



**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

Members
James Paul Geary
Orton A. Jones
David L. White

Offices
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FIRST ANNUAL REPORT

TO THE

GOVERNOR AND THE LEGISLATURE

February 7, 1986

Submitted by:

JAMES PAUL GEARY
ORTON A. JONES
DAVID L. WHITE

FOREWARD

In 1985, the Legislature created an Education Employees Grievance Board, charged it with the responsibility of administering the grievance procedure at level four and directed that the Board hire at least two full-time hearing examiners and such clerical help as was necessary to implement the legislative intent. The legislative intent was to provide a simple, expeditious and fair process for resolving problems that arise between the nearly fifty-five thousand (55,000) employees of the educational system of West Virginia and their employers in order to maintain good morale, enhance job performance and better serve the community. (Code, 18-29-1, effective July 1, 1985)

The Legislature also required the Board to submit a yearly budget and report to the Governor and the Legislature regarding receipts and expenditures, number of level four hearings conducted, synopsis of hearing outcomes and such other information as the Board may deem appropriate.¹ The Board is also required to make an annual evaluation of the level four grievance process and the performance of the hearing examiners.

On September 6, 1985, Governor Moore appointed James Paul "Buck" Geary, Petersburg, Orton A. Jones, Spencer and David L. White, Bluefield, to the Board and after a recruitment effort an administrative assistant and two

¹ A copy of Fiscal Year 1986-87 appropriation request and the Governor's Executive Budget is attached to this report and marked as Appendix A and B, respectively.

full-time hearing examiners were hired in December to serve at the will and pleasure of the Board.²

A public hearing was held on January 30th in Charleston to receive input with which to make this report. In accordance with Code, 18-29-5, notice was given to all institutions, employee organizations and all grievants participating in the level four grievance procedure in 1985.

There were two level four hearings conducted in 1985; the first involved a school teacher who had been suspended without pay for immorality. An evidentiary hearing was conducted involving the taking of over four hundred pages of testimony and a decision was rendered ordering the reinstatement of the teacher. No appeal to the Circuit Court has been taken in that case. The other level four grievance was submitted to the hearing examiner on the basis of the record made up at levels one and two and involved a statutory interpretation as to the necessity of giving reasons to the most senior applicant for an administrative position if that applicant was not selected. This grievance has been appealed to the Circuit Court of Kanawha County ostensibly on the basis of the hearing examiner's refusal to summarily award grievant the position or to award attorney's fees. It is contemplated that these written decisions will be distributed to County Boards of Education, Superintendents and employee representative organizations such as WVEA,

² The Legislature provided that the hearing examiners reside in different educational service areas and the Board established the first two offices in Charleston and Elkins in space other than that utilized by an institution as required by Code, 18-29. The Charleston office was opened on December 24, 1985. The other hearing examiner did not assume her duties until January, 1986.

School Service Personnel Association, etc., and will serve as precedent much the same as Attorney General opinions, opinions of the circuit courts and the Supreme Court of Appeals.

At present, there are one hundred twenty (120) requests for hearings by hearing examiners pending with approximately ten new cases arriving per week. It is anticipated that the number of appeals will increase as information of the existence and function of level four procedure is disseminated.³ Fifteen evidentiary hearings have been scheduled between now and March and some of the hearings have been set in the county where the grievance occurred instead of in the hearing examiner's office as is the usual procedure. Code 18-29-4 requires that the hearing examiner conduct a hearing within ten days following a request and to render a decision in writing within thirty days following the hearing so it is apparent that the time constraints are rather demanding.⁴

³ This, in fact, has materialized inasmuch as the volume of cases has drastically increased in the past few weeks. More specifically, twenty-four appeals were received in the last week of January.

⁴ Until there are a sufficient number of hearing examiners to accommodate the number of appeals, it is counterproductive for the examiners to travel unless the appeals cluster in a given area or there is an inordinate number of witnesses to transport. It is also necessary, at present, because there is only one recording machine for use by the two hearing examiners.

EVALUATION

Although it is difficult to evaluate the level four process at this early date, from the comments, reports, etc., received and the responses made at the public meeting held on January 30, 1986, there appears to be a high level of enthusiasm and positive expectations about the creation of the Board and the level four grievance procedure among the education community and it is justified. It is no revelation to note that the employee-employer relationship in the area of education in West Virginia has been less than harmonious and has generated an inordinate amount of litigation. Code, 18-29, et seq., was obviously a recognition of this situation and an effort to remove what many employees believed to be "politics" from the grievance procedure and to inject impartiality and an element of finality to the process.⁵

To effectuate the purpose and to maintain continuity and confidence in the procedure, it is essential that two additional hearing examiners be employed with offices in the areas of Beckley and Wheeling. Geographically, this would ensure that no grievant would be required to travel and transport witnesses an unreasonable distance from where the

⁵ Examples include the requirement that office space for hearing examiners be on "neutral" ground, that hearing examiners serve at the will and pleasure of the Board and that the Board and participants evaluate the examiners, that no contact with the grievance evaluators at lower levels occur unless all parties are present, etc. The decision of the hearing examiner is final and binding upon the parties and is enforceable in circuit court; any appeal is on the entire record made before the hearing examiner. (Code, 18-29-7)

grievance occurred, would ensure that the "neutrality" of the hearing situs be preserved and would expedite the hearing process.⁶ The central office will be maintained in Charleston with a chief hearing examiner and administrative assistant and would serve as the clearing house for decisions of the hearing examiners and circuit courts, the repository for records for appeals, perform the logging in and distribution of grievances, the performance of the administrative functions, to coordinate and assist the hearing examiners in the satellite offices, etc. The office in Elkins, Beckley and Wheeling would be staffed by a hearing examiner and secretary and recording equipment capable of serving these areas.

Fortunately, Governor Moore has agreed with the projection of the Board to increase the number of hearing examiners to four and has recommended that support staff be hired for each satellite office and the Charleston Office. These facilities will be operative July, 1986. With this type of cooperation the level four grievance procedure is not apt to fail.

⁶ The Legislature provided for hiring hearing examiners in each of the eight regional educational service agency areas and four appears to be the minimum number needed to effectively administer the law at present.

CONCLUSION

Potentially, Code, 18-29, et seq., is the solution to a problem that has defied solution, one that has affected perhaps a greater segment of West Virginia's population than any other single problem. It is essential that the participants in this grievance procedure gain and maintain confidence in it and that this Board as well as those State officials responsible for it strive to achieve the full potential of this progressive and unique legislation.⁷

⁷ In December, a computer inquiry was made of the other states and of those responding, Oklahoma was the only one with any education grievance procedure which included a State hearing examiner, which applied only to teacher terminations. Other States, such as North Dakota, reported having a formal grievance procedure for all classified state employees.

A P P E N D I X

APPENDIX A
FY 1986-87 APPROPRIATION REQUEST
SPENDING UNIT ACCOUNT SUMMARY

Education Employees Grievance Board

6015-05

Spending Unit

Appropriated State Account Number

Appropriated Federal Account Number

	FY 1984-85 Actual State	FY 1985-86 Leg Digest State	FY 1985-86 Budgeted			FY 1986-87 Current Level Request				Recommendation		
			State	Federal	Other	Total	State	Federal	Other	Total	Federal	State
Number of Positions			6			6	12				12	
PERSONAL SERVICES			50,081			50,081	208,750				208,750	
Number of Positions							2				2	
ANNUAL INCREMENT							720				720	
TOTAL PERSONAL SERVICES			50,081			50,081	209,470				209,470	
CURRENT EXPENSES												
10-Civ Ser. Pbd Empls & Ret Fees												
11-Social Security Matching												
12-Pub Emp Ins Premium												
13-Other Health Insurance												
14-Workers Compensation			200			200	1,000				1,000	
15-Unemp Comp												
16-Pan 3 Paymt Cont												
20-Office Post & Frl Exp			5,000			5,000	12,500				12,500	
21-Printing & Binding			1,500			1,500	3,500				3,500	
22-Rental Expenses (Building)			8,000			8,000	28,500				28,500	
23-Utities												
24-Telephone & Telegraph			6,000			6,000	14,500				14,500	
25-Contractual & Professional			1,752			1,752	10,000				10,000	
26-Travel			2,000			2,000	15,000				15,000	
27-SSD												
30-Rental (Machine & Misc.)			3,200			3,200	4,000				4,000	
31-Association Dues												
32-Fire, Auto, Bond & Oth. Ins												
33-Food Products												
34-Cloth. & Household Sup.												
35-Advertising			200			200	250				250	
36-Vehicle Expense												
37-Research, Ed., & Med.												
38-Maintenance Contracts			-0-			-0-	300				300	
39-Manufacturing Supplies												
40-Merchandise for Resale												
41-Security Service												
42-Hospitality												
43-Ed. Training (Stipends)												
44-Promotional												
45-Farm Expense												

**FY 1986-87 APPROPRIATION REQUEST
DIVISION FINANCIAL SUMMARY**

Education Employees Grievance Board

6015-05

Central Office (Chas.)

Spending Unit

Appropriated State Account Number

Appropriated Federal Account Number

Division

	FY 1985-86 Legislative Digest		FY 1985-86 Budgeted				FY 1986-87 Current Level Request				Recommendation	
	State	Federal	State	Federal	Other	Total	State	Federal	Other	Total	Federal	State
Number of Positions			5			5	6			6		
PERSONAL SERVICES			32,581			32,581	75,250			75,250		
Number of Positions			-0-			-0-	2			2		
ANNUAL INCREMENT			-0-			-0-	720			720		
TOTAL PERSONAL SERVICES			32,581			32,581	75,970			75,970		
CURRENT EXPENSES												
Workers Compensation			128			128	394			394		
Other Employee Benefits												
Office Expenses			4,000			4,000	6,000			6,000		
Rentals (Bldg)			5,000			5,000	10,500			10,500		
Utilities												
Telephones & Telegraph			4,000			4,000	7,000			7,000		
Contractual & Professional			1,052			1,052	6,000			6,000		
Travel			1,500			1,500	7,000			7,000		
ISSD												
Other Current Expenses			4,400			4,400	8,425			8,425		
TOTAL CURRENT EXPENSES			20,080			20,080	45,319			45,319		
REPAIRS & ALTERATIONS												
EQUIPMENT			9,782.50			9,782.50	5,050			5,050		
GROSS TOTAL			62,443.50			62,443.50	126,339			126,339		
LESS REAPPROPRIATIONS												
NET TOTAL	100,000		62,443.50			62,443.50	126,339			126,339		

unclassified

Percent Change from FY 85-86 for Federal and State Funds

**FY 1986-87 APPROPRIATION REQUEST
DIVISION FINANCIAL SUMMARY**

Education Employees Grievance Board

6015-05

Elkins
Hearing Examiner

Spending Unit

Appropriated State Account Number

Appropriated Federal Account Number

Division

	FY 1985-86 Legislative Digest		FY 1985-86 Budgeted				FY 1986-87 Current Level Request				Recommendation	
	State	Federal	State	Federal	Other	Total	State	Federal	Other	Total	Federal	State
Number of Positions			1			1	2			2		
PERSONAL SERVICES			17,500			17,500	44,500			44,500		
Number of Positions			-0-			-0-	-0-			-0-		
ANNUAL INCREMENT			-0-			-0-	-0-			-0-		
TOTAL PERSONAL SERVICES			17,500			17,500	44,500			44,500		
CURRENT EXPENSES												
Workers' Compensation			72			72	202			202		
Other Employee Benefits												
Office Expenses			2,500			2,500	1,500			1,500		
Rentals (Bldg.)			3,000			3,000	6,000			6,000		
Utilities												
Telephone & Telegraph			2,000			2,000	1,500			1,500		
Contractual & Professional			700			700	1,400			1,400		
Travel			500			500	3,000			3,000		
ISSD												
Other Current Expenses			1,000			1,000	375			375		
TOTAL CURRENT EXPENSES			9,772			9,772	13,977			13,977		
REPAIRS & ALTERATIONS												
EQUIPMENT			10,284.50			10,284.50	1,650			1,650		
GROSS TOTAL			37,556.50			37,556.50						
LESS REAPPROPRIATIONS												
NET TOTAL			37,556.50			37,556.50	60,127			60,127		

Percent Change from FY 85-86 for Federal and State Funds

**FY 1986-87 APPROPRIATION REQUEST
DIVISION FINANCIAL SUMMARY**

Education Employees Grievance Board

6015-05

Hearing Examiner

Spending Unit	FY 1985-86 Legislative Digest		FY 1985-86 Budgeted				FY 1986-87 Current Level Request				Division Recommendation	
	State	Federal	State	Federal	Other	Total	State	Federal	Other	Total	Federal	State
PERSONAL SERVICES							2			2		
Number of Positions							44,500			44,500		
ANNUAL INCREMENT							-0-			-0-		
TOTAL PERSONAL SERVICES							44,500			44,500		
CURRENT EXPENSES												
Workers' Compensation												
Other Employee Benefits							202			202		
Office Expenses												
Rental (diag)							2,500			2,500		
Utilities							6,000			6,000		
Telephone & Telegraph												
Contractual & Professional							3,000			3,000		
Travel							1,300			1,300		
ISSD							2,500			2,500		
Other Current Expenses												
TOTAL CURRENT EXPENSES							375			375		
REPAIRS & ALTERATIONS							15,877			15,877		
EQUIPMENT												
							11,935			11,935		
GROSS TOTAL												
LESS REAPPROPRIATIONS												
NET TOTAL							72,312			72,312		

Percent Change from FY 85-86 for Federal and State Funds

APPENDIX B



STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

January 29, 1986

ARCH A. MOORE, JR.
GOVERNOR

EXECUTIVE MESSAGE NO. 25

The Honorable Joseph P. Albright
Speaker, West Virginia House of Delegates
State Capitol
Charleston, West Virginia 25305

Dear Mr. Speaker:

Please amend the Budget Bill previously submitted by me to
read as follows:

Title II - Appropriations
Section 1. Appropriations from general revenue
Fiscal
82 - Education Employees Grievance Board
(WV Code Chapter 18-1A)
Account No. 6015

1	Personal Services	\$208,750
3	Current Expenses	85,000
4	Equipment	<u>28,500</u>
5	Total	\$322,970

Thank you for your cooperation in this matter.

Sincerely yours,

Arch A. Moore, Jr.
Arch A. Moore, Jr.
Governor

AAMJR:at

cc: The Honorable George Farley
Chairman, House Finance Committee
✓ Education Employees Grievance Board

RECEIVED
FEB 3 1986

W.Va. Education Employees
Grievance Board