

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

House Bill No. 4314

(By Mr. Speaker, Mr. Kiss, and Delegates
Martin, Stator, Manuel, Fleischauer and Givens)



Passed March 13, 1998

In Effect July 1, 1998

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COMMITTEE SUBSTITUTE

FOR

H. B. 4314

(BY MR. SPEAKER, MR. KISS, AND DELEGATES
MARTIN, STATON, MANUEL, FLEISCHAUER AND GIVENS)

[Passed March 13, 1998; in effect July 1, 1998.]

AN ACT to amend and reenact section five, article twenty-nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, four, five, six, seven and ten, article six-a, chapter twenty-nine of said code; and to further amend said article by adding thereto a new section, designated section twelve, all relating to the education and public employees grievance process; providing for expedited grievance processes; expanding the jurisdiction of the board; changing the default provisions; giving board procedural jurisdiction at levels two and three; allowing mediation at the request of any party; allowing appeals to be filed in the circuit court of Kanawha County; and increasing the cap on attorney's fees for prevailing grievants.

Be it enacted by the Legislature of West Virginia:

That section five, article twenty-nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections three, four,

five, six, seven and ten, article six-a, chapter twenty-nine of said code be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twelve, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 29. GRIEVANCE PROCEDURE.

§18-29-5. Education and state employees grievance board; hearing examiners.

1 (a) The education and state employees grievance
2 board shall consist of three members who are citizens of
3 the state appointed by the governor by and with the advice
4 and consent of the Senate for overlapping terms of three
5 years. No two members may be from the same
6 congressional district, and no more than two of the
7 appointed members may be from the same political party.
8 No person may be appointed to membership on the board
9 who is a member of any political party executive
10 committee or holds any other public office or public
11 employment under the federal government or under the
12 government of this state. Members are eligible for
13 reappointment, and any vacancy on the board shall be
14 filled within thirty days of the vacancy by the governor by
15 appointment for the unexpired term.

16 A member of the board may not be removed from
17 office except for official misconduct, incompetence,
18 neglect of duty, gross immorality or malfeasance, and then
19 only in the manner prescribed in article six, chapter six of
20 this code for the removal by the governor of the state
21 elected officers.

22 The board shall hold at least two meetings yearly at
23 times and places as it may prescribe and may meet at other
24 times as may be necessary, the other meetings to be agreed
25 to in writing by at least two of the members. The
26 compensation for members of the board is seventy-five
27 dollars for each calendar day devoted to the work of the
28 board, but not more than seven hundred and fifty dollars
29 during any one fiscal year. Each member shall be
30 reimbursed for all reasonable and necessary expenses

31 actually incurred in the performance of board duties, but
32 shall submit a request for reimbursement upon a sworn
33 itemized statement.

34 The board shall administer the grievance procedure at
35 levels two, three and four, as provided in section five,
36 article six-a, chapter twenty-nine of this code, and as
37 provided for in section four of this article and shall
38 employ at least two full-time hearing examiners on an
39 annual basis and clerical help as is necessary to implement
40 the legislative intent expressed in section one of this
41 article.

42 In addition to the authorization granted by this section
43 over education employees, the board has jurisdiction over
44 the procedures to be followed in processing grievances
45 filed under article six-a, chapter twenty-nine of this code.

46 The board shall hire hearing examiners who reside in
47 different regional educational service agency areas unless
48 and until the number of hearing examiners exceeds the
49 number of the areas, at which time two hearing examiners
50 may be from the same area. If a grievant previously
51 before a hearing examiner again brings a grievance, a
52 different hearing examiner is required to hear the
53 grievance upon written request therefor by any party to
54 the grievance. These hearing examiners serve at the will
55 and pleasure of the board.

56 The board shall submit a yearly budget and shall
57 report annually to the governor and Legislature regarding
58 receipts and expenditures, number of level four hearings
59 conducted, synopses of hearing outcomes and other
60 information as the board determines appropriate. The
61 board shall further evaluate on an annual basis the level
62 four grievance process and the performance of all hearing
63 examiners and include the evaluation in the annual report
64 to the governor and Legislature. In making the
65 evaluation, the board shall notify all institutions, employee
66 organizations and all grievants participating in level four
67 grievances in the year for which evaluation is being made
68 and shall provide for the submission of written comment
69 or the hearing of testimony regarding the grievance
70 process, or both. The board shall provide suitable office

71 space for all hearing examiners in space other than that
72 utilized by any institution as defined in section two of this
73 article and shall ensure that reference materials are
74 generally available.

75 The board is authorized to promulgate rules consistent
76 with the provisions of this article; the rules shall be
77 adopted in accordance with chapter twenty-nine-a of this
78 code.

79 (b) Hearing examiners may consolidate grievances,
80 allocate costs among the parties in accordance with section
81 eight of this article, subpoena witnesses and documents in
82 accordance with the provisions of section one, article five,
83 chapter twenty-nine-a of this code, provide relief found
84 fair and equitable in accordance with the provisions of this
85 article, and exercise other powers as provides for the
86 effective resolution of grievances not inconsistent with any
87 rules of the board or the provisions of this article.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 6A. GRIEVANCE PROCEDURE FOR STATE EM- PLOYEES.

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

1 (a) (1) A grievance shall be filed within the times
2 specified in section four of this article and shall be
3 processed as rapidly as possible. The number of days
4 indicated at each level specified in section four of this
5 article is the maximum number of days allowed and, if a
6 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
12 or her employment.

13 (2) Any assertion by the employer that the filing of
14 the grievance at level one was untimely shall be asserted
15 by the employer on behalf of the employer at or before
16 the level two hearing. The grievant prevails by default if a

17 grievance evaluator required to respond to a grievance at
18 any level fails to make a required response in the time
19 limits required in this article, unless prevented from doing
20 so directly as a result of sickness, injury, excusable neglect,
21 unavoidable cause or fraud. Within five days of the
22 receipt of a written notice of the default, the employer
23 may request a hearing before a level four hearing
24 examiner for the purpose of showing that the remedy
25 received by the prevailing grievant is contrary to law or
26 clearly wrong. In making a determination regarding the
27 remedy, the hearing examiner shall presume the employee
28 prevailed on the merits of the grievance and shall
29 determine whether the remedy is contrary to law or clearly
30 wrong in light of that presumption. If the examiner finds
31 that the remedy is contrary to law, or clearly wrong, the
32 examiner may modify the remedy to be granted to
33 comply with the law and to make the grievant whole.

34 (b) If the employer or its agent intends to assert the
35 application of any statute, policy, rule or written
36 agreement or submits any written response to the filed
37 grievance at any level, a copy of the materials shall be
38 forwarded to the grievant and any representative of the
39 grievant named in the filed grievance. Anything
40 submitted and the grievant's response to the submitted
41 materials, if any, becomes part of the record. Failure to
42 assert the statute, policy, rule or written agreement at any
43 level does not prevent the subsequent submission of the
44 materials in accordance with the provisions of this
45 subsection.

46 (c) The grievant may file the grievance at the level
47 vested with authority to grant the requested relief if each
48 lower administrative level agrees in writing to filing the
49 grievance at a higher level. In the event a grievance is
50 filed at a higher level, the employer shall provide copies to
51 each lower administrative level.

52 (d) An employee may withdraw a grievance at any
53 time by notice, in writing, to the level where the grievance
54 is then current. The grievance may not be reinstated by
55 the grievant unless reinstatement is granted by the
56 grievance evaluator at the level where the grievance was

57 withdrawn. If more than one employee is named as
58 grievant in a particular grievance, the withdrawal of one
59 employee does not prejudice the rights of any other
60 employee named in the grievance. In the event a
61 grievance is withdrawn or an employee withdraws from a
62 grievance, the employer shall notify, in writing, each lower
63 administrative level.

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

66 (f) A grievant may be represented by an employee
67 organization representative, legal counsel or any other
68 person, including a fellow employee, in the preparation or
69 presentation of the grievance. At the request of the
70 grievant, that person or persons may be present at any step
71 of the procedure: *Provided*, That at level one of the
72 grievance, as set forth in section four of this article, a
73 grievant may have only one representative.

74 (g) If a grievance is filed which cannot be resolved
75 within the time limits set forth in section four of this article
76 prior to the end of the employment term, the time limit
77 shall be reduced as agreed to in writing by both parties so
78 that the grievance procedure may be concluded within ten
79 days following the end of the employment term or an
80 otherwise reasonable time.

81 (h) No reprisals of any kind may be taken by any
82 employer or agent of the employer against any interested
83 party, or any other participant in the grievance procedure
84 by reason of the participation. A reprisal constitutes a
85 grievance, and any person held responsible for reprisal
86 action is subject to disciplinary action for insubordination.

87 (i) Decisions rendered at all levels of the grievance
88 procedure shall be dated, in writing setting forth the
89 decision or decisions and the reasons for the decision, and
90 transmitted to the grievant and any representative named
91 in the grievance within the time prescribed. If the grievant
92 is denied the relief sought, the decision shall include the
93 name of the individual at the next level to whom appeal
94 may be made.

95 (j) Once a grievance has been filed, supportive or
 96 corroborative evidence may be presented at any
 97 conference or hearing conducted pursuant to the
 98 provisions of this article. Whether evidence substantially
 99 alters the original grievance and renders it a different
 100 grievance is within the discretion of the grievance
 101 evaluator at the level where the new evidence is presented.
 102 If the grievance evaluator rules that the evidence renders it
 103 a different grievance, the party offering the evidence may
 104 withdraw it, the parties may consent to the evidence, or the
 105 grievance evaluator may decide to hear the evidence or
 106 rule that the grievant must file a new grievance. The time
 107 limitation for filing the new grievance is measured from
 108 the date of the ruling.

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

112 (l) Forms for filing grievances, giving notice, taking
 113 appeals, making reports and recommendations, and all
 114 other necessary documents shall be made available by the
 115 immediate supervisor to any employee upon request. The
 116 forms shall include information prescribed by the board.
 117 The grievant shall have access to the employer's
 118 equipment for purposes of preparing grievance
 119 documents subject to the reasonable rules of the employer
 120 governing the use of the equipment.

121 (m) Notwithstanding the provisions of section three,
 122 article nine-a, chapter six of this code, or any other
 123 provision relating to open proceedings, all conferences
 124 and hearings pursuant to this article shall be conducted in
 125 private except that, upon the grievant's request,
 126 conferences and hearings at levels two and three shall be
 127 open to employees of the grievant's immediate office or
 128 work area or, at the request of the grievant, shall be public.
 129 Within the discretion of the hearing examiner, conferences
 130 and hearings may be public at level four.

131 (n) No person may confer or correspond with a
 132 hearing examiner regarding the merits of the grievance
 133 unless all parties to the grievance are present.

134 (o) Grievances shall be processed during regular
135 working hours. Attempts shall be made to process the
136 grievance in a manner which does not interfere with the
137 normal operation of the employer.

138 (p) The grievant or the employee selected by a
139 grievant to represent him or her in the processing of a
140 grievance through this procedure, or both, shall be granted
141 necessary time off during working hours for the grievance
142 procedure without loss of pay and without charge to
143 annual or compensatory leave credits. In addition to
144 actual time spent in grievance conferences and hearings,
145 the grievant or the employee representative, or both, shall
146 be granted time off during working hours, not to exceed
147 four hours per grievance, for the preparation of the
148 grievance without loss of pay and without charge to
149 annual or compensatory leave credits. However, the first
150 responsibility of any state employee is the work assigned
151 by the appointing authority to the employee. An
152 employee may not allow grievance preparation and
153 representation activities to seriously affect the overall
154 productivity of the employee.

155 (q) The aggrieved employee, employing agency and
156 representatives of both have the right to call, examine and
157 cross-examine witnesses who are employees of the agency
158 against which the grievance is lodged and who have
159 knowledge of the facts at issue.

160 (r) Both parties may produce witnesses other than
161 employees of the agency against which the grievance is
162 lodged, and the witnesses are subject to examination and
163 cross-examination.

164 (s) If an employer or the employer's agent causes a
165 conference or hearing to be postponed without adequate
166 notice to employees who are scheduled to appear during
167 their normal work day, the employees may not suffer any
168 loss in pay for work time lost.

169 (t) Any grievance evaluator may be excused from
170 participation in the grievance process for reasonable cause,
171 including, but not limited to, conflict of interest or
172 incapacitation, and if this occurs the grievance evaluator at

173 the next higher level shall designate an alternative
174 grievance evaluator if it is reasonable and necessary.

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

179 (v) All grievance forms and reports shall be kept in a
180 file separate from the personnel file of the employee and
181 may not become a part of the personnel file, but shall
182 remain confidential except by mutual written agreement
183 of the parties.

184 (w) The number of grievances filed against an
185 employer or agent or by an employee is not, per se, an
186 indication of the employer's or agent's or the employee's
187 job performance.

188 (x) Any chief administrator with whom a grievance is
189 filed may appeal a level four decision on the grounds that
190 the decision:

191 (1) Is contrary to law or a lawfully adopted rule or
192 written policy of the employer;

193 (2) Exceeds the hearing examiner's statutory
194 authority;

195 (3) Is the result of fraud or deceit;

196 (4) Is clearly wrong in view of the reliable, probative
197 and substantial evidence on the whole record; or

198 (5) Is arbitrary or capricious or characterized by abuse
199 of discretion.

200 The appeal shall follow the procedure regarding
201 appeal provided the grievant in section four of this article
202 and provided both 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

4 the date on which the event became known to the grievant,
5 or 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.
9 At the request of the grievant or the immediate supervisor,
10 an informal conference shall be held to discuss the
11 grievance within three days of the receipt of the written
12 grievance. The immediate supervisor shall issue a written
13 decision within six days of the receipt of the written
14 grievance. If a grievance alleges discrimination or
15 retaliation by the immediate supervisor of the grievant, the
16 level one filing may be waived by the grievant and the
17 grievance may be initiated at level two with the
18 administrator or his or her designee, within the time limits
19 set forth in this subsection for filing a grievance at level
20 one. A meeting may be held to discuss the issues in
21 dispute, but the meeting is not required.

22 (b) *Level two.*

23 Within five days of receiving the decision of the
24 immediate supervisor, the grievant may file a written
25 appeal to the administrator of the grievant's work location,
26 facility, area office, or other appropriate subdivision of the
27 department, board, commission or agency. The
28 administrator or his or her designee shall hold a
29 conference within five days of the receipt of the appeal
30 and issue a written decision upon the appeal within five
31 days of the conference.

32 (c) *Level three.*

33 Within five days of receiving the decision of the
34 administrator of the grievant's work location, facility, area
35 office, or other appropriate subdivision of the department,
36 board, commission or agency, the grievant may file a
37 written appeal of the decision with the chief administrator
38 of the grievant's employing department, board,
39 commission or agency. A copy of the appeal and the
40 level two decision shall be served upon the director of the
41 division of personnel by the grievant.

42 The chief administrator or his or her designee shall
43 hold a hearing in accordance with section six of this article
44 within seven days of receiving the appeal. The director of
45 the division of personnel or his or her designee may
46 appear at the hearing and submit oral or written evidence
47 upon the matters in the hearing.

48 The chief administrator or his or her designee shall
49 issue a written decision affirming, modifying or reversing
50 the level two decision within five days of the hearing.

51 (d) *Level four.*

52 (1) If the grievant is not satisfied with the action taken
53 by the chief administrator or his or her designee, within
54 five days of the written decision the grievant may request,
55 in writing, on a form furnished by the employer, that the
56 grievance be submitted to a hearing examiner as provided
57 for in section five of this article. The hearing shall be
58 conducted in accordance with section six of this article
59 within fifteen days following the request for the hearing:
60 *Provided*, That the hearing may be held within thirty days
61 following the request, or within a time that is mutually
62 agreed upon by the parties, if the hearing examiner gives
63 reasonable cause, in writing, as to the necessity for the
64 delay. A copy of the appeal shall be served by the
65 grievant upon the director of the division of personnel.
66 The director of the division of personnel, or his or her
67 designee, may appear at the hearing and submit oral or
68 written evidence upon the matters in the hearing.

69 (2) Within thirty days following the hearing, the
70 hearing examiner shall render a decision in writing to all
71 parties setting forth findings and conclusions on the issues
72 submitted. Subject to the provisions of section seven of
73 this article, the decision of the hearing examiner is final
74 upon the parties and is enforceable in circuit court.

75 (e) *Expedited grievance process.*

76 (1) A grievance involving suspension without pay,
77 demotion or dismissal or loss of wages may be initiated at
78 level two with the administrator of the grievant's work
79 location, facility, area office, or other appropriate

80 subdivision of the department, board, commission or
81 agency.

82 (2) An employee may grieve a final action of the
83 employer involving a dismissal, demotion or suspension
84 exceeding twenty days directly to the hearing examiner.
85 The expedited grievance shall be in writing and shall be
86 filed within ten days of the date of the final action with the
87 chief administrator and the director of the division of
88 personnel.

**§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, is renamed the
4 education and state employees grievance board and, in
5 addition to those duties set forth in chapter eighteen, shall
6 administer the grievance procedure at level four as
7 provided for in section four of this article. The board has
8 jurisdiction regarding procedural matters at levels two and
9 three of the grievance procedure. The board shall
10 employ, in addition to those persons employed as hearing
11 examiners for educational employee grievances, at least
12 two full-time hearing examiners for the purpose of
13 conducting hearings at level four, as provided in section
14 four of this article. The hearing examiners are employed
15 on an annual basis along with the clerical help necessary
16 to implement the legislative intent expressed in section one
17 of this article.

18 In addition to the budget required for submission to
19 the Legislature by virtue of the provisions of section five,
20 article twenty-nine, chapter eighteen of this code, the
21 board shall submit a yearly budget and shall report
22 annually to the governor and the Legislature regarding
23 proceedings conducted under this article, including
24 receipts and expenditures, the number of level four
25 hearings conducted, synopses of hearing outcomes and
26 other information as the board determines appropriate.
27 The board shall further evaluate on an annual basis the
28 level four grievance process and the performance of all
29 hearing examiners and include the evaluation in the

30 annual report to the governor and the Legislature. In
 31 making the evaluation the board shall notify all
 32 employers, employee organizations, the director of the
 33 division of personnel and all grievants participating in
 34 level four grievances in the year for which evaluation is
 35 being made and shall provide for the submission of
 36 written comment or the hearing of testimony regarding
 37 the grievance process, or both.

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

47 The board is authorized to propose rules for
 48 promulgation consistent with the provisions of this article,
 49 and in accordance with article three, chapter twenty-nine-a
 50 of this code.

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

§29-6A-6. Hearings generally.

1 (a) The chief administrator or his or her designee
 2 acting as a grievance evaluator or the hearing examiner
 3 shall conduct all hearings in an impartial manner and shall
 4 ensure that all parties are accorded procedural and

5 substantive due process. All parties shall have an
6 opportunity to present evidence and argument with respect
7 to the matters and issues involved, to cross-examine and to
8 rebut evidence. Reasonable notice of a hearing shall be
9 sent prior to the hearing to all parties and their named
10 representative and shall include the date, time and place of
11 the hearing. Level one, level two and level three hearings
12 shall be at a convenient place accessible to the aggrieved
13 employee. All hearings shall be held on the employer's
14 premises or on other premises mutually agreeable to the
15 parties and within regular working hours: *Provided*, That
16 any hearing might continue beyond normal working
17 hours. Level four hearings shall be at a place to be
18 designated by the hearing examiner.

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

24 (c) The chief administrator or his or her designee or
25 the hearing examiner has the power to (1) Administer
26 oaths and affirmations; (2) subpoena witnesses; (3)
27 regulate the course of the hearing; (4) hold conferences
28 for the settlement or simplification of the issues; (5)
29 exclude immaterial, irrelevant or repetitious evidence; (6)
30 sequester witnesses; (7) restrict the number of advocates;
31 and (8) take any other action not inconsistent with the
32 rules of the board or the provisions of this article.

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

45 level four hearing to any party to that hearing who
46 requests the transcript.

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

53 (f) All materials submitted in accordance with section
54 three of this article; the mechanical recording of all
55 testimony and evidence or the transcription of the
56 testimony, if any; the decision; and any other materials
57 considered in reaching the decision are the record of a
58 grievance. The record shall be submitted to any level at
59 which appeal has been made, and the record shall be
60 considered, but the development of the record is not
61 limited thereby.

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

65 (h) Prior to the decision any party may propose
66 findings of fact and conclusions of law.

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

1 (a) The decision of the hearing examiner is final upon
2 the parties and is enforceable in circuit court.

3 (b) Either party or the director of the division of
4 personnel may appeal to the circuit court of Kanawha
5 County or to the circuit court of the county in which the
6 grievance occurred on the grounds that the hearing
7 examiner's decision:

8 (1) Is contrary to law or a lawfully adopted rule or
9 written policy of the employer;

10 (2) Exceeds the hearing examiner's statutory
11 authority;

12 (3) Is the result of fraud or deceit;

13 (4) Is clearly wrong in view of the reliable, probative
14 and substantial evidence on the whole record; or

15 (5) Is arbitrary or capricious or characterized by abuse
16 of discretion or clearly unwarranted exercise of discretion.

17 (c) The appeal shall be filed within thirty days of
18 receipt of the hearing examiner's decision. The decision
19 of the hearing examiner is not automatically stayed upon
20 the filing of an appeal, but a stay may be granted by the
21 circuit court upon separate motion for a stay.

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

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

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

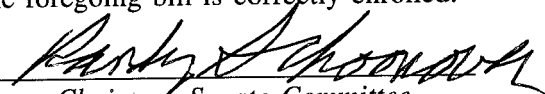
1 If an employee appeals to a circuit court an adverse
2 decision of a hearing examiner rendered in a grievance
3 proceeding pursuant to provisions of this article or is
4 required to defend an appeal and the person substantially
5 prevails, the adverse party or parties is liable to the
6 employee, upon final judgment or order, for court costs,
7 and for reasonable attorney's fees, to be set by the court,
8 for representing the employee in all administrative
9 hearings and before the circuit court and the supreme
10 court of appeals, and is further liable to the employee for
11 any court reporter's costs incurred during any
12 administrative hearings or court proceedings: *Provided*,
13 That in no event shall such attorney's fees be awarded in
14 excess of a total of one thousand five hundred dollars for

15 the administrative hearings and circuit court proceedings
16 nor an additional one thousand dollars for supreme court
17 proceedings: *Provided, however,* That the requirements
18 of this section shall not be construed to limit the
19 employee's right to recover reasonable attorney's fees in a
20 mandamus proceeding brought under section nine of this
21 article.

§29-6A-12. Mediation required at request of either party.

1 Upon the request of either party, the board may
2 require mediation or other alternative dispute resolution
3 technique to assist the parties in identifying, clarifying and
4 resolving issues regarding the grievance. Mediation may
5 be requested at any time prior to the level four hearing.
6 All of the information that is provided by parties during
7 mediation is and shall remain confidential. Mediators
8 may not be called as witnesses to provide testimony in
9 unresolved grievances that proceed to a grievance hearing,
10 and any hearing examiner involved in a mediation process
11 may not hear the grievance or be consulted regarding the
12 merits of the grievance.

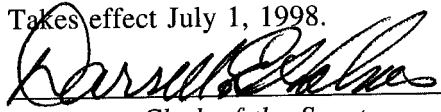
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

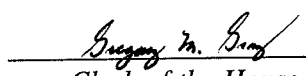

Chairman Senate Committee

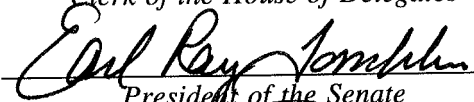

Chairman House Committee

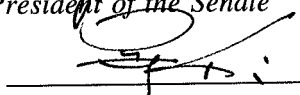
Originating in the House.

Takes effect July 1, 1998.

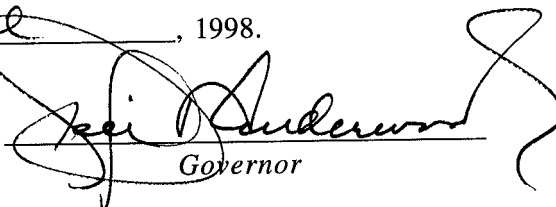

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 8th
day of April, 1998.


Governor

PRESENTED TO THE

GOVERNOR

Date

Time

3/26/98
10:41am