

No. 209

**WEST VIRGINIA LEGISLATURE**

REGULAR SESSION, 1988




**ENROLLED**

*COMMITTEE SUBSTITUTE FOR*  
**SENATE BILL NO. 289**

(By Senator *TENKONICH, MR. PRESIDENT, ET AL*)



**PASSED** MARCH 12, 1988

In Effect JULY 1, 1988 



**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**Senate Bill No. 289**

(SENATORS TONKOVICH (MR. PRESIDENT), HOLLIDAY AND TUCKER,  
*original sponsors*)

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[Passed March 12, 1988; to take effect July 1, 1988.]

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AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-a, relating to a grievance procedure for state employees; legislative purpose; definitions; procedural levels; expedited grievance process; education and state employees grievance board; employment of hearing examiners; submission of annual budget, evaluation and report; promulgation of rules and regulations; hearings; enforcement and reviewability; mandamus proceeding; attorney's fees and costs; and application of article.

*Be it enacted by the Legislature of West Virginia:*

That chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article six-a, to read as follows:

**ARTICLE 6A. GRIEVANCE PROCEDURE FOR STATE EMPLOYEES.**

**§29-6A-1. Purpose.**

1 The purpose of this article is to provide a procedure for  
2 the equitable and consistent resolution of employment  
3 grievances raised by nonelected state employees who are

4 classified under the state civil service system, or employed  
5 in any department, other governmental agencies, or by  
6 independent boards or commissions created by the  
7 Legislature, with the exception of employees of the board of  
8 regents, state institutions of higher education, the  
9 Legislature, any employees of any constitutional officer  
10 unless they are covered under the civil service system, and  
11 members of the department of public safety.

**§29-6A-2. Definitions.**

1 For the purpose of this article:

2 (a) "Board" means the education employees grievance  
3 board created in section five, article twenty-nine, chapter  
4 eighteen of this code and hereafter known as the education  
5 and state employees grievance board.

6 (b) "Chief administrator" means the commissioner,  
7 director or head of any state department, board,  
8 commission or agency.

9 (c) "Days" means working days exclusive of Saturday,  
10 Sunday or official holidays.

11 (d) "Discrimination" means any differences in the  
12 treatment of employees unless such differences are related  
13 to the actual job responsibilities of the employees or agreed  
14 to in writing by the employees.

15 (e) "Employee" means any person hired for permanent  
16 employment, either full or part-time, by any department,  
17 agency, commission or board of the state created by an act  
18 of the Legislature, except those persons employed by the  
19 board of regents or by any state institution of higher  
20 education, members of the department of public safety, any  
21 employees of any constitutional officer unless they are  
22 covered under the civil service system and any employees of  
23 the Legislature. The definition of "employee" shall not  
24 include any patient or inmate employed in a state  
25 institution.

26 (f) "Employee organization" means any employee  
27 advocacy organization whose membership includes  
28 employees as defined in this section which has filed with the  
29 board the name, address, chief officer and membership  
30 criteria of the organization.

31 (g) "Employer" means that state department, board,  
32 commission or agency utilizing the services of the employee  
33 covered under this article.

34 (h) "Favoritism" means unfair treatment of an  
35 employee as demonstrated by preferential, exceptional or  
36 advantageous treatment of another or other employees.

37 (i) "Grievance" means any claim by one or more  
38 affected state employees alleging a violation, a  
39 misapplication or a misinterpretation of the statutes,  
40 policies, rules, regulations or written agreements under  
41 which such employees work, including any violation,  
42 misapplication or misinterpretation regarding  
43 compensation, hours, terms and conditions of employment,  
44 employment status or discrimination; any discriminatory  
45 or otherwise aggrieved application of unwritten policies or  
46 practices of their employer; any specifically identified  
47 incident of harassment or favoritism; or any action, policy  
48 or practice constituting a substantial detriment to or  
49 interference with effective job performance or the health  
50 and safety of the employees.

51 Any pension matter or other issue relating to public  
52 employees insurance in accordance with article sixteen,  
53 chapter five of this code, retirement, or any other matter in  
54 which authority to act is not vested with the employer shall  
55 not be the subject of any grievance filed in accordance with  
56 the provisions of this article.

57 (j) "Grievance evaluator" means that individual  
58 authorized to render a decision on a grievance under  
59 procedural levels one, two and three as set out in section  
60 four.

61 (k) "Grievant" means any named employee or group of  
62 named employees filing a grievance as defined in subsection  
63 (i) of this section.

64 (l) "Harassment" means repeated or continual  
65 disturbance, irritation or annoyance of an employee which  
66 would be contrary to the demeanor expected by law, policy  
67 and profession.

68 (m) "Hearing examiner" means the individual or  
69 individuals employed by the board in accordance with  
70 section five of this article.

71 (n) "Immediate supervisor" means that person next in  
72 rank above the grievant possessing a degree of  
73 administrative authority and designated as such in the  
74 employee's contract, if any.

75 (o) "Representative" means any employee organization,  
76 fellow employee, legal counselor or other person or persons

77 designated by the grievant as the grievant's representative.  
78 (p) "Reprisal" means the retaliation of an employer or  
79 agent toward a grievant, witness, representative or any  
80 other participant in the grievance procedure either for an  
81 alleged injury itself or any lawful attempt to redress it.

**§29-6A-3. Grievance procedure generally.**

1 (a) A grievance must be filed within the times specified  
2 in section four of this article and shall be processed as  
3 rapidly as possible. The number of days indicated at each  
4 level specified in section four of this article shall be  
5 considered as the maximum number of days allowed and, if  
6 a decision is not rendered at any level within the prescribed  
7 time limits, the grievant may appeal to the next level:  
8 *Provided*, That the specified time limits shall be extended  
9 whenever a grievant is not working because of accident,  
10 sickness, death in the immediate family or other cause  
11 necessitating the grievant to take personal leave from his or  
12 her employment.

13 (b) If the employer or its agent intends to assert the  
14 application of any statute, policy, rule, regulation or  
15 written agreement or submits any written response to the  
16 filed grievance at any level, a copy thereof shall be  
17 forwarded to the grievant and any representative of the  
18 grievant named in the filed grievance. Anything submitted  
19 and the grievant's response thereto, if any, shall become  
20 part of the record. Failure to assert such statute, policy,  
21 rule, regulation or written agreement at any level shall not  
22 prevent the subsequent submission thereof in accordance  
23 with the provisions of this subsection.

24 (c) The grievant may file the grievance at the level  
25 vested with authority to grant the requested relief if each  
26 lower administrative level agrees in writing thereto. In the  
27 event a grievance is filed at a higher level, the employer  
28 shall provide copies to each lower administrative level.

29 (d) An employee may withdraw a grievance at any time  
30 by notice, in writing, to the level wherein the grievance is  
31 then current. The grievance may not be reinstated by the  
32 grievant unless reinstatement is granted by the grievance  
33 evaluator at the level where the grievance was withdrawn.  
34 If more than one employee is named as grievant in a  
35 particular grievance, the withdrawal of one employee shall  
36 not prejudice the rights of any other employee named in the

37 grievance. In the event a grievance is withdrawn or an  
38 employee withdraws from a grievance, such employer shall  
39 notify in writing each lower administrative level.

40 (e) Grievances may be consolidated at any level by  
41 agreement of all parties.

42 (f) A grievant may be represented by an employee  
43 organization representative, legal counsel or any other  
44 person, including a fellow employee, in the preparation or  
45 presentation of the grievance. At the request of the grievant,  
46 such person or persons may be present at any step of the  
47 procedure: *Provided*, That at level one of such grievance, as  
48 set forth in section four of this article, a grievant may have  
49 only one such representative.

50 (g) If a grievance is filed which cannot be resolved  
51 within the time limits set forth in section four of this article  
52 prior to the end of the employment term, the time limit set  
53 forth in said section shall be reduced as agreed to in writing  
54 by both parties so that the grievance procedure may be  
55 concluded within ten days following the end of the  
56 employment term or an otherwise reasonable time.

57 (h) No reprisals of any kind shall be taken by any  
58 employer or agent of the employer against any interested  
59 party, or any other participant in the grievance procedure  
60 by reason of such participation. A reprisal constitutes a  
61 grievance, and any person held to be responsible for reprisal  
62 action shall be subject to disciplinary action for  
63 insubordination.

64 (i) Decisions rendered at all levels of the grievance  
65 procedure shall be dated, shall be in writing setting forth  
66 the decision or decisions and the reasons therefor, and shall  
67 be transmitted to the grievant and any representative  
68 named in the grievance within the time prescribed. If the  
69 grievant is denied the relief sought, the decision shall  
70 include the name of the individual at the next level to whom  
71 appeal may be made.

72 (j) Once a grievance has been filed, supportive or  
73 corroborative evidence may be presented at any conference  
74 or hearing conducted pursuant to the provisions of this  
75 article. Whether evidence substantially alters the original  
76 grievance and renders it a different grievance is within the  
77 discretion of the grievance evaluator at the level wherein  
78 the new evidence is presented. If the grievance evaluator  
79 rules that the evidence renders it a different grievance, the

80 party offering the evidence may withdraw same, the parties  
81 may consent to such evidence, or the grievance evaluator  
82 may decide to hear the evidence or rule that the grievant  
83 must file a new grievance. The time limitation for filing the  
84 new grievance shall be measured from the date of such  
85 ruling.

86 (k) Any change in the relief sought by the grievant shall  
87 be consented to by all parties or may be granted at level four  
88 within the discretion of the hearing examiner.

89 (l) Forms for filing grievances, giving notice, taking  
90 appeals, making reports and recommendations, and all  
91 other necessary documents shall be made available by the  
92 immediate supervisor to any employee upon request. Such  
93 forms shall include information as prescribed by the board.  
94 The grievant shall have access to the employer's equipment  
95 for purposes of preparing grievance documents subject to  
96 the reasonable rules of the employer governing the use of  
97 such equipment.

98 (m) Notwithstanding the provisions of section three,  
99 article nine-a, chapter six of this code, or any other  
100 provision relating to open proceedings, all conferences and  
101 hearings pursuant to this article shall be conducted in  
102 private except that, upon the grievant's request,  
103 conferences and hearings at levels two and three shall be  
104 open to employees of the grievant's immediate office or  
105 work area or, at the request of the grievant, shall be public.  
106 Within the discretion of the hearing examiner, conferences  
107 and hearings may be public at level four.

108 (n) No person shall confer or correspond with a hearing  
109 examiner regarding the merits of the grievance unless all  
110 parties to the grievance are present.

111 (o) Grievances shall be processed during regular  
112 working hours. Attempts shall be made to process the  
113 grievance in a manner which does not interfere with the  
114 normal operation of the employer.

115 (p) The grievant or the employee selected by a grievant  
116 to represent him in the processing of a grievance through  
117 this procedure, or both, shall be granted necessary time off  
118 during working hours for the grievance procedure without  
119 loss of pay and without charge to annual or compensatory  
120 leave credits. In addition to actual time spent in grievance  
121 conferences and hearings, the grievant or the employee  
122 representative, or both, shall be granted time off during

123 working hours, not to exceed four hours per grievance, for  
124 the preparation of such grievance without loss of pay and  
125 without charge to annual or compensatory leave credits.  
126 However, it shall be understood by all parties that the first  
127 responsibility of any state employee is the work assigned by  
128 the appointing authority to the employee. Grievance  
129 preparation and representation activities by an employee  
130 shall not seriously affect the overall productivity of the  
131 employee.

132 (q) The aggrieved employee, employing agency and  
133 representatives of both shall have the right to call, examine  
134 and cross-examine witnesses who are employees of the  
135 agency against which the grievance is lodged and who have  
136 knowledge of the facts at issue.

137 (r) Both parties may produce witnesses other than  
138 employees of the agency against which the grievance is  
139 lodged, and such witnesses shall be subject to examination  
140 and cross-examination.

141 (s) Should any employer or the employer's agent cause a  
142 conference or hearing to be postponed without adequate  
143 notice to employees who are scheduled to appear during  
144 their normal work day, such employees will not suffer any  
145 loss in pay for work time lost.

146 (t) Any grievance evaluator may be excused from  
147 participation in the grievance process for reasonable cause,  
148 including, but not limited to, conflict of interest or  
149 incapacitation, and in such case the grievance evaluator at  
150 the next higher level shall designate an alternate grievance  
151 evaluator if such is deemed reasonable and necessary.

152 (u) No less than one year following resolution of a  
153 grievance at any level, the grievant may by request in  
154 writing have removed any record of the grievant's identity  
155 from any file kept by the employer.

156 (v) All grievance forms and reports shall be kept in a file  
157 separate from the personnel file of the employee and shall  
158 not become a part of such personnel file, but shall remain  
159 confidential except by mutual written agreement of the  
160 parties.

161 (w) The number of grievances filed against an employer  
162 or agent or by an employee shall not, per se, be an indication  
163 of such employer's or agent's or such employee's job  
164 performance.



165 (x) Any chief administrator with whom a grievance was  
166 filed may appeal a level four decision on the grounds that  
167 the decision (1) was contrary to law or lawfully adopted  
168 rule, regulation or written policy of the employer, (2)  
169 exceeded the hearing examiner's statutory authority, (3)  
170 was the result of fraud or deceit, (4) was clearly wrong in  
171 view of the reliable, probative and substantial evidence on  
172 the whole record, or (5) was arbitrary or capricious or  
173 characterized by abuse of discretion. Such appeal shall  
174 follow the procedure regarding appeal provided the  
175 grievant in section four of this article and provided both  
176 parties in section seven of this article.

**§29-6A-4. Procedural levels and procedure at each level.**

1 (a) *Level one.*

2 Within ten days following the occurrence of the event  
3 upon which the grievance is based, or within ten days of the  
4 date on which the event became known to the grievant, or  
5 within ten days of the most recent occurrence of a  
6 continuing practice giving rise to a grievance, the grievant  
7 or the designated representative, or both, may file a written  
8 grievance with the immediate supervisor of the grievant. At  
9 the request of the grievant or the immediate supervisor, an  
10 informal conference shall be held to discuss the grievance  
11 within three days of the receipt of the written grievance.  
12 The immediate supervisor shall issue a written decision  
13 within six days of the receipt of the written grievance.

14 (b) *Level two.*

15 Within five days of receiving the decision of the  
16 immediate supervisor, the grievant may file a written  
17 appeal to the administrator of the grievant's work location,  
18 facility, area office, or other appropriate subdivision of the  
19 department, board, commission or agency. The  
20 administrator or his designee shall hold a conference within  
21 five days of the receipt of the appeal and issue a written  
22 decision upon the appeal within five days of the conference.

23 (c) *Level three.*

24 Within five days of receiving the decision of the  
25 administrator of the grievant's work location, facility, area  
26 office, or other appropriate subdivision of the department,  
27 board, commission or agency, the grievant may file a  
28 written appeal of the decision with the chief administrator

29 of the grievant's employing department, board, commission  
30 or agency. A copy of the appeal and the level two decision  
31 shall be served upon the personnel director of the state civil  
32 service commission by the grievant.

33 The chief administrator or his designee shall hold a  
34 hearing in accordance with section six of this article within  
35 seven days of receiving the appeal. The personnel director  
36 of the state civil service commission or his designee may  
37 appear at such hearing and submit oral or written evidence  
38 upon the matters in the hearing.

39 The chief administrator or his designee shall issue a  
40 written decision affirming, modifying or reversing the level  
41 two decision within five days of such hearing.

42 (d) *Level four.*

43 (1) If the grievant is not satisfied with the action taken  
44 by the chief administrator or his designee, within five days  
45 of the written decision the grievant may request, in writing,  
46 on a form furnished by the employer, that the grievance be  
47 submitted to a hearing examiner as provided for in section  
48 five of this article, such hearing to be conducted in  
49 accordance with section six of this article within fifteen  
50 days following the request therefor: *Provided*, That such  
51 hearing may be held within thirty days following the  
52 request, or within such time as is mutually agreed upon by  
53 the parties, if the hearing examiner gives reasonable cause,  
54 in writing, as to the necessity for such delay. A copy of the  
55 appeal shall be served by the grievant upon the director of  
56 personnel of the state civil service commission. The director  
57 of personnel of the state civil service commission, or his  
58 designee, may appear at such hearing and submit oral or  
59 written evidence upon the matters in the hearing.

60 (2) Within thirty days following the hearing, the hearing  
61 examiner shall render a decision in writing to all parties  
62 setting forth findings and conclusions on the issues  
63 submitted. Subject to the provisions of section seven of this  
64 article, the decision of the hearing examiner shall be final  
65 upon the parties and shall be enforceable in circuit court.

66 (e) *Expedited grievance process.*

67 An employee may grieve a final action of the employer  
68 involving a dismissal, demotion or suspension exceeding  
69 twenty days directly to the hearing examiner. The  
70 expedited grievance shall be in writing and must be filed

71 within ten days of the date of the final action with the chief  
72 administrator and the director of personnel of the state civil  
73 service commission.

**§29-6A-5. Education and state employees grievance board;  
hearing examiners.**

1 (a) The education employees grievance board, created  
2 by virtue of the provisions of section five, article twenty-  
3 nine, chapter eighteen of this code, shall be hereafter known  
4 and referred to as the education and state employees  
5 grievance board and, in addition to those duties set forth in  
6 said chapter eighteen, is hereby authorized and required to  
7 administer the grievance procedure at level four as  
8 provided for in section four of this article. The board shall  
9 employ, in addition to those persons employed as hearing  
10 examiners for educational employee grievances, at least  
11 two full-time hearing examiners for the purpose of  
12 conducting hearings at level four as provided in section four  
13 of this article. Such hearing examiners shall be employed on  
14 an annual basis along with such clerical help as is necessary  
15 to implement the legislative intent expressed in section one  
16 of this article.

17 In addition to the budget required for submission to the  
18 Legislature by virtue of the provisions of section five,  
19 article twenty-nine, chapter eighteen of this code, the board  
20 shall submit a yearly budget and shall report annually to  
21 the governor and the Legislature regarding proceedings  
22 conducted under this article, including receipts and  
23 expenditures, number of level four hearings conducted,  
24 synopses of hearing outcomes and such other information  
25 as the board may deem appropriate. The board shall further  
26 evaluate on an annual basis the level four grievance process  
27 and the performance of all hearing examiners and include  
28 such evaluation in the annual report to the governor and the  
29 Legislature. In making such evaluation the board shall  
30 notify all employers, employee organizations, the director  
31 of personnel of the state civil service commission and all  
32 grievants participating in level four grievances in the year  
33 for which evaluation is being made and shall provide for the  
34 submission of written comment and/or the hearing of  
35 testimony regarding the grievance process.

36 The board shall provide suitable office space for all

37 hearing examiners in space other than that utilized by any  
 38 employer as defined in section two of this article and shall  
 39 ensure that reference materials are generally available. The  
 40 board shall provide forms for filing grievances, giving  
 41 notice, taking appeals, making reports and  
 42 recommendations and such other documents as the board  
 43 deems necessary for any stage of a grievance under this  
 44 article.

45 The board is authorized to promulgate rules and  
 46 regulations consistent with the provisions of this article,  
 47 such rules and regulations to be adopted in accordance with  
 48 chapter twenty-nine-a of this code.

49 (b) Hearing examiners are hereby authorized and shall  
 50 have the power to consolidate grievances, allocate costs  
 51 among the parties in accordance with section eight of this  
 52 article, subpoena witnesses and documents in accordance  
 53 with the provisions of section one, article five, chapter  
 54 twenty-nine-a of this code, provide such relief as is deemed  
 55 fair and equitable in accordance with the provisions of this  
 56 article, and such other powers as will provide for the  
 57 effective resolution of grievances not inconsistent with any  
 58 rules and regulations of the board or the provisions of this  
 59 article: *Provided*, That in all cases the hearing examiner  
 60 shall have the authority to provide appropriate remedies  
 61 including, but not limited to, making the employee whole.

**§29-6A-6. Hearings generally.**

1 The chief administrator or his designee acting as a  
 2 grievance evaluator or the hearing examiner shall conduct  
 3 all hearings in an impartial manner and shall ensure that all  
 4 parties are accorded procedural and substantive due  
 5 process. All parties shall have an opportunity to present  
 6 evidence and argument with respect to the matters and  
 7 issues involved, to cross-examine and to rebut evidence.  
 8 Reasonable notice of a hearing shall be sent prior to the  
 9 hearing to all parties and their named representative and  
 10 shall include the date, time and place of the hearing. Level  
 11 one, level two and level three hearings shall be at a  
 12 convenient place accessible to the aggrieved employee. All  
 13 such hearings shall be held on the employer's premises or on  
 14 other premises mutually agreeable to the parties and within  
 15 regular working hours: *Provided*, That any such hearing  
 16 might continue beyond normal working hours. Level four

17 hearings shall be at a place to be designated by the hearing  
18 examiner.

19 The employer that is party to the grievance shall produce  
20 prior to such hearing any documents, not privileged, and  
21 which are relevant to the subject matter involved in the  
22 pending grievance, that have been requested by the  
23 grievant, in writing.

24 The chief administrator or his designee or the hearing  
25 examiner shall have the power to (1) administer oaths and  
26 affirmations, (2) subpoena witnesses, (3) regulate the course  
27 of the hearing, (4) hold conferences for the settlement or  
28 simplification of the issues by consent of the parties, (5)  
29 exclude immaterial, irrelevant or repetitious evidence, (6)  
30 sequester witnesses, (7) restrict the number of advocates,  
31 and take any other action not inconsistent with the rules  
32 and regulations of the board or the provisions of this article.

33 All the testimony and evidence at any level three or level  
34 four hearing shall be recorded by mechanical means, and all  
35 recorded testimony and evidence at such hearing shall be  
36 transcribed and certified by affidavit. The chief  
37 administrator shall be responsible for promptly providing a  
38 copy of the certified transcript of a level three hearing to  
39 any party to that hearing who requests such transcript. The  
40 hearing examiner may also request and be provided a  
41 transcript upon appeal to level four and allocate the costs  
42 therefor as prescribed in section eight of this article. The  
43 board shall be responsible for promptly providing a copy of  
44 the certified transcript of a level four hearing to any party to  
45 that hearing who requests such transcript.

46 Formal rules of evidence shall not be applied, but parties  
47 shall be bound by the rules of privilege recognized by law.  
48 No employee shall be compelled to testify against himself or  
49 herself in a grievance involving disciplinary action. The  
50 burden of proof shall rest with the employer in disciplinary  
51 matters.

52 All materials submitted in accordance with section three  
53 of this article; the mechanical recording of all testimony  
54 and evidence or the transcription thereof, if any; the  
55 decision; and any other materials considered in reaching  
56 the decision shall be made a part and shall constitute the  
57 record of a grievance. Such record shall be submitted to any  
58 level at which appeal has been made, and such record shall

59 be considered, but the development of such record shall not  
60 be limited thereby.

61 Every decision pursuant to a hearing shall be in writing  
62 and shall be accompanied by findings of fact and  
63 conclusions of law.

64 Prior to such decision any party may propose findings of  
65 fact and conclusions of law.

**§29-6A-7. Enforcement and reviewability; costs; good faith.**

1 The decision of the hearing examiner shall be final upon  
2 the parties and shall be enforceable in circuit court:  
3 *Provided*, That either party or the state civil service  
4 commission may appeal to the circuit court of the county in  
5 which the grievance occurred on the grounds that the  
6 hearing examiner's decision (1) was contrary to law or a  
7 lawfully adopted rule, regulation or written policy of the  
8 employer, (2) exceeded the hearing examiner's statutory  
9 authority, (3) was the result of fraud or deceit, (4) was  
10 clearly wrong in view of the reliable, probative and  
11 substantial evidence on the whole record, or (5) was  
12 arbitrary or capricious or characterized by abuse of  
13 discretion or clearly unwarranted exercise of discretion.  
14 Such appeal shall be filed in the circuit court of the county  
15 in which the grievance occurred within thirty days of  
16 receipt of the hearing examiner's decision. The decision of  
17 the hearing examiner shall not be stayed, automatically,  
18 upon the filing of an appeal, but a stay may be granted by  
19 the circuit court upon separate motion therefor.

20 The court's ruling shall be upon the entire record made  
21 before the hearing examiner, and the court may hear oral  
22 arguments and require written briefs. The court may  
23 reverse, vacate or modify the decision of the hearing  
24 examiner or may remand the grievance to the appropriate  
25 chief administrator for further proceedings.

26 Both employer and employee shall at all times act in good  
27 faith and make every possible effort to resolve disputes at  
28 the lowest level of the grievance procedure. The hearing  
29 examiner may make a determination of bad faith and in  
30 extreme instances allocate the cost of the hearing to the  
31 party found to be acting in bad faith. Such allocation of  
32 costs shall be based on the relative ability of the party to pay  
33 such costs.

**§29-6A-8. Allocation of costs.**

1 Any expenses incurred relative to the grievance  
2 procedure at levels one through three shall be borne by the  
3 party incurring such expenses.

**§29-6A-9. Mandamus proceeding.**

1 Any employer failing to comply with the provisions of  
2 this article may be compelled to do so by mandamus  
3 proceeding and shall be liable to any party prevailing  
4 against the employer for court costs and attorney fees, as  
5 determined and established by the court.

**§29-6A-10. Employee's right to attorney's fees and costs.**

1 If an employee shall appeal to a circuit court an adverse  
2 decision of a hearing examiner rendered in a grievance  
3 proceeding pursuant to provisions of this article or is  
4 required to defend an appeal and such person shall  
5 substantially prevail, the adverse party or parties shall be  
6 liable to such employee, upon final judgment or order, for  
7 court costs, and for reasonable attorney's fees, to be set by  
8 the court, for representing such employee in all  
9 administrative hearings and before the circuit court and the  
10 supreme court of appeals, and shall be further liable to such  
11 employee for any court reporter's costs incurred during any  
12 such administrative hearings or court proceedings:  
13 *Provided*, That in no event shall such attorney's fees be  
14 awarded in excess of a total of one thousand dollars for the  
15 administrative hearings and circuit court proceedings nor  
16 an additional one thousand dollars for supreme court  
17 proceedings: *Provided, however*, That the requirements of  
18 this section shall not be construed to limit the employee's  
19 right to recover reasonable attorney's fees in a mandamus  
20 proceeding brought under section nine of this article.

**§29-6A-11. Application of Article.**

1 This article applies to all grievances arising on or after the  
2 effective date of this article. This article supersedes and  
3 replaces the civil service grievance and appeals procedure  
4 currently authorized under the rules and regulations of the  
5 Civil Service Commission upon the resolution of all  
6 grievances and appeals pending in the civil service  
7 grievance system on the effective date of this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Bruce O. Williams*  
.....  
Chairman Senate Committee

*Bernard V. Kelly*  
.....  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1988.

*Judd C. Millis*  
.....  
Clerk of the Senate

*Donald J. Kopp*  
.....  
Clerk of the House of Delegates

*Don Tomkins*  
.....  
President of the Senate

*W. J. ...*  
.....  
Speaker House of Delegates

The within *approved* ..... this the *31<sup>st</sup>* .....  
day of *March*, 1988.

*Anna S. ...*  
.....  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/22/88

Time 11:34 a.m.

RECEIVED

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE