

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



**ANNUAL REPORT  
TO THE  
GOVERNOR AND THE LEGISLATURE**

**CALENDAR YEAR 2002**



**MEMBERS**  
Walt Auvil  
Roger Smith II  
Lowell Witters

**DIRECTOR**  
Ronald Wright

**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**  
**BOB WISE**  
Governor

808 Greenbrier Street  
Charleston, WV 25311  
Telephone (304) 558-3361  
FAX (304) 558-1106  
Toll-Free (866) 747-6743  
E-MAIL:  
wvgb@state.wv.us  
INTERNET:  
www.state.wv.us/admin/  
grievanc/grievanc.htm

February 13, 2003

**THE HONORABLE BOB WISE  
GOVERNOR, STATE OF WEST VIRGINIA**

and

**MEMBERS OF THE LEGISLATURE**

Dear Governor and Members of the Legislature:

The Grievance Board is pleased to submit its Annual Report for calendar year 2002, in accordance with W. Va. Code § 18-29-5 (1998), and W. Va. Code § 29-6A-5 (1998). The Board is proud of the agency's accomplishments and the good work of its staff. This report summarizes the significant activities of the agency during calendar year 2002 and contains detailed information about its operations covering the past several years.

Respectfully submitted,

*Ronald Wright*  
RONALD WRIGHT

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## **Calendar Year 2002 in Review**

Calendar Year 2002 was a year marked by increased attention to strategic planning, a continued focus on both customer and employee satisfaction, and a new emphasis on outreach and education. As a result of efforts by the Board and its staff, a number of improvements were made and work began on initiatives to assist the Board in improving the grievance procedure. A number of these improvements and projects are highlighted below.

The Board adopted a Procedural Rule to fully satisfy the requirements of the Open Governmental Proceedings Law, W. Va. Code §§ 6-9A-1 et seq., commonly called the Open Meetings or "Sunshine" law. 156 C.S.R. 2 (Aug. 11, 2002). This important law specifies the manner in which the public must be given notice of meetings and provides general rules for governing bodies to conduct meetings.

The Beckley Office was moved out of the State Office Complex, a facility that is occupied by several state agencies covered by the grievance procedure for state employees. This move provides state employees whose grievances are heard in Beckley with a neutral forum for hearings and other proceedings. See W. Va. Code § 29-6A-5(a). The new Beckley Office also provides customers with better facilities and support services, along with free parking and a more convenient location from the interstate highway, all at significantly less cost to the State. Several improvements were also made to the Board's Elkins Office.

Updates, changes and improvements were made to the Board's Web site (<http://www.state.wv.us/admin/grievanc/grievanc.htm>), which already contained a wealth

of information about the Board and the grievance process, including the Board's procedural rules for processing and adjudicating grievances, grievance forms, monthly case summaries, and the full text of all grievance decisions issued since January 1, 1994. The frequently asked questions section was updated and changed. A database containing information about all prior decisions was enhanced significantly with the addition of a search form that makes searching for precedent much easier and faster. Summaries of all Orders issued in claims for relief by default were added to the database, thereby improving research capability in that area of law. Links were added to the Legislature's Web page, which also continues to improve, so that interested persons can easily find, read and printout the applicable grievance procedure law.

The Board's staff worked with the Administrative Office of the Supreme Court and the Circuit Court of Kanawha County to establish a means by which the Board is now promptly sent final court orders in grievance decisions appealed to circuit court. In addition, the Board's database and records were updated this year to show the results in a large number of appeals to circuit court.

The Board established a new long-term goal of engaging in activities to educate public employers and employees about the purposes and value of a properly functioning grievance procedure. These activities will include participating in educational conferences and meetings with all interested groups and organizations. As an outgrowth of activities relating this goal, the Board's staff has begun to collect information and comments concerning how well the grievance process works, or not, at the lower levels of the procedure. Similarly, the Board's staff has begun a comparative analysis of grievance procedures in other states, particularly surrounding states. This project involves

determining what procedures exist in other jurisdictions, who can file grievances, what can be grieved, and the outcomes or results in grievances.

### **History, Mission and Operations**

The Education Employees Grievance Board was created in 1985 when a grievance procedure for educational employees was established. W. Va. Code §§ 18-29-1, et seq. The procedure was intended to provide a simple, expeditious and fair process for resolving employee grievances at the lowest possible administrative level.

In 1988 the Legislature enlarged the Grievance Board's jurisdiction considerably by enacting a Grievance Procedure for State Employees that covers most state employees.<sup>1</sup> The agency's name was changed to the Education and State Employees Grievance Board. W. Va. Code §§ 29-6A-1, et seq. The stated purpose of this law was to establish a procedure for the equitable and consistent resolution of employment disputes. These laws protect the employment rights of all public employees covered by the procedure.

Ten years later in 1998, the Legislature made several changes to the law governing grievances by state employees. One of the most significant changes was a new default provision by which an employee may prevail in his or her grievance, if the grievance evaluator at Level One, Two or Three fails to respond to the grievance in the time required by law. The Board was given jurisdiction over procedural matters at Levels Two and Three

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<sup>1</sup> Employees of constitutional officers are not covered, unless they are in the classified service, and apparently none of these employees is in the classified service. Employees of the Legislature and uniformed members of the State Police are also expressly excluded. W. Va. Code § 29-6A-2(e). County health department employees covered by a merit system are entitled to use the grievance procedure. W. Va. Dept. of Admin. v. W. Va. Dept. of Health and Human Resources/Boone County Health Dept., 192 W. Va. 202, 451 S.E.2d 768 (1994).

of the grievance procedure in both state and education employee grievances. Until this change the Board's authority was limited to administering Level Four of the procedure. In addition, the Board was empowered to require mediation at the request of any party in grievances by state employees. W. Va. Code § 29-6A-12 (1998).<sup>2</sup>

Finally in 2001 the Legislature changed the law so that grievances filed by higher education employees after July 1, 2001, must be processed under the Grievance Procedure for State Employees. See W. Va. Code § 18B-2A-4(k).

The Board consists of three members appointed by the Governor, with the advice and consent of the Senate, for three year terms. The Chair of the Board is Lowell Witters, a Republican from Kanawha County, who is serving a term that expires July 1, 2003. In December 2001, Governor Bob Wise appointed Walt Auvil, Esq., a Democrat from Wood County, to a term expiring July 1, 2004. On January 24, 2003, Governor Wise, also appointed Debra A. Kilgore, Esq., a Democrat from Mercer County, to a term ending July 1, 2005, subject to the advice and consent of the Senate.

The Board's mission is to equitably, consistently and quickly resolve employment disputes between employees and county boards of education, higher education institutions, and state agencies so that good morale may be maintained, effective job performance may be enhanced, and the citizens of this State may be better served.

The Board employs attorneys to preside over grievances that reach Level Four of the grievance procedure and to serve as mediators. These employees are designated as

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<sup>2</sup> The Board first made this recommendation to the Legislature in 1992. The law was also amended to make it clear that ALJs can require the parties in a state employee grievance to participate in settlement conferences. W. Va. Code § 29-6A-6 (1998).

"hearing examiners" in the grievance procedure laws, but the Board refers to them as administrative law judges (ALJs) because of the nature of their duties and responsibilities.<sup>3</sup> The Board requires its ALJs to be licensed to practice law in West Virginia, and does not permit them to have an outside law practice.

The Board employs a Director, an Administrative Officer, six ALJs, and three Secretaries in a flat organizational structure.<sup>4</sup> See Appendix A. The Board's principal office is in Charleston, and it maintains hearing offices in Beckley, Elkins, Westover, and Wheeling.

The Board's primary activities include: (1) schedule and conduct Level Four hearings and prehearing conferences in public employee grievances; (2) issue binding, written decisions with findings of fact and conclusions of law, subject to limited judicial review in the circuit courts; (3) provide mediation services to actively assist employers and employees in identifying, clarifying and resolving issues anytime before a Level Four hearing; (4) administer Level Four of grievance procedure; and (5) prepare transcripts and certify records to circuit courts when decisions are appealed.

The Board has established the following goals and objectives: (1) issue timely and prompt decisions; (2) issue decisions within thirty working days after the cases are ready for decision; (3) process grievances in a fair, objective manner, according respect and courtesy to all parties; (4) assist the parties in settling grievances through prehearing

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<sup>3</sup> The West Virginia Division of Personnel has placed these positions in the class title of ALJ II in its classified-exempt plan.

<sup>4</sup> The Director performs administrative duties and functions as the chief administrative law judge.



conferences and mediation; (5) issue readable decisions based upon a consistent application and interpretation of law and policy; and (6) publish decisions and case summaries promptly on the Internet for all interested persons.

Both grievance procedure laws contain a broad definition of what can be grieved. Employees may grieve nearly any employer action affecting their compensation, hours, terms and conditions of employment, including allegations of discrimination, favoritism and harassment. W. Va. Code §§ 18-29-2 (1992) & 29-6A-2 (1988).<sup>5</sup> The Board also exercises jurisdiction over claims based upon alleged violations or misinterpretations of federal and state wage and hour laws, and claims that may also be filed under the West Virginia Human Rights Act. The most common types of grievances by far are challenges to promotion and hiring decisions, dismissal and other lesser disciplinary measures, and classification/compensation matters.

In accordance with the State Administrative Procedures Act, the Board adopted new Procedural Rules effective December 1, 2000, governing the practice and procedure for handling grievances at Level Four. The new Procedural Rules substantially amended the prior rules to conform to statutory changes and current practice. The Rules were

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<sup>5</sup> "Grievance" is defined by W. Va. Code § 29-6A-2(i) (1988) as:

"Any claim by one or more affected state employees alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules, regulations or written agreements under which such employees work, including any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination; any discriminatory or otherwise aggrieved application of unwritten policies or practices of their employer; any specifically identified incident of harassment or favoritism; or any action, policy or practice constituting a substantial detriment to or interference with effective job performance or the health and safety of the employees."

Pension, retirement and medical insurance matters, however, are expressly excluded, and thus not grievable.

promulgated under the authority granted by W. Va. Code §§ 18-29-5(a) & 29-6A-5(a), and are codified at 156 Code of State Regulations 1 (156 C.S.R. 1).

### **Annual Open Meeting and Sixth Customer Satisfaction Survey**

The Board, after proper notice, conducted its annual open meeting in Charleston on January 10, 2003, as required by W. Va. Code § 18-29-5(a) (1998), and W. Va. Code § 29-6A-5(a) (1998). The purpose of the open meeting is to help the Board evaluate the functioning of the grievance process at Level Four, the performance of its ALJs, and to prepare an annual report to the Governor and the Legislature.

The Board mailed seven hundred eighty-two (782) notices of the open meeting. All Grievants whose cases were completed in 2002 were mailed a notice. State agencies, educational institutions, county superintendents, employee organizations, union representatives, attorneys, and the Director of the West Virginia Division of Personnel (Personnel) were notified of the meeting. A Customer Satisfaction Survey form was mailed with the open meeting notice. In addition, the Annual Meeting was announced on the Board's web site and the customer satisfaction survey form was made available for printing online.

Nine people attended the public meeting. Seven of the persons attending were either employed by public employee unions or organizations that represent employees in grievance proceedings, or were employees whose grievances had been denied in 2002. Their comments were largely negative in nature, the primary complaint being that the percentage of grievances denied was too high. A personnel officer for a county board of education and a lawyer who represents state agencies in grievance hearings also

attended. Their comments were very favorable, especially concerning the Board's mediation services.

The Board continued to use a Customer Satisfaction Survey form to help in the evaluative process, to identify areas that may need improvement, and to serve as a benchmark for future evaluations. (Appendix B).

Customers are grouped into five categories on the form: Grievant, Employer, Employee Representative, Counsel, and Other. The survey results are analyzed based on these customer types. Ratings for most questions on the Survey are as follows: (5) Excellent; (4) Good; (3) Fair; (2) Poor; (1) Very Poor, or Not Applicable. Appendix C contains two reports showing the survey results for 2002 and 2001. The first report gives the average rating of the Board's adjudication services, and the second report shows the average rating of administrative procedures and staff.

Customers were asked to give their Overall Satisfaction rating of the Board on a scale from 100% to 0%. Grievants expressed an average overall satisfaction rating of about 39% for 2001, slightly higher than last year, but comparable to prior years.

The Board and staff will thoroughly review and consider the annual meeting testimony and exhibits, and the customer satisfaction survey information. The Board will meet with all staff members in March to discuss this information and to consider ways in which to improve the agency's performance.

#### **Grievances Filed at Level Four and Adjudication Activities in 2002**

The number of grievances filed at Level Four has remained fairly constant during the last three years, as shown in the table below. As explained in more detail in last year's

annual report, the number of grievances filed in 2001 was inflated by an unusually large number of employees filing the same grievances separately. With that factor taken into account, the number of grievances filed in 2001 was approximately 454.<sup>6</sup>

| <b>Grievances filed at Level Four</b> | <b>2002</b> | <b>2001</b> | <b>2000</b> | <b>1999</b> | <b>1998</b> | <b>1997</b> | <b>1996</b> | <b>1995</b> |
|---------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| <b>State</b>                          | 219         | 358         | 206         | 281         | 301         | 261         | 200         | 265         |
| <b>Higher Education</b>               | 40          | 94          | 31          | 56          | 36          | 56          | 57          | 38          |
| <b>County Boards of Education</b>     | 186         | 182         | 174         | 213         | 186         | 269         | 277         | 283         |
| <b>Totals</b>                         | <b>445</b>  | <b>634</b>  | <b>411</b>  | <b>550</b>  | <b>523</b>  | <b>586</b>  | <b>534</b>  | <b>586</b>  |

With a reduced overall caseload, the number of Decisions<sup>7</sup> and Orders issued continued to decline, as shown in the next table.<sup>8</sup> The number of public employees whose cases were processed this year, however, was relatively large due to large numbers of employees filing the same grievance.

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<sup>6</sup> The number of grievances filed in 2002 includes seven cases remanded to the Board by the courts. Detailed reports concerning grievance activity for several years are in the appendices to this Report. Appendix D shows the number of grievances filed at Level Four against particular county boards of education, the State Department of Education and other entities. Appendix E shows the number of grievances filed against particular higher education institutions, and Appendix F shows the number of grievances filed against State bureaus and departments.

<sup>7</sup> Nine of the Decisions issued involved cases in which the Grievant(s) filed a default claim, and the ALJ ruled on whether the remedy sought was contrary to law or clearly wrong.

<sup>8</sup> Dismissal orders are often entered when grievances have been appealed prematurely to Level Four without a required lower level hearing having been held, or when cases are settled and the grievant requests that the grievance be dismissed. Occasionally, however, these rulings involve complicated procedural or substantive issues.

| <b>All Decisions and Orders</b>            | <b>2002</b> | <b>2001</b> | <b>2000</b> | <b>1999</b> | <b>1998</b> | <b>1997</b> | <b>1996</b> |
|--|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| <b>Decisions Issued</b>                    | 223         | 260         | 293         | 329         | 366         | 422         | 339         |
| <b>Dismissal Orders and Default Orders</b> | 166         | 163         | 161         | 194         | 184         | 240         | 389         |
| <b>Totals</b>                              | <b>389</b>  | <b>423</b>  | <b>454</b>  | <b>523</b>  | <b>550</b>  | <b>662</b>  | <b>728</b>  |

In 2002, as shown in the table below, ALJs continued their practice of issuing decisions ever more quickly. Although the law requires decisions to be issued within thirty working days, the average decision-making time was only fifteen working days, a reduction of 25 percent from last year. Total processing time was reduced significantly, and the percentage of grievances decided within thirty working days was increased to an all time high. Furthermore, more than 99 percent of decisions were issued within sixty working days of becoming mature for decision.<sup>9</sup>

| <b>Decision-Making Time by Average Number of Working Days</b> | <b>2002</b> | <b>2001</b> | <b>2000</b> | <b>1999</b> | <b>1998</b> | <b>1997</b> | <b>1996</b> | <b>1995</b> |
|---|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| <b>Decision-Making Time</b>                                   | 15          | 20          | 21          | 29          | 39          | 69          | 44          | 39          |
| <b>Total Processing Time</b>                                  | 101         | 122         | 115         | 168         | 149         | 181         | 145         | 136         |
| <b>Percentage of Cases Decided within 30 Working Days</b>     | 92%         | 80%         | 79%         | 81%         | 52%         | 19%         | 38%         | 40%         |
| <b>Dismissal Cases Decided within 30</b>                      | 88%         | 96%         | 75%         | 89%         | 71%         | 37%         | 41%         | 60%         |

<sup>9</sup> A case is considered mature for decision on the date the ALJ has everything he or she needs to render a decision. For example, a case is not considered mature for decision until proposed findings of fact and conclusions of law are filed, or the time for filing proposed findings and conclusions has expired. However, where the parties agree to submit the case for decision at the close of the hearing without filing briefs, the case becomes mature on that date.

The percentage of decisions appealed to circuit court increased this year, as shown in the table below. The Board has been notified that sixty-six (66) appeals, or 30% of the decisions issued in 2002, were appealed to circuit court.<sup>10</sup>

| 2002 | 2001 | 2000 | 1999 | 1998 | 1997 | 1996 | 1995 | 1994 | 1993 | 1992 |
|------|------|------|------|------|------|------|------|------|------|------|
| 30%  | 24%  | 25%  | 23%  | 23%  | 17%  | 22%  | 17%  | 20%  | 26%  | 23%  |

The percentage of grievances granted increased slightly in 2002, following declines the previous two years, as reflected in the table below.<sup>11</sup>

| 2002 | 2001 | 2000 | 1999 | 1998 | 1997 | 1996 | 1995 | 1994 |
|------|------|------|------|------|------|------|------|------|
| 20%  | 18%  | 23%  | 29%  | 29%  | 26%  | 26%  | 24%  | 27%  |

Employees were represented in about 80% of the 223 grievances decided in 2002, most frequently by public employee organizations or unions that handled about 50% of those cases. The table below provides shows how frequently employees were granted relief depending on the nature of their representation in 2002 and 2001. The results this were very similar last year, except that pro se Grievants, meaning employees who represented themselves, prevailed much more frequently this year.

| REPRESENTATION<br>BREAKDOWN | HOW<br>FREQUENTLY | RELIEF<br>GRANTED | GRANTED |
|-----------------------------|-------------------|-------------------|---------|
|-----------------------------|-------------------|-------------------|---------|

<sup>10</sup> Two Dismissal Orders and four Default Orders issued in 2002 were appealed to circuit court.

<sup>11</sup> Cases were counted as granted if the grievance was granted in any part. Cases were counted as denied if the grievance was dismissed or denied without reaching the merits of the grievance, including grievances dismissed on jurisdictional grounds and cases denied on procedural grounds, such as being untimely filed. Approximately five grievances, or 3% of all decisions issued in 2002, were denied as untimely.

|   |     |    |     |
|---|-----|----|-----|
| Union Representation 2002 <sup>12</sup> | 111 | 23 | 21% |
| Union Representation 2001               | 132 | 32 | 24% |
| Attorney 2002                           | 46  | 10 | 22% |
| Attorney 2001                           | 53  | 10 | 19% |
| Other Representation 2002               | 20  | 2  | 10% |
| Other Representation 2001               | 11  | 1  | 9%  |
| Pro Se 2002                             | 46  | 10 | 22% |
| Pro Se 2001                             | 64  | 5  | 8%  |
| Decisions Issued 2002                   | 223 | 45 | 20% |
| Decisions Issued 2001                   | 260 | 48 | 18% |

Of the 45 grievances granted in 2002, 26, or 58%, were against county boards of education. Seventeen, or 38%, of these grievances involved school service personnel, while nine, or 20%, concerned professional personnel. Five, or 11%, of the grievances granted were against higher education institutions, and 14, or 31%, were against state agencies.

Appendix G contains a synopsis of the forty-five grievances granted in 2002, and an additional eight grievances in which ALJs entered Orders finding employers had defaulted in processing the grievances.

A breakdown of decisions issued by type of employment is set forth in the table below.

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<sup>12</sup> This category includes instances in which the employee organization employs full-time attorneys who represent employees in grievance hearings and related matters.

| <b>2002 DECISIONS</b>  | <b>DECISIONS<br/>ISSUED</b> | <b>GRIEVANCES<br/>GRANTED</b> | <b>PERCENT<br/>GRANTED</b> |
|--|-----------------------------|-------------------------------|----------------------------|
| <b>Higher Education</b>  | 25                          | 5                             | 20%                        |
| <b>State</b>   | 76                          | 14                            | 18%                        |
| <b>Boards of Education -<br/>Professional<br/>Personnel<sup>13</sup></b> | 44                          | 9                             | 20%                        |
| <b>Boards of Education -<br/>Service Personnel</b>                       | 78                          | 17                            | 22%                        |
| <b>TOTALS</b>  | <b>223</b>                  | <b>45</b>                     | <b>20%</b>                 |

The Board gives the highest priority to grievances in which employees are dismissed from their employment. The number of dismissal grievances filed in 2002 was higher than the number filed during at least the last five years, as shown in the table below.<sup>14</sup>

| <b>Dismissal Cases</b> | <b>Cases Filed</b> | <b>Decisions Issued</b> | <b>Grievances Granted</b> |
|------------------------|--------------------|-------------------------|---------------------------|
| 2002                   | 73                 | 26                      | 5                         |
| 2001                   | 61                 | 26                      | 5                         |
| 2000                   | 42                 | 28                      | 5                         |
| 1999                   | 72                 | 45                      | 15                        |
| 1998                   | 65                 | 41                      | 12                        |
| 1997                   | 69                 | 34                      | 9                         |

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<sup>13</sup> Two grievances were filed by a group consisting of both professional and school service personnel employed by a county board of education. For purposes of this report, those grievances have been counted as cases filed by professional personnel.

<sup>14</sup> In 2002, the Board disposed of an additional thirty-three (33) dismissal and eight (8) suspension grievances by Dismissal Orders. Grievances are generally dismissed due to such factors as settlement agreements, withdrawals and failure to appear.



The percentage of cases decided based upon the record made at lower levels of the grievance procedure, without a Level Four hearing, increased this year and was higher than in all but one recent year. Twenty-one percent of these cases were granted, compared with 23% 2001. The probability that a grievance is granted does not appear to be related to whether a Level Four hearing is held.

| <b>Cases Submitted on Record (SOR)</b>    | <b>2002</b> | <b>2001</b> | <b>2000</b> | <b>1999</b> | <b>1998</b> | <b>1997</b> | <b>1996</b> |
|---|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| <b>Decisions Issued in SOR Cases</b>      | 48          | 39          | 48          | 60          | 63          | 82          | 53          |
| <b>Percentage of All Decisions Issued</b> | 22%         | 15%         | 16%         | 18%         | 17%         | 23%         | 18%         |

It is appropriate to note that the Board has used a number of approaches for setting Level Four hearings. Experience has shown that scheduling the Level Four hearing within fifteen days of the request for a hearing, as required by law, works very poorly. The parties will usually request a continuance for one or more good reason, such as they are trying to settle the dispute, they cannot get prepared that quickly, or key witnesses cannot be available on the date the hearing is set.

The Board has found that the most effective and efficient approach to setting hearings is to require the parties to confer with each other, and agree on three or four hearing dates. The hearing is then usually scheduled on the first date when the ALJ and a hearing room are available. Although the hearing date is ordinarily one the parties have agreed upon, the Board receives at least one request for a continuance in a large percentage of the cases. Such requests are generally not objected to by the other parties and are, therefore, routinely granted. Consequently, the number of hearings held, as

shown in the table below, has always been much lower than the number of hearings scheduled.

| Hearing Activity   | 2002 | 2001 | 2000 | 1999 | 1998 | 1997 | 1996 | 1995 |
|--------------------|------|------|------|------|------|------|------|------|
| Hearings Scheduled | 567  | 597  | 503  | 713  | 758  | 688  | 789  | 988  |
| Hearings Held      | 257  | 275  | 279  | 329  | 337  | 313  | 303  | 386  |

### **Administrative Support Activities and Use of the Internet**

The Board's secretarial staff assembled and transmitted eighty-one certified records to circuit clerk's offices around the state in cases appealed to circuit court, a slight increase from last year. The Board's secretarial staff typed the transcripts in most of the decisions appealed, but the Board contracts out for transcription services when its secretarial staff becomes backlogged and cannot meet court deadlines. This may tend to happen more frequently because the Board has reduced substantially its secretarial staff. Producing transcripts and certifying records to circuit court continues to be a primary task for the secretarial staff. Nonetheless, in 2002 they submitted the certified record in most cases within thirty (30) days of receipt of the circuit court order notifying the Board of the appeal.

Hearings held at the Board's offices are mechanically recorded on four-track audio tapes. A transcript is not normally prepared, unless the decision is appealed to circuit court. However, upon request the Board promptly supplies the parties with copies of the hearing tapes, in lieu of a transcript. In addition, when a decision is appealed and the transcript was prepared in-house, the Board will provide the parties a copy of the transcript

in electronic form.<sup>15</sup> When the transcript is prepared by a transcription service, the parties may purchase a copy from the service.

Since 1997 the Board has used its web site to provide public employers and employees with access to its decisions and to improve its services. The web site is now the Board's primary method of distributing information. New decisions are published twice a month. All decisions can be downloaded by calendar year in Rich Text Format, a format compatible with most word-processing software applications. The Secretary of State's office is also provided copies of all decisions in electronic form twice a month.<sup>16</sup>

The Board's staff uses a Microsoft Access database, called Boardlaw, containing case summaries and pertinent information on more than five thousand (5,000) decisions issued since 1985. The database is updated monthly with summaries of new decisions rendered and with any information received about decisions appealed to the courts. All the information in the database is published on the web page, and it can be quickly and easily searched.<sup>17</sup> In addition, the database can be downloaded in a compressed form for use with Microsoft Access.<sup>18</sup>

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<sup>15</sup> The Board's staff has devised a method of preparing electronic transcripts that enables the parties to cite to the page numbers where testimony appears in the official, paper transcript certified to the circuit court. This innovative technique has been well received by attorneys who handle grievance appeals.

<sup>16</sup> Final decisions are filed with the Secretary of State's office in accordance with W. Va. Code § 29A-2-9.

<sup>17</sup> The Board's staff enhanced the database search feature in 2002 so the most recently decided cases are retrieved first. This search feature is now the most frequently used part of the web page.

<sup>18</sup> This database is a valuable research tool for the ALJs and all interested persons who  
(continued...)

Customers have responded very positively to the web site, and are continuing to use it frequently. According to the monthly WebTrends Report from the Division of Information Services & Communications, during the period from September through November 2002, the average number of user sessions per day was 437, lasting approximately twenty-one (21) minutes per session. This usage level is virtually identical to last year.

As required by W. Va. Code § 18-29-11 (1992), the Board provides a statewide quarterly report to inform the higher education governing boards, the county boards of education and employee organizations of current personnel-related issues. The Board issues the report monthly to disseminate the information more quickly. These reports have been redesigned and are now distributed primarily via the web page.

In accordance with W. Va Code § 18-29-11 (2000) (House Bill 4785), the Board sends an annual report to each county board of education within thirty days of the end of each school year. This report lists the number of grievances granted, denied, or otherwise disposed of during that school year. This report is also posted on the web site.

The Public Records Management and Preservation Act, W. Va. Code § 5A-8-9, requires, among other things, that all state agencies adopt and maintain a continuing program for efficient management of state records. This law requires all agencies to submit schedules for the retention and orderly disposal of each type of state record in their possession. The Board received approval of its proposed retention and disposal plan in

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<sup>18</sup>(...continued)  
need to be aware of new precedent interpreting and applying the various personnel laws and regulations applicable to public employees.

2000, and some of its oldest records and grievance files were shredded and recycled in 2001. Each year old records will be disposed of in accordance with this plan.

This summary of administrative activities is by no means comprehensive. The Board does not keep data on all activities performed by its staff to assist customers and to keep the agency operating effectively and efficiently. For example, the Board's staff answers procedural questions about the grievance process on a daily basis.

### **Grievance Mediation Services**

Mediation can be defined as a process in which a trained, neutral third party helps the parties negotiate a mutually acceptable agreement to resolve their dispute. Mediation emphasizes solutions that satisfy the interests of the parties, rather than litigation to decide which party has the "correct" legal position. Mediation may include the use of various problem-solving techniques to help the parties resolve future conflicts on their own, thus preventing future grievances.

The Board has been a leader in the use of mediation in state government. It began an experimental mediation project in 1991. The Legislature endorsed that project and passed W. Va. Code § 18-29-10, which required the Board to engage in mediation and other dispute resolution techniques to actively help the parties in identifying, clarifying and resolving issues prior to the Level Four hearing, to the extent feasible with existing personnel and resources.<sup>19</sup>

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<sup>19</sup> The ALJs serve as mediators and are generally able to schedule mediation sessions so as not to delay the processing of the case. All ALJs have received either one or two days of intensive mediation training sponsored by the United States District Court for the Northern District of West Virginia and/or the West Virginia State Bar. The Board has also held in-house mediation training for its ALJs, focusing on recent trends in workplace  
(continued...)

The Board continued to encourage and to promote the use of mediation in 2002, emphasizing that it would provide a mediator early in the grievance process, before an evidentiary hearing had been held. The ALJs hold prehearing conferences frequently, typically by a recorded telephone conference call, to identify and clarify issues, to encourage settlement discussions and to explore the possibility of mediation. ALJs conducted at least eighty-six (86) prehearing conferences in 2002.

The Board conducted twenty-two mediation sessions in 2002, an increase of about 33% from last year.

| <b>Mediation Sessions Conducted</b>                   | <b>2002</b> | <b>2001</b> | <b>2000</b> |
|---|-------------|-------------|-------------|
| <b>After Cases Reached Level Four</b>                 | 20          | 15          | 16          |
| <b>Percentage Resolved At or After Mediation</b>      | 35%         | 53%         | 64%         |
| <b>Grievances Mediated Before Reaching Level Four</b> | 2           | 2           | 5           |
| <b>Percentage Resolved At or After Mediation</b>      | 0%          | 50%         | 80%         |

Although the percentage of grievances that settled in mediation was relatively low in 2002, the Board does not consider this as cause for concern. Positive long-term human relations benefits to the parties can result from mediation sessions that do not produce a settlement of the immediate dispute. Furthermore, it is very important to recognize that, although the percentage of grievances that are mediated remains small, the parties frequently settle grievances on their own, after the cases are appealed to Level Four.<sup>20</sup>

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<sup>19</sup>(...continued)

mediation. Individual ALJs have pursued additional training in conflict management, problem-solving and mediation.

<sup>20</sup> One hundred forty-three (143), or 32%, of all grievances processed in 2000, were concluded by the issuance of a dismissal order.

One hundred thirty-three (133), or 37 percent, of all grievances processed in 2002, were completed by the issuance of a dismissal order. Many dismissal orders are issued as the result of settlements.<sup>21</sup>

The Board continues to believe mediation is the most cost-effective means of resolving grievances. The proper use of mediation promotes equitable settlements to the benefit of all parties. Delay and costly litigation are eliminated. Public employers clearly can use mediation to save money, make more efficient use of their resources, retain some control over the outcome of grievances, and, most importantly, preserve the integrity of ongoing working relationships. The Board also believes that public employees clearly benefit from the use of grievance mediation, and it is not aware of any negative consequences resulting from its use.

The Board's mediation efforts have helped foster a climate in which the parties discuss problems, consider possible solutions to problems and engage in settlement activity more frequently. Nonetheless, the Board's experience with mediation shows that only a relatively small percentage of its cases will be resolved through formal mediation. This is partly because the grievance procedure is itself a form of alternative dispute resolution, and, thus, the incentives for settlement are not as great as in civil litigation. Moreover, the Board believes that many grievances, such as hiring and promotions disputes, simply cannot be lawfully settled due to the constraints and requirements contained in state personnel laws and regulations.

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<sup>21</sup> Employees have the right to withdraw a grievance at any time. See W. Va. Code §§ 18-29-3(d) & 29-6A-3(d).

## **Evaluation of Level Four Grievance Process and ALJ Performance**

Based upon its observations and all available information, the Board believes the grievance procedure at Level Four continued to function well in 2002. By any objective measure, the Board's overall performance continued to improve. The ALJs were successful in reducing decision-making time, as discussed earlier, while the quality of decisions remained high. The Board believes the continuing efforts made to encourage the use of mediation early in the grievance process produced beneficial results to all parties and to the general public.

The Board believes its ALJs performed well this year, fairly and impartially performing their duties.<sup>22</sup> Grievances were decided based upon the law and the evidence, not on politics or any other impermissible factor. The percentage of grievances denied simply reflects the merits of the individual cases. ALJs deny grievances frequently because employees cannot meet the high legal standard required to prevail. In many compensation and classification grievances filed by state employees, the issue concerns the propriety of a determination made by the West Virginia Division of Personnel. Personnel's classifications determinations, however, are ordinarily not subject to reversal, unless the determination was clearly wrong. See W. Va. Dept. of Health and Human Resources v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681 (1993).<sup>23</sup> Similarly, grievances

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<sup>22</sup> For many years the Board has required its ALJs to adhere to the general principles contained in the Code of Judicial Conduct, although this code, by its terms, applies only to judges the judicial branch, not ALJs in the executive branch.

<sup>23</sup> According to the Division of Personnel's Annual Report for Fiscal Year 2000, 317 back pay awards were granted that year totaling \$593,488.00. The report states that back pay awards may be granted as the result of a grievance decision, a court order, or an order  
(continued...)



concerning the termination of at-will or probationary employees, who have extremely limited rights to continued employment, seldom have merit.

In addition, ALJs have an important but limited role under the law. The West Virginia Supreme Court of Appeals has made clear that it is not the job of an ALJ to manage the agency or to substitute his or her judgment or management philosophy for that of agency personnel. See Skaff v. Pridemore, 200 W. Va. 700, 709, 490 S.E.2d 787,796 (1997) (ALJ found to have exceeded his authority in ordering employer to adopt a specific personnel policy).

The low percentage of decisions reversed by the Courts is a good indicator that the ALJs are properly applying the law to diverse factual situations and are rendering legally sound and fair decisions. According to its records, only about 13% of all decisions appealed have been reversed.

### **Fiscal Summary**

The Board operates in a sound fiscal manner and is frugal with taxpayer money. At the same time, the Board earnestly strives to comply with its legal duties and responsibilities, and to provide high quality customer service for public employers and employees. The Board's actual expenditures have decreased over the past three years, as shown in the table below, while the quality of service has improved.

| FY 2002   | FY 2001   | FY 2000   | FY 1999   | FY 1998   | FY 1997   |
|-----------|-----------|-----------|-----------|-----------|-----------|
| \$849,883 | \$861,443 | \$920,469 | \$938,611 | \$913,483 | \$960,913 |

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<sup>23</sup>(...continued)

from the United States Department of Labor. See Pages 6 & 21. The report is available on the web at [www.state.wv.us/admin/personnel/empcom/annrpt00.pdf](http://www.state.wv.us/admin/personnel/empcom/annrpt00.pdf).

The Board does not charge for its services and generates no revenue.

### **Recommendations**

Because of its role as the neutral third party, and its limited statutory duties and responsibilities, the Board usually does not take positions on public policy questions or make legislative recommendations.<sup>24</sup> The Board, however, will make two recommendations to the Governor and the Legislature. First, the Board recommends, as it has numerous times before, that the Legislature revise the grievance procedure laws to help insure its complete neutrality. When the Executive Branch of State government was reorganized in 1989, the Board was placed within the Department of Administration, along with the West Virginia Division of Personnel. The Board objected to this change at the time. The Board continues to believe this organizational structure creates a conflict of interest and an appearance of impropriety. For example, the Board must hear and decide grievances filed by employees who work for agencies that are within the Department of Administration. Some of these cases involve personnel decisions made by the Secretary of this Department, who has substantial control over the Board's budget. Public employees have expressed, and continue to express, a distrust of this agency partly because of this structural arrangement. It should be made clear, however, that no attempt has been made by anyone in authority to influence decisions or penalize the Board or its ALJs for performing their duties.

From a structural or organizational standpoint, the Board should be in a more autonomous position. Consequently, the Board favors an amendment to Chapter 5F of the

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<sup>24</sup> The Board does not have statutory authority to make studies of this State's personnel policies.

West Virginia Code removing the Board from the Department of Administration, and making it an independent agency within the Executive Branch of government.

Second, the Board recommends the Legislature raise the compensation paid to members by passing House Bill 2076. The current per diem of seventy-five dollars per meeting has not been changed since 1985 when the agency was created. The bill provides that Board members would be paid the same amount as currently paid to legislators for interim duties, that is, one hundred fifty dollars per meeting. The existing cap of seven hundred fifty dollars per fiscal year would not be changed by the bill.

#### **Final Comments about Level Four and the Philosophy for Handling Grievances**

During the past eighteen years, the Board has created a large body of law or precedent to be followed in many areas of public employment. The Board and all stakeholders recognized early on the importance of making information about its decisions readily available to employers and employees. The premise or assumption was that making this information readily available would serve the interests of both management and labor and would promote better employer-employee relations. The Internet made it possible to disseminate this information promptly, and the Board readily embraced this technology.<sup>25</sup> The ready availability of precedent likely has contributed to the gradual decline in grievances reaching Level Four, and has helped the parties in the informal resolution and settlement of grievances at the lower levels.

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<sup>25</sup> It is also important to remember the Board does not know how many grievances are filed at the lower levels, or what percentage of these cases are resolved before reaching Level Four.

The Board believes a properly functioning grievance procedure is vital to any organization, and it may be especially important in the public sector. This State's grievance laws are well designed to facilitate the settlement of grievances as soon as possible after they arise. This is important because grievances become magnified in importance and increasingly difficult to settle as they progress through the steps in the process.<sup>26</sup> Good grievance procedures are important but they alone do not ensure the goals of these procedures will be achieved. The good faith attitude of everyone handling grievances is of paramount importance. The Legislature has recognized this by expressly requiring both employers and employees to act in good faith at all times and make every possible effort to resolve disputes at the lowest level. W. Va. Code § 29-6A-7.

For the grievance procedure to be effective at the lower levels, the Board feels the comments it made the last two years should be reiterated. Public employers, employees, unions, and employee organizations should keep certain guiding principles firmly in mind. First, it must be clearly understood that the basic objective of the grievance procedure is not "winning" grievances, but resolving disputes in a fair and equitable manner. Second, supervisors and managers at all levels should consider grievances as aids to discovering, eliminating, or reducing the underlying causes of discontent whenever possible. Third, when wrong decisions have been made, these mistakes should be acknowledged and corrected promptly. Fourth, everyone involved must be willing to devote adequate resources, time and attention to the handling and disposition of grievances. Fifth, if grievances are to be handled properly, everyone must be thoroughly familiar with the

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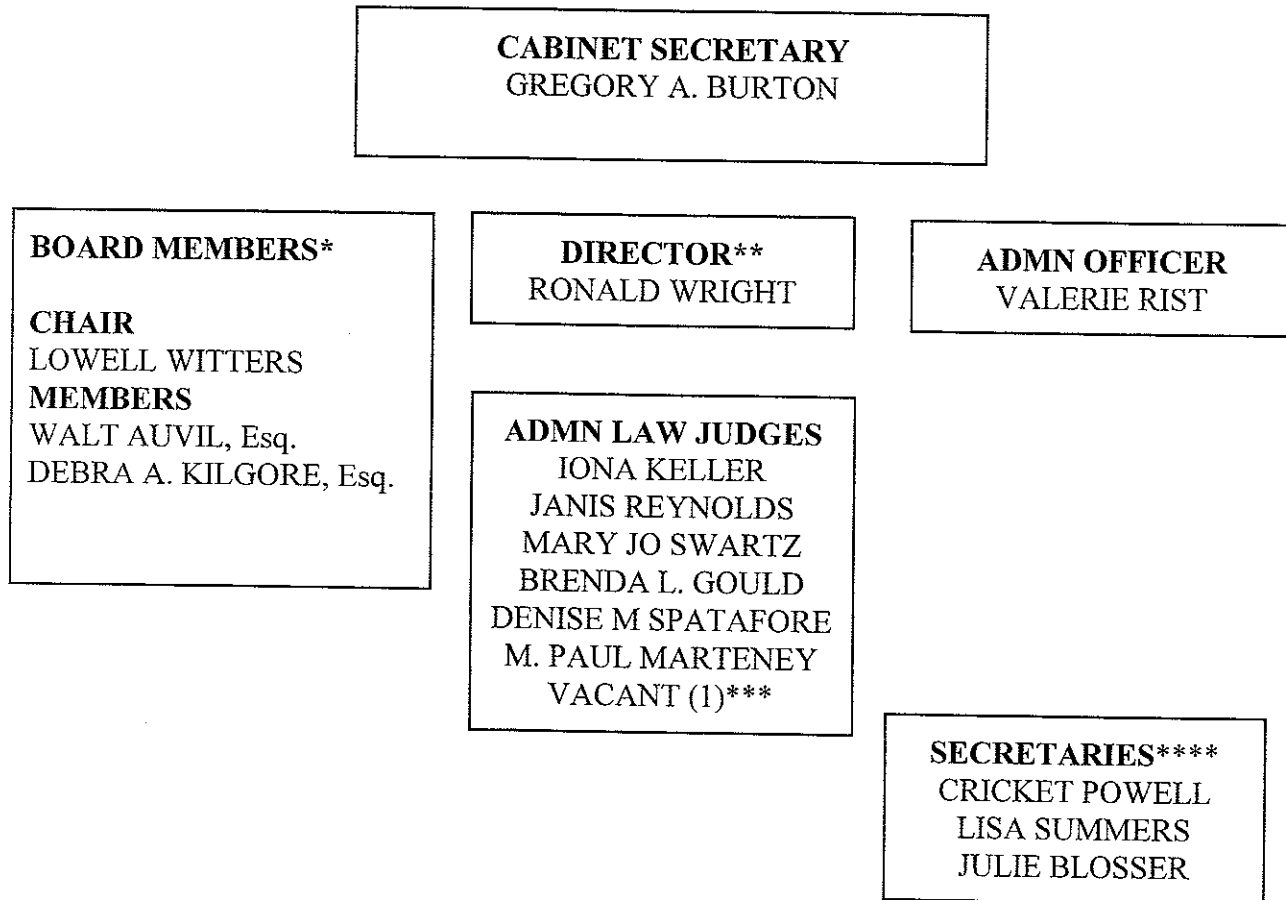
<sup>26</sup> See F. Elkouri, *How Arbitration Works* 157 (4<sup>th</sup> ed. 1985)

governing personnel laws and regulations and Board decisions. See F. Elkouri, How Arbitration Works 154-155 (4<sup>th</sup> ed. 1985)(outlining recommendations made by the President's National Labor-Management Conference of 1945).

In conclusion, the Board intends to continue focusing on prompt decision making and avoiding unreasonable delay at Level Four, particularly delay in issuing decisions. It will continue to promote the use of mediation early in the grievance process. It will continue the outreach and education activities started this year and will strive to improve the entire grievance process.

## ORGANIZATIONAL CHART

### WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD



Grievance Board included in DOA, Code, 5F-2-1 (a) (7).

\* Board members appointed by Governor, Code, 18-29-5 (a).

\*\* No statutory provision for a Director.

\*\*\* One vacant ALJ position eliminated in Oct. 2000 to provide for merit increases. Another vacant ALJ position was eliminated in December 2002.

\*\*\*\* Two Secretary II positions have been eliminated in recent years, one in the Beckley Office and one in the Wheeling office.

Revised January 27, 2003



State of West Virginia

## Education and State Employees Grievance Board

[www.state.wv.us/admin/grievanc/grievanc.htm](http://www.state.wv.us/admin/grievanc/grievanc.htm)

# Customer Satisfaction Survey

We would appreciate your help in telling us how we can improve the services provided by the Education and State Employees Grievance Board. Please respond to the questions below and mail your completed survey to: Customer Survey; 808 Greenbrier Street, Charleston, WV 25311. **All surveys must be postmarked no later than January 6, 2003.** You may also fax this information by that date to (304) 558-1106. If you have any questions regarding this survey, please feel free to contact Ron Wright of the Grievance Board at (304) 558-3361 or toll-free at 866-747-6743.

### I. Adjudication Services: Administrative Law Judge Performance

|  | Excellent | Good | Fair | Poor | Very Poor | Not Applicable |
|--|-----------|------|------|------|-----------|----------------|
| 1. Promptness in deciding cases  | 5         | 4    | 3    | 2    | 1         | N/A            |
| 2. Quality of written decisions, e.g., readability, proper discussion of legal and factual issues  | 5         | 4    | 3    | 2    | 1         | N/A            |
| 3. Ability to conduct orderly and fair hearings  | 5         | 4    | 3    | 2    | 1         | N/A            |
| 4. Knowledge of law applicable to the hearing  | 5         | 4    | 3    | 2    | 1         | N/A            |
| 5. Conscientiousness in finding facts and interpreting the law without regard to public criticism  | 5         | 4    | 3    | 2    | 1         | N/A            |
| 6. Courtesy to parties and witnesses   | 5         | 4    | 3    | 2    | 1         | N/A            |
| 7. Please rank the top three (3) qualities, by question number listed above, which you find most important. For example, if promptness in deciding cases is the most important, you would place a "1" in the first blank space.<br>(most important) _____ (second most important) _____ (third most important) _____ |           |      |      |      |           |                |

### II. Level Four of Grievance Procedure: Administrative and Secretarial Staff

|  |   |   |   |   |   |     |
|--|---|---|---|---|---|-----|
| 8. Simplicity of forms utilized to file grievance                                      | 5 | 4 | 3 | 2 | 1 | N/A |
| 9. Simplicity of procedure   | 5 | 4 | 3 | 2 | 1 | N/A |
| 10. Promptness in obtaining a hearing date   | 5 | 4 | 3 | 2 | 1 | N/A |
| 11. Promptness in responding to requests for information about the grievance procedure | 5 | 4 | 3 | 2 | 1 | N/A |
| 12. Accuracy of information provided   | 5 | 4 | 3 | 2 | 1 | N/A |
| 13. Courtesy of staff  | 5 | 4 | 3 | 2 | 1 | N/A |

See Reverse Side for Continuation of Customer Survey

Grievance Board Customer Satisfaction Survey

III. General Comments:

14. Circle the percentage of your overall satisfaction in doing business with the Grievance Board  
100% 90% 80% 70% 60% 50% 40% 30% 20% 10% 0%
15. During 2002, has your overall satisfaction with the Grievance Board:  
☐ Increased      ☐ Decreased      ☐ Remained the Same      ☐ Not Applicable
16. What are your top three (3) recommendations to improve the services provided by the Grievance Board?

17. Is there anything else you want to tell us?

IV. Customer Information

Please check the box that best describes your role in the grievance procedure:

- |  |                                   |
|--|-----------------------------------|
| <input type="checkbox"/> Grievant                | <input type="checkbox"/> Employer |
| <input type="checkbox"/> Employee Representative | <input type="checkbox"/> Counsel  |
| <input type="checkbox"/> Other _____             |                                   |

(Completing the information below is *optional*, although it may assist us in following up on your comments or complaints)

Name: \_\_\_\_\_

Agency: \_\_\_\_\_

Address: \_\_\_\_\_

Thank You for Your Response



## Average Rating by Customer of Administrative Procedures and Staff For 2002

| Customer Type | # of Responses | Overall Satisfaction | Forms Simple | Procedure Simple | Prompt Hearing Date | Prompt Info Response | Info Accuracy | Staff Courtesy |
|---------------|----------------|----------------------|--------------|------------------|---------------------|----------------------|---------------|----------------|
| COUNSEL       | 17             | 78.13                | 3.76         | 3.76             | 4.24                | 4.24                 | 4.12          | 4.53           |
| EMPLOYEE REP  | 8              | 66.25                | 3.88         | 3.13             | 3.88                | 3.50                 | 3.71          | 4.13           |
| EMPLOYER      | 23             | 90.22                | 4.30         | 4.13             | 4.30                | 4.57                 | 4.35          | 4.78           |
| GRIEVANT      | 27             | 39.26                | 3.11         | 2.70             | 2.37                | 2.59                 | 2.81          | 3.26           |
| OTHER         | 5              | 32.00                | 3.60         | 3.20             | 3.00                | 2.80                 | 2.60          | 3.60           |

## Average Rating by Customer of Administrative Procedures and Staff For 2001

| Customer Type | # of Responses | Overall Satisfaction | Forms Simple | Procedure Simple | Prompt Hearing Date | Prompt Info Response | Info Accuracy | Staff Courtesy |
|---------------|----------------|----------------------|--------------|------------------|---------------------|----------------------|---------------|----------------|
| COUNSEL       | 15             | 84.33                | 4.60         | 4.47             | 4.40                | 3.60                 | 4.20          | 4.20           |
| EMPLOYEE REP  | 12             | 40.83                | 3.33         | 2.58             | 3.33                | 3.08                 | 3.33          | 3.75           |
| EMPLOYER      | 20             | 87.50                | 3.55         | 3.55             | 3.90                | 3.60                 | 3.70          | 4.40           |
| GRIEVANT      | 44             | 38.37                | 2.68         | 2.40             | 2.32                | 2.32                 | 2.52          | 3.07           |
| OTHER         | 2              | 95.00                | 4.50         | 4.50             | 4.50                | 4.50                 | 4.50          | 4.50           |

## Average Rating by Customer of Adjudication Services for 2002

| Customer Type | # of Responses | Overall Satisfaction | Prompt Decision | Quality Decision | Orderly Hearing | Know Law re Hearing | Public Criticism | Courtesy |
|---------------|----------------|----------------------|-----------------|------------------|-----------------|---------------------|------------------|----------|
| COUNSEL       | 17             | 78.13                | 4.18            | 3.94             | 4.24            | 4.12                | 3.88             | 4.47     |
| EMPLOYEE REP  | 8              | 66.25                | 3.63            | 3.57             | 4.00            | 3.75                | 3.14             | 4.13     |
| EMPLOYER      | 23             | 90.22                | 4.30            | 4.30             | 4.30            | 4.39                | 4.48             | 4.43     |
| GRIEVANT      | 27             | 39.26                | 2.56            | 2.44             | 2.81            | 2.63                | 2.41             | 3.63     |
| OTHER         | 5              | 32.00                | 3.80            | 3.00             | 3.60            | 2.40                | 2.60             | 4.50     |

## Average Rating by Customer of Adjudication Services for 2001

| Customer Type | # of Responses | Overall Satisfaction | Prompt Decision | Quality Decision | Orderly Hearing | Know Law re Hearing | Public Criticism | Courtesy |
|---------------|----------------|----------------------|-----------------|------------------|-----------------|---------------------|------------------|----------|
| COUNSEL       | 15             | 84.33                | 4.13            | 4.07             | 4.27            | 4.33                | 4.07             | 4.47     |
| EMPLOYEE REP  | 12             | 40.83                | 2.92            | 2.92             | 3.08            | 2.67                | 2.58             | 3.50     |
| EMPLOYER      | 20             | 87.50                | 3.85            | 4.45             | 4.45            | 4.45                | 4.35             | 4.65     |
| GRIEVANT      | 44             | 38.37                | 2.80            | 2.32             | 2.68            | 2.79                | 2.05             | 3.11     |
| OTHER         | 2              | 95.00                | 4.50            | 4.50             | 4.50            | 4.50                | 4.50             | 4.50     |

# APPENDIX D

## GRIEVANCES FILED AT LEVEL FOUR AGAINST COUNTY BOARDS OF EDUCATION, THE STATE DEPARTMENT OF EDUCATION AND OTHER ENTITIES CALENDAR YEARS 2002 THROUGH 1995

| County Boards of Education: | 2002 | 2001 | 2000 | 1999 | 1998 | 1997 | 1996 | 1995 |
|-----------------------------|------|------|------|------|------|------|------|------|
| Barbour County Board        | 1    | 2    | 0    | 2    | 0    | 0    | 2    | 3    |
| Berkeley County Board       | 2    | 2    | 4    | 2    | 1    | 7    | 5    | 1    |
| Boone County Board          | 2    | 1    | 6    | 6    | 6    | 1    | 5    | 10   |
| Braxton County Board        | 0    | 0    | 2    | 0    | 2    | 1    | 1    | 1    |
| Brooke County Board         | 1    | 0    | 1    | 2    | 1    | 0    | 3    | 4    |
| Cabell County Board         | 3    | 9    | 9    | 7    | 0    | 11   | 9    | 9    |
| Calhoun County Board        | 0    | 0    | 1    | 1    | 3    | 0    | 0    | 0    |
| Clay County Board           | 0    | 0    | 0    | 2    | 0    | 1    | 1    | 0    |
| Doddridge County Board      | 0    | 0    | 0    | 2    | 0    | 0    | 0    | 0    |
| Fayette County Board        | 5    | 3    | 1    | 1    | 3    | 7    | 8    | 5    |
| Gilmer County Board         | 1    | 0    | 0    | 0    | 1    | 0    | 0    | 4    |
| Grant County Board          | 3    | 0    | 1    | 2    | 1    | 3    | 2    | 2    |
| Greenbrier County Board     | 2    | 4    | 2    | 2    | 1    | 5    | 7    | 5    |
| Hampshire County Board      | 3    | 1    | 1    | 1    | 0    | 3    | 1    | 1    |
| Hancock County Board        | 4    | 3    | 5    | 7    | 9    | 12   | 11   | 10   |

|                         |    |    |    |    |    |    |    |    |
|-------------------------|----|----|----|----|----|----|----|----|
| Hardy County Board      | 0  | 1  | 0  | 1  | 0  | 0  | 1  | 1  |
| Harrison County Board   | 9  | 15 | 4  | 8  | 4  | 4  | 5  | 4  |
| Jackson County Board    | 1  | 2  | 1  | 4  | 1  | 3  | 2  | 3  |
| Jefferson County Board  | 9  | 6  | 3  | 1  | 4  | 2  | 2  | 3  |
| Kanawha County Board    | 24 | 20 | 22 | 25 | 13 | 17 | 19 | 17 |
| Lewis County Board      | 2  | 1  | 0  | 4  | 2  | 4  | 3  | 0  |
| Lincoln County Board    | 8  | 5  | 7  | 20 | 30 | 33 | 7  | 9  |
| Logan County Board      | 5  | 5  | 8  | 7  | 7  | 18 | 15 | 21 |
| Marion County Board     | 3  | 5  | 4  | 1  | 3  | 2  | 5  | 5  |
| Marshall County Board   | 3  | 2  | 1  | 2  | 1  | 3  | 0  | 0  |
| Mason County Board      | 4  | 2  | 3  | 5  | 4  | 5  | 9  | 7  |
| McDowell County Board   | 5  | 3  | 1  | 5  | 0  | 2  | 5  | 7  |
| Mercer County Board     | 1  | 2  | 1  | 1  | 2  | 10 | 3  | 8  |
| Mineral County Board    | 1  | 1  | 4  | 3  | 5  | 3  | 2  | 3  |
| Mingo County Board      | 8  | 3  | 5  | 6  | 15 | 40 | 49 | 67 |
| Monongalia County Board | 13 | 12 | 20 | 14 | 11 | 0  | 8  | 4  |
| Monroe County Board     | 1  | 2  | 1  | 5  | 3  | 2  | 6  | 5  |
| Morgan County Board     | 1  | 1  | 0  | 1  | 3  | 3  | 4  | 1  |
| Nicholas County Board   | 4  | 3  | 1  | 5  | 4  | 3  | 3  | 2  |
| Ohio County Board       | 3  | 3  | 1  | 2  | 1  | 2  | 3  | 3  |

|                         |    |    |   |    |   |    |    |   |
|-------------------------|----|----|---|----|---|----|----|---|
| Pendleton County Board  | 0  | 1  | 0 | 0  | 2 | 1  | 0  | 4 |
| Pleasants County Board  | 1  | 0  | 0 | 0  | 1 | 0  | 0  | 0 |
| Pocahontas County Board | 0  | 1  | 4 | 0  | 0 | 2  | 0  | 0 |
| Preston County Board    | 2  | 3  | 8 | 4  | 1 | 0  | 0  | 4 |
| Putnam County Board     | 11 | 5  | 7 | 13 | 6 | 12 | 3  | 4 |
| Raleigh County Board    | 10 | 16 | 5 | 3  | 2 | 10 | 12 | 9 |
| Randolph County Board   | 3  | 2  | 7 | 3  | 5 | 3  | 7  | 4 |
| Ritchie County Board    | 0  | 4  | 0 | 0  | 2 | 1  | 1  | 0 |
| Roane County Board      | 0  | 0  | 0 | 0  | 0 | 0  | 0  | 0 |
| Summers County Board    | 0  | 3  | 1 | 1  | 3 | 2  | 6  | 5 |
| Taylor County Board     | 1  | 1  | 0 | 0  | 0 | 0  | 1  | 2 |
| Tucker County Board     | 4  | 5  | 0 | 1  | 1 | 1  | 3  | 0 |
| Tyler County Board      | 0  | 0  | 1 | 0  | 0 | 0  | 3  | 0 |
| Upshur County Board     | 2  | 0  | 2 | 1  | 2 | 1  | 2  | 1 |
| Wayne County Board      | 1  | 5  | 6 | 11 | 6 | 6  | 5  | 4 |
| Webster County Board    | 1  | 1  | 2 | 1  | 0 | 3  | 4  | 2 |
| Wetzel County Board     | 4  | 4  | 2 | 1  | 2 | 3  | 6  | 2 |
| Wirt County Board       | 0  | 0  | 0 | 0  | 1 | 1  | 0  | 0 |
| Wood County Board       | 5  | 4  | 0 | 5  | 3 | 5  | 6  | 4 |
| Wyoming County Board    | 2  | 3  | 2 | 4  | 1 | 4  | 2  | 5 |

|                                 |            |            |            |            |            |            |            |            |
|---------------------------------|------------|------------|------------|------------|------------|------------|------------|------------|
| Multi-County Vocational Centers | 3          | 1          | 0          | 1          | 0          | 0          | 2          | 3          |
| Regional Educ. Serv. Agencies   | 0          | 0          | 0          | 0          | 1          | 2          | 1          | 0          |
| W. Va. Department of Education  | 4          | 4          | 7          | 7          | 6          | 5          | 6          | 4          |
| <b>Totals</b>                   | <b>186</b> | <b>182</b> | <b>174</b> | <b>213</b> | <b>186</b> | <b>268</b> | <b>276</b> | <b>283</b> |

## APPENDIX E

### GRIEVANCES FILED AT LEVEL FOUR AGAINST HIGHER EDUCATION INSTITUTIONS CALENDAR YEARS 2002 THROUGH 1997

| <b>STATE COLLEGES</b>                         | <b>2002</b> | <b>2001</b> | <b>2000</b> | <b>1999</b> | <b>1998</b> | <b>1997</b> |
|---|-------------|-------------|-------------|-------------|-------------|-------------|
| Bluefield State College                       | 3           | 5           | 0           | 0           | 1           | 2           |
| Concord State College                         | 1           | 2           | 0           | 0           | 2           | 1           |
| Fairmont State College                        | 4           | 2           | 2           | 1           | 0           | 2           |
| Glenville State College                       | 0           | 0           | 0           | 0           | 0           | 0           |
| Potomac State College                         | 1           | 1           | 0           | 0           | 0           | 1           |
| Shepherd College                              | 1           | 7           | 2           | 4           | 1           | 7           |
| West Liberty State College                    | 0           | 1           | 1           | 3           | 4           | 4           |
| W. Va. Univ. Institute of Technology          | 1           | 0           | 0           | 0           | 0           | 0           |
| W. Va. Northern Community College             | 0           | 0           | 3           | 0           | 2           | 2           |
| W. Va. Southern Community & Technical College | 3           | 1           | 1           | 1           | 1           | 6           |
| W. Va. State College                          | 1           | 1           | 1           | 8           | 2           | 3           |
| <b>STATE UNIVERSITIES</b>                     |             | 0           |             |             |             |             |
| Marshall University                           | 13          | 14          | 10          | 11          | 10          | 8           |
| W. Va. University                             | 9           | 60          | 10          | 28          | 13          | 18          |
| W. Va. University Hospitals                   | 1           | 0           | 0           | 0           | 0           | 0           |
| W. Va. School of Osteopathic Med.             | 1           | 0           | 0           | 0           | 0           | 2           |

|                                    |           |           |           |           |           |           |
|------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| WVNET                              | 0         | 0         | 1         | 0         | 0         | 0         |
| Higher Education Policy Commission | 1         |           |           |           |           |           |
| <b>Totals</b>                      | <b>40</b> | <b>94</b> | <b>31</b> | <b>56</b> | <b>36</b> | <b>56</b> |



# APPENDIX F

## GRIEVANCES FILED AT LEVEL FOUR AGAINST STATE AGENCIES CALENDAR YEARS 2002 THROUGH 1997

|  | 2002 | 2001 | 2000 | 1999 | 1998 | 1997 |
|--|------|------|------|------|------|------|
| <b>Administration, Department of</b>           |      |      |      |      |      |      |
| Board of Risk & Insurance Management           | 0    | 0    | 0    | 0    | 0    | 1    |
| Consolidated Public Retirement Bd.             | 1    | 0    | 1    | 0    | 0    | 0    |
| Finance  | 1    | 0    | 0    | 0    | 0    | 0    |
| General Services                               | 4    | 2    | 0    | 3    | 1    | 4    |
| Personnel                                      | 2    | 0    | 0    | 0    | 3    | 0    |
| Public Employees Insurance Agency              | 1    | 0    | 3    | 0    | 0    | 0    |
| Purchasing                                     | 0    | 1    | 0    | 0    | 1    | 0    |
| Surplus Property                               | 1    |      |      |      |      |      |
| <b>Commerce, Bureau of</b>                     |      |      |      |      |      |      |
| Forestry                                       | 1    | 0    | 0    | 0    | 0    | 1    |
| Labor  | 0    | 0    | 3    | 3    | 1    | 4    |
| Miners' Health, Safety & Training              | 1    | 0    | 0    | 0    | 0    | 2    |
| Natural Resources                              | 1    | 1    | 4    | 2    | 6    | 2    |
| Tourism & Parks                                | 0    | 0    | 2    | 0    | 0    | 0    |
| <b>Education &amp; the Arts, Department of</b> | 0    |      |      |      |      |      |

|  |    |     |    |    |    |    |
|--|----|-----|----|----|----|----|
| Culture and History  | 0  | 0   | 0  | 0  | 2  | 2  |
| Educational Broadcasting Authority                         | 1  | 0   | 0  | 1  | 1  | 0  |
| Library Commission   | 1  | 1   | 1  | 0  | 0  | 0  |
| Rehabilitation Services                                    | 7  | 5   | 6  | 5  | 13 | 3  |
| <b>Employment Programs, Bureau of</b>                      | 10 | 20  | 9  | 6  | 14 | 13 |
| <b>Environmental Protection, Department of</b>             | 11 | 12  | 2  | 2  | 3  | 6  |
| <b>Health and Human Resources, Department of</b>           | 56 | 212 | 76 | 77 | 70 | 67 |
| <b>Military Affairs &amp; Public Safety, Department of</b> |    |     |    |    |    |    |
| Adjutant General   | 0  | 0   | 0  | 1  | 0  | 4  |
| Corrections  | 34 | 28  | 40 | 94 | 65 | 48 |
| Juvenile Services  | 6  | 8   | 3  | 8  | 15 | NA |
| Public Safety  | 1  | 2   | 1  | 2  | 12 | 1  |
| Regional Jail Authority                                    | 5  | 2   | 5  | 4  | 11 | 7  |
| Veteran's Affairs  | 1  | 3   | 3  | 3  | 1  | 2  |
| <b>Public Service Commission</b>                           | 2  | 1   | 0  | 1  | 3  | 1  |
| <b>Senior Services, Bureau of</b>                          | 0  | 1   | 1  | 0  | 2  | NA |
| <b>Supreme Court of Appeals</b>                            | 1  | -   | -  | -  | -  | -  |
| <b>Tax &amp; Revenue, Department of</b>                    |    | 2   | 3  | 7  | 5  | 0  |
| Alcohol Beverage Control Administration                    | 0  | 1   | 1  | 0  | 2  | 5  |
| Insurance Commission                                       | 3  | -   | -  | -  | -  | -  |

|   |            |            |            |            |            |            |
|---|------------|------------|------------|------------|------------|------------|
| Lottery Commission                          | 1          | -          | -          | -          | -          | -          |
| State Tax Department                        | 2          | -          | -          | -          | -          | -          |
| <b>Transportation, Department of</b>        |            |            |            |            |            |            |
| Highways                                    | 59         | 46         | 24         | 32         | 40         | 62         |
| Motor Vehicles                              | 2          | 1          | 0          | 5          | 4          | 4          |
| Parkways, Economic Dev. & Tourism Authority | 0          | 7          | 15         | 14         | 19         | 14         |
| <b>County Health Departments</b>            |            | 4          | 2          | 9          | 4          | 6          |
| Beckley-Raleigh County Health Department    | 1          | 0          | 0          |            |            |            |
| Berkeley County                             | 0          | 1          | 0          |            |            |            |
| Clay County                                 | 0          | 1          | 0          |            |            |            |
| Kanawha-Charleston                          | 1          | 0          | 0          |            |            |            |
| Monongalia County                           | 1          | 1          | 0          |            |            |            |
| Morgan County                               | 0          | 1          | 1          |            |            |            |
| Preston County                              | 0          | 0          | 1          |            |            |            |
| <b>Totals</b>                               | <b>219</b> | <b>360</b> | <b>206</b> | <b>281</b> | <b>183</b> | <b>262</b> |

This table reflects the current organizational structure of State government. Please note that although employees of constitutional officers occasionally file grievances, the Board does not have jurisdiction over grievances filed by such employees. See Footnote 1 of this report. Please also note that the Board's docketing system does not always enable it to identify the specific division or organizational unit within a department or bureau from which the grievances arose. Starting with the 2000 report, the Board began listing the specific county health department from which grievances were filed.

## 2002 Grievances Granted and Defaults Found

**Topics** ANNUAL LEAVE  
**Docket No.** 02-CORR-029  
**Synopsis** Grievant completed two Application to Donate Annual Leave forms on September 14, 2001, in which she donated 32 hours to co-workers. On December 20, 2001, Grievant received the forms which had not been completed by Respondent, with a note that the hours were not needed.  
DECISION: Grievant argues that time donated after her applications were submitted had been accepted, but in any case, Respondent denied her the opportunity to use the time herself when it delayed the return until the end of December. Since Respondent failed to advise Grievant that the donated time had not been processed until it was too late for her to use herself, reinstatement of the 32 hours is equitable relief in this matter. Grievance GRANTED.

**Topics** ANNUAL LEAVE USE; OVERTIME  
**Docket No.** 02-CORR-141  
**Synopsis** Grievant took one week's vacation and was required to use 44 hours of leave to cover absence, because he was regularly scheduled to work 44 hours per week. Grievant normally gets overtime pay for extra four hours.  
DECISION: Work week is 40 hours, and overtime can only be paid when it is actually worked. Leave use cannot exceed 40 hours per week, and cannot be used to cover overtime work.  
Grievant must reimburse Respondent for pay received for extra 4 hours of overtime, but gets 4 hours added back to his leave balance. Grievance GRANTED.

**Topics** BACK PAY; TIMELINESS  
**Docket No.** 01-HE-382  
**Synopsis** Grievant prevailed in a consolidated grievance of Plumbers and Lead Plumbers, in which they were awarded back pay to January 1, 1994. Grievant's back pay was limited to March 15, 1998; however, when he was promoted to Lead Plumber. Respondent asserts that he was not awarded back pay as a Lead, and was not entitled to further compensation, and matter was not timely filed.  
DECISION: Timeliness may not be considered since it was not raised by Respondent during level two proceedings. W. Va. Code, 18-29-5(b) gives ALJ's authority to grant fair and equitable relief. Since Grievant had timely challenged his Mercer classification, and should not be penalized for the promotion, he is awarded back pay from March 1998 to January 16, 2001. Grievance GRANTED.

**Topics** BREAK IN SERVICE; ONE DAY ABSENCE  
**Docket No.** 02-40-027  
**Synopsis** Grievant was called off the substitute rotation to serve in an assignment when a regular employee was absent for an extended period of time due to an injury. The regular employee did not request a leave of absence, so the position could not be posted. Grievant had served in the position for a period of over four months when he became ill and called in to report off work for one day. Grievant, as a substitute, did not have any leave time. Grievant lost the assignment. Grievant successfully argued his one day absence did not constitute a break in service. Grievant should have been allowed to continue in the assignment when he returned from his illness the following day. Grievance GRANTED.

|                   |   |
|-------------------|---|
| <b>Topics</b>     | COLLECTIVE BARGAINING; CONTRACT; UNION  |
| <b>Docket No.</b> | 02-23-047   |
| <b>Synopsis</b>   | <p>Grievants are members of Amalgamated Transit Union, Local 1539, which contracted with the Board to collectively bargain terms and conditions of employment, the last Agreement dated 1981. Grievants seek to enforce the agreement, while the Board contends it is invalid and thus not enforceable. While a union cannot force itself upon a public employer absent a statutory requirement mandating that the employer recognize the union, a government entity may voluntarily enter such an agreement, and once doing so, is committed to complying with its terms.</p> <p>DECISION: The Agreement is valid and enforceable, and the Board is ordered to recognize the Union and to meet with its representatives regarding terms and conditions of employment as set forth in the Agreement. Grievance GRANTED.</p> |
| <b>Topics</b>     | COMPENSATION; EXTRA-DUTY ASSIGNMENTS  |
| <b>Docket No.</b> | 02-06-005   |
| <b>Synopsis</b>   | <p>After the start of the regular school year, Grievants were required to complete their summer runs for two days, as well as performing their required orientation duties. After Grievants filed a grievance, they were compensated for the time greater than eight hours that they worked on those two days. Grievants wanted to be paid two full days wages for these two days, for a total of four days of pay for two days of work. Grievants cannot be paid for two full days of work for one day. However, Grievants, in this particular case, should have been paid as if the runs were extra-duty runs which would increase the compensation they received at Level I. Grievance GRANTED, IN PART and DENIED, IN PART.</p>   |
| <b>Topics</b>     | COMPENSATION; PERSONNEL POLICY; SCHOOL CLOSING  |
| <b>Docket No.</b> | 02-24-040   |
| <b>Synopsis</b>   | <p>Grievants contended Respondent should not have required them to work when school was closed due to a temporary power outage, deviating from past policy contained in the employee handbook. Evidence showed that Respondent had not formally adopted the policy change, but had only issued a memorandum, which most employees had never seen. Therefore, since Grievants did receive pay for working that day, they were awarded an additional day off with pay, because they should not have been required to work, per prior policy. Grievance GRANTED.</p>   |
| <b>Topics</b>     | CONTRACT RENEWAL; PROBATIONARY EMPLOYMENT; BEGINNING TEACHER INTERNSHIP   |
| <b>Docket No.</b> | 02-02-183   |
| <b>Synopsis</b>   | <p>After a somewhat difficult first year, Board voted not to renew Grievant's teaching contract, based on classroom control difficulties observed and documented throughout the year. Grievant argued she should have been offered an additional year of supervision under the terms of the beginning teacher internship statute, which was found to be valid. That statute provides the board with only two options at the end of a teacher's first year, which are either a recommendation for permanent employment or an additional year of internship. Grievant was not provided with many of the rights provided for under the internship program, such as orientation before the beginning of school and the required meetings with a mentor teacher. Grievance GRANTED.</p>  |

|                   |   |
|-------------------|---|
| <b>Topics</b>     | DEFAULT   |
| <b>Docket No.</b> | 01-DEP-526D (DEFAULT ORDER)   |
| <b>Synopsis</b>   | <p>Grievant alleged a default occurred when Respondent failed to respond at Level I within the statutory time lines.</p> <p>Grievant's supervisor failed to respond a Level I within the time lines because of incorrect information about the amount of time he had to respond. Ignorance of the law will not excuse a default. Default GRANTED.</p>   |
| <b>Topics</b>     | DEFAULT; FAILURE TO SCHEDULE A LEVEL III HEARING  |
| <b>Docket No.</b> | 01-PEDTA-626D (DEFAULT ORDER)   |
| <b>Synopsis</b>   | <p>Grievant asked for a continuance of his level three hearing, and this request was granted. The Grievance Evaluator then took no action to reschedule the hearing for ten months, because Grievant did not make an additional request for hearing. The Grievance Evaluator did schedule a Motion to Dismiss when requested by Respondent. Default GRANTED.</p>  |
| <b>Topics</b>     | DEFAULT; LEVEL III; DECISION; REQUIRED RESPONSE   |
| <b>Docket No.</b> | 01-DEP-580D (DEFAULT ORDER)   |
| <b>Synopsis</b>   | <p>Grievant agreed to have her grievance decided on the same record as a similar grievance filed at the same time, but grievances were not consolidated. A decision was issued denying other grievance, but no decision was ever issued in Grievant's grievance. Failure to issue decision constituted unexcused default. Default GRANTED.</p>  |
| <b>Topics</b>     | DEFAULT; REMEDY   |
| <b>Docket No.</b> | 01-DEP-580D   |
| <b>Synopsis</b>   | <p>Grievant prevailed in earlier hearing on claim that Respondent defaulted at Level III. Respondent requested hearing on remedy, asserting it could rebut the presumption that Grievant prevailed on the merits and that remedy requested was contrary to law or clearly wrong. Respondent failed to rebut presumption by clear and convincing evidence, and failed to prove by a preponderance of the evidence that remedy was contrary to law or clearly wrong. Grievance GRANTED.</p>   |
| <b>Topics</b>     | DEFAULT; STATUTORY EXCUSE; STAY   |
| <b>Docket No.</b> | 02-HHR-54D (DEFAULT ORDER)  |
| <b>Synopsis</b>   | <p>Level three grievance evaluator failed to show up for a scheduled hearing due to illness. Respondent proved default was excused due to illness, but level three evaluator also failed to reschedule hearing. Grievant asserted default by letter to her level two evaluator on the following workday, but level three never got the notice. Grievant again asserted default 30 days later after being told level three evaluator would have to reschedule. Respondent then asked for level four hearing on default claim.</p> <p>DECISION: Initial default excused due to sickness of evaluator, but failure to promptly reschedule was not excused. Initial assertion of default did not stay proceedings because person responsible for time limits did not know about assertion. Default GRANTED.</p> |

|                   |  |
|-------------------|--|
| <b>Topics</b>     | DEFAULT; SUSPENSION  |
| <b>Docket No.</b> | 02-HHR-226D  |
| <b>Synopsis</b>   | <p>Respondent conceded that a default had occurred. Respondent argued the relief requested would be contrary to law and clearly wrong because the facts underlying the presumption that Grievant prevailed on his grievance were not true. Grievant was suspended for 20 days for "continued inappropriate, unprofessional, hostile, and argumentative interaction" with his supervisor, and for "purposefully and with malice, forcefully lean[ing] into" his supervisor and elbowing her in the breast. The evidence showed that Grievant was not respectful of or courteous to his supervisor, and that he was unnecessarily rude and argumentative in his response to her directive. This amounted to insubordination for which some discipline was appropriate. Respondent did not demonstrate that Grievant intentionally elbowed his supervisor in the breast as was charged. The suspension was reduced to a verbal reprimand. Grievance GRANTED, IN PART and DENIED, IN PART.</p> |
| <b>Topics</b>     | DEFAULT; SUSPENSION  |
| <b>Docket No.</b> | 02-BEP-106D (DEFAULT ORDER)  |
| <b>Synopsis</b>   | <p>Following the imposition of a ten day suspension, Grievant initiated a grievance on March 23, 2001. A level three hearing was completed on February 11, 2002, and proposed findings and conclusions were due on March 25, 2002. At the hearing evaluator's request, Grievant agreed to extend the time lines for the decision to ten days. The recommended decision was dated April 8, 2002, but the Commission did not adopt the decision and issue a level three response until April 17, 2002. DECISION: Grievant agreed to extend the period of time in which the decision was due to ten days. She did not agree to a second ten day extension, and the decision was untimely issued, with no stated cause for the delay. Grievance GRANTED.</p>   |
| <b>Topics</b>     | DEFAULT; SUSPENSION; WORKING; DAYS   |
| <b>Docket No.</b> | 01-HHR-598D (DEFAULT ORDER)  |
| <b>Synopsis</b>   | <p>Grievant alleged a default at level one against DHHR when it failed to respond to his grievance within the statutory time frame. DHHR argued no default occurred because Grievant was serving a suspension, which it alleged tolled the time frame for responding to his grievance. DECISION: "Working Days" refers not to days when an employee is actually working, or performing the duties of his or her job, but rather refers to a work week comprised of "regular working hours", defined by the employer. There is nothing in the grievance statute which provides that an employee's time off work due to a disciplinary suspension serves to toll the time limits for filing a grievance, or responding to it. Further, DHHR alleged Grievant waived the time limits, but the evidence failed to prove that allegation by a preponderance of the evidence. Thus, Grievant proved DHHR defaulted on his claim at level one. Grievance GRANTED.</p>                             |
| <b>Topics</b>     | DEFAULT; TRANSMISSION OF RESPONSE  |
| <b>Docket No.</b> | 02-DOH-025D (DEFAULT ORDER)  |
| <b>Synopsis</b>   | <p>Grievant filed a grievance with his supervisor and met with him for a level one conference. Six days passed and Grievant received no response, so he filed a default claim. Supervisor testified that he prepared the response on his computer the same day as the conference, and he believed he "must have" put it in interdepartmental mail. However, he had no proof of this and no specific recollection of doing so. There was no evidence that the response was ever transmitted to Grievant, so default occurred at level one. Default GRANTED.</p>   |

**Topics** DEFAULT; WAIVER  
**Docket No.** 02-CORR-137D (DEFAULT ORDER)  
**Synopsis** Grievant waived the time lines for a level two conference, but did not agree to an extension of time for the decision to be issued. The conference was conducted on April 11, 2002, and a decision was issued on April 19, 2002. There was no reason given for the delay.  
DECISION: The decision was dated April 16, 2002, and was untimely issued. Grievance GRANTED.

**Topics** DISCRIMINATION; FAVORITISM; DUTIES  
**Docket No.** 02-CORR-124  
**Synopsis** Grievant, an Accounting Technician III, was required to cover a security post normally staffed by a Correctional Officer, about five percent of his time from February 2001, through June 2002. Due to a shortage of Correctional Officers, supervisors were asked to volunteer employees who could be spared from their regular duties to cover security posts. Some employees have not been required to cover security posts because their supervisors determined they could not be spared from their regular duties. Also, some supervisors have determined that employees who were volunteered to cover a security post needed to work overtime to complete their regular assignments. Grievant's supervisor decided he could spare Grievant, and that Grievant did not need to work overtime to complete his regular assignments. This was not discrimination or favoritism. Also, Grievant could be required to cover a security post, even though it was not within the normal duties of his position. However, Grievant had been required to cover a security post for such a long period of time that this duty was not de minimis. Grievant was entitled to a pay differential for covering a security post. Grievance GRANTED.

**Topics** DISMISSAL  
**Docket No.** 02-HEPC-164  
**Synopsis** Grievant, a 23 year employee, was dismissed for mowing 8 acres of hay, ordering parts and service to repair farm machinery, and storing a spare part in his garage at home. Respondent argued that Grievant's actions constituted gross misconduct, and when considered in conjunction with a recent 10 day suspension, warranted the dismissal. Grievant asserted that his actions were consistent with his prior practice, and presented the testimony of a former supervisor who corroborated his testimony.  
DECISION: A number of factors support a decision to mitigate the discipline imposed in this matter. In addition to Grievant's considerable tenure, the actions leading to the dismissal arose primarily from the fact that a new and inexperienced supervisor had been appointed, and there were difficulties in communication. The discipline was reduced to a 20 day suspension. Grievance GRANTED.



|                   |  |
|-------------------|--|
| <b>Topics</b>     | DISMISSAL  |
| <b>Docket No.</b> | 02-20-090  |
| <b>Synopsis</b>   | <p>A parent complaint resulted in a videotape from Grievant's bus being viewed by supervisory personnel. Grievant was dismissed after videotapes from his bus from several days revealed inappropriate language and behavior by Grievant in the presence of students. Grievant was not present while the videotapes were viewed because he had been suspended. Videotapes could be viewed by Grievant's supervisors. Grievant's use of profanity and other improper language was correctable conduct, and not grounds for dismissal. His conversations with students about sex and drug usage, while well intentioned, were inappropriate, and warranted some discipline. Respondent proved some minor violations which also warranted discipline. Some of Grievant's behavior was found to be negligence, not willful neglect of duty. His joking, non-malicious, inappropriate interaction with students was correctable behavior. As Grievant's supervisor had approved of him driving a bus after working at night and not getting sufficient rest, and had encouraged him to do so, Grievant did not possess the intent to violate any policy, and was not guilty of willful neglect of duty or insubordination. Finally, Respondent could not now discipline Grievant for actions from years ago, and allegations about Grievant, about which his supervisor had been aware and had previously chosen not to discipline Grievant. Dismissal was reduced to a 15 day suspension without pay, and Respondent was directed to place Grievant on an improvement plan. Grievance GRANTED.</p> |
| <b>Topics</b>     | DISMISSAL; WRITTEN REPRIMAND; INSUBORDINATION; WILLFUL NEGLECT OF DUTY   |
| <b>Docket No.</b> | 01-BCHD-552  |
| <b>Synopsis</b>   | <p>Grievant was terminated after she refused to sign a written reprimand. Her termination letter charged her with three counts of insubordination and willful neglect of duty. At hearing Respondent sought to have after-acquired evidence placed into evidence. Respondent failed to meet its burden of proof, providing only one of the three charges of insubordination. Willful neglect of duty was not proven. The after-acquired evidence was examined for reasons explained in the Decision and these charges were also not proven. Grievance GRANTED.</p>   |
| <b>Topics</b>     | EXTRACURRICULAR ASSIGNMENTS; JOB POSTINGS; COMPENSATION; EXTRA-DUTY ASSIGNMENTS  |
| <b>Docket No.</b> | 01-45-614  |
| <b>Synopsis</b>   | <p>Grievants made an un rebutted prima facie showing that other bus operators performing midday school-to-school runs were compensated for performing extra-duty assignments. Respondent assigned a midday band run from one school to another to the drivers one week at a time, and did not plan to compensate them at the extra-duty rate because the run was to be part of their regular assignment. DECISION: Run was extra-duty, because it was irregular. Even though it was the same run and was regular for the students, for the drivers it was irregular because they would only have the assignment once every two years. Grievance GRANTED.</p>   |

**Topics** JOB POSTING

**Docket No.** 02-HEPC-180

**Synopsis** Respondent followed a long-standing practice of using an existing applicant pool if a similar job to one already posted and filled opened up within a short time. Grievant, who did not apply for the first job, was not considered for the second job. An external candidate was hired for second job, but if grievant had been in applicant pool, he would have had preference over outside applicants.  
DECISION: MU must develop posting policy consistent with 133 CSR 39 § 8.1; and repost position.  
Grievant did not prove discrimination. Grievance GRANTED, in part; DENIED as to specific relief sought, which was instatement into position.

**Topics** MISCLASSIFICATION; GRANDFATHER CLAUSE; NEW CLASSIFICATION; EXPERIENCE

**Docket No.** 01-41-501

**Synopsis** Grievant was a Secretary III/Accountant III when legislature enacted new classification of accounts payable supervisor. Grievant's supervisor recommended she be placed in new class based on duties. Board denied because new class required years of experience, and that was interpreted to mean years with the school board.  
Grievance granted in part, Grievant's outside experience counted.  
Grievance denied in part, no grandfather clause in new provision & Board already classified another employee as accounts payable supervisor - new class contemplates singular position, so can't have more than one. Grievance GRANTED, IN PART and DENIED, IN PART.

**Topics** OVERLOAD COMPENSATION; DISCRIMINATION

**Docket No.** 02-HEPC-068

**Synopsis** As instructors of the Aviation Maintenance Technician program, Grievants are subject to FAA rules and regulations regarding curriculum, including the fact they are required to provide 6-8 hours of instruction for each 3 hour class. Since 1997 Grievants were eligible for overload compensation beyond 9 credit/19 contact hours. In Spring 2002, the workload of all faculty members was increased from 12 to 15 hours before they were entitled to overload compensation. At that time, Grievants workload was adjusted to 15 credit/22 contact hours. Grievants argue they are subject to discrimination, and request the reinstatement of the 19 contact hour limitation, and back pay for the spring semester. Respondent offered no legitimate, non-discriminatory reason for the change. Grievance GRANTED.

**Topics** OVERTIME

**Docket No.** 01-DOH-571

**Synopsis** Grievants alleged they should receive overtime for the flood relief time they did not work, but two later-called employees did.  
This is an odd case, and the agency supervising Grievants and the other Division of Highways' employees was in the National Guard. The ALJ found the Grievants should have worked the overtime, but because DOH was not in charge of them at the time, the relief granted was modified. Grievance GRANTED.

|                   |   |
|-------------------|---|
| <b>Topics</b>     | PAY EQUITY; VOCATIONAL RUNS; TIMELINESS   |
| <b>Docket No.</b> | 02-41-037   |
| <b>Synopsis</b>   | <p>Grievant argued he was not paid for his vocational run, and another similarly situated employee was. Respondent asserted this grievance was not timely filed, as the situation had existed for many years.</p> <p>Grievant proved discrimination, but the compensation was limited to fifteen working days prior to the filing of the grievance. Grievance as to Lilly GRANTED; as to Akers SETTLED and DISMISSED.</p>   |
| <b>Topics</b>     | POSTING   |
| <b>Docket No.</b> | 02-18-252   |
| <b>Synopsis</b>   | <p>Intervenor was employed by JCBE to fill a vacancy created by a one-year leave of absence. Subsequently, his employment was terminated and he was placed on the preferred recall list. When another social studies teacher transferred, Intervenor was placed in that vacancy which was not posted.</p> <p>DECISION: The vacancy created by the transfer must be posted pursuant to Code. Grievance GRANTED.</p>  |
| <b>Topics</b>     | POSTING   |
| <b>Docket No.</b> | 02-25-087   |
| <b>Synopsis</b>   | <p>MBOE posted two positions as extracurricular in the anticipation that part-time bus operators would apply. When no regularly employed drivers bid on the runs, two substitute operators were given the assignments. Several months later MBOE corrected their classification by making them regular, part-time drivers. Grievants complain that they have more seniority than the substitutes given the runs, and would have applied for the assignments had they been properly posted. MBOE argued that the upgrade in classification was a settlement made to avoid grievance being filed the incumbents.</p> <p>DECISION: When it was apparent that no regularly employed bus operator applied for the positions, MBOE was obligated to repost them as regular, part-time assignments. The change of classification cannot be considered a settlement since no grievance had been filed. Grievance GRANTED.</p> |
| <b>Topics</b>     | POSTING; FILING; STANDING   |
| <b>Docket No.</b> | 01-31-599   |
| <b>Synopsis</b>   | <p>Grievants grieved the failure of Respondent to post two positions. The positions were filled without posting. Grievants were not qualified for the positions.</p> <p>Although Grievants were not qualified for the positions at issue, ALJ found they had standing to grieve, because failure to post was a violation of W. Va. Code §18A-4-7a. The purpose of posting is to obtain a pool of qualified applicants. Grievance GRANTED.</p>   |

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| <b>Topics</b>     | REALLOCATION; RECLASSIFICATION   |
| <b>Docket No.</b> | 01-DPS-609   |
| <b>Synopsis</b>   | <p>Grievant received a change in classification at Level III from a Secretary I to a Secretary II. At Level IV, Grievant sought back pay from 1988, for a variety of reasons. Grievant did not meet her burden of proof and demonstrate any reason why she should receive back pay from 1988. Grievant had filed a prior grievance on the exact same issue in 1997, it had been denied at Level III, and Grievant had not pursued it further.</p> <p>This case had multiple problems, not the least of which was the failure to hold a hearing at Level III, and a decision based on documentation only. Additionally, the Level III Hearing Examiner granted the grievance stating Grievant was reclassified. If Grievant had been reclassified, she would not have been entitled to any increase. After the Level III decision was issued, a five percent pay increase was granted from the date of the decision. For equity reasons and following Martin, the five percent increase was granted from ten days before the filing of this grievance. Grievance GRANTED.</p> |
| <b>Topics</b>     | RECLASSIFICATION; GRANTED BELOW  |
| <b>Docket No.</b> | 02-20-240  |
| <b>Synopsis</b>   | <p>This grievance followed an odd path to Level IV. The grievance was granted at Level II, and waived by the Board at Level III.</p> <p>At Level IV, Respondent did not meet the burden of proof mandated by W. Va. Code §18-29-3(t), which is the standard of review for a board of education appealing to Level IV, when a grievance has been granted. Grievance GRANTED.</p>  |
| <b>Topics</b>     | RECLASSIFICATION; TIMELINESS; BACK PAY   |
| <b>Docket No.</b> | 02-HHR-294   |
| <b>Synopsis</b>   | <p>Grievant sought reclassification to the higher pay grade and back pay. At level three, grievance evaluator found she was not misclassified, but ordered her to be temporarily upgraded and awarded back pay to time she began performing additional duties. Grievance Evaluator then issued errata notice changing back pay award to ten days prior to filing of grievance. Grievant appealed only back pay award.</p> <p>DECISION: As grievant did not prevail on misclassification claim, she is not entitled to extended back pay. Grievance GRANTED, IN PART and DENIED, IN PART.</p>   |
| <b>Topics</b>     | REPRIMAND  |
| <b>Docket No.</b> | 02-46-081  |
| <b>Synopsis</b>   | <p>Following a reduction in force, the bus routes of many operators were reconfigured, leading to ongoing discussion regarding whether certain runs were properly filled. Grievant believed that a certain run had not been properly filled and encouraged the operator assigned to it, to file a grievance. Grievant contacted this individual a number of times regarding the matter. The employee then spoke with the bus operator who had previous held the run. The second operator met with the Superintendent and asked that something be done to resolve the matter. The Superintendent then issued Grievant a letter stating that he was acting improperly and must stop engaging in the activities. Grievant argued that he had done nothing wrong.</p> <p>DECISION: Discussing grievance matters was not an inappropriate action. A letter of reprimand was improperly placed in his personnel file since he had not been previously warned if other employees found his behavior objectionable. Grievance GRANTED.</p>   |

**Topics** SALARY INCREMENT; EXPERIENCE CREDIT; LEAVE BANK

**Docket No.** 02-40-122

**Synopsis** Grievant suffered a serious illness and received 120 days from personal leave bank during school year 1997-1998. She actually worked only 13 days that year. Respondent refused to give her experience credit for that school year, because she did not actually work 133 days. Per Superintendent's interpretation of Policy 5610, the 133 days includes any days for which a teacher is entitled to be paid, including personal leave days "and other such days." Because an employee using days from a personal leave bank is in "pay status" and using leave days, Grievant was entitled to receive experience credit for those days. Grievance GRANTED.

**Topics** SALARY REDUCTION

**Docket No.** 02-MHS&T-253

**Synopsis** Grievant's salary was reduced as a result of a decision in another employee's grievance. It had been temporarily raised several years earlier and not reduced, but he had also received several merit increases since then, making him one of the highest-paid underground mine inspectors. His director informed him his salary was being reduced.

However, W. Va. Code §22A-1-12(c) requires mine inspector salaries to be fixed by the director with the approval of the Board, and director had not received board approval.

DECISION: In theory, it is permissible to reduce Grievant's salary for those reasons, but director did not follow proper procedure. Grievance GRANTED, but Respondent is not restricted from reducing Grievant's salary in future by using proper method.

**Topics** SCHEDULE CHANGE; TRANSFER

**Docket No.** 02-01-219

**Synopsis** When Grievants would not agree to any changes in their runs which might arise in the next school year, Respondent placed them on transfer list. West Virginia Code §18A-2-7 says transfers must be based on "known or expected circumstances" and is designed to prohibit such "blanket" transfers, found illegal in the Crow/Wroblewski decision. Respondent directed to cease this practice of mass transfers. Grievance GRANTED.

**Topics** SELECTION; EXTRACURRICULAR

**Docket No.** 01-22-528

**Synopsis** Three Grievants challenged the selection process for 3 separate extracurricular positions in a federally funded after school program. Grievant Burns argued the selection of Charles McCann as Project Director was a sham, and questioned the entire process. Grievant proved McCann's involvement in the selection process for any of the positions was inappropriate once he became a candidate; and that McCann received a public reprimand from the Ethics Commission for his involvement. However, McCann did not make the decision to recommend himself, and those who did made their recommendation directly to the superintendent. Both Grievant Burns and McCann were well qualified. 2 of the 3 members of the selection team based their recommendation of McCann, in part, upon inaccurate information. However, the third member also favored McCann for sound reasons, and the selection was not arbitrary and capricious.

Grievant Baker argued it was unlawful for 2 of the members of the selection team to hire themselves into the Area Director positions they created. These 2 members of the selection team were not involved in the selection process for these positions, and the person who made the decision to recommend them did so because they had much more experience than Grievant, and were better qualified. The selection was not arbitrary and capricious.

Grievant Napier argued she was better qualified than 3 of the successful applicants for 6 Site Coordinator positions. She demonstrated one of the successful applicants did not possess a degree in education, which was a requirement for the position, not a preferred qualification as Respondent argued. However, Grievant Napier did not meet all the minimum qualifications either. Grievant also demonstrated the selection team improperly considered their own knowledge of the applicants' skills, training, and community involvement, thus giving an advantage to those applicants with whom they were more familiar. Grievant Napier demonstrated the decision to hire 1 of the applicants was based upon information which was not provided to the management team by the applicant, and there was no evidence that this information was accurate. The decision to hire this applicant over Grievant Napier was found to be arbitrary and capricious. Grievance GRANTED, IN PART and DENIED, IN PART.

**Topics** SELECTION; FAVORITISM

**Docket No.** 01-DOH-604

**Synopsis** Grievant was recommended for promotion to Crew Leader by county administrators; however, before the recommendation was transmitted to Charleston, Assistant Commissioner White directed that another applicant be appointed. The successful applicant had not submitted a completed application and had ties with the Chairman of the county Democratic party.

DECISION: The totality of the evidence supports a finding that the selection was substantially motivated by political considerations. Grievance GRANTED.

**Topics** SELECTION; POLITICAL PATRONAGE

**Docket No.** 01-DOH-589

**Synopsis** Grievants demonstrated the posted Braxton County Maintenance Supervisor position was filled on a temporary basis for political reasons, which was improper. Respondent was ordered to fill the position on a permanent basis with one of the Grievants. Grievance GRANTED.

**Topics** SELECTION; PROMOTION; DEFAULT REMEDY  
**Docket No.** 02-DOH-025D  
**Synopsis** Grievant had prevailed by default, and requested remedy was placement in the TWIII position which had been awarded to another applicant. Evidence established Grievant had numerous more years of seniority and experience in highway maintenance and construction and was more qualified. Also, Respondent's contention that Grievant needed certification on the grader, the most used piece of equipment at this particular substation, was not supported. The successful applicant did not have one of the certifications for another piece of equipment Grievant did have, and he was temporarily upgraded to work on it. In addition, Grievant had completed his grader training and only needed to take the state examination. Therefore, Respondent failed to prove that placement of Grievant in the position would be contrary to law or clearly wrong. Grievance GRANTED.

**Topics** SELECTION; TIMELINESS; APPLICATION  
**Docket No.** 02-15-079  
**Synopsis** Grievant was interested in the play director position at Weir High School, which he knew was going to be vacant for the upcoming year. He sent a letter of intent to the principal, who called Grievant in to discuss his qualifications. Principal called central office to see if position was going to be posted, and they were to get back to him. The position was posted the next day, and Grievant was out of town the entire posting period. When he returned the evening of the last day of the posting, he was informed that he could not apply for the position. Only one person applied and was selected. Grievant filed the grievance 15 days after the board officially hired the other applicant, so grievance was timely. Grievant had expressed interest in the position, and he could have sent in an application the day after the posting period ended. Grievant was entitled to apply and have his qualifications compared to those of successful applicant. Grievance GRANTED/DENIED.

**Topics** SUMMER SCHOOL PROGRAMS; PAY  
**Docket No.** 01-43-509  
**Synopsis** Grievants argued that they should be paid for regular summer jobs a rate based on regular employment rate.  
DECISION: W. Va. Code §18-5-39 requires service personnel in regular summer jobs to be paid hourly rate based on regular employment rate. Overrules Waybright and related cases.  
The holdings in *McMillin/Colvin v. Hancock County Bd. of Educ.* and its progeny that a determination of full-time or part-time employment for salary purposes required by Code §18A-4-8, pertains to the term of a service employee's contracted regular employment, not to summer school employment, has been superceded by the 1996 amendment to W. Va. Code § 18-5-39(f).  
Service personnel employed under contracts for regular summer positions W. Va. Code § 18-5-39(f) (2001) are not working in extracurricular or extra-duty assignments.  
Service personnel employed in summer positions must be paid a daily or half-daily rate based on the salary scale contained in W. Va. Code § 18A-4-8a.  
Service personnel employed in summer positions are entitled to the benefits conferred by W. Va. Code §§ 18A-4-5b, 18A-4-8, 18A-4-8a, 18A-4-10 and 18A-4-14, prorated on a daily or half-daily basis. Grievance GRANTED, IN PART and DENIED, IN PART.

**Topics** SUSPENSION  
**Docket No.** 02-12-130  
**Synopsis** Grievant was suspended for one day after a parent complained that she had touched her son's face in an aggressive manner, leaving red marks and causing him to cry. Grievant admitted that she placed her hand under the child's chin to lift his face to her while she was talking to him, but denies that she used any undue force, or was angry at the time.  
DECISION: Respondent did not prove that Grievant touched the child in a manner to leave marks, or that she acted out of anger. The parent's complaint was not credible given a video tape from the school bus which showed the student was not crying or upset on his way home. Grievance GRANTED.

**Topics** SUSPENSION; ARBITRARY; CAPRICIOUS; MITIGATION  
**Docket No.** 02-HEPC-191  
**Synopsis** Grievant was suspended without pay for 7-months for throwing a ceramic mug as part of an art class demonstration, which struck two students, causing injuries. Grievant contends the suspension was too severe, and seeks mitigation of the penalty. While considerable deference is given to an employer's determination of the seriousness of the employee's conduct, in this case, a 7-month suspension is considered out of proportion to the offense, and arbitrary and capricious.  
DECISION: Suspension to be reduced to Summer 2002 term without pay. Grievance GRANTED.

**Topics** SUSPENSION; DUE PROCESS  
**Docket No.** 02-19-010  
**Synopsis** Grievant was suspended without pay for ten days for using inappropriate language. Her Board hearing was not scheduled or held until after she had already served the suspension. Per the holdings in Knauff, Wirt, and Waite, an employee is entitled to a hearing before the Board/superintendent BEFORE being suspended without pay. Grievant's due process rights were violated, so the grievance was GRANTED.

**Topics** SUSPENSION; MITIGATION; PROGRESSIVE DISCIPLINE  
**Docket No.** 02-HHR-099  
**Synopsis** Grievant removed a teddy bear from an Alzheimer's patient's room for cleaning, because it was extremely soiled. The patient believed the bear was her "baby" and became agitated and violent upon discovering it was gone from her room. Grievant received an 18-day suspension, because she had previously been warned and disciplined about taking property from patients' rooms. However, in this case, Grievant merely committed a well-intentioned error, so mitigation was appropriate. Suspension reduced to 12 days. Grievance GRANTED.



**Topics** SUSPENSION; WILFUL NEGLECT OF DUTY; MITIGATION

**Docket No.** 02-52-011

**Synopsis** While on an extra duty trip taking the debate team to a competition, Grievant took the bus to the nearby regional jail to visit his son. He asked permission from the debate team sponsor, and believed she was authorized to give permission for this side trip, which did not interfere with the debate team's activities. Grievant also brought his fiancé along on the trip, who had been invited to go by the debate team sponsor. Grievant believed that any authorizations necessary to take his fiancé along would be taken care of by the sponsor. The fiancé's presence was not authorized by the bus supervisor, but it was not wilful neglect of duty for Grievant to bring her on the trip, because he did not invite her. He was justified in believing the sponsor was responsible for obtaining any necessary authorization. As to the jail trip, bus operators had been repeatedly advised that personal trips while on school trips was not allowed. However, he did attempt to get it "OK'd" by asking for the sponsor's permission. Also, Grievant had been an exemplary employee for twenty years and often performed extra duty trips without compensation, like he did on this occasion. Therefore, mitigation was appropriate, and the suspension was reduced to a written reprimand. Grievance GRANTED.

**Topics** TERMINATION OF CONTRACTS; ITINERANT STATUS

**Docket No.** 02-21-209

**Synopsis** In order to provide the Board with flexibility in positioning special education aides, Respondent terminated Grievants' contracts and reissued them with the designation of "itinerant." This was improper, pursuant to West Virginia Code §18A-2-7, because termination of contracts then requires the Board to fill the vacancies pursuant to West Virginia Code §18A-4-8b, which was not done here. Proper method would have been transfer to itinerant positions, which has been upheld by Grievance Board. Grievance GRANTED as to Grievants whose contracts were terminated and DENIED as to a few Grievants who bid upon positions which were posted as itinerant, upheld in the Vance v. Jefferson grievance.

**Topics** TRANSFER

**Docket No.** 01-30-538

**Synopsis** Grievant, a regularly-employed Secretary complained when an individual who had been placed on the preferred recall list as the result of a RIF was placed into a position over Grievant. MCBOE relies on w. Va. Code, 18A-4-8b(q), which provides that no position openings may be filled until all employees on the preferred recall list have been given an opportunity to accept re-employment. DECISION: Section 8b(q) must be read in context with the remainder of Section 8b which requires that employees be selected to fill positions of the basis of seniority, qualifications, and evaluations, and also requires placement in a certain order, dependent upon employment status. Grievant was entitled to the position in question before the employee who was on the preferred recall list. Grievance GRANTED.

**Topics** TRANSFER; SELECTION; ACCEPTANCE

**Docket No.** 02-20-135

**Synopsis** Grievant was told his job would be eliminated, and was strongly encouraged to apply for a temporary position. Grievant made it clear he was applying for the temporary position only because he was afraid his job was going to be eliminated. Grievant's job was not eliminated, but he was placed in the temporary position without being asked if he still wanted the position. Respondent would not allow Grievant to return to his old position which had not been eliminated and had not been filled. Grievance granted and Grievant was returned to his old position. Grievance GRANTED.

**Topics** UNIFORMITY; CONTRACT; DISCRIMINATION; REPRISAL

**Docket No.** 02-54-289

**Synopsis** Grievant is an Assistant Principal working under a 240-day contract. Other Assistant Principals in the county work under 261-day contracts. The Superintendent's primary goal is to reduce contract terms through attrition. The Assistant Principals whom Grievant compares himself to had been working under 261-day contracts, but Grievant only recently received the Assistant Principal job. The West Virginia Supreme Court has addressed this issue before, and found that, although the goal to reduce contracts through attrition is sound, the means of achieving it is not, and the board cannot ignore the uniformity provisions of W. Va. Code §18A-4-5b. Grievant proved he performed like assignments and duties, and thus is entitled to the same 261-day contract as other Assistant Principals. Grievant also claimed reprisal because the level two hearing was set on a day he was scheduled to attend a conference. There was no merit to this claim. Grievance GRANTED.