WEST VIRGINIA CODE: §6C-2-4

§6C-2-4. Grievance procedural levels.

(a) Level one: Chief administrator. —

(1) Within 15 days following the occurrence of the event upon which the grievance is based, within 15 days of the date upon which the event became known to the employee, or within 15 days of the most recent occurrence of a continuing practice giving rise to a grievance, an employee may file a written grievance with the chief administrator stating the nature of the grievance and the relief requested and request either a conference or a hearing. The employee shall also file a copy of the grievance with the board. State government employees using the services of the Division of Personnel shall further file a copy of the grievance with the Director of the Division of Personnel. Employees of the Department of Transportation shall file a copy of the grievance with the chief administrator or designated grievance evaluator.

(2) Conference. — The chief administrator shall hold a conference within 20 days of receiving the grievance. A conference is a private, informal meeting between the grievant and the chief administrator to discuss the issues raised by the grievance, exchange information, and attempt to resolve the grievance. The chief administrator may permit other employees and witnesses to attend and participate in a conference to reach a resolution. The chief administrator shall issue a written decision within 20 days of the conference.

(3) Level one hearing. — The chief administrator shall hold a level one hearing within 20 days of receiving the grievance. A level one hearing is a recorded proceeding conducted in private in which the grievant is entitled to be heard and to present evidence; the formal rules of evidence and procedure do not apply, but the parties are bound by the rules of privilege recognized by law. The parties may present and cross-examine witnesses and produce documents, but the number of witnesses, motions and other procedural matters may be limited by the chief administrator. The chief administrator shall issue a written decision within 20 days of the level one hearing.

(4) An employee may proceed directly to level three upon the agreement of the parties or when the grievant has been discharged, suspended without pay, demoted or reclassified resulting in a loss of compensation or benefits. Level one and level two proceedings are waived in these matters.

(b) Level two: Alternative dispute resolution. —

(1) Within 15 days of receiving an adverse written decision at level one, the grievant shall file a written request for mediation, private mediation, or private arbitration.

(2) Mediation. — The board shall schedule the mediation between the parties within 20 days

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of the request. Mediation shall be conducted by an administrative law judge pursuant to standard mediation practices and board procedures at no cost to the parties. Parties may be represented, and the representative shall have the authority to resolve the dispute. The report of the mediation shall be documented in writing within 20 days. Agreements are binding and enforceable in this state by a writ of mandamus.

(3) Private mediation. — The parties may agree in writing to retain their choice of a private mediator and share the cost. The mediator shall schedule the mediation within 20 days of the written request and shall follow standard mediation practices and any applicable board procedures. Parties may be represented and shall have the authority to resolve the dispute. The report of the mediation shall be documented in writing within 20 days. Agreements are binding and enforceable in this state by a writ of mandamus.

(4) Private arbitration. — The parties may agree, in writing, to retain their choice of a private arbitrator and share the cost. The arbitrator shall schedule the arbitration within 20 days of the written request and shall follow standard arbitration practices and any applicable board procedures. The arbitrator shall render a decision in writing to all parties, setting forth findings of fact and conclusions of law on the issues submitted within 30 days following the arbitration. An arbitration decision is binding and enforceable in this state by a writ of mandamus. The arbitrator shall inform the board, in writing, of the decision within 15 days.

(c) Level three hearing. —

(1) Within 10 days of receiving a written report stating that level two was unsuccessful, the grievant may file a written appeal with the employer and the board requesting a level three hearing on the grievance. State government employees who use the services of the Division of Personnel shall further file a copy of the grievance with the Director of the Division of Personnel. Employees of the Department of Transportation shall file a copy of the grievance with the chief administrator or designated grievance evaluator.

(2) The administrative law judge shall conduct all proceedings in an impartial manner and shall ensure that all parties are accorded procedural and substantive due process.

(3) The administrative law judge shall schedule the level three hearing and any other proceedings or deadlines within 30 days of receipt of the appeal from a lower-level decision in consultation with the parties. The location of the hearing and whether the hearing is to be made public are at the discretion of the administrative law judge. Hearings may be rescheduled at the request of either party for good cause shown or by the administrative law judge.

(4) The administrative law judge may issue subpoenas for witnesses, limit witnesses, administer oaths, and exercise other powers granted by rule or law.

(5) Within 30 days following the hearing or the receipt of the proposed findings of fact and conclusions of law, the administrative law judge shall render a decision in writing to all

parties setting forth findings of fact and conclusions of law on the issues submitted.

(6) The administrative law judge may make a determination of bad faith and, in extreme instances, allocate the cost of the hearing to the party found to be acting in bad faith. The allocation of costs shall be based on the relative ability of the party to pay the costs.

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