and thirty (30) by higher education employees.⁶ The number of grievances filed by State employees was identical to calendar year 1991; the number of grievances by county board of education employees increased by six, while the number of cases filed by higher education employees

⁶ Appendix A shows the number of grievances filed in calendar year 1992, and the two preceding years, against higher education institutions and county boards of education. Appendix B is an alphabetical list showing the number of grievances filed against state agencies in 1992 and in the two preceding years.

decreased by twenty-two (22). The decline in higher education grievances thus accounted for the overall decline in the number of cases reaching level four.

The Board disposed of two hundred seventy-four (274) grievances by written decision. It issued one hundred eighty-five (185) dismissal orders and approximately thirteen (13) remand orders.⁷ The Board's caseload of approximately two hundred and seventy-two (272) cases at the beginning of calendar year 1992 was slightly lower than the beginning caseload for 1991.

The Board ruled in favor of the employee in approximately thirty-two (32) percent of the grievances and in favor of the employer in about sixty-five (65) percent of the cases. Three (3) percent of the decisions were granted in part and denied in part. These percentages are similar to the results in prior years. A breakdown by category is listed below:

	<u>Granted</u>	<u>Denied</u>	<u>In Part</u>
Education employees:	33%	66%	1%
State employees:	23%	70%	7%
Higher Education:	43%	57%	0%

The Board scheduled six hundred sixty-two (662) level four hearings. ALJs conducted two hundred thirty-four (234) level four

⁷ Remand orders and dismissal orders are frequently entered when the lower level steps in the grievance procedure have not been completed. Dismissals orders are also entered when grievance are settled.

hearings. In nearly one half of the cases set for hearing, a party requested and was granted one continuance without objection. The parties often initially requested a hearing but later decided that a hearing was not necessary and submitted the case to the ALJ for decision on the record developed below.

Discharge grievances rose substantially in 1992.⁸ The Board received fifty-four (54) discharge cases in calendar year 1992, compared to only thirty-two (32) in 1991. It also received twenty-nine (29) disciplinary suspension grievances. Decisions were issued on the merits in thirty-one (31) dismissal cases; twelve (12) were granted, eighteen (18) were denied and one was remanded. Eleven (11) disciplinary suspension cases were decided; four (4) were granted and seven (7) were denied. Since disciplinary cases tend to require more time to hear and decide, typically involving more witnesses and more factual issues, the increase in this category of grievances placed additional demands on the Board's ALJs.

About twenty-eight (28) percent of the decisions rendered in 1992 were appealed to circuit court. Ninety-six (96) decisions were appealed to circuit court in 1992, compared with approximately one-hundred eleven (111) in 1991. Grievants filed most of these appeals. The Board's secretarial staff prepared the transcripts in most of these cases, and assembled and certified the records to circuit court, some of which were voluminous, in all these cases. Producing transcripts internally within a reasonable time has been

⁸ The Board gives priority to disciplinary cases.

difficult at times, but the Board's secretarial staff has been able to regularly meet short court-imposed deadlines.⁹

It is difficult for the Grievance Board to determine the outcome of these appeals due to the inconsistent and sporadic manner in which it is informed of these decisions.¹⁰ Frequently, and despite specific written requests, neither the parties to the grievance nor the circuit clerk's office notifies the Board that the circuit court has ruled on an appeal. One technique has been to periodically review the docket of the West Virginia Supreme Court of Appeals.

In any case, according to the information currently available to the Board a high percentage of the decisions are upheld by the courts on appeal. Since the Board's inception in 1985, approximately four hundred seventy-nine (479) decisions have been appealed. Circuit courts have affirmed the rulings of the ALJs in about eighty (80) percent of the cases. When decisions by the Supreme Court of Appeals of West Virginia are considered, the affirmance rate is even higher because that Court has also upheld the Board's decisions in a large percentage of the cases.

⁹ The judiciary of this State benefits from the grievance procedure because the courts no longer have to conduct extensive evidentiary hearings and can decide the cases on appeal based upon the record below.

¹⁰ There is no provision in either the education or the state employees grievance procedure statute requiring the parties or the circuit court to notify the Board of the decision on appeal. Although parties are asked to provide the Board with a copy of the circuit court's decision, and the Board's Procedural Rule 4.16 requires the prevailing party to furnish a copy of that decision, this has not proven to be effective.

Each month the Board's staff prepares a summary or synopsis of all decisions rendered in the immediately preceding month. The Board mails these case summaries to thirty-one (31) entities and organizations to help them in keeping abreast of the current legal issues and case precedent. The case summaries and additional information are also added each month to an electronic database, called Boardlaw, that was created by the Board's staff. The Board's ALJs utilize the database for research purposes and the database is also distributed to the Attorney General's office, various employee organizations and individuals without charge. This resource is becoming increasingly valuable to the ALJs and all interested persons. Each hearing office is equipped with a high-speed tape duplicating machine to provide the parties, upon request, with an audio-tape recording of the hearing instead of providing transcripts.¹¹

In 1992, the Legislature substantially amended the grievance procedure law covering educational employees and placed additional duties on the Board. See W.Va. Code, 18-29-3,5,10,11. The Board, as required by W.Va. Code, 18-29-11 (1992), now provides a statewide quarterly report to, among others, all county boards of education and employee organization summarizing recent grievance decisions. (The first two quarterly reports can be found in Appendix C).

¹¹ It should be noted that the Board, with its current secretarial staff, does not, and cannot, comply with its statutory duty under W.Va. Code, 29-6A-6, to promptly provide a certified copy of the level four transcript to any party upon request.

M E D I A T I O N

Another 1992 amendment to the education employees grievance procedure, W.Va. Code, 18-29-10, requires the Grievance Board, to the extent feasible with existing personnel and resources, to engage in mediation and other dispute resolution techniques to actively assist the parties in identifying, clarifying and resolving issues prior to the level four hearing. The Board therefore expanded the limited mediation experiment it had already begun to encourage the settlement of disputes. The results were encouraging and the Board intends to continue to provide mediation services consistent with its limited resources. As required by the statute, the Board filed a report with the Legislature on the progress of the mediation program on December 23, 1992. A summary of that report is included here for the convenience of the reader.

Mediation is, of course, a process where a neutral person assists the parties to a dispute in reaching a mutually acceptable agreement to settle the controversy.¹² The Board views mediation as an additional step in the existing procedure that supplements but does not supplant the existing grievance procedure, i.e., employees do not surrender their rights by attempting to settle the matter, for if the parties reach no agreement the case proceeds to adjudication.

The mediation experiment was limited to cases in which both

¹² Four of the Grievance Board's administrative law judges received training in mediation sponsored by the United States District Court for the Northern District of West Virginia and/or the West Virginia State Bar.

parties requested the services of one of its ALJ mediators. The Board's approach was to attempt to assist the parties in resolving disputes that would not otherwise be settled. In other words, the experiment focused on cases where the parties had discussed settlement but had not been able to resolve the dispute on their own.

A large number of notices were sent to parties advising them that mediation services were available upon joint request. As of November 30, 1992, mediation sessions were conducted in twelve (12) grievances. Seven cases or fifty-eight (58) percent settled at the mediation session. One case that did not settle at the session did settle later before the level four hearing, and it is believed that the discussions during the mediation session were a contributing factor in the later settlement. Four cases did not settle. Two difficult cases settled to the benefit of all parties. These key two cases, and probably the others as well, would probably not have been resolved without the assistance of a mediator.

Grievances by education and state employee grievances were successfully mediated in the experiment, and the average session lasted between four and five hours. In addition to mediation, the Board's has encouraged its ALJs to conduct more pre-hearing conferences to clarify the issues and to discuss the possibility of settlement. These efforts have also produced positive results.

The Board's experience thus far, and scholarly literature on the subject, see e.g., Grievance Mediation: Is It Worth Using?, 18 Journal of Law & Educ. 495 (Fall 1989), clearly indicates that (1)

grievance mediation and the use of other pre-hearing techniques are the single most cost-effective means of resolving grievances and (2) the proper use of such procedures can promote equitable settlements. Mediation and other alternatives to litigation have been and are being used successfully in the federal work place and in other States in grievances by public employees. Mediation can be used successfully here too; it is not a panacea but it does hold much potential if utilized properly.

Savings to the Grievance Board are readily apparent. Grievances that are resolved prior to hearing reduce the time spent by ALJs in conducting hearings and in writing decisions. Settlements, even after the level four hearing, can be beneficial to all parties. Settlements also eliminate secretarial work connected with the issuance of a written decision and in the preparation of the transcript and record for submission to circuit court in the event of an appeal.

Employers covered by the grievance procedure may also experience cost-saving benefits. Attorney fees and court reporter expenses can be reduced or eliminated. Employee-witnesses do not have to miss work to attend level four hearings and travel expenses are reduced. Public employees may also benefit by reducing or eliminating attorney fees and other costs associated with prosecuting a grievance, not to mention obtaining a quick agreement resolving of the matter in controversy. In short, grievance mediation has tangible benefits to all parties, and there does not appear to be any substantial negative consequences from the proper

utilization of such procedures. Accordingly, the Grievance Board intends to expand its use of mediation and other prehearing techniques.

In its Mediation Report to the Legislature, the Board recommended that the Legislature amend both grievance procedure statutes to give administrative law judges the authority to require the parties to attend and to participate in settlement conferences and mediation sessions. Currently, both grievance procedure statutes provide that hearing examiners may conduct "conferences for the settlement or simplification of the issues by consent of the parties." W.Va. Code, 18-29-6 and W.Va. Code, 29-6A-6.

It is widely recognized that people often think that making an offer to settle a dispute is a sign of weakness. This alone is a good reason to authorize hearing examiners to require the parties to a grievance to participate in settlement conferences and/or mediation sessions. Modifying current law is advisable and is consistent with case-processing techniques widely utilized in administrative and judicial forums. The Supreme Court of Appeals of West Virginia is presently considering the adoption of temporary rules to govern mediation in the Circuit Courts of West Virginia. Under these rules a judge may refer a case to mediation on his or her own motion; consent of the parties is not required.

E V A L U A T I O N

The Board is pleased to report that it is generally satisfied with the functioning of level four of the grievance procedure and

the performance of its ALJs in 1992. The Board received only limited criticism of the grievance procedure and received even less criticism about the performance of the ALJs. The Board believes that level four of the grievance procedure is functioning well.

As was true in the last three years, the written commentary received about the conduct of ALJs and the decisions rendered in particular cases is the type of comment normally expected of litigants involved in adversarial proceedings. Such comments were few in number and are a good indication that the ALJs are providing fair hearings, that the decisions are generally perceived by the parties to be fair, and that the Board has achieved the neutral stance intended by the Legislature.

As in previous years, the most frequent and principal criticism concerned delays in the processing of grievances at every level of the procedure, including level four. Unnecessary and unreasonable delay is a major area of concern to the Board; its primary concern continues to be with unreasonable delay in issuing decisions at level four.¹³

In 1992, the Board made progress in reducing the time it takes to render decisions and in preventing lengthy decisional delay. The Board is now tracking grievances more closely, keeping more information about decisional delay and taking additional steps to

¹³ Delay caused by a desire of the parties to submit findings of fact and conclusions of law is not considered to be unnecessary delay. Numerous circumstances contribute to delay, including the complexity of the legal and factual issues presented, fluctuating caseloads, turnover in ALJ positions and other human factors present in any agency operating with only limited staff. Frequently delay is sought for legitimate reasons by the parties.

reduce decisional delay. The Board will continue to strive to meet its statutory duties and to reduce the time between the submission of the case and the issuance of a written decision.

Another perennial complaint was that the Board ruled too often in favor of the employer. The Board is of the firm opinion that this is not a valid complaint for a number of reasons. First, grievances are decided based upon the law and the evidence. The percentage of grievances denied is simply a reflection of the merits of the cases presented. Second, the Legislature should not be misled by the statistics. For example, it is not uncommon for several employees to file separate grievances raising the same legal issue. If an ALJ rejects the legal argument in one case, the argument will ordinarily be rejected in the other grievances as well. Thus, one legal argument can result in the denial of many grievances. Third, no meaningful comparison can be made with respect to how arbitrators rule in other jurisdictions because this State has a significantly different, if not unique, system for resolving employee grievances. Here, an individual employee can file a grievance and pursue it through level four of the grievance procedure. In collective bargaining states, however, the grievance belongs to the union and it decides which cases it will pursue to arbitration.

The Board is, and has been, of the opinion that the high percentage of decisions affirmed in the Courts is a good indication that ALJs are knowledgeable in the law, can apply the law to diverse factual situations, and are rendering fair decisions based

on the law and the evidence.

Ordinarily, it would be difficult to predict with confidence how many grievances will reach level four in the future. At the present time, however, it is extremely likely that a significant increase in such cases will occur in calendar year 1993 because of the West Virginia Division of Personnel's on-going reclassification projects. See Report of Blue Ribbon Personnel Commission (1992) at 21. The information currently available indicates that employees will file two or three hundred cases that will reach this level. If the number of other grievances remains relatively constant, as they have in the past three years, the Board's difficulties will be magnified significantly and complaints and dissatisfaction about delay in the process will likely increase.

The Board met with the Blue Ribbon Personnel Commission and has reviewed its recommendations to the Governor concerning the grievance procedure for State employees. The Board and its staff are committed to and pledge to work with the Governor's Office, the Legislature, and all interested parties in improving the existing statutory procedure for resolving employee grievances.

FISCAL SUMMARY

The Board was appropriated \$638,515 for Fiscal Year 1992-93. This is \$26,605 less than the appropriation in the previous fiscal year. This reduction primarily affected the current expense account.

RECOMMENDATIONS

First, to comply with the time requirements in the grievance procedure laws, the Board recommends that the Legislature increase the Grievance Board's funding in an amount sufficient to permit it to open an additional office, staffed with an ALJ and a secretary, and to employ two additional ALJs, both of whom would be based in the Charleston office. With such additional staff, the Board could substantially comply with the demanding legal requirements imposed by the State's two grievance procedure statutes.

Second, the Board recommends that the Legislature increase the salaries of its ALJs to \$40,000 so as to retain experienced personnel and to attract qualified attorneys when vacancies do occur. As noted in earlier annual reports, recruitment experience has demonstrated that most experienced lawyers will not consider these positions at the current salary level. This salary inadequacy has handicapped the Board in its recruitment efforts and has created a retention problem. Because of the specialized nature and difficulty of the work performed by ALJs, any turnover in these positions will result in increased decisional delay. It takes time to recruit and to select ALJs and they ordinarily do not reach full-performance level for several months. The lack of proper compensation therefore serves to undermine a primary purpose of the grievance procedure: The expeditious resolution of employment disputes.

Third, when the Executive Branch of State government was reorganized in 1989, the Board perceived a conflict of interest was

created by its being placed in the Departmental structure. The structural arrangement continues to create an appearance of impropriety, a problem that is only compounded by the Board's being in the same department as the Division of Personnel. The Board continues to believe that from a structural standpoint it would be preferable for it to be in a more autonomous position, as is the Public Service Commission.

Finally, the Board reiterates the recommendation that both grievance procedure statutes be amended to authorize its ALJs to require the parties to attend and participate in settlement conferences and mediation sessions.

CONCLUSION

The Board's accomplishments since 1985 have demonstrated the wisdom of the legislation creating a grievance procedure for education and state employees. Many disputes have been resolved and many questions have been answered. The extensive body of law the Board has created through past decisions provides public employers, as well as employees and their representatives, an invaluable source of information relating to the proper way to decide personnel matters.

It is, therefore, with a sense of pride and accomplishment that the West Virginia Education and State Employees Grievance Board respectively tenders its 1992 Annual Report to the Governor and the Legislature.

APPENDIX A

GRIEVANCES FILED IN CALENDAR YEARS 1992, 1991 AND 1990 AGAINST
COUNTY BOARDS OF EDUCATION/HIGHER EDUCATION BOARDS

<u>Board of Directors:</u>	<u>1992</u>	<u>1991</u>	<u>1990</u>
Bluefield State College	2	3	2
College of Graduate Studies	0	1	0
Concord State College	2	5	1
Fairmont State College	3	3	3
Glenville State	0	0	1
Potomac State College	1	0	1
Shepherd College	2	3	0
West Liberty State College	1	4	5
West Virginia Institute of Technology	2	3	1
West Virginia Northern Community College	2	1	1
West Virginia Southern Community College	1	6	9
West Virginia State College	1	0	1

Board of Trustees:

Marshall University	4	5	3
West Virginia University	8	16	19
West Virginia University Hospitals	1	1	0
West Virginia University/Charleston	0	1	0
	<u>30</u>	<u>52</u>	<u>47</u>

County Boards of Education:

Barbour County Board	3	0	1
Berkeley County Board	2	7	2
Boone County Board	1	7	5
Braxton County Board	2	0	1
Brooke County Board	7	8	1
Cabell County Board	11	2	12
Calhoun County Board	1	0	0
Clay County Board	1	0	0

Doddridge County Board	0	0	3
Fayette County Board	4	6	7
Gilmer County Board	2	2	4
Grant County Board	1	3	3
Greenbrier County Board	1	4	10
Hampshire County Board	2	0	0
Hancock County Board	6	21	12
Hardy County Board	2	0	0
Harrison County Board	1	14	12
Jackson County Board	1	1	1
Jefferson County Board	2	1	1
Kanawha County Board	28	39	27
Lewis County Board	6	5	4
Lincoln County Board	10	10	15
Logan County Board	12	12	10
Marion County Board	10	6	4
Marshall County Board	2	7	0
Mason County Board	4	3	0
McDowell County Board	10	3	3
Mercer County Board	16	13	11
Mineral County board	5	2	3
Mingo County Board	12	11	23
Monongalia County Board	10	6	3
Monroe County Board	9	1	2
Morgan County Board	2	3	0
Nicholas County Board	2	3	3

Ohio County Board	5	11	5
Pendleton County Board	1	2	1
Pocahontas County Board	1	1	0
Preston County Board	4	7	6
Putnam County Board	4	7	11
Raleigh County Board	9	7	8
Randolph County Board	2	3	6
Roane County Board	0	0	1
Summers County Board	9	4	9
Taylor County Board	0	1	0
Tucker County Board	4	2	1
Tyler County Board	1	1	1
Upshur County Board	0	2	1
Wayne County Board	4	1	14
Webster County Board	11	1	1
Wetzel County Board	2	1	0
Wood County Board	6	3	11
Wyoming County Board	10	1	13
	<hr/>	<hr/>	<hr/>
	261	255	262

APPENDIX B

GRIEVANCES FILED AGAINST STATE AGENCIES IN 1992, 1991 and 1990

	<u>1992</u>	<u>1991</u>	<u>1990</u>
Alcohol Beverage Control Commission	1	12	10
Adjutant General	0	1	0
Administration	4	4	1
Board of Education	0	1	0
Bureau of Employment Programs	16	0	0
Commerce, Labor, Economic Resources	4	8	1
Corrections	18	9	4
Culture and History	1	0	0
Department of Education	1	4	2
Employment Security	1	3	4
Energy	1	4	3
Farm Management Commission	0	2	0
Finance and Administration	0	3	2
Health and Human Resources (combination Dept of Health/Dept Human Services)	83	77	110
Highways	32	35	27
Housing Development Fund	0	0	1
Human Rights Commission	1	1	0
Insurance Commissioner	0	0	1
Labor	1	1	0
Lottery Commission	0	0	1
Motor Vehicles	1	1	1

Natural Resources	6	3	24
Parkways, Economic Development & Tourism	4	9	0
Personnel	1	1	2
Public Safety	1	4	0
Public Service Commission	5	3	5
Racing Commission	0	0	3
Regional Jail Authority	8	3	0
Rehabilitation Services	7	3	7
RESA VIII	1	0	0
Solid Waste Management	1	0	0
Tax	5	8	1
Tourism and Parks	2	0	0
Transportation	3	1	1
Veterans' Affairs	0	10	4
Workers' Compensation Fund	3	4	11

County Health Departments:

Boone County Health Department	2	0	0
Barbour County Health Department	1	0	0
Cabell Huntington Health Department	0	0	1
Grant County Health Department	2	0	0
Kanawha-Charleston Health Department	0	0	2
Logan County Health Department	0	0	1
Monongalia County Health Department	0	0	1
Preston County Health Department	0	0	1
Taylor County Health Department	0	2	0
	<hr/> 217	<hr/> 217	<hr/> 232

WEST VIRGINIA EDUCATION AND STATE EMPLOYEES
GRIEVANCE BOARD

SYNOPSSES - HIGHER EDUCATION

JULY 1992

NOTICE: These synopses in no way constitute an official opinion or comment by the Grievance Board or its administrative law judges on the holdings on the cases. They are intended to serve as an information and research tool only.

Hartley v. University of W.Va. Bd. of Trustees/WVU, Docket No. 91-BOT-411 (July 31, 1992)

WVU policy ER-1 provides a probationary employee may be let go if he has been given a warning letter and he thereafter commits an infraction related to the behavior warned against. Record established Grievant did not commit a later related infraction; therefore, he should not have been terminated. Burden of proof on employer, even though Grievant probationary, since termination was disciplinary. Grievance was **GRANTED**.

Marple v. University of W.Va. Bd. of Trustees/WVU, Docket No. 91-BOT-190 (July 27, 1992)

The grievant was dismissed from his employment as a supervisor of a bridge restoration project. He grieved the dismissal and was reinstated to the position pursuant to a settlement agreement. About ten days later, he was laid off in a reduction in force. He filed the present grievance contending that the layoff was based upon a performance appraisal.

DECISION: The grievance did not prove by a preponderance of the evidence that his evaluation was tainted or inaccurate due to retaliatory motivation on the part of the respondent. The grievant failed to prove any violation of WVU's personnel policies or any abuse of discretion with respect to his layoff. Grievance was **DENIED**.