

RIGHTS OF PUBLIC EMPLOYEES

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**INTERIM REPORT OF THE
COMMISSION TO STUDY THE
RIGHTS OF PUBLIC EMPLOYEES**

To

THE GOVERNOR

And

THE GENERAL ASSEMBLY OF VIRGINIA



House Document No. 28

**COMMONWEALTH OF VIRGINIA
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RIGHTS OF PUBLIC EMPLOYEES

Interim Report of the Commission to Study the Rights of Public Employees

To

The Governor and the General Assembly of Virginia

Richmond, Virginia

January, 1975

To: Honorable Mills E. Godwin, Jr., Governor of Virginia

and

The General Assembly of Virginia

INTRODUCTION

The Commission's work since the 1974 Session of the General Assembly essentially falls into two areas, as reflected by its subcommittee structure. The recommendations of the Commission's Grievance Procedure Subcommittee (treated in Part II of this report) were unanimously approved by the full Commission; however, the Commission was not so successful in reaching a consensus, or even a majority opinion, on the recommendations of the Legislative Proposals Subcommittee (treated in Part I of this report). The Legislative Proposals Subcommittee recommended that legislation be enacted which would permit public employers and public employees to reach enforceable agreements resulting from collective bargaining; and provide for new sanctions, and the more flexible administration of these sanctions, for violations of the prohibition against public employees engaging in strikes.

PART I

LEGISLATIVE PROPOSALS

As noted above, the full Commission was unable to reach a majority opinion on the recommendations submitted by the Legislative Proposals Subcommittee. Consequently, this portion of the Commission's report consists of the four statements which follow.

PRINCIPLES OF EQUITABLE PUBLIC EMPLOYER-EMPLOYEE RELATIONS

CONSISTENT WITH THE PUBLIC INTEREST

Good employer-employee relationships demand an environment in which employees can make known their positions on matters affecting their working conditions and a forum in which grievances can be fairly heard and resolved. The employer must be responsive to employee concerns. We believe that these principles must be observed and faithfully followed to effect sound employer-employee relations. Collective bargaining will not enhance the good relations which we believe should exist and is not in the interest of the public generally.

What is collective bargaining? In short it is a method or way to equalize the bargaining power between employees and their employer in arriving at the "price" at which the employees will work. In the private sector it was thought that the bargaining power of the employer, who could discharge individuals at will or shut down the store or plant or move it away, far exceeded that of the individual worker who was forced to quit and work elsewhere if he did not like the "price", an alternative which, at least in the 1930's when the National Labor policy was adopted (Wagner Act 1935), was not economically feasible for the average employee. The remedy adopted in the private sector was the organization of employees with collective bargaining enforced by the "right to strike". This "right" was protected by law so that a striker would not lose his job if he went on strike and the employer could not exercise his traditional rights in reprisal.

Under the National Labor Relations Act, collective bargaining, per se, means the obligation to meet and confer in good faith over wages, hours of work and working conditions. Working conditions include a variety of things such as job security, the right to process a grievance, holidays, vacations, pension plans, health insurance, etc.

Thus, the question involved in the issue of public employee collective bargaining is whether it is necessary or desirable to equalize the bargaining power between public employees and public

employers by encouraging the organization of employees for the purpose of collective bargaining — in full knowledge of the fact that the process does not equalize anything unless it is supported by a “right to strike” with protection from reprisal.

The only reason for government services is to supply the public with certain essentials of life which cannot reasonably be supplied by the average citizen himself, or to him by private enterprise. Fundamentally, these essentials are police and fire protection, education, water, sewage, highways and the like, which are needed by all, but which only a few could afford on their own. Because they are essential to the health, welfare and safety of the public, the expenditure of public funds for their provision becomes justifiable. Equally because they are so essential it becomes intolerable that they be interrupted. Therefore, every member of the Commission on the Rights of Public Employees takes the stand that “strikes” in the public sector must be prohibited.

States which have adopted collective bargaining or meet and confer legislation for public employees have experienced an increase in the number of strikes as a result, even though such strikes were unlawful. Thus, the process of collective bargaining invites strikes and threats thereof and no legislation has been found which can prevent such strikes — action which challenges the very sovereignty of government.

Thus, public sector bargaining is incompatible with governmental sovereignty. It is one thing to say that an organization of employees is entitled to suggest and offer ideas and proposals concerning the wages and working conditions of its members. It is quite a different matter for public officials, entrusted with decision-making authority, to recognize representatives of an organization for the purpose of negotiating these subjects. The power and authority to govern and tax under our representative form of government is vested exclusively in democratically elected officials. This form of government, being a government of the people acting through their elected representatives, is the most orderly and workable form that society has experienced. All employees have the right to associate to advocate their views, thoughts and interests but this does not mean that any such group should have a special status or influence on the decision-making process. Because the public in general is directly affected and must foot the bill for public employee wages, hours and working conditions, it is unfair to permit one group the right to exert an economic force through collective bargaining which other members of the community do not have and which would affect the tax burden of all.

Under our form of government, public office or employment never has been and cannot become a matter of bargaining and contract. ... This is true because the whole matter of qualifications, tenure, compensation and working conditions for any public service involves the exercise of legislative powers. Except to the extent that all the people have themselves settled any of these matters by writing them into the Constitution, they must be determined by their chosen representatives who constitute the legislative body. It is a familiar principle of

constitutional law that the legislature cannot delegate its legislative powers and any attempted delegation thereof is void If such powers cannot be delegated, they surely cannot be bargained or contracted away, and certainly not by any administrative or executive officers who cannot have any legislative powers. *City of Springfield v. Clouse*, 356 Mo. 1239, 206 S.W. 2d 539, 545 (1947).

If then this exclusive responsibility be vested solely in the public employer, what then are the attendant responsibilities to the public employee? The basic responsibilities can be enumerated quite concisely and the responsiveness of the State of Virginia can be documented as well.

At the 1973 Session, the General Assembly amended the Virginia Personnel Act to provide for an employee grievance procedure to afford an immediate and fair method for the resolution of disputes which may arise between an agency and its employees. Chapter 7, Acts of 1973. At the same Session, an employee grievance procedure was provided for employees of all localities having more than fifteen employees and such localities were required to establish a personnel system including a classification plan for service and uniform pay plan for its employees. Chapter 256. Public employees were also covered by the provisions of the Virginia Right to Work Law. Chapter 79.

House Joint Resolution Nos. 207, 208 and 209, agreed to at the 1973 Session, evidence the concern and public policy of Virginia regarding its employees by providing for periodic evaluation of wages, hours, benefits and other working conditions; by requiring every public employer to promulgate and implement rules and policies so as to provide an opportunity for its employees to contribute to the development of policies which directly or indirectly affect working conditions; and by requiring that all public employees enjoy wages, hours, benefits and other working conditions commensurate with their service to the public.

There has not been enough time for these measures to bear fruit, but the evidence so far before the Commission shows that most public employers in Virginia have at least made a good faith attempt to implement them. Thus, there is reason to believe that any problems in the field of wages, hours and working conditions can be resolved through the processes provided in the policies announced and laws enacted in 1973. The need now is not for further legislation but for responsive execution of this legislation on the part of the public employer.

Public employees occupy a status entirely different from their counterparts in the private sector. Public employees are the agents of government and exercise a part of the sovereignty entrusted to government. While serving a mission different from the private employee, the public employee enjoys benefits not necessarily available to the private employee. Governments do not go out of business and do not move to distant places. The public employee has, therefore, enjoyed a security of employment not assured to those in the private sector. In addition, by legislative enactment, the

public employee has been guaranteed such things as employment and promotion on a merit basis, grievance procedures through which his just complaints can be resolved, classification and pay plans assuring equal pay for equal work, liberal holiday and vacation schedules, sick leave programs rarely matched by private employers, and retirement systems more liberal than those commonly found in the private sector. And unlike the private sector, all of these benefits are protected by law in the public sector.

The conclusion that we reach is three-fold:

First, the public interest would not be served by providing for collective bargaining in the public sector, a process that dissipates legislative authority and responsibility.

Secondly, communication between employer and employees, as individuals or in associations, must be improved, and grievance procedures, now required by law, must be used in an atmosphere free of any fear of reprisal. Every employee must be made aware of and understand the grievance procedure that is available to him. Lines of communication should be improved to the point of excellence as a means of effecting sound employer-employee relations.

Finally, it is apparent from this Commission's public hearings that the legislation and policy statements enacted by the General Assembly at the 1973 Session embody all of the legislation presently needed on the subject of the rights of public employees. The current need is for full and responsive execution of this legislation.

Respectfully submitted,

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William F. Parkerson, Jr.

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Claude W. Anderson

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Julian Hirst

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Joseph P. King, Jr.

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Francis V. Lowden, Jr.

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Coleman B. Yeatts

SUPPLEMENTAL STATEMENT

By Julian Hirst

AS TO REASONS FOR VOTE

This statement is prepared in explanation of my vote on November 21, 1974, as a member of the Commission to Study the Rights of Public Employees. The question before the Commission on that date was the recommendation by a majority of a subcommittee of the Commission that the full Commission recommend "A Bill" to the 1975 General Assembly.

The Bill, if enacted, would incorporate into State law certain provisions and practices relating to public employment in Virginia. Presuming that the Bill will be incorporated for information into the Commission's Report to the General Assembly, I will not go into further identification or explanation of it. This statement and my vote relate to that specific Bill which was the only one before the Commission and which, to my knowledge, is unchanged from the draft submitted to the Commission for vote on November 14, 1974.

The vote on the question was 6-6. I voted in the negative and for reasons hereinafter stated. These reasons, in part, were expressed before the Commission prior to the Chairman calling the vote and are contained, in part, in the minutes of that Commission meeting.

By way of generalization, the Bill, as it will be herein referred to, would, if it becomes legislation, be of major significance. I will not elaborate upon its intent and content but observe that, as law, the Bill would have positive and permanent effect upon employer-employee relations in the public sector, upon the administration of local and State government and upon the delivery of public services. It should not be treated either lightly or accidentally.

There is much that can be said objectively on the whole issue which generated the Bill. There are a variety of directions as to philosophy, the organization of personnel in public employment, needs of guidelines, trends in Virginia, national trends, outside influences, prevailing and potential lines of communications in the public sector, grievance processes, unionism, rights of employees, etc. All of these are material to the arena into which the Bill is being injected. It is to be hoped that at some time the Commission can and will enter into discussions and review of these and other matters as they relate to public employees in Virginia.

However, my concern at this stage regarding the Bill is as to two points. One is as to process . The other is wording content .

Process

It is not my intent to be critical of my fellow Commission members. I am fully certain that all members of this Commission, as with others who serve the Commonwealth on commissions and committees, approach their responsibilities with dedication and high public interest. Additionally, I am not so naive as to be unaware of developments and attitudes in the State as well as certain principles of public administration and service.

The extent of my knowledge of the background information available to the Commission's subcommittee which presented the Bill is restricted to one paragraph contained in the "Report - Legislative Proposals Subcommittee". The Subcommittee Report was forwarded to the other members of the Commission under the date of November 13, 1974, prior to the referenced November 21 meeting.

The paragraph reads:

"The Subcommittee has met four times since the full Commission was continued pursuant to House Joint Resolution No. 126 of the 1974 General Assembly. During these meetings the Subcommittee studied approaches other states have taken in this area and heard testimony from interested persons concerning their public labor experiences under Virginia's present laws. The Subcommittee heard testimony from the following: the Arlington Police Beneficiary Association, the Virginia Conference of the American Association of University Professors, the Henrico Professional Firefighters Association, the Montgomery County Education Association, the Charlottesville Education Association, the Alexandria Professional Firefighters Association, the Albemarle Educational Association, the State Professional Firefighters Association, the Superintendent of the City of Alexandria Schools and the Superintendent of the Bath County Schools."

It is my recollection that three (perhaps four) of these meetings were hearings by the subcommittee. One, it is believed, was held in Tidewater. Two were held at the Boars Head Inn, in Charlottesville, and The Homestead, Hot Springs. These latter two locales are not too identifiable within the scene of local or State governmental operations.

Those identified as giving testimony break down to one local police organization, three local and one State professional firefighters organizations, one association of university professors, three local education organizations and two school district superintendents. These further break to eight local employee organizations or associations, two State employee organizations or associations, and two individuals at supervisory level.

No doubt each of these groups, and no doubt their spokespersons, are capable and knowledgeable. Nevertheless, and respectfully, it hardly seems that these nine groups and two individuals could constitute full resource and information on the vast structure and personnel complex of public employment in Virginia. Legislation bearing upon local and State government and

upon public employees in Virginia can be far reaching in impact. The above grouping is of minimum percentage numerically, geographically and as to echelons of responsibility and experience.

It might be countered that the subcommittee meetings were in part (or all) open and any persons interested could have appeared. Perhaps true, but two things must be realized. One is that the Commission's role, purpose or identity is not well stabilized or understood in governmental circles. Secondly, the subject of public employee relations is not one that supervisors or the supervised are readily or comfortably prepared to discuss in open public forum. There are good and valid reasons for this. Study should be pursued along other routes.

Given the significance and complexity of the general subject and the proposition of establishing new law relating thereto, it would seem that the preparatory work should range much further than the apparently limited coverage given to and obtained at the subcommittee level. In the absence, I have to withhold endorsement of the Bill.

Wording Content

I raised the following questions as to wording content within the proposed Bill. Perhaps in some instances there may be simple explanation or easy adjustments for clarification or correction. However, I consider them substantive. The underlined words are as extracted from the Bill.

1. § 40.1-127(c). Definition of "Employee Organization". any organization which includes employees of a public agency . This appears to open to a wide variety of employee organizations, including non-public employee organizations within which only a very few public employees may be members.

among its primary purposes Difficulty is invoked in defining this phrase for practical application.

2. § 40.1-127(d). "Governing body " Does this define the General Assembly as the governing body for State employees?
3. § 40.1-127(e). The listed exemptions should be expanded to include certain appointees at local government level.

Why the exception of staffs of the General Assembly ?

4. § 40.1-127(f). In the inclusion of State universities and colleges , what is considered to be the governing body for the purpose of actions prescribed under the Bill?

Are community colleges considered individually or collectively?

5. § 40.1-127(g). Definition of "strike". The definition does not include the practices of "slow-down" or "sick-out".

6. § 40.1-127(h). Sentence structure and composition should be revised.
7. § 40.1-127(i). Sentence composition should be revised.
8. § 40.1-129. There is no protection provided against such as “slow-downs”, “sick-outs” or “excessive actions having consequence on the functioning of public service”.
9. § 40.1-130. The last sentence should be deleted. Partial reason is that the deduction of pay based on a stipulated number of days of work may be questionable in practice.
10. § 40.1-131. “Actions for damages”. This paragraph merits review and discussion. I have question on the intent and the application of the word damages as used.
11. § 40.1-132. In stating facts and circumstances a court shall consider when an employee organization is brought before it there is omitted “the effect of the strike on the functioning of the government or upon service to the public”.

Under (iii) the ability of the employee organization to pay the penalty imposed should be deleted.

Under (iv) the expression good offices is questioned as desirable wording in a statute.

Under (iv), why must the governmental units be required to go to state or federal mediation and conciliation services ?

Under (v), what is the definition and application of the term extreme provocation ?

12. Somewhere in Article 2 there should be the presumption of employee organization responsibility in event of a strike. No protection is provided against those strikes where the organization/union purports to be absent and claims no involvement in creation or conduct of the strikes.
13. § 40.1-133. There is a conflict in this paragraph which includes a written agreement with any person but exempts individual contracts of employment .
14. § 40.1-134. Authority is given to representatives of governing bodies to discuss wages, hours, term and conditions of employment with public employees . This is being done!

Discussions of the above matter are prohibited with supervisory or confidential employees . This is strongly questioned. Government administration is placed in a bind.
15. § 40.1-135. Why is it necessary that a governing body adopt the so-called written memorandum of such understanding ?

Here again there is a question as to the State “governing body”

performance under this procedure.

16. § 40.1-136. There was a significant difference in the wording of this paragraph in the Bill and a statement in the Subcommittee's Report as to the intent of the paragraph. Whether the difference was cleared up or not is unknown.
17. § 40.1-137. "Enforcement". The prescription that the so-called written memorandum of understanding is enforceable, apparently at first level, in a court of record should receive discussion and review.
18. § 40.1-138. This paragraph, as worded, seriously deprives public employees of basic personal and employment rights. The paragraph specifies:

Any individual employee cannot present a grievance and have it adjusted unless the adjustment is consistent with the terms of an effective memorandum of understanding .

and

the employee representative must have been given opportunity to be present at such adjustment .

In view of these initial questions as to the suitability of the Bill as proposed by the Commission's subcommittee and in consideration of other questions earlier noted, it was necessary that I vote negatively on the proposal of the labor-management Bill.

.....
Julian F. Hirst

RIGHTS OF PUBLIC EMPLOYEES — THE VIRGINIA APPROACH

The Legislative Proposals Subcommittee was continued from 1973 in order to study changes in the Public Labor-Management Relations Act ("meet and confer" bill), H.B. 550, and the Public Labor-Management Contracts Act, H.B. 591, in addition to studying any other recommendations for legislation in the area of rights of public employees. Chairman of the Commission to Study the Rights of Public Employees, James M. Thomson, continued as Chairman of the Subcommittee whose membership consisted of: Julian F. Carper, J. Samuel Glasscock, George H. Heilig, Jr., Joseph P. King, Jr. and Frank W. McCulloch.

The Subcommittee has met four times since the full Commission was continued pursuant to House Joint Resolution No. 126 of the 1974 General Assembly. During these meetings the Subcommittee reviewed approaches other states have taken in this area and heard testimony from interested persons concerning their experiences under Virginia's present laws. Among others, the Subcommittee received testimony from the following: the Arlington Police Beneficiary Association, the Arlington Professional Firefighters Association, the Virginia Conference of the American Association of University Professors, the Henrico Professional Firefighters Association, the Montgomery County Education Association, the Charlottesville Education Association, the Alexandria Professional Firefighters Association, the Albemarle Educational Association, the State Professional Firefighters Association, the Superintendent of the City of Alexandria Schools and the Superintendent of the Bath County Schools.

As a result of this additional review and consideration of the drafts of legislation, the Subcommittee recommends the adoption of legislation which would accomplish the following:

1. Provide for an omnibus definition of a public employee in order to give broad effect to the recommended legislation;
2. Prohibit strikes in the public sector; provide for an omnibus and broad definition of a strike; create a broad presumption that employees absent or abstaining from work during a strike are engaging in a strike and further provide that the employees in violation of the strike prohibition be penalized as provided under the public employer's personnel rules;
3. Create a cause of action in favor of a public employer which suffers damages caused by an employee organization acting in violation of the strike prohibition;
4. Provide for injunctive relief against conduct violative of the strike prohibition and establish factors for a court to consider when determining the contempt penalty for noncompliance with its orders;

5. Permit the imposition of the loss of pay of two days pay for each day of a violation and permit the employee to be placed on probation for a one-year period;

6. Permit the public employer to impose additional penalties in its personnel rules for the violation of the strike prohibition;

7. Permit localities and other public employers to decide whether they wish to undertake contract negotiations with public employees or their representatives;

8. Require that contracts between public employers and public employees' organizations expressly shall provide for the retention of management prerogatives;

9. Provide that contracts between public employers and public employees' organizations are not to be binding until approved by the governing body of the public employer;

10. Permit a public employee to take his grievances directly to his employer provided that the employer allows this and any resulting adjustment is not inconsistent with any contract governing the rights between the public employer and the public employees.

The need for legislation to provide guidelines for Virginia's governing bodies in the area of public labor-management relations has arisen after the fact, since, at present, some 19 jurisdictions within the Commonwealth have voluntarily entered into agreements of one type or another with at least some of their employees. In view of these agreements and from time to time, opinions have been requested of the Attorney General of Virginia which have resulted in several opinions stating that Virginia's local jurisdictions do not have the authority to voluntarily enter into such agreements with their employees. In another opinion letter dated November 19, 1974, however, he has stated that county boards of supervisors and school boards have the authority to meet and reach agreements with employee representatives, reserving for themselves the right to make the final decision. The lack of clarity in the law is thus evident.

Alexandria, for instance, has entered into an agreement between its school board and the local education association, which the Attorney General of Virginia has subsequently stated, in his opinion, is not a valid agreement in the absence of legislative authority, which the General Assembly has, up to the present, refused to grant. However, the school board of the City of Alexandria and the Alexandria Education Association continue to abide by and operate under the agreement.

The focal point of the question that is raised is whether the State should grant the option to any State agency, county or city to meet with any group of employees and enter into agreements with them voluntarily. This question was raised in the first draft of the bill which became House Bill 591 in the 1974 Session. This bill, as originally drafted, provided that agreements between public employees and State and local governing bodies were against the public policy of Virginia unless made in accordance with the

provisions of the bill. The full Commission changed this language to provide that it was the public policy of the State to recognize these agreements in the public sector if made in accordance with the provisions of the bill. While it might not be apparent to the reader of the report just what the difference is and was, half of the Commission refused to support the measure with this change.

As a result, in the 1974 Session, the supporters of H.B. 591 took the policy statement out of the bill entirely and simply provided that if an agreement was reached between a public employer and a group of its employees, it was a valid agreement. However, even this neutral position could not reconcile the differing view points of the members of the Commission.

It should be noted that the provisions of this legislation are wholly voluntary on the part of the State or any county or city, that is to say that no governing body is required or compelled to enter into any agreements. This legislation simply says that if an agreement is reached, it is a valid agreement if done pursuant to the terms of this bill and then approved by the local governing body.

It is interesting to note that while opposition to this legislation has come primarily from such organizations as the Virginia Manufacturers Association and the Virginia Chamber of Commerce, the provisions in this bill are designed to protect the management rights of the public employer. The protective features of the Federal Executive Order 11491 relating to federal employees are included in § 40.1-136 of the recommended legislation, and in addition, we have required that these provisions be included in the contract so that they are before the contracting parties. Such provisions will not prohibit the parties from reaching agreement on procedural matters.

In the 1974 Session, the bill was amended so as to include stringent anti-strike provisions which were overly harsh and intended to be so by its sponsor. When the bill reached the Senate, the supporting organizations realized the severity of the penalties being dangled over their heads and they withdrew their support and joined the Virginia Manufacturers Association and the Virginia Chamber of Commerce in opposing the legislation, which resulted in its defeat.

The Subcommittee undertook after the end of the 1974 Session to redraft H.B. 591 and has included a series of recommendations dealing with the handling of strikes. Paramount among the recommendations is the retention of the no-strike provision which is already in the law. This sanction has been supported with the right of a public employer to sue for damages and also to apply for injunctive relief against a strike, in the local circuit court and, if the no-strike injunction is violated, the court may exercise its contempt powers. A set of criteria has been developed to help guide the court in imposing penalties deemed appropriate. In addition, public employees who engage in strikes "may be subject to removal, suspension or other disciplinary action under the employing agency personnel rules governing absence without leave or misconduct". Compensation of a striking employee may be deducted at the rate of

two days pay for each day or part thereof that he or she is involved in a strike and the employees may also be placed on probation for a year.

The argument has been advanced by those who have opposed H.B. 591 that such legislation will effectively transfer the authority to govern from the Commonwealth and its local governing bodies to employee associations. If this result appeared to be the case, we would join the opposition to H.B. 591. In examining this argument, it should be noted that under this legislation, no governing body is compelled to follow the provisions of H.B. 591; it is not mandatory; it is optional with the State or the local governing unit. However, if meetings are held and agreements are reached under the bill, the governing body has the right to veto any agreement which it considers undesirable. As a consequence, we feel that the interests of both the government and the public are fully protected.

Certainly the Commonwealth and its local governing bodies are better protected under H.B. 591 than they are today in view of the fact that many local governmental units in Virginia have already contracted away management rights and recognized units for bargaining which are really not in the best interest of the public or its government. This has resulted because there are no guidelines or controls on which the Commonwealth or its localities can rely.

Typically, those more rural jurisdictions who have not been faced with such problems in the public sector look askance on the Northern Virginia area where such agreements have been in effect for many years, and, in addition, they look at the salaries paid by these jurisdictions with alarm. It is undisputed that the metropolitan area of Washington, D. C., particularly, in the Northern Virginia counties of Arlington and Fairfax and the cities of Alexandria, Falls Church and Fairfax, pay the highest salaries; and have some of the largest schools in the State. However, no union has taken over the control of or even threatens to gain any control over the governments in this area. As a practical matter union strength is probably less in the Northern Virginia area than in any other part of the State. As a matter of fact, the teachers in the Northern Virginia area are represented by their local education association and are not represented by any union.

Some may ask why the urban jurisdictions have been faced with these problems in recent years. It would appear that there are some very practical reasons. The larger school divisions have organizational problems which tend to swallow up the individual and this is augmented in areas where the rate of turnover is high. Such agreements have tended to give the average teacher some input into the educational system and the teachers' working conditions.

In addition, while a rural county may be in a position to refuse to sign contracts except on an individual basis, a larger school division might have a somewhat different problem. The sixty teachers in Bath County may perhaps be replaced by sixty other teachers. We would question, as we were told many citizens there have questioned, whether substantial damage has not been done to

the educational system in that county with such a turnover. But whether that is true or not, larger urban jurisdictions would be hard-pressed to fill the gap left by the loss of several thousand teachers. Under the present law, for example, if Fairfax County's teachers refused to teach until their Education Association was recognized as a bargaining unit, and the county recognized the existence of a strike as a result of that action, the teachers would be automatically terminated and could not be rehired for twelve months unless that were permitted by a court. Fairfax County would simply be without a means of teaching its 120,000 children. Frankly, no larger jurisdiction can intelligently take that chance.

Basically, there is a difference in political philosophy between those who support this type of legislation and some of those who oppose this approach. Some of those who oppose H.B. 591 believe that when you work for a public employer, you become a second class citizen and you give up certain basic rights which are reserved only for those who work in the private sector. Basically, this group does not believe that a public employee has a right to join a union. They do not want to concede that this right which was first stated in federal court decisions under the Constitution of the United States has also been protected by Virginia's right to work law. The right to work law not only prohibits anyone from making a person join a union, but it guarantees to that person the right to join a union if he wants to do so.

There are those who condemn this legislation as not in the best interests of Virginia. Like many private employers, the public employer tends to think of the government as his. Indeed it is not! The government is merely a group of individuals who represent all of the citizenry and the public employee as part of that citizenry is entitled to his say just as the rest of us are. For too long a period of time, the courts have continued to require more and more skill of the police and many of the jurisdictions have refused to provide the funds for the equipment, the training and the pay necessary to provide these skills. All over Virginia, and indeed the nation, local governments continue to authorize highrise developments without the necessary fire equipment or the trained personnel to handle this and other disasters. At least in the metropolitan areas the firemen and police have begun to raise their voices and are demanding to be heard. They are telling our elected officials: "If you want us to protect the public in an urbanized society, give us the compensation, give us the training, and give us the equipment to do the job." Who knows the need any better? But officials in several large Virginia cities have refused to open the door and meet with the traditional organizations representing policemen and firefighters, and some of these employees are now turning to more militant national unions.

The demand for participation in the education process of planning, programming and instruction in the field of education is perhaps further advanced in Virginia than with any other group of public employees. Teachers in areas surrounding the urban areas have begun to ask why they can't help in improving Virginia's educational system and have some voice in setting up the terms and conditions of their employment. Again, one might ask who is in a

better position to know the problems or can better supply answers than the teachers of Virginia. Yet in at least seventeen local jurisdictions employing over 13,000 teachers, the associations that have gained the support of a majority of these teachers have been denied recognition.

Our point is now, as it has been from the start, that our public employees are citizens of Virginia and they are entitled to the normal rights and privileges excluding, however, the right to strike, of any privately employed person. There should never come a time when the Commonwealth or any of its subdivisions should refuse to sit down and discuss the problems that are of common interest to them.

Some members of this Commission believe that enlightened management can provide public employees adequate opportunities to participate in shaping the policies affecting their working conditions without authorizing collective discussions and agreements.

Other members are convinced by Virginia's experience that this will not happen in any meaningful way without legislation. House Joint Resolution No. 208 of 1973, endorsing such employee "input", has had no discernible impact on most State and local public bodies. Even the narrow mandate of grievance procedures adopted two years ago by the Assembly has had limited application, and in fact seems unknown to many public employees, and in some instances has been obstructed. In these circumstances five members of the Commission (Messrs. Thomson, Heilig, Sutherland, Carper and McCulloch) continue to recommend basic legislation along the lines of H.B. 550 to require public employers to meet and confer with organizations of their employees when a majority of those employees in an appropriate unit choose to be so represented. This would accord public employees the fundamental right of free choice which private employees now enjoy.

Recognizing the current opposition to such a basic measure, however, six members of the Commission (Messrs. Thomson, Glasscock, Heilig, Sutherland, Carper and McCulloch) strongly recommend, at a minimum, the legislation outlined above in more detail, to validate the agreements made where State or local bodies exercise their option to meet and hammer out understandings with their employees' organizations, provided management rights and the governing body's final say are maintained. With this there should be coupled more workable sanctions for any violations of the prohibition against public employee strikes. This clarification of the present uncertain law and support for the local bodies who choose to recognize and deal with their employees seems to us the least the Assembly can do to give form and order to the growing public employee relations problems.

We hope this legislation is adopted because we feel that it will minimize and tend to eliminate much of the unrest we foresee if the public employer refuses to meet and discuss the problems which mutually affect it and its employees, or if, having met and worked out an agreement, the public employer and its employees are left in

the dark as to the agreement's legal status and effect.

Respectfully submitted,

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James M. Thomson

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Julian F. Carper

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George H. Heilig, Jr.

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Frank W. McCulloch

.....

David A. Sutherland

STATEMENT OF J. SAMUEL GLASSCOCK

The sharp divergence of views among the members of the Commission emphasizes the difficulties involved in collective bargaining for public employees. Collective bargaining for public employees can cause a number of problems, but the failure to examine seriously this possibility is an invitation to even greater problems. Conditions have changed and continue to change in the field of public employment. It is unwise to fail to recognize these changes and even more unwise to fail to respond to them.

For many reasons, public employees have shown increasing interest in recent years in negotiating with public employers about wages, benefits, working conditions and the opportunity to have some input into decisions affecting their employment. This has led many of them to seek the assistance of professional labor representatives. It is no secret that many labor unions are anxious to acquire new dues paying members and, therefore, the courtship between public employees and unions is extremely active in some parts of the State.

Adding to the present problem is the confusion which exists regarding the legality of collective bargaining for public employees in Virginia. Some of the legal distinctions are quite fine and a variety of arrangements between public employees and governing bodies now exist in the State. In some areas, governing bodies refuse to discuss wages and other matters with public employees or their representatives. In other areas, collective bargaining exists on a rather complete and sophisticated scale.

Our present law now provides that a public employee who engages in a strike must lose his job for a year (§ 40.1-55). While this requirement would seem stringent enough to prevent a strike by any public employee, it was not successful in one Tidewater area. Only a legally permissible subterfuge permitted these employees to continue in their same work. The mandatory loss of job for one year by all striking public employees is an unworkable sanction at this time in our history.

Under all the circumstances, we must consider some change in our laws dealing with the rights of public employees. It would appear though that any consideration of the rights of public employees should consider the rights of the public. There is an enormous difference between public employment and private employment. Competition in the market place provides limitations on private industry and labor which do not exist in the public sector. Private industry and organized labor may engage in adversary bargaining backed by the threat of a strike or cessation of business to determine what part of the price paid by the consumer goes to industry and what part goes to labor. The government cannot simply go out of business and invest its funds in some other venture. The services provided by the government must continue to be given.

The question of ultimate responsibility for the operation of the government cannot be completely ignored. If public employees are accorded all of the rights of private employees, then the will of a relatively small number of public employees could outweigh the proper wishes of the public at large. And if some public employees have reservations about an arbitrary and unwise public administrator, then the public might well have some reservations about the possibility of an arbitrary and unwise public employee bargaining agent, whom they have no opportunity to vote out of office. It, therefore, seems that public employees cannot be given all the rights of private employees and they cannot be given the right to strike.

It follows though that if we are to deny public employees the right to strike, then we must provide some machinery to ensure that public employees receive fair wages, benefits, working conditions and a reasonable opportunity for contribution to the decisions affecting their work. While changes in conditions in the future may require other decisions, it seems that at this time the General Assembly should:

- (1) Adopt a statement of public policy which provides:
 - (a) That there must be no work stoppage by public employees.
 - (b) That when enlightened management practices are followed and there is mutual respect and concern between governing bodies, administrative officials, other government employees and the general public, harmonious relations can exist and there is no need for formal and adversary negotiations regarding the rights and duties of public employees.
- (2) Repeal § 40.1-55 which now provides an unworkable sanction on strikes by public employees.
- (3) Enact legislation which:
 - (a) Prohibits strikes.
 - (b) Recognizes that some localities now have a form of collective bargaining for public employees and permits bargaining agreements provided certain safeguards are included, e.g., retention by the public employer of management rights.
 - (c) Provides a workable definition of bargaining unit.
 - (d) Provides reasonable and workable sanctions against strikes.
 - (e) Requires approval of agreements by governing bodies.
- (4) Expand the application of the present grievance procedure and establish responsibility to make certain that the grievance procedure is actually used as intended to resolve differences between public employers and employees.
- (5) Establish advisory committees at the various levels of

government to assist in determining and publicizing fair wages, benefits and working conditions. Such committees should be composed of representatives of government, public employees and the public.

(6) Establish responsibility for training in and utilization of good management techniques at the various levels of public employment, including meaningful employee participation in management decisions where possible.

Respectfully submitted,

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J. Samuel Glasscock

PART II

GRIEVANCE PROCEDURES

The Commission to Study the Rights of Public Employees continued its subcommittee to study grievance procedures for public employees which it established last year. The Subcommittee has continued to analyze several aspects of the grievance procedures, including:

1. The progress of State agency grievance procedures;
2. The progress within localities in implementing grievance procedures;
3. The need for consolidating the State Board of Education grievance plan with the State agency plan; and,
4. The justification for excluding local welfare personnel and constitutional officers from grievance procedures.

The Chairman of the Commission, Mr. James Thomson, appointed William F. Parkerson, Jr., Subcommittee Chairman and Coleman B. Yeatts, Chatham, Claude W. Anderson, Buckingham, Julian Hirst, Richmond, Francis V. Lowden, Jr., Richmond, and David A. Sutherland, Fairfax, to serve on the Subcommittee.

The Subcommittee sought guidance and expressed its indebtedness to the Director of the Department of Personnel, John Garber, the Virginia Municipal League, and the Statewide Personnel Administration Improvement Project Director and Consultant, Messrs. Arthur T. Lewis, Jr. and Jack Foster for their diligent efforts on the Subcommittee's behalf.

After consideration of the findings and suggestions of the Subcommittee, the Commission makes the following recommendations to the General Assembly.

RECOMMENDATIONS

1. The Commission recommends the continuation of grievance procedure analysis. John Garber documented evidence to report to the Subcommittee that the grievance procedures have had a significant and favorable impact on employee-employer relations. The Analysis of Grievances Filed under the Commonwealth of Virginia's Uniform Grievance Procedures (October 1, 1973-March 31, 1974), prepared by the Division of Personnel, has been attached hereto as Appendix B. This report demonstrates the Commonwealth's good faith efforts to deal with employees equitably. No instances of employee or employer dissatisfaction with the procedure have been reported. The procedure has been

made available to all employees and supervisory employees have expressed interest in training programs to assist them in improving employer-employee relations. The Commonwealth thus far has experienced excellent concerted efforts from all personnel in providing fair and equitable resolutions of work-place disputes. The Commission recommends that the Department of Personnel continue its analysis of the grievance procedure in order to ascertain the continued effectiveness of this new administrative tool in the settlement of grievances.

2. The Commission urges local governing bodies to provide employees with applicable grievance procedure plans in order to enhance the lines of communication by making employees aware of the procedure available to them. As of July 1, 1974, all localities with fifteen or more employees were required to promulgate a grievance procedure approved by the Department of Personnel or adopt the State plan. Thus far, approximately 98 out of 127 eligible localities have submitted approved grievance procedures. Eleven localities have operating procedures which have not yet been approved. Twenty-nine localities having fifteen or more employees have not submitted grievance procedures which are in conformance to the requirements of the Code. The attached Appendix C contains lists of those localities falling into the aforementioned categories. The Statewide Personnel Administration Improvement Project sponsored jointly by the Virginia Municipal League, the Virginia Association of Counties, the Division of State Planning and Community Affairs, the U. S. Civil Service Commission and the State Personnel Division served localities in the early months of 1974 by conducting training workshops and providing on-site technical assistance to assist in the effective resolution of grievances. The emphasis of the programs has been on good supervisory practices to prevent grievances. However, the procedure in the localities is still in its early implementation process and the Commission agrees that much more data should be obtained in order to ascertain its use and effectiveness. Presently no agency or division is responsible for assuring that local governing bodies notify their employees of the available procedure for the resolution of grievances. Therefore, the Commission finds the need to continue to monitor the progress of localities in making procedures available to their employees and the use made of the procedures by the employees. It urges localities to move forward with their plans in order that the General Assembly can obtain a complete picture as to their effectiveness.

3. The Commission reviewed the grievance procedure promulgated by the State Board of Education. Although the procedure differs in form with the State procedure, it has been observed that the procedure conforms with the State plan in providing an administrative procedure for the resolution of employer-employee disputes. No evidence exists at this time to justify the consolidation of the procedures.

4. The Commission reconsidered the justification for exclusions of certain classes of public employees from the grievance procedure, i.e., local welfare employees and constitutional officers. After consultation with the Director of the Department of Welfare and

Institutions, William L. Lukhard, the Commission recommends that the exclusion of local welfare employees be terminated.

RATIONALE

I. PROGRESS OF VARIOUS STATE AGENCY GRIEVANCE PROCEDURES.

Mr. Garber, Director of Personnel, presented the Subcommittee with evidence showing that such procedures are fully operational. As shown in Appendix B, fifty grievances were reported by seventeen agencies. Twenty-seven (54%) were settled prior to arbitration, nine (33%) of which were settled in favor of the grievant. At the panel hearing level, five out of thirteen grievances were settled in favor of the grievant. Forty-four percent of the grievances filed were settled at the second step of the procedure, 22% at the third level and 27% at the fourth level. It is apparent that employees are increasingly using the procedure for settling work-place disputes. Also depicted in Mr. Garber's report is the increased employee representation by fellow employees and attorneys and the varied nature of the grievances. That the procedures are workable and accepted by employers and employees demonstrates the Commonwealth's positive attitude toward the judicious resolution of conflicts. The most heartening ratio is the total number of State employees compared to the total number of grievances filed - 64,186 to 50, or .07%. This further demonstrates the excellent efforts of the Commonwealth to provide excellent working conditions for its employees. The Commission commends the Commonwealth in this regard.

II. PROGRESS WITHIN LOCALITIES IN ESTABLISHING GRIEVANCE PROCEDURES.

Aspects of the progress with localities' grievance procedures include: adoption of the procedures, implementation of such procedures, communication with employees regarding the availability of the procedures and communication with supervisors regarding the processing of grievances.

Statistics furnished by the Statewide Personnel Improvement Project (Appendix C) show 98 out of 127 local governments required to comply with such procedures have done so. Instruction and training seminars have assisted a great deal of localities in developing procedures. A problem, however, arises in that no agency or officer of the State has been delegated the responsibility of notifying those localities which had no procedure prior to July 1, 1974, that they are now required to implement the State procedure.

The Statewide Personnel Administration Project has rendered a valuable service to localities through its on-site technical assistance to 48 local governing bodies. Training workshops have begun across the State to assist localities in developing expertise in the implementation of the procedure, methods of communication between supervisors and employees and ways to assure that every

employee is aware of the administrative channels through which he may voice his concerns.

The Commission feels that localities are moving with good faith intentions and positive attitudes toward addressing employee grievances. Certain problems still exist in a few localities but the Statewide Personnel Administrative Improvement Project will continue to assist localities in ascertaining solutions through its workshops and seminars.

At the present time, localities have been operating under the procedures for such a short time that the Commission recommends continued monitoring of the progress of localities in responding to grievances under the procedures. The Commission strongly urges localities to make every effort to make their employees aware of their grievance system and how to use it efficiently and effectively.

III. INCLUSION OF LOCAL WELFARE EMPLOYEES IN THE STATE GRIEVANCE PLAN.

The exclusion of local welfare employees and constitutional officers from the grievance procedure was originally based upon the unique employment relationship they hold with certain State agencies. The Commission has learned that the State Board of Welfare recently amended its personnel rules to require the local welfare departments to comply with a grievance procedure plan which is very similar to the State plan. Additionally, the Commission has learned, through consultation with Mr. Lukhard, Director of the Department of Welfare and Institutions, that inclusion of welfare employees in the State grievance procedure would not affect the Department's system of classification and compensation or in any other way prove detrimental if the Personnel Act's exemption of welfare employees was left intact. For these reasons, the Commission feels that the exclusion of welfare employees from the grievance procedure is no longer justified and recommends that this exclusion be deleted (Appendix D). At the present time the Commission finds no evidence to support disturbing the constitutional officer exclusion.

Respectfully submitted,

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James M. Thomson, Chairman

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William F. Parkerson, Jr., Vice Chairman

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Claude W. Anderson

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Julian F. Carper

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J. Samuel Glasscock

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George H. Heilig, Jr.
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Julian Hirst
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Joseph P. King, Jr.
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Francis V. Lowden, Jr.
.....
Frank W. McCulloch
.....
David A. Sutherland
.....
Coleman B. Yeatts

APPENDIX A

A BILL to amend the Code of Virginia by adding a chapter numbered 7 in Title 40.1 containing sections numbered 40.1-127 through 40.1-138; and to repeal Article 2 of Chapter 4 of Title 40.1 containing sections numbered 40.1-55 through 40.1-57.1; the added and repealed sections relating to public employer-employee relations, prohibiting of strikes and penalties.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a chapter numbered 7 in Title 40.1 containing sections numbered 40.1-127 through 40.1-138 as follows:

Article 1.

Definitions .

§ 40.1-127. *Definitions.—As used in this chapter:*

A. *“Chief executive officer” means the ranking administrative official of any public employer or his delegate or such person as the governing body may designate as such. In the case of school divisions, the superintendent of the local school division shall be the chief executive officer.*

B. *“Confidential employee” means any person whose job includes responsibilities on behalf of the employer in connection with the public employer’s personnel policies and practices.*

C. *“Employee organization” means any organization which includes employees of a public agency and which has among its primary purposes representing such employees in discussions with that public agency over grievances and wages, hours, and other terms and conditions of employment.*

D. *“Governing body” means the body of the public employer possessing legislative powers and the power to appropriate public funds. In the case of school divisions, it means the school boards to the extent of their supervisory authority granted by the Constitution.*

E. *“Public employee” means any person employed by a public employer, including teaching personnel, except those persons (1) elected by popular vote, (2) appointed to office by the Governor of this State, (3) serving on the staffs of the Governor and General Assembly, and (4) employed as supervisors, or (5) serving as confidential employees.*

F. *“Public employer” or “employing agency” means the State of Virginia or any agency or department thereof including State universities and colleges; and every political subdivision or district, and every town, city, county or municipal corporation, and every public school board, or school division.*

G. *“Strike” means the failure by concerted action of public employees to report for*

duty, the willful absence without satisfactory cause from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, or in any manner interfering with the operation of any public agency, for the purpose of inducing, influencing, or coercing a change in the conditions or compensation or the rights, privileges, or obligations of employment.

H. "Supervisor" means any person having authority in the interest of the employer: (a) to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees; (b) responsibility to direct the employees; (c) to adjust their grievances; or (d) effectively to recommend such action, provided that in connection with the exercise of the foregoing authority there is required the use of some independent judgment as opposed to the exercise of such authority of a routine or clerical nature.

I. "Teaching personnel" means those persons holding regular teaching certificates of this State, and who are employed by any school board or school division, except that superintendents of schools, assistant superintendents, principals, certified professional employees who represent a board of education at meetings with teaching personnel or who are regularly responsible to a board of education for personnel relations or budget preparation, certified teaching personnel employed in an administrative capacity and temporary substitutes are excluded.

Article 2.

Public Employee Strikes.

§ 40.1-128. *Prohibition of strikes.*—No public employee or employee organization shall engage in a strike, and no public employee or public employee organization shall cause, instigate, encourage, or condone a strike.

§ 40.1-129. *Presumption.*—For purposes of this article an employee who is absent from work without permission or excuse, or who abstains wholly or in part from the full performance of his duties in his normal manner without permission, on the date or dates when a strike occurs, shall be presumed to have engaged in such strike on such date or dates.

§ 40.1-130. *Violations and penalties.*—Any public employee who violates § 40.1-128 may be subject to removal, suspension or other disciplinary action under the employing agency personnel rules governing absence without leave or misconduct. Such disciplinary action may include the deduction of the employee's compensation of two days pay for each day, or part thereof, of his participation in a violation and the placing of such employee on probation for one year.

§ 40.1-131. *Actions for damages.*—Any employee organization which violates § 40.1-128 may be subject to an action in the circuit court of the county or city where the violation occurred for damages thereby caused in a proceeding brought by the chief legal officer upon the request of the governing body of the public employer involved; provided that in cases where the public employer is the Commonwealth the proceeding shall be brought by the Attorney General at the request of the Governor. The court hearing such action may consider in mitigation of damages acts of extreme provocation by the public employer or his representatives which detracts from the employee organization's responsibility for the violation.

§ 40.1-132. *When public employees or an employee organization threaten to act, appear to be about to act, or are acting in violation of § 40.1-128, the public employer or*

employing agency may apply to the court of appropriate jurisdiction for an injunction against such violation. If public employees or an employee organization fail to comply with an order of the court enjoining or restraining such action, the chief executive officer may request that the court punish such violators under the contempt power and procedures of the court.

In fixing the penalty for such noncompliance, the court shall consider all the facts and circumstances directly related to the contempt, including but not limited to: (a) the extent of any wilful defiance of or resistance to the court's mandate, (b) the impact of the strike on the public health, safety, and welfare of the community and (c) the ability of the employee organization to pay the penalty imposed; and the court may consider (i) the refusal of the employee organization or the public employer upon the request of the other party to accept the good offices of any available State or federal mediation and conciliation services to assist the parties in their resolution or settlement of issues in dispute and (ii) whether, if so alleged by the employee organization, the public employer or its representatives engaged in such acts of extreme provocation as to detract from the responsibility of the employee organization for the strike.

Article 3.

Public Labor-Management Contracts Act.

§ 40.1-133. Statement of policy.—If any official or group of officials of the State, or of any county, city or town, or of any other political subdivision of the State, shall enter into a written agreement with any person, association or employee organization respecting wages, hours or any other conditions of employment of public employees, such agreement shall be enforceable only if it substantially conforms with the provisions of this article. The provisions of this article shall not apply to any contract or agreement in force on the effective date hereof, but shall apply in all respects to contracts or agreements entered into thereafter and to any renewal or extension of any existing or new contract. This article shall not apply to individual contracts of employment.

§ 40.1-134. Discussions.—The governing body of any public employer may elect to have its representative or representatives discuss wages, hours, and other terms and conditions of employment of its public employees with its public employees or any representative thereof; provided that no discussion shall be had with supervisory or confidential employees.

§ 40.1-135. Written memorandum.—If agreement is reached pursuant to § 40.1-134, the parties thereto may prepare a written memorandum of such understanding which shall not be binding until adopted, or modified and adopted as modified, by the governing body in the regular course of legislative business.

§ 40.1-136. Parties' rights provisions.—Every memorandum of understanding, adopted or adopted as modified in conformance with § 40.1-135, shall expressly state: "Management officials of the public employer retain the right to: (a) direct employees of the agency; (b) hire, promote, transfer, assign, and retain employees in positions with the public employer, and to suspend, demote, discharge, or take other disciplinary action against employees; (c) relieve employees from duties because of lack of work or for other legitimate reasons; (d) maintain the efficiency of the operations entrusted to them; (e) determine overall objectives and policies and the methods, means and personnel by which operations are to be conducted; and (f) take whatever actions may be necessary to carry out the mission of the public employer in situations of emergency."

§ 40.1-137. Enforcement.—To the extent that such memorandum is adopted in conformance with this article, and is in force and effect, it shall be enforceable by an interested party in the appropriate court of record in this Commonwealth.

§ 40.1-138. Individual rights preserved.—Nothing herein shall deprive any individual employee of his right at any time to present a grievance to his employer and to have the same adjusted as long as the adjustment is not inconsistent with the terms of any memorandum of understanding then in effect covering such employee; provided, that the employee representative of an employee thus covered has been given opportunity to be present at such adjustment.

2. That Article 2 of Chapter 4 of Title 40.1 containing sections numbered 40.1-55 through 40.1-57.1 of the Code of Virginia is repealed.

APPENDIX B

Analysis of Grievances Filed under the Commonwealth of Virginia's Uniform Grievance Procedures (October 1, 1973-March 31, 1974)

At the request of the Commission to Study the Rights of Public Employees, a follow-up to the study undertaken in the fall of 1973 to assess the use and adequacy of the Uniform Grievance Procedures was conducted. A questionnaire similar to the one used in the previous study was sent to the heads of all State agencies (see Appendix A).

Of the 90 agencies reporting, 27 large and 46 small agencies reported no grievances. A total of 50 grievances were reported by 16 large agencies and 1 small agency. (See Table 1). The number of grievances and the number of agencies reporting grievances for the period October 1, 1973 - March 31, 1974 was quite similar to those reported during the first reporting period (December 1, 1972 - September 31, 1973), however Table 2 reveals that it was not the same agencies reporting grievances for both periods. Of those 24 agencies reporting grievances for the two time periods, 14 agencies (58%) had grievances during only one of the reporting periods, while 10 agencies (42%) had grievances during both of the periods.

Table 3 shows that of the 50 grievances reported, 27 (54%) were settled prior to arbitration. Of those 27 grievances settled prior to arbitration, 9 (33%) were settled in favor of the grievant. Of those 13 grievances settled by a panel hearing, 5 (38%) were settled in favor of the grievant. Four of the grievances filed under the State's Uniform Grievance Procedures are now pending in court and six of the grievances filed are in progress under the State's procedures.

Table 4 reveals that of the 49 grievances filed in the large agencies, 16 (33%) were settled at the second step of the grievance procedure. Seven (44%) of the 16 grievances settled at the second step were settled in favor of the grievant. Eleven grievances (22%) were settled at the third step (two decisions (22%) in favor of the grievant), and 13 grievances (27%) were settled by a panel hearing at the fourth step. In the large agencies, six grievances have not been settled under the State's procedure and three grievances are pending in court. The only grievance filed in a small agency is pending in court.

Grievance cases being referred to the courts is a new development during this reporting period. In all but one of the four cases now in court, the grievance progressed through the panel hearing under the State's procedures before being filed as a court suit. The other suit was filed just prior to the panel hearing.

Employee representation is depicted in Table 5. It is evident that employees usually seek representation as the grievance progresses to higher levels of the procedures. While 14 (88%) of the 16 grievants whose grievances were settled at the second step had no representation, only 3 (21%) of the 14 grievants whose grievances were settled at the fourth step had no representation (7 were represented by attorneys and 4 were represented by fellow employees). There appears to be an increase in employee representation from the last reporting period, especially in the use of attorneys.

The Commission to Study the Rights of Public Employees expressed concern that State employees were not aware of the Uniform Grievance Procedures. To alleviate this concern, the questionnaire instructions emphasized the need to make employees aware of the grievance procedures. Appendix B explains the actions being taken in some of the State agencies to disseminate information on the grievance procedures to State employees.

Appendix C includes comments from several agencies on the grievance procedures.

From the data presented in this report and the previous report, it appears that the grievance procedures are functioning adequately as a means of resolving employee - supervisor differences. From the comments offered by the agencies, it appears that State employees should be aware of the grievance procedures. It is the belief of the agencies and the Division of Personnel that the relatively small number of grievances filed is the result of effective communication between employees and their supervisors.

Reports of this nature will be presented approximately every six months to provide a means to evaluate the effectiveness of the grievance procedures on a continuing basis.

Table 1

NUMBER OF AGENCIES REPORTING

	No Grievances	Grievances	
Large Agencies	27	16	43
Small Agencies	46	1	
Total	73	17	90*

* Nine Agencies not under the grievance procedure.

Table 2

Trends in Agencies Reporting Grievances *

	No Grievances 1st Period	Grievances 1st Period	
No Grievances 2nd Period	63	7	70
Grievances 2nd Period	7	10	17
	70	17	87**

*Includes 5 agencies with carry over grievances from the 1st Reporting Period.

**In the 1st Reporting Period, 10 agencies were not under the grievance procedure and 2 agencies did not respond to the questionnaire.

Table 3

Grievances Settled Prior to and by Panel Hearings for Large and Small Agencies*

SMALL
AGENCIES

LARGE
AGENCIES

Settled Prior to Panel Hearing		Settled by Panel Hearing		In Court	Not Settled
Settled in favor of Grievant	Settled in favor of Agency	Settled in favor of Grievant	Settled in favor of Agency		
0	0	0	0	1 Pay	0
1 Salary 2 Policy 1 Failure to follow instructions 1 Dismissal 1 Leave 2 Work Schedule 1 Working Condition	1 Discrimination 1 Termination 2 Service Rating 1 Failure to follow instructions 3 Work Schedule 4 Policy 4 Promotion 1 Reassignment 1 Demotion	4 Removal 1 Merit Increase	5 Removal 2 Promotion and/or Transfer 1 Policy	2 Sex Discrimination 1 Promotion, Tenure Salary	2 Service Rating 1 Demotion 1 Work Schedule 1 Termination 1 Failure to follow instructions
9	18	5	8	3	6
TOTAL	9	18	5	8	4

* Includes 6 grievances carried over from 1st Reporting Period.

Table 4

Nature of Grievances Filed Within Levels of Settlement for Large and Small Agencies*

Level at which Grievance Settled	Large Agencies		Small Agencies	
	Settled in favor of Grievant	Settled in favor of Agency	Settled in favor of Grievant	Settled in favor of Agency
2nd	1 Salary 1 Failure to follow instructions 1 Dismissal 2 Work Schedule 1 Working Conditions 1 Policy 7	1 Termination 4 Policy 1 Work Schedule 3 Promotion 9	0	0
3rd	1 Policy 1 Leave 2	1 Discrimination 2 Service Rating 1 Failure to follow instructions 2 Work Schedule 1 Promotion 1 Reassignment 1 Demotion 9	0	0
4th	4 Removal 1 Merit Increase 5	2 Promotion 5 Removal 1 Policy 8	N.A.	N.A.
In Court	2 Sex Discrimination 1 Promotion, Tenure, Salary 3		1 Pay	1
Not Settled	2 Service Rating 1 Demotion 1 Work Schedule 1 Termination 1 Failure to follow instructions 6			0

Total

49

1

* Includes 6 grievances carried over from 1st Reporting Period.

Table 5
EMPLOYEE REPRESENTATION DURING THE GRIEVANCE PROCEDURE

Level at which Grievance Settled	Level Prior to Settlement	LARGE AGENCY REPRESENTATION					SMALL AGENCY REPRESENTATION					Total
		Fellow Employee	Friend	Relative	Attorney	No one	Fellow Employee	Friend	Relative	Attorney	No one	
2nd	2	2				14						16
3rd	2	2	1	1								4
	3	1			1	9						11
4th	2											0
	3	1										1
	4	4			7	3						14
In Court	2						1					1
	3								1			1
	4				1	2			1			4
Not Settled	2	2			1	2						5
	3				2							2
	4				1							1
Total		12	1	1	13	30	1	0	1	1	0	60

APPENDIX A

COMMONWEALTH OF VIRGINIA
OFFICE OF THE GOVERNOR



JOHN W. GARBER
DIRECTOR
DIVISION OF PERSONNEL

TELEPHONE 778-3804
P. O. BOX 634
RICHMOND 23205

April 26, 1974

MEMORANDUM

TO THE HEADS OF ALL STATE AGENCIES:

The Commission to Study the Rights of Public Employees has again requested information on the use of the State's uniform grievance procedures. Therefore, we must ask that you provide us with data on the number of grievances filed in your agency since our last survey, October 1, 1973.

Please list all grievances filed between October 1, 1973 and March 31, 1974 on the enclosed questionnaire. Also, include those grievances which were listed in the previous survey as not settled (include even if the grievance is still not settled).

The use of the grievance procedure will be a continuing concern of the Commission for the next biennium. Therefore, we will be requesting grievance data from you periodically (approximately every six months) throughout the next two years. Your cooperation in maintaining your records so that this information will be available upon request will be appreciated.

The Commission has expressed concern that few State employees are aware of the grievance procedures. Please address yourself immediately to this concern and include in your report a reference to specific actions taken or planned to ensure complete dissemination of information on these procedures to all of your employees.

The questionnaire should be completed and returned to the Division of Personnel by May 10, 1974. (Questionnaires must be returned even if you have had no grievances.) Any questions regarding the questionnaire should be addressed to Peggy S. Mobley, State Personnel Manpower Analyst, Division of Personnel, P. O. Box 654, Richmond, Virginia 23205; telephone - Richmond agencies-7548, SCATS - 369-7548.

A handwritten signature in cursive script, appearing to read "John W. Garber".

John W. Garber
Division of Personnel

INSTRUCTIONS :

Please Read Carefully

The following instructions are provided to assist you in the preparation of this questionnaire. Please provide the requested information for each grievance reported in your agency between October 1, 1973 and March 31, 1974 which progressed to the second step or higher of the Commonwealth of Virginia's grievance procedure. Also include those grievances which were reported as not settled in the previous survey even if they still remain unsettled.

Questions:

1. Self explanatory
2. Self explanatory
3. Column headings:
 - A. Nature of Grievance--briefly describe the grievance.
 - B. Level at which grievance settled--indicate the final step of the grievance procedure used (2, 3, or 4). If grievance has not been settled as of the cut off date, March 31, 1974, indicate N.S. - not settled.
 - C. Employee Representation--indicate if the grievant was represented by anyone at any stage of the grievance procedure. If he/she was, indicate the level at which the representation occurred. Example: If the grievant had a fellow employee represent him at the second step, a friend representative at the third step, and an attorney represent him at the fourth step, it should be shown this way:

Employee Representation

Fellow Employee	Friend	Relative	Attorney	No One
2	3		4	

- D. Results--briefly indicate the decision and in whose favor it was made.
4. Comments--to be used for comments and suggestions regarding the grievance procedure.

Grievance Procedures Use October, 1973-March, 1974

Please refer to the attached instructions for information regarding the completion of this questionnaire.

(1) Agency _____ I. D. Number _____

(2) Number of persons employed by your agency.

____ Less than 100 ____ 100 or more

(3) For each grievance carried to the second step or higher, provide the following information:

Nature of Grievance	Level at which Grievance Settled	Employee Representation					Results
		Fellow Employee	Friend	Relative	Attorney	No One	
1							
2							
3							
4							
5							

(4) Please use the space provided to make comments and/or suggestions for the improvement of the grievance procedure.

Appendix B

Dissemination of Grievance Procedures Information

Actions taken by various State agencies to Disseminate information on the State's Uniform Grievance Procedures:

1) Commission of Outdoor Recreation:

On December 13, 1972 a memorandum was sent to all members of the staff concerning the Employee Grievance Procedure and a copy of Personnel Rule 14 (Employee Grievance Procedures). When a new employee is hired he is given a copy of the memo and the Employee Grievance Procedure.

2) State Milk Commission:

Copies of the Grievance Procedure as required by Personnel Rule 14, effective December 1, 1972, were given to each employee of this agency, also copies were posted to each bulletin board.

3) Virginia Institute of Marine Science:

Employees have been notified of Grievance Procedures.

4) George Mason University:

Each new employee hired by the University is furnished a copy of the Employee Grievance Procedure during initial processing, and the importance of maintaining channels of communications is emphasized. This procedure has proven satisfactory to date.

5) Virginia National Guard:

The Department of Military Affairs published the State Grievance Procedure to all State employees on 8 January 1973. Each employee was required to acknowledge receipt for the procedure. This acknowledgement is filed in the individual's personnel folder which is maintained in this office. Each new employee is given a copy of the State Grievance Procedure upon entering state service in this department, and is required to acknowledge receipt therefor.

6) Virginia State Library:

A copy of the Grievance Procedure has been posted on bulletin boards and included in the revised handbook of the Virginia State Library.

7) VMI:

Copy to All Employees - December 1972
Copy of Instructions to All Supervisors - December 1972
Copy included in Orientation Booklets for All New Employees
Posted on Bulletin Board for Buildings and Grounds Employees
Reminder to be drafted, mailed to each employee and posted
in conspicuous places on the Post - May 1974

8) Virginia Employment Commission:

Copy of grievance procedure given to each employee in April 1973; to Supervisors in March 1973.

An outline of the grievance procedure included in the new employees handbook issued to each employee in September 1973.

New employees told during Basic Training Class that Grievance Procedure is in effect.

9) Division of War Veteran Claims:

On January 26, 1971, the complete explanation of the grievance procedure to conform with the Virginia Personnel Rules was mailed to each employee of this Division.

On January 19, 1973, the revised grievance procedure was sent to each employee.

10) State Registration Board for Contractors:

Duplicate copies of the Grievance Procedure were made and distributed to all employees of this Board November 30, 1972.

11) Division of Industrial Development:

We originally provided each employee with a copy of our procedure at the time it was adopted 1-1-73. To alleviate the concern of the Commission, we are today again distributing copies to all employees.

12) State Department of Health:

A copy of the grievance procedures was issued to each employee in January 1973. Also instructions were issued at the same time directing each Section, Bureau, Division and Local Health Department to make copies of the grievance procedures to be given to new employees upon employment.

13) Department of the Treasury:

A copy of the grievance procedure has been distributed to each employee of the Department of the Treasury. When new employees report for work they receive a copy of the grievance procedure along with the other necessary payroll deduction and personnel information forms.

14) Department of Accounts:

Grievance procedure is posted to bulletin boards. Section heads discuss grievance procedures during training sessions. New hires are informed of procedures.

15) DeJarnette Center for Human Development:

We feel that our employees are aware of the grievance procedures. A copy of the procedure was distributed to each employee on January 29, 1973. A new Department of Mental Health and Mental Retardation Employees Handbook was distributed to each employee in December, 1973. This handbook contains the grievance procedure. Receipt of this handbook was acknowledged and filed in the employee's personnel folder. New employees receive a copy of the handbook upon entering service along with a review of its contents. The grievance procedure was reviewed with supervisory personnel in January, 1973, and again in December, 1973. These people in turn reviewed the procedure with the employees under their supervision on both occasions. This institution has been represented at seminars including this subject on the agenda. Several of our employees have served on grievance hearing panels in other hospitals.

16) Christopher Newport College of the College of William and Mary:

It is the opinion of this College, and its employees, that Rule 14 - - Employee Grievance Procedures, of the Virginia Personnel Act of 1942 (Amended), is very just and equitable. The contents of House Document No. 28 of 1974 have been carefully reviewed, especially the comment on page 9 relating to the lack of knowledge of the grievance procedure. Christopher Newport College reproduced Rule 14 when it was first issued and distributed it to all classified employees on the campus. Since then it has been incorporated into the College Personnel Handbook, almost verbatim and all employees received a copy of that publication. The College enjoys the situation of being very small, only sixty classified employees, and the Personnel Officer has the opportunity to keep them advised of current State personnel policy. This is on a daily and personal contact basis. To this date, the College has not encountered a grievance which has gone beyond the first step.

17) Virginia School for the Deaf and for the Blind at Staunton:

A copy of the Grievance Procedure with detailed steps to follow was given to each employee when the program was started. "The Procedure" is stated in our "Employee Handbook" of which each employee was issued a copy. All new employees are given a copy of the "Handbook" at the time of employment. "The Procedure" is posted on all bulletin boards.

18) State Board of Elections:

The State's grievance procedures are posted in the Office.

19) Virginia Port Authority:

The Virginia Port Authority has taken every step to see that our employees are aware of the grievance procedures. On December 18, 1972 all employees were given a copy of the Grievance Procedures and a memorandum outlining the first and second level review. All new employees are also given a copy of Rule 14.

20) Division of Consolidated Laboratory Services:

We feel that all in this Division are aware of the procedure. We prepared a Division procedure summarizing Rule 14 and including the assigned levels of supervision for each step. A copy was given to each employee and each new employee receives a copy on reporting to work.

21) Blue Ridge Sanatorium:

Copies of Grievance Procedures, Supervisory Instructions, and forms for handling grievances were distributed to each department head on February 20, 1974. Copies of Grievance Procedures and forms for starting grievances and panel hearings were distributed to all employees and posted on bulletin boards on March 5, 1974. All new employees receive the information mentioned when they are employed.

22) Office of Emergency Services:

On May 2, 1974, a copy of the grievance procedure was distributed to each salaried employee of this agency.

23) Division of Drug Abuse Control:

To be sure that all employees are freshly aware of the channels open for handling grievances, we have xeroxed the Grievance Procedure for Small Agencies sent to us in late 1972 for each section in our office and asked that the procedures be discussed with employees by their supervisor and then posted on bulletin boards in each section.

24) Petersburg Training School and Hospital:

Each new employee receives an Employee's Handbook which contains the complete Grievance Procedure - further during the employee orientation this is discussed. (All employees were issued this new handbook in December, 1973 - prior to that a stenciled copy was given to each employee). Each employee must sign a slip indicating that they have received a copy of "The Employee's Handbook." On this slip, their attention is specifically directed to the Grievance Procedure, pages 38-44.

25) Virginia Department of Labor and Industry:

We distributed copies of the Grievance Procedures to all employees 2-73.

26) Longwood College:

September 1973 each semi-monthly employee received a copy of the grievance procedures with their September 22 check and all monthly employees received a copy of the grievance procedures in their mailboxes. Each new employee since that time receives a copy when they are hired.

On March 1, 1974, all office personnel had a meeting; on April 23, 1974 all custodial workers, grounds laborers, and power plant personnel had a meeting; on April 24, 1974, all painters, electricians, plumbers, and all other workers at Longwood had a meeting; and, the above three meetings had as a part of their agenda the discussion of the grievance procedures with time for questions and answers.

27) Highway Safety Division:

To insure that all employees were made familiar with this procedure, it has been made a part of the Division's personnel manual, a copy of which has been furnished to each employee.

28) Catawba Hospital:

Grievance procedures - employee informed of Grievance procedures through meetings conducted on Employee's Handbook.

29) State Air Pollution Control Board:

Memorandum will be forwarded by this office through Division and Regional offices to ensure dissemination of grievance procedure to all employees of this agency.

30) Auditor of Public Accounts:

Staff memo 1972-13, dated December 26, 1972, subject "Grievance Procedures" disseminated to all currently employed and subsequent thereto.

31) Madison College:

A copy of the grievance procedure is furnished to all employees.

32) Northern Virginia Mental Health Institute:

Every employee has received an Employee's Handbook which includes a full description of the grievance procedure.

33) Department of Agriculture and Commerce:

Information on filing grievances was disseminated to employees in the January 5, 1973, issue of our employee newsletter, INTERCOM. We plan to occasionally run reminders in the INTERCOM.

34) Virginia Soil and Water Conservation Commission:

All employees sent a copy of State grievance procedures on January 12, 1973.

New employees receive a copy upon employment.

35) Lynchburg Training School and Hospital:

Every employee is given a copy of the Employees' Handbook, prepared by the Department of Mental Health and Mental Retardation, at the time he is signed up for employment. An Orientation Meeting is held then and the Grievance Procedure is discussed and explained to employees. In addition, after the employee has been here between one week and one month, another Orientation Program is held and the Grievance Procedure is again pointed out. All employees are informed that if they need additional instructions for filing a grievance, they should contact the Personnel Supervisor.

36) Virginia Commission for the Visually Handicapped:

Complete instructions pertaining to the Grievance Procedure were issued to Agency Department Heads on December 4, 1972. Each employee of the Agency was given a personal copy of the procedure on December 7, 1972, and all employees hired since that date have received personal copies, receipts for which are permanently filed. As a matter of good management, all Supervisors are encouraged to be sympathetic and to offer suggestions through the Suggestion Committee program. However, no course of instruction designed to foster the filing of grievances or complaints has been conducted and none is planned.

37) Department of Conservation and Economic Development:

All old personnel of this Department have been presented with the grievance procedure and have had it explained to them. Each new employee is given a copy of the grievance procedure and has it explained to him at the time of employment with the Department.

38) Northern Virginia Training Center:

All employees of this agency are informed of the State grievance procedure during orientation in-service training. In addition, each new employee is issued a copy of the Department of Mental Health and Mental Retardation Employee's Handbook which contains a section on Grievance Procedures, pages 38-44.

39) Department of Taxation:

The Department of Taxation has issued a copy of the grievance procedure to all employees. In addition, division directors and supervisors have been given thorough instructions so that they may answer the questions of their employees. The department has included its grievance procedure and all appeal procedures, which were developed through input from the various divisions, in the departmental personnel policy manual. All new employees are informed of the grievance procedure and furnished a copy in their initial employment orientation. They are also given a copy of Executive Order Number One and briefed on its significance.

40) University of Virginia:

All new University employees are given copies of the grievance procedure and it is then discussed by our Training Coordinator in our employee orientation programs. A condensed version of the procedure is also outlined in our Employee Handbook which is given to all new employees. We are also in the process of updating our Personnel Procedures Manual (a copy will be available in every department) which will have in it the detailed grievance procedure.

41) Central State Hospital:

Every employee of Central State Hospital received with their paycheck on December 7, 1973 a revised Department of Mental Health and Mental Retardation Employee's Handbook with the total Grievance procedure printed on pages 38 through 44. After this initial distribution, each new employee has been given this handbook as well as having it reviewed with him as part of our orientation for all new employees.

As part of the exit interview, every employee who has been removed from his position is informed of his rights to the grievance procedure.

The grievance procedure is also reviewed periodically with supervisors who in turn are instructed to review the procedure with all their employees.

We shall continue to emphasize the grievance procedure to all our employees in an effort to keep them fully informed.

42) Division of Engineering and Buildings:

Each employee of the Division of Engineering and Buildings on December 1, 1972, was given a personal copy of the grievance procedure and was asked to sign that he had received it. A copy of the procedure is posted on each bulletin board in each of our sections. New employees are also given a copy of the procedure no later than the date he reports to work, as instructed by the Director on November 30, 1972.

Although this Division has not had a true test of the procedure, the steps appear to be fair. Because of the number of steps involved, this tends to eliminate any complaint or irritating circumstance being reported by the employee as a grievance. Basically it is felt by the staff that it is a good procedure because it allows the supervisor to communicate with the employee, yet it also allows the employee to pursue a matter if so desired.

43) Department of Vocational Rehabilitation:

Copies of the original Grievance Procedure as prepared by the Division of Personnel were distributed to all current employees of the department and copies are given to all new employees during their orientation.

The procedure is currently being rewritten to reflect a better understanding of the procedure by all levels of personnel. This revision should be ready for distribution to all current employees and new employees to be effective no later than July 1, 1974.

44) Virginia State College:

Upon receipt of the Grievance Procedures, quick copies were made and sent to each employee of the College.

Copies were displayed on prominent bulletin boards.

Outline on grievance procedures is carried in Handbook for Employees, Virginia State College, and is being revised to comply with State Grievance procedures.

45) Science Museum of Virginia:

All employees have been informed of the grievance procedure.

46) Department of Community Colleges:

All employees were given a copy of the Grievance Procedure originally and new hires are given copies through individual handout at orientation by copy of employee handbooks and at faculty orientation seminars each fall.

47) Industrial Commission of Virginia:

All of our employees have been informed of the grievance procedures.

48) Alcoholic Beverage Control Board:

In reference to paragraph #4 in April 26, 1974, memorandum from Mr. John W. Garber, a letter was sent to all employees in this Department relative to the Grievance Procedure on February 5, 1973.

It is our intent to initiate an orientation program for new employees on June 1, 1974. Emphasis will be placed on the Grievance Procedure including distribution of a copy of the procedure to all new employees.

49) VPI and SU:

When the new Personnel Rule 14 and the Grievance Procedure were forwarded to the agencies, we submitted a memorandum, to Deans, Directors and Department Heads and reproduced copies of the grievance procedure for each classified employee and advised, through this memorandum, that each employee be made aware of the grievance procedures.

Additionally, as indicated in our memorandum, we stated that this procedure would be placed in the new revised employee handbook, which is given to each new employee and was also made available to all present employees at the time it was reissued in January of 1973 and has been continued in issues since.

For over two years we have additionally been emphasizing the employee grievance procedure and its accessibility through an employee orientation program, also given to each new employee. In case the employee has missed receiving through some means, an employee handbook at the time of signing up for payroll, which is highly impractical since a checklist is signed at that time by the employee certifying that they did receive an employee handbook, an additional handbook is also included in the orientation packet.

A highly similar grievance procedure has been published in our employee handbook and given to each employee since January, 1971, two years prior to the institution of the State procedure.

The grievance procedure is additionally posted on numerous bulletin boards throughout the University and in our supervisory training sessions, of which several per year are conducted with various level supervisors, we again emphasize the importance of the use of the grievance procedure and its availability to all employees.

The fact that we have had no second step grievances or above in the last six months does not in my opinion mean that the employee is unaware of the grievance procedure, especially because of the efforts expended as mentioned above to advise them of the procedure, but rather that the grievances are effectively handled at the first level.

Additionally, we are continuing to give employee benefit programs in each department throughout the year to all employees in which again the availability and knowledge of the grievance procedure, as indicated in the employee handbook, is emphasized. We certainly feel that effective measures are being taken at Virginia Tech to not only make the State employee aware of the grievance procedures, but to keep them aware that these procedures are available to them, which in my opinion even borders on encouraging the use of the grievance procedure.

If there are additional procedures that can be suggested that we should follow in some way making the employee even more aware of the grievance procedure, we would certainly be open to additional suggestion.

50) College of William and Mary

On December 18, 1972, Rule #14 was distributed to all deans, department heads, and supervisors, and on December 22, 1972, each classified employee received a copy with his/her paycheck.

When new employees are appointed to classified status at the College of William and Mary, they are given an employee handbook, which includes the following statement:

"Any employee who feels that he has a justifiable grievance which is directly related to employment by the College, may present the grievance in accordance

with Rule 14 of the Virginia Personnel Act, with full assurance of complete freedom from reprisal action of any kind. Complete information and assistance concerning any grievance is available in the Personnel Office."

In addition, each newly appointed employee receives a copy of Rule 14 of the Virginia Personnel Act.

APPENDIX C.

COMMENTS

1. Suggest that group grievances not be authorized in the present framework.

Richard Lawrence
Merit System

2. We have received comments that the grievance procedure is too complicated and too lengthy. It is requested that consideration be given to an abbreviated procedure, if all parties mutually agree.

There are indications that there has been hesitancy on the part of possible grievants to implement this option because of the one-to-one confrontation required between the grievant and the supervisor, and between the grievant and the higher authority. To alleviate this condition, it is suggested that a neutral third part might be present at all confrontations up to the panel hearing.

H. T. Cooke
Old Dominion University

3. It is suggested that the agency grievance form G. O. Form P-18 (12-72) be revised to include first step and statements of grievance by both employee and supervisor.

Lynchburg Training School
and Hospital

4. We would like to have a very definitive written instruction on the role the Personnel Office plays in the conduct of grievances.

Southwestern State Hospital

5. The procedure is currently being rewritten to reflect a better understanding of the procedure by all levels of personnel. This revision should be ready for distribution to all current employees and new employees to be effective no later than July 1, 1974.

Department of Vocational Rehabilitation

6. It is believed that where the grievant retains an attorney, the agency should also be represented by an attorney.

Western State Hospital

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APPENDIX C

September 18, 1974

Status of Grievance Procedures In Local Governments

Virginia's	Counties	Cities	Towns	Total
.....				
Total number of Localities in State	95	38	192	325
.....				
Approximate number of Localities with over 15 employees [N5]	39	38	46	123
.....				
Number of localities that submitted approved Grievance Procedures [N6]	27	35	33	95
.....				
Number of Localities without approved Grievance Procedures [N6]	12	3	13	28
.....				
Number of Localities with Grievance Procedures in operation but not State approved [N6, [N7]	7	3	5	15
.....				

*Information sources:

1. Survey/Questionnaire

2. Random telephone survey

3. State Personnel Office

4. 1970 U.S. Census of Population

.....

5. Excludes employees of: Constitutional Offices, Welfare Departments, Schools and Court

6. Refers to localities with 15 or more employees

7. This total of "15" localities is included in the "29" total listed immediately above

These localities have submitted grievance procedures which are in conformity with 15.1-7.1 of the Code of Virginia as of November 19, 1974:

<i>Cities</i>	<i>Counties</i>	<i>Towns</i>
1. Bedford	1. Accomac	1. Altavista
2. Bristol	2. Augusta	2. Appalachia
3. Charlottesville	3. Bedford	3. Ashland
4. Clifton Forge	4. Campbell	4. Big Stone Gap
5. Colonial Heights	5. Chesterfield	5. Blacksburg
6. Covington	6. Fauquier	6. Blackstone
7. Danville	7. Franklin	7. Bluefield
8. Fairfax	8. Frederick	8. Chase City
9. Falls Church	9. Hanover	9. Chatham
10. Emporia	10. Henrico	10. Christiansburg
11. Franklin	11. Henry	11. Clarksville
12. Galax	12. Loudoun	12. Colonial Beach
13. Hampton	13. Mecklenburg	13. Culpeper
14. Hopewell	14. Pittsylvania	14. Dublin
15. Lexington	15. Prince George	15. Farmville
16. Lynchburg	16. Prince William	16. Front Royal
17. Martinsville	17. Pulaski	17. Herndon
18. Newport News	18. Roanoke	18. Lawrenceville
19. Norfolk	19. Rockingham	19. Leesburg
20. Norton	20. Russell	20. Luray
21. Petersburg	21. Scott	21. Manassas
22. Portsmouth	22. Shenandoah	22. Marion
23. Richmond	23. Spotsylvania	23. Narrows
24. Radford	24. Tazewell	24. Poquoson
25. Roanoke	25. Westmoreland	25. Pulaski
26. Salem	26. Wise	26. Pearisburg
27. South Boston	27. York	27. Richlands
28. Staunton		28. Rocky Mount
29. Suffolk		29. Smithfield
30. Virginia Beach		30. Tazewell
31. Waynesboro		31. Vinton
32. Williamsburg		32. Warrenton
33. Winchester		33. West Point
34. Fredericksburg		34. Woodstock
35. Buena Vista		35. Wytheville
		36. Vienna

November 19, 1974

These localities have more than 15 employees as prescribed under Title 15.1-7.1 of the Code of Virginia and have not submitted grievance procedures which are in conformity with the Code:

<i>Cities</i>	<i>Towns</i>	<i>Counties</i>
1. Alexandria	1. Abingdon	1. Albemarle
2. Harrisonburg	2. Coeburn	2. Alleghany
3. Chesapeake	3. Grundy	3. Amherst
	4. Manassas Park	4. Arlington
	5. Orange	5. Brunswick
	6. Saltville	6. Buchanan
	7. Wise	7. Caroline
		8. Carroll
		9. Fairfax
		10. James City
		11. Greensville
		12. Isle of Wight
		13. Lancaster
		14. Lee
		15. Montgomery
		16. Rockbridge
		17. Smyth
		18. Stafford
		19. Washington

APPENDIX D

A BILL to amend and reenact §§ 15.1-7.1 and 63.1-26, as amended, of the Code of Virginia, relating to inclusion of welfare employees in grievance procedures.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-7.1 and 63.1-26, as amended, of the Code of Virginia are amended and reenacted as follows:

§ 15.1-7.1. Establishment of grievance procedure for employees.—Notwithstanding any other provision of law to the contrary, the governing body of every county, city and town which has more than fifteen employees shall establish by June thirty, nineteen hundred seventy-four, a grievance procedure for its employees to afford an immediate and fair method for the resolution of disputes which may arise between such public employer and its employees and a personnel system including a classification plan for service and uniform pay plan for all employees excluding the employees and deputies of constitutional officers and division superintendents of schools; *provided, however, employees of local welfare departments and local welfare boards shall be included in such a grievance procedure but shall be excluded from such a personnel system.*

Every such grievance procedure shall conform to like procedures established by the Governor pursuant to § 2.1-114 and shall be submitted to the Director of Personnel appointed pursuant to § 2.1-113 for approval. Failure to comply with any provision of this section shall cause the grievance procedures adopted by the Commonwealth to be applicable in accordance with such rules as the Director of Personnel may prescribe. The term “grievance” as used herein shall not be interpreted to mean negotiations of wages, salaries or fringe benefits.

§ 63.1-26. Establishment of entrance and performance standards.—The Board shall establish minimum entrance and performance standards for the personnel employed by the Commissioner, local boards and local superintendents in the administration of the succeeding chapters of this title and make necessary rules and regulations to maintain such entrance and performance standards, including such rules and regulations as may be embraced in the development of a system of personnel administration meeting requirements of the federal Department of Health, Education and Welfare under appropriate federal legislation relating to programs administered by the Board ; *provided, however, the grievance procedure promulgated by the Governor under § 2.1-114 shall apply to the personnel employed by the Commissioner and grievance procedures adopted under § 15.1-7.1 shall apply to the personnel employed by local boards and local superintendents.*

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