

Appendix B Level One Hearing Guidelines

When a grievant requests a hearing at level one, this is an evidentiary hearing which must be recorded and transcribed. A record is being made, so it is important to maintain order, and to make sure everything that is said is clearly recorded. The parties may call witnesses and present documents to be placed into evidence.

Scheduling the hearing

By statute, the hearing must be held within 15 working days of the date the grievance was received, and shall be scheduled during regular work hours, in a convenient location, accessible to all parties. The parties may agree to schedule the hearing at any time or place. The chief administrator may ask the parties for dates they are available for hearing, but there is no requirement that this be done, and due to the time constraints, this may not be practical.

Continuances: If either party is not available on the date the hearing is scheduled, the party may request that the hearing be continued to a different date. The chief administrator may continue the hearing for good cause, without the agreement of the other party, and reschedule the hearing to a different date without delay. If a party or his or her representative cannot be present on the date selected, and the hearing must be scheduled beyond the 15-day time limit, the parties may agree, in writing, to hold the hearing beyond the statutory timeframes. Always document any continuances or rescheduling of hearings and the reasons for them.

Notice: Notice of the hearing shall be sent to the parties at least five days prior to the hearing. The notice must include the date, time, and place of the hearing.

Representation: By statute, West Virginia Code § 6C-2-3(g), a party is entitled to have a representative present at any step of the grievance process, including the level one hearing, so the representative's schedule must also be taken into account when scheduling the hearing.

Issues which may arise before the hearing

Grievances may be consolidated by agreement of the parties, or at the discretion of the chief administrator, when the grievances involve similar issues.

Any employee may ask before the hearing, or at the beginning of the hearing, to intervene and become a party to the grievance. The employee asking to intervene must demonstrate that the decision on the grievance may substantially and adversely affect his rights or property, and that his interest is not adequately represented by the existing parties. It is within the chief administrator's discretion whether to allow the employee to

intervene.

Witnesses: By statute, West Virginia Code § 6C-2-4(a)(3), all parties have the right to present and cross-examine witnesses at a level one hearing. However, the chief administrator does have the right to reasonably limit the evidence to relevant matters and take measures to limit redundant or repetitive evidence.

Conducting the hearing

The chief administrator should utilize a sign-in sheet at the hearing for all parties and witnesses. Each name should be printed to ensure that a legible record is made of those in attendance.

Recording: The chief administrator will begin the hearing by turning on the recording equipment, or instructing the court reporter that they will be “on the record.” It is a good idea to do a test to make sure the recording equipment is working properly. The recording *must* be of good quality to be transcribed, so all witnesses and parties must speak clearly and loudly enough to be recorded.

At all times during the hearing, the chief administrator should make it clear that only one person is to speak at a time, so that everything that is said on the record is properly recorded. If two or more individuals are speaking at the same time during the hearing, the chief administrator should instruct the parties to cease this behavior.

Introduction: The chief administrator should begin the hearing by introducing himself, stating the case name and docket number, and the date and time. Each party should be asked to identify himself also. The chief administrator should state which party has the burden of proof. Pursuant to the Board’s Procedural Rules, Section 3, the employer only has the burden of proof in a disciplinary case.

Preliminary and Procedural issues: If any issues need clarification, this should be addressed before any evidence is taken. Discussions may be held “off the record” (not recorded and not part of the record), to facilitate the process, and to address procedural issues which the chief administrator believes can be more easily clarified off the record; however, any matters which were decided during an off the record discussion must be restated on the record.

Opening Statements: The chief administrator should allow each party to make a brief opening statement to identify the issues and arguments, if they wish to do so. The party with the burden of proof should give his opening statement first, and also present his witnesses first.

Swearing witnesses: An oath must be administered by the chief administrator to

each witness. The witness should raise his right hand and agree to an oath such as the following: “Do you swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?” Each witness must identify himself on the record, and should be asked to identify his position and place of employment.

Questioning witnesses: Only one person for each party should be allowed to ask questions of each witness (no tag-teaming a single witness). When the party presenting a witness has finished with his questions, the other party must be given the opportunity to cross-examine the witness about his testimony. The party presenting the witness should be allowed to ask follow-up questions of the witness after cross-examination. It is within the chief administrator’s discretion whether to allow additional questioning, so long as each party is given a full and fair opportunity to elicit information from the witness which is relevant to the issues. Any party may object to any question asked of a witness. The chief administrator may listen to the argument of the parties regarding the objection before making a ruling on whether the question will be allowed, and may limit the argument of the parties to ensure an orderly administration of the hearing and to complete the hearing.

Witnesses should be instructed to answer questions by saying “yes” or “no,” rather than “uh huh.” Witnesses should be instructed to wait until the person asking the question has completed the question before they answer. The chief administrator may interrupt the questioning to make sure the witness’ response is clear when a witness has not complied with these instructions.

Disciplinary cases: A grievant *cannot* be required to testify in a disciplinary hearing, including cases involving termination of employment, suspensions, and reprimands.

Documents: Each document offered as evidence must be marked as an Exhibit, using sequential numbers or letters, and reflecting which party offered the document into evidence. For example, Respondent’s level one exhibit 1, 2, 3, and so on, or Grievant’s level one exhibit 1, 2, 3, and so on. The chief administrator must ask if there is any objection to the admission of the document into the record, and the opposing party may state his objection to the admission of the exhibit into evidence. If there is an objection, the chief administrator must make a ruling on whether the document will be admitted into evidence. The chief administrator must state on the record whether each document has been admitted into the record. Documents which are not admitted into evidence should be given an exhibit number, and the chief administrator must write on the face of the document that it has not been admitted. The document should remain in the grievance file for appeal.

Closing arguments: The chief administrator may allow each party to make a closing statement at the end of the hearing, or submit written proposed findings of fact and conclusions of law. However, if the parties wish to submit written argument, the chief administrator needs to determine whether this is feasible given the statutory time lines.

The parties may agree to waive the statutory time lines for issuance of the decision. Such waivers should be reduced to writing, stating a specific date for the submission of written proposals, and a specific date for the issuance of the Decision.

If the hearing cannot be completed on the scheduled date, it is within the discretion of the chief administrator to set another day of hearing as quickly as possible.

After the hearing

The chief administrator must issue a written decision within 15 working days of the level one hearing, transmitting it to the grievant within this time period. The decision must state the reasons for the decision, whether the grievance is granted or denied, and the address and procedure to appeal to the next level.

The chief administrator must complete the "Cost Report" at the conclusion of the hearing, and submit it with the written decision to the West Virginia Public Employees Grievance Board.

A copy of the recording of the hearing must be provided to any party upon request.