

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Civil Service System TITLE NUMBER: 143
RULE TYPE: Legislative; CITE AUTHORITY §29-6-10
AMENDMENT TO AN EXISTING RULE: YES x NO
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1
TITLE OF RULE BEING AMENDED: Rules and Regulations of the West
Virginia Civil Service System
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:
TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: December 18, 1987 TIME: 9:00 a.m.
LOCATION OF PUBLIC HEARING: House of Delegates Chamber
State Capitol
Charleston, WV

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH x

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Civil Service Commission
1900 Washington Street, I
Charleston, WV 25305

The Department requests that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Lowell D. Rees

CIVIL SERVICE COMMISSION
Willard H. Erwin, Jr., Chairman
Bill J. Wellman



Address Communications To:
Director of Personnel
1900 Washington Street East
Room B-456
Charleston, West Virginia 25305
Phone 348-3950

STATE OF WEST VIRGINIA

CIVIL SERVICE SYSTEM

NOTICE OF PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE

PUBLIC HEARING

AGENCY: West Virginia Civil Service Commission

RULE TYPE: Legislative

RULE TITLE: Rules and Regulations

Civil Service System

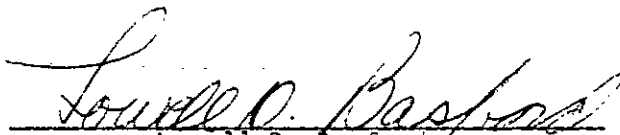
A PUBLIC HEARING ON THE ABOVE PROPOSED RULE WILL BE HELD AT 9:00 a.m. ON
December 18, 1987 AT House of Delegates Chamber, State Capitol, Charleston,
West Virginia

COMMENTS ARE LIMITED TO: ORAL WRITTEN BOTH x

COMMENTS MAY ALSO BE MAILED TO: Civil Service Commission, 1900 Washington
Street, East, Charleston, West Virginia 25305

THE DEPARTMENT REQUESTS THAT PERSONS WISHING TO MAKE COMMENTS AT THE HEARING
MAKE AN EFFORT TO SUBMIT WRITTEN COMMENTS IN ORDER TO FACILITATE A REVIEW OF
THESE COMMENTS.

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.



Lowell D. Basford
Acting Director of Personnel

Section 23. Grievance Procedure

23.01. Purpose and Intent-The purpose of this section is to provide a procedure for classified employees and their employer to reach solutions to problems which arise between them within the scope of their respective employment relationships to the end that good morale may be maintained, effective job performance may be enhanced and the citizens of the community may be better served. This procedure is intended to provide a simple, expeditious and fair process for resolving problems at the lowest possible administrative level.

This procedure is intended to encourage employees to discuss problems with their supervisors, thereby providing a basis to talk over matters of mutual interest, to explain, to reach agreement, to make adjustments if necessary, and to foster better understanding between employees and supervisors. Such discussion will lead to better employee/supervisor understanding of policies, procedures and practices.

23.02. Responsibility

(a) The Civil Service Commission shall be responsible for the basic standards, guidelines and for administration of the grievance procedure.

(b) The appointing authority of each department shall be responsible for the implementation of this procedure throughout the agency.

(c) Employees shall submit only grievances made in good faith, expressed in reasonable terms, containing causes for the grievance, a statement of relief sought, and sufficient information upon which to base these decisions.

23.03. Grievance Defined

(a) Except those matters listed in paragraph (b) of this section, a grievance shall be any claim initiated in a timely fashion by a classified employee alleging his employment has been adversely affected by unfair treatment, erroneous or capricious interpretation or application of agency policies or procedures or of Civil Service System rules and regulations, or allegations of unlawful discrimination.

(b) The following matters are not subject to the grievance procedure:

(1) the statutes, rules and regulations and written policies of any state agency, board or commission;

(2) matters directly appealable to the Civil Service Commission to include demotion, dismissal, suspension of more than thirty days in a twelve month period, examination rejection, examination rating or removal from register;

(3) issues on which a claim has been filed with the West Virginia Human Rights Commission;

(4) any action by an agency due to a federal or state law, Civil Service law or regulation or an executive order;

(5) the agency budget or organizational structure, including the number or assignment of employees or positions in any organizational unit;

(6) establishment and revision of position classifications, allocation and reallocation of positions and the assignment of classes to pay ranges;

(7) the methods, means and personnel by which the work and mission of the agency are to be carried out;

(8) the selection of an individual by the appointing authority or designee to fill a position through appointment, promotion, demotion or lateral class change, unless it is alleged that the selection is in violation of written agency policy or Civil Service Rules and Regulations on filling vacancies;

(9) merit salary increases, performance awards or other kinds of honorary or discretionary awards.

23.04. Determining Grievability-If, during the course of the grievance procedure, a question arises as to whether a particular issue is or is not grievable, the Director of Personnel is empowered to render a decision. The appointing authority or designee shall submit a written statement of the issue to the Director of Personnel for a decision. A copy of the above request shall be made available to the grievant and the grievant's representative, if any. If the Director determines the issue in question to be non-grievable the grievance shall be voided. The written determination of the Director shall be made within ten (10) calendar days of receipt of the request and shall be sent to all parties. The timeframes specified for processing grievances shall be extended for a determination on the issue.

23.05. Grievance Procedure Generally

(a) A grievance must be filed within the times specified in Section 23.06 of these rules and shall be processed as rapidly as possible. Unless otherwise specified, the number of days indicated at each level shall be considered as the maximum number of working days allowed and, if a decision is not rendered at any level within the prescribed time limits, the grievant may appeal to the next level. If the grievant fails to appeal the grievance to the next step within the prescribed time limits, the matter shall be voided. The specified time limits shall be extended whenever the grievant, grievance evaluator or representative is not working because of accident, sickness, death in the immediate family, inclement weather or other cause necessitating the grievant or the grievance evaluator or representative to be absent from his or her employment.

(b) Grievances may be consolidated at any level by agreement of all parties or at the discretion of the hearing board at step four.

(c) The grievant and the agency may have the assistance of one other person in the preparation and presentation of the grievance. Such persons may be present at any step of the procedure. In addition to actual time spent in grievance conferences and hearings, the employee representative shall be granted time-off during his working hours, not to exceed four (4) hours per grievance, for the preparation of such grievance without loss of pay and without charge to annual leave or compensatory leave. Likewise, the grievant shall be granted time-off during his working hours, not to exceed four (4) hours per grievance, with no loss of pay and benefits. However, it shall be understood by all parties that the first responsibility of any state employee is the work assigned by the appointing authority to the employee. Grievance preparation and representation activities by an employee shall not seriously affect the overall productivity of the employee.

(d) No reprisals of any kind shall be taken by any employer or representative of the employer against the grievant, or any other participant in the grievance procedure by reason of such participation. A reprisal constitutes a grievance, and any person held to be responsible for reprisal action shall be subject to disciplinary action for insubordination.

(e) Except for the informal attempt to resolve the grievance at the first step, decisions rendered at all levels of the grievance procedure shall be dated, shall be in writing setting forth the decision and the reasons therefor, and shall be transmitted to the grievant and any representative named in the grievance within the time prescribed. If the grievant is denied the relief sought, the decision shall include the name of the individual at the next step to whom appeal may be made.

(f) Forms for filing grievances shall be made available at locations in the agency convenient and accessible to employees. Such forms shall include information as prescribed by the commission. The grievant shall have access to the employer's equipment for purposes of preparing grievance documents subject to the reasonable rules of the employer governing the use of such equipment.

(g) All conferences and hearings pursuant to this article shall be conducted in private. Within the discretion of the hearing board, hearings may be public at step four.

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

23.06. Procedural Steps and Procedure at each Step

(a) Step One - Verbal Presentation of Grievance

(1) Within five (5) days following the occurrence of the event upon which the grievance is based, or within five (5) days of the date on which the event became known to the grievant, the grievant or the designated representative shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought. The grievance shall be presented only in the presence of the grievant.

The conference with the immediate supervisor concerning the grievance shall be conducted within three (3) days of the request therefor.

(2) The immediate supervisor shall respond to the grievance within three (3) days of the conference. If the grievance is denied, the immediate supervisor shall advise the grievant of the appeal procedure for step two.

(b) Step Two - Written Presentation of Grievance

If the grievant is not satisfied with the action taken by the immediate supervisor, within five (5) days of receiving the decision of the immediate supervisor, the grievant may appeal the decision in writing to the immediate supervisor who shall immediately forward the written grievance along with a summary of the verbal response to the chief administrator. The chief administrator shall investigate the grievance and conduct a conference with all parties within five (5) days following the request therefor. The conference shall include the grievant, grievant's representative, if any, the supervisor rendering the step one decision and other employees or officials having information or knowledge relevant to the issue. The purpose of this conference is to amicably discuss the grievance and afford the grievant an opportunity to present his or her viewpoint on the issue. Within five (5) days of such conference the chief administrator shall issue a written decision on the grievance. Such decision may affirm, modify or reverse the decision rendered at step one.

(c) Step Three - Agency Head Conference

(1) If the grievant is not satisfied with the action taken by the chief administrator, within five (5) days of the written decision the grievant may request, in writing, on a form furnished by the employer, that the grievance be submitted to the appointing authority for a conference to be held by the appointing authority or designee within ten (10) days following the request therefor: Provided, however, that such conference may be held within fifteen (15) days following the request, if the appointing authority gives reasonable cause, in writing, as to the necessity for such delay.

(2) Within seven (7) days following the conference, the appointing authority shall render a decision in writing, setting forth the findings and conclusions on the issues submitted. Such decision may affirm, reverse or modify the decision rendered at step two. The appointing authority shall transmit a copy of the decision to the parties and the Director of Personnel, Civil Service System.

(d) Step Four - Appeal to Grievance Hearing Board

(1) If the grievant is not satisfied with the action taken by the appointing authority, within ten (10) days of the written decision the grievant may request, to the Director of Personnel, Civil Service System, in writing, that the grievance be submitted to a hearing board for a hearing to be conducted within fifteen days following the request therefor: provided, that such hearing may be held within thirty (30) days following the request, or within such time as is mutually agreed upon by the parties, if the hearing board gives reasonable cause, in writing, as to the necessity for such delay. The Director of Personnel, Civil Service System, or his designee, may appear at such hearing or submit written evidence on the matters in the hearing.

(2) Within thirty (30) calendar days following the hearing, the hearing board shall render a decision in writing to all parties setting forth findings and conclusions on the issues submitted. The decision of the hearing board shall become the order of the Commission and shall be final and binding upon the parties. The order of the Commission may be appealed to the court of proper jurisdiction as provided for in the State Administrative Procedures Act.

23.07. Grievance Hearing Committee

(a) There is hereby created the state grievance hearing committee comprised of at least eighty members, all of whom must be State employees, and which members shall be appointed by the Civil Service Commission within thirty days from the effective date of this Section.

(b) The role of the committee shall be to (1) provide technical advice to the Civil Service Commission with regard to operation of this grievance procedure; and, (2) to take testimony, gather evidence, prepare findings of fact and conclusions of law and prepare orders on grievances at the fourth step.

(c) The committee shall constitute a pool of members from which a three member board shall be selected for each step four hearing or to determine a grievable matter. One member of the committee shall be selected as chairperson by the Director of Personnel.

(d) A grievance hearing committee roster shall be compiled by the Director of Personnel. For each grievance hearing board, the Director of Personnel shall select those names in sequence as they appear on the roster; provided, however, no member of the committee may serve on a board with regard to a grievance from the agency in which the committee member is employed, nor shall any member of the committee serve on a hearing board with regard to a grievance in which such committee member has a personal involvement, a conflict of interest, or the appearance of a conflict of interest. Either party may object to the selection of a hearing board member. Such objection shall be submitted in writing to the Director of Personnel within five (5) calendar days of the hearing board selection. A copy of the written objections shall be submitted to the other party in the grievance.

(e) Each member of the committee who performs duties with regard to this section shall be deemed to be conducting such duties as part of his official capacity and shall be entitled to such expenses as the employee would be normally entitled should such employee be engaged in official state government travel, and such expenses shall be paid by the committee member's employing agency.

(f) The hearing board shall have the power to consolidate grievances, provide such relief as is deemed fair and equitable in accordance with this procedure and such other powers as will provide for the effective resolution of grievances not inconsistent with any agency rules or regulations.

23.08. Hearings Generally-The hearing board shall conduct all hearings in an impartial manner and shall ensure that all parties are accorded procedural and substantive due process. All parties shall have an opportunity to present evidence and argument with respect to the matters and issues involved and to cross examine and to rebut evidence. Reasonable notice of hearing shall be sent to calendar days prior to the hearing to all parties and their named representative and shall include the date, time and place of the hearing. The hearing shall be held on the employer's premises and shall be in a convenient location accessible to the grievant.

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

The hearing board shall have the power to administer oaths and affirmations, regulate the course of the hearing, hold conferences for the settlement or simplification of the issues by consent of the parties, exclude immaterial, irrelevant or repetitious evidence, sequester witnesses, restrict the number of representatives, and take any other action not inconsistent with these rules.

All the testimony and evidence at a fourth step hearing shall be recorded by mechanical means or stenographic notes and characters and shall be transcribed and certified by affidavit of the person transcribing same at the request of any party to the grievance at his expense.

Every decision pursuant to a hearing shall be in writing and shall be accompanied by findings of fact and conclusions of law. Prior to such decision any party may propose findings of fact and conclusions of law.

23.09. Enforcement; good faith.

(a) When rendered the decision of the hearing board shall become the order of the Commission and shall be final and binding upon the parties. The order shall be enforceable in the court of proper jurisdiction as provided for in the State Administrative Procedures Act.

(b) Both the employer and the employee shall at all times act in good faith and make every possible effort to resolve grievances at the lowest level of the grievance procedure. The hearing board may make a determination of bad faith and in extreme instances may consider such actions in its decision.

23.10. Forms and Reporting.

The Director of Personnel shall prescribe a uniform grievance form to be used for all employees in the classified service. Grievance procedure forms shall be readily available to employees.

The prescribed grievance procedure form will be used for recording the employee's grievance and the action taken by the officials at each step. It is required that a copy be filed with the Director of Personnel after resolution of the grievance at any step of the written procedure.

CIVIL SERVICE COMMISSION
Willard H. Erwin, Jr., Chairman
Bill J. Wellman



Address Communications To:
Director of Personnel
1900 Washington Street East
Room B-456
Charleston, West Virginia 25305
Phone 348-3950

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STATE OF WEST VIRGINIA

CIVIL SERVICE SYSTEM

November 18, 1987

MEMORANDUM

TO: Rich O. Hartman, Director
Administrative Law Division
Office of Secretary of State

FROM: Lowell D. Basford *LDB*
Acting Director of Personnel

Please find enclosed a Notice of Public Hearing and a copy of the proposed revisions to the Civil Service Rules and Regulations to be discussed at the hearing on December 18, 1987.

Please let me know if you have any questions in this regard.

LDB:ss

Enclosure