

**REPORT OF THE
JOINT SENATE AND HOUSE
GENERAL LAWS COMMITTEES
STUDY ON
GRIEVANCE PROCEDURES
TO
THE
GENERAL ASSEMBLY OF VIRGINIA**



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Report of the Senate and House

General Laws Committees

Study on Grievance Procedures

To

The General Assembly of Virginia

Richmond, Virginia

December, 1977

I. INTRODUCTION.

During the 1977 Session of the General Assembly, Senator Elliot Schewel introduced three bills (Senate Bills 890, 892 and 893) relating to public employer-employee relations and the grievance procedure. These bills, considered by the Senate General Laws Committee, were of such magnitude that the Committee charged a subcommittee to explore in depth employer-employee relations with a view to strengthening such relations through improvements in the State and local grievance procedures. The subcommittee was charged with the task of identifying specific weaknesses in the procedure and making appropriate recommendations to remedy such weaknesses. The Senate General Laws Committee invited its counterpart in the House of Delegates to participate in the study.

Senator Adelard L. Brault, Chairman of the Senate General Laws Committee, appointed the following Senate members to serve on the subcommittee: James T. Edmunds, Kenbridge; Clive L. DuVal, II, Arlington; Virgil H. Goode, Jr., Rocky Mount; Elliot S. Schewel, Lynchburg; and Wiley F. Mitchell, Jr., Alexandria. Delegate Thomas W. Moss, Chairman of the House General Laws Committee, appointed the following House members to serve on the subcommittee: Alan A. Diamonstein, Newport News; Thomas J. Rothrock, Fairfax; James B. Murray, Charlottesville; Calvin W. Fowler, Danville; and Arthur R. Giesen, Jr., Staunton. The Joint Subcommittee elected Senator Elliot S. Schewel and Alan A. Diamonstein as chairman and vice-chairman, respectively. John Daniel, staff attorney, and Constance D. Sprouse, Legislative Research Associate of the Division of Legislative Services, served as staff for the Joint Subcommittee.

The organizational meeting of the Joint Subcommittee was held on May 2, 1977. At that time the mission of the Joint Subcommittee was agreed upon to encompass Senate Bills 890, 892, and 893 (state and local grievance

procedures), House Bill 1610 ("Policemen's bill of rights") and House Bill 1783 (teachers' dismissal bill).

Public hearings were held in Richmond, Annandale, Staunton, Newport News and Abingdon. These hearings were conducted in two segments to separate managerial and supervisory employees from non-supervisory employees in order to encourage non-supervisory personnel to address the Joint Subcommittee without fear of reprisal. Employees who did fear reprisal were offered the opportunity to address the Joint Subcommittee in executive session. Approximately forty managerial or supervisory employees and sixty non-supervisory employees addressed the Joint Subcommittee. In addition, several members of the Subcommittee met on an individual basis with many non-supervisory employees who felt their jobs might be threatened if they appeared in public session. The respective Committees received the Subcommittee's report and under their auspices, the Subcommittee's report is printed here for the General Assembly's review.

II. GRIEVANCE PROCEDURE RECOMMENDATIONS

The grievance procedure has been recognized since its inception in 1971 as an important management tool for improving employer-employee relations. Broad discretionary authority granted to administrators has been reduced and personal employment relationships have declined because of the growth of state government and the more formal, legal nature of employment. The procedure provides a method to insure proper application of management policies and procedures as well as determining supervisory fairness and effectiveness. Under such procedures, employees have the increased opportunity for serious discussion of work related concerns which provides them with reasonable and logical explanations by supervisors of actions or decisions.

Unfortunately, the Joint Committee has discovered several deficiencies in the procedures themselves as well as the application of these procedures. Criticism has been directed at every facet of the procedure by managers, supervisors and employees. The Subcommittee herein sets out the current procedures with its recommendations for modifications and additions which it feels will clarify the procedure and increase its effectiveness. Legislation to these ends is attached as Appendix 1.

1. DEFINITION OF GRIEVABILITY AND MANAGEMENT RIGHTS.

Under the present State grievance procedure, a grievance is defined as follows: "A grievance is a complaint or dispute of an employee or employees regarding the application, meaning or interpretation of personnel policies or procedures as they effect the work activity of such employee or employees. Any condition of employment accepted by the employee at the time of employment or subsequent thereto shall not be grievable. All appeals resulting from employee removal or demotion are administered under Rule 11.3.1 of the Rules for the administration of the Virginia Personnel Act or under Section 17 (D) of the Joint Merit System Rules.

"Nothing in this procedure is intended to circumscribe or modify the

existing right of any State agency to do the following, provided however, that none of these rights may be exercised in an arbitrary or capricious manner: (a) direct the work of its employees; (b) hire, promote, transfer, assign and retain employees within the agency; (c) demote or dismiss employees for proper cause; (d) maintain the efficiency of governmental operations; (e) relieve employees from duties because of lack of work or for other legitimate reasons; (f) take actions as may be necessary to carry out the duties of the agency in emergencies; and (g) determine the methods, means and personnel by which operations are to be carried on".

Several criticisms of this definition were expressed by employers and employees. Employers remarked that the definition is too broad and ambiguous while employees stated the definition is too narrow. The management rights section of the definition was cited by employees as being the vehicle by which all complaints could be determined non-grievable.

Criticism was leveled at the separate procedure for dismissals, demotions and suspensions. Under this procedure an employee's only redress of an agency head decision is an appeal to the Director of Personnel. No impartial panel reviews such decisions. The present system of two procedures to deal with employees is confusing at best to employees and, in the case of the disciplinary procedure, it does not provide an IMPARTIAL final review of an agency's actions.

Historically, constitutional employees were included in the original bill requiring a grievance procedure for local employees. During the legislative process they became an exempted class of employees. However, testimony revealed that this situation has presented several problems in localities which have fifteen or more employees and are required to provide a grievance procedure for local employees. Within the same office facilities are constitutional employees without the benefit of this communications apparatus.

The Subcommittee agrees with many of these criticisms and recommends that a grievance definition be included in the Code which incorporates constitutional officers and disciplinary actions as well as clarifies employee and employer rights. The Subcommittee's suggested definition is, as follows:

"A grievance is a complaint or dispute of an employee relating to his or her employment, including but not necessarily limited to (1) disciplinary actions involving dismissals, demotions and suspension, (2) concerns regarding the application, meaning or interpretation of personnel policies, procedures, rules and regulations, as well as, (3) the arbitrary and capricious exercise of any management right. All complaints shall be grievable except where they involve (1) negotiation of wages or salaries, position classifications or general employee benefits, (2) work activity accepted by the employee as a condition of employment, (3) the contents of ordinances, statutes or established personnel policies, procedures, rules and regulations, (4) failure to promote except where the employee can show established promotional policies or procedures were not followed or

applied fairly, (5) the methods, means and personnel by which such operations are to be carried on, or (6) discharge, layoff or suspension from duties because of lack of work, reduction in work force, or job abolition.

“The classification of a complaint as ‘non-grievable’ shall not be construed to restrict any employee’s right to seek or management’s right to provide customary administrative review of complaints outside the scope of the grievance procedure.

“Once an employee reduces his grievance to writing he must specify on the appropriate form the specific relief he expects to obtain through the use of this procedure”.

Employees of constitutional officers should also have access to the State grievance procedure. The Joint Subcommittee recommends that in any constitutional officer’s office which employs fifteen or more employees, such employees should be given access to the State grievance procedure.

2. DECISIONS REGARDING GRIEVABILITY: LEVEL IN PROCEDURE DECISION IS MADE.

Under present State procedures, agency heads may request a ruling from the director of personnel during the third step of the procedure as to whether or not the employee complaint is a grievance. Local grievance procedures vary widely in this aspect of the procedure but have some party outside the agency review the appropriateness of complaints.

Testimony included criticism that the director of personnel is not an impartial third party. Some speakers recommended the panel decide grievability at fourth step, while others stated that decisions should be made earlier in the procedure to clarify the procedure to employers and employees so that non-grievable issues would not take unnecessary time which normally would be spent pursuing work responsibilities.

The Joint Subcommittee feels the present level of the procedure assigned the grievance determination process is appropriate. However, whether or not the director of personnel is, or has been, an impartial judge is not the issue. The perception of employees of his position in management and his association with other agency heads lends strength to the arguments of those who advocate placing this responsibility outside the executive branch.

Therefore, the Joint Subcommittee recommends that the Attorney General be delegated this responsibility under the State grievance procedure. For local grievance procedures, the Subcommittee recommends this responsibility be delegated to the county, city or town attorney; except, in the event a locality does not have such an official, the Commonwealth’s attorney shall make the determination of grievability. Under local procedure such decisions would be appealed to the Attorney General.

At this point the Joint Subcommittee wishes to emphasize to management the importance of addressing all complaints, regardless of

their standing under the grievance procedure. Evidence has been overwhelming that lower level supervisors are closing the lines of communications by informally and improperly declaring an employee's complaint not a grievance and thereby refusing to deal with employee problems or concerns.

3. STEPS IN PROCEDURE AND TIME LIMITS

Currently, the State procedure contains four basic steps: (1) an oral discussion between the employee and the first level of supervision; (2) a reduction of the grievance by the employee to writing and submitted to the supervisor and reviewed by him; if not resolved, (3) a meeting with the next level of supervision or agency head; and if not resolved, (4) a panel hearing, such panel to be comprised of an employee appointee, a management appointee and a third impartial member appointed by the other panel members. This process can take more than sixty days if the grievance proceeds through every step.

The Joint Subcommittee agrees that the number of steps and the time frame for each step appear to afford the employer and employee adequate time to resolve concerns or complaints. The need for administrative flexibility here is recognized by the Joint Subcommittee which recommends the actual steps and time limits not be codified but remain the administrative function of the executive branch.

4. PANEL SELECTION.

The State grievance procedure provides for a final review of a grievance by an impartial panel. Decisions of these panels are binding and final as long as they are within the capability of the agency to statutorily enforce them. (The Joint Subcommittee takes this opportunity to point out to localities that, according to an Attorney General Opinion of August 14, 1973, grievance procedure panels under local governments also must provide for a panel decision that is final and binding.)

The method of panel selection has received an enormous amount of criticism from both employers and employees that the members of such panels are not impartial. Presently, the State selection process calls for the employee and employer to select one member each and these two appointees select the third member from a list provided by the State Department of Personnel and Training. Locality procedures for panel selection vary greatly. Some jurisdictions provide a panel similar to the State procedure while others use members of their citizen advisory personnel boards.

The Joint Subcommittee recommends the State's panel selection process be amended to provide that the third member be selected from the citizenry of the State at large and not from the Personnel Department's "approved" list. If the third member cannot be agreed upon within a certain time frame, the circuit court judge of the jurisdiction in which the dispute arose would be empowered to select the third member. Local government panel selection methods appear for the most part to provide an

impartial hearing and the Joint Subcommittee sees no reason to interfere with local prerogatives on this point.

5. PANEL PROCEDURES.

Presently, no guidelines exist in the State grievance procedure for the conduct of panel hearings. Likewise no State officer has the responsibility of promulgating rules of conduct. Without some standard methods for panels, no two hearings are conducted in the same manner, consider the same types of evidence and render decisions of uniformity.

The Joint Subcommittee agrees that this point is well-taken and proposes that the Director of Personnel and Training be responsible for the promulgation of rules of conduct for panels. This would be useful to both parties to the proceedings in knowing before hand such matters as how witnesses may be called and what evidence may be presented.

6. OFFICE OF EMPLOYEE COUNSELORS.

The need to provide employees with source of information outside their own agency has become apparent to the Subcommittee through testimony presented at its public hearings. The lack of adequate information and the fear of being retaliated against for seeking information about the grievance procedure deeply concerns this Subcommittee. Employees often are not familiar with the circumstances or conditions under which they may utilize the procedure and how to institute a grievance. Likewise, they are fearful of approaching their superiors, with whom they have a dispute, to obtain the necessary forms for instituting a grievance. Employees also bear a financial burden because, by the time they reach the panel stage, they usually feel the need to be represented by an attorney since the agency is represented by its legal counsel.

The Subcommittee has been hampered in its study owing to the lack of data on the numbers, types and disposition of grievances. No State agency accumulates and analyzes this type of information. Without adequate information of this sort, neither the executive branch nor the legislative branch can determine how well the procedure addresses management - employee concerns and what changes would improve management - employee relations.

To address the aforementioned, the Subcommittee recommends that an Office of Employee Relations Counselors be created. Such office would be under the direct supervision and control of the Governor with a director appointed by, and to serve at the pleasure of, the Governor.

The responsibilities of the Office and director would include: (1) investigating threats or actions of reprisal against employees attempting to use the employees grievance procedure; (2) providing information, upon request of employees, on the use of the grievance procedure as well as general information on personnel statutes, policies, rules and regulations and providing the necessary forms for such use; (3) acting as the employee representative at panel hearings if the employee so requests and the

counselor in the exercise of his discretion elects to do so; (4) collecting data and preparing annual reports for the Governor and the General Assembly on the use of the grievance procedure; and (5) making recommendations to the Governor and General Assembly for improvements in the grievance procedure and management - employee relations. The Subcommittee proposes that one method for the dissemination of information which should be available to the Office is a toll-free telephone number for use by State employees seeking this information.

7. ADVISORY COMMITTEE ON PERSONNEL.

The Joint Subcommittee recommends that the Governor's Advisory Personnel Committee, permitted to be constituted under § 2.1-113 of the Code, be required to be appointed. Responsibilities would include review of all public employer-employee relations throughout the Commonwealth, including local government personnel administration matters (see Appendix 2).

8. GRIEVANCE TRAINING.

The solution to effective management is constructive communication between employers and employees. While the Department of Personnel and Training has developed training seminars for supervisors, only an extremely small number have been given this training. Without proper supervisory training, communications between these groups suffer dramatically.

The Joint Subcommittee recognizes the efforts of the Department of Personnel and Training in providing such training but the number of supervisors receiving this training is not large enough to make a noticeable impact on government operations. Therefore, the Joint Subcommittee proposes that this vital training be provided to a larger number of supervisors. The Joint Subcommittee envisions that such training could be had at little cost to the Commonwealth through "in-house" seminars. The Joint Subcommittee also recommends that grievance training to acquaint managers, supervisors and employees with this revised procedure be implemented as soon as possible.

9. DISCIPLINARY REGULATIONS OF THE DEPARTMENT OF PERSONNEL AND TRAINING.

Over the years the Department of Personnel and Training has promulgated several regulations relating to the demotion, suspension and dismissal of State employees for disciplinary reasons. The Subcommittee is concerned that no provisions in these regulations provides for administrative leave (suspension with pay) for employees under investigation pending final disciplinary action. The suspension without pay of an employee awaiting the outcome of an administrative determination as to any action which may be taken against him appears to an undue financial burden.

The Subcommittee recommends that the General Assembly adopt a resolution (See Appendix 3) directing the Secretary of Administration to

study the disciplinary regulations promulgated by the Department of Personnel and Training to determine how they should be amended to provide for administrative leave for State employees.

III. RECOMMENDATIONS CONCERNING POLICE OFFICERS'S BILL OF RIGHTS (H.B. 1610).

For the past two years, the legislature has recognized special problems relating to administrative practices of the Department of State Police and local law-enforcement agencies when investigating the conduct of police officers. The General Assembly addressed this problem by passing legislation in 1976 and 1977 referred to as the "policemen's bill of rights," to ensure due process during such investigations. However, the Governor vetoed both bills.

While the Joint Subcommittee recognizes that there are special personnel practices and problems for law-enforcement officers not experienced by other public employees, the Joint Subcommittee feels that it has addressed many of their problems through its recommendations set out herein.

Additionally, the Joint Subcommittee realizes the existence of a special problem with anonymous complaints against employees, especially police officers, and recommends a separate bill (see Appendix 4) which would prohibit the involuntary suspension without pay of any State or local government employee unless for disciplinary reasons.

IV. FINDINGS REGARDING THE TEACHERS DISMISSAL BILL (H.B. 1783).

The Joint Subcommittee heard hours of testimony regarding H. B. 1783 that the General Assembly passed in 1977 and the Governor vetoed. This bill would have established fact-finding panels to review tenured teacher dismissal recommendations by superintendents. A school board could make its final recommendation based upon the fact-finders' decision or could conduct an additional hearing.

While there has been strong criticism of the bill, the Joint Subcommittee agrees that the present system regarding school board hearings on dismissal recommendations of superintendents may not be adequate for several reasons. Not only is there confusion concerning the timing of school board review, whether to hold a hearing before final action of the board or after such final action, but also problems exist in some school divisions because these boards give only cursory review to superintendant recommendations for teacher dismissal. Certain boards vote to dismiss an employee and then hold an appeal hearing merely to satisfy the statutory requirement for such hearing.

The Joint Subcommittee realizes that H. B. 1783 has several provisions which would remedy the above mentioned situations. However, questions regarding the expense, duplication and removal of the school board from the initial fact finding process need in-depth consideration which this

Subcommittee has neither the time or expertise to give this problem. In view of the fact that the Education Committees of the House and Senate will face this issue again, the Joint Subcommittee presents the following summary of testimony it received on the merits of H. B. 1783 for consideration by these committees and members of the General Assembly.

Proponents stated that teachers recommended for dismissal by their superintendants face contract laws which are vague. Under present statutes, school boards may conduct a hearing on dismissal either before or after it has accepted the superintendant's recommendation. Often a school board votes to dismiss a teacher before giving such teacher an opportunity to be heard. In this case, the board merely conducts the hearing to comply with state statute and not to review seriously its previous decision.

Continuing contract law provides that written notice not be given to a teacher for his dismissal. Personal conferences which are often held in lieu of written notice may leave a teacher confused as to his specific deficiencies. Even when administrators document deficiencies, they often withhold it from the teacher until the school board hearing leaving the teacher unable to review its accuracy and to prepare his rebutal to such documentation.

Under H. B. 1783, proponents stated that procedural safeguards would be provided in that a fair and impartial review of superintendants' recommendations would be conducted by an independent fact-finder. Delegation of school board decision-making authority, which was upheld in Morgan v. U. S. , 298 US 468 (1936) would provide an independent analysis of a superintendant's recommendation. This would relieve citizens serving on boards from the lengthy and time-consuming hearing process. Additionally, proponents noted that school board members are often unfamiliar with formal dismissal hearing procedures and rely heavily on their superintendants to conduct the hearing leaving teachers in an impossible situation.

Proponents also felt confident that this impartial hearing process would significantly reduce the number of teachers seeking court action. School boards would have a well-documented transcript upon which the fact-finder's recommendations and the Board's recommendations were based thereby making it less likely that federal courts would intervene in such matters.

Recommendations for dismissal originate with school principals and often superintendants merely pass along such recommendations to the school board. A fact-finder would thoroughly review a principal's rationale as well as the superintendant's actions which led him to support the principal's recommendation.

The proponents expressed their opinion that this procedure would be no more costly than the present hearing process which requires a transcript be made. School boards may set aside the fact-finder's determination and conduct an additional hearing, but, as the school boards gain confidence in the fact-finder's ability to impartially determine the appropriateness of a

superintendent's recommendation, the school board will find it unnecessary to spend its time conducting a second hearing.

Wood v. Strickland , 420 US 308 was cited by proponents as the legal basis under which public officials may be held personally liable if they deliberately deny constitutional rights of employees or act with such abandon that they can be impuned. With the impartial fact-finder conducting the hearing and assuring due process for the teacher, school boards would have added protection from personal liability. Liability insurance for such officials would be more easily obtained. Presently, only one insurance company issues this type of liability policy in Virginia and obtaining such insurance is similar to the medical liability insurance situation.

Opponents stated that current law provided adequate procedural safeguards for teachers. Currently, it is difficult to dismiss a teacher. House Bill 1783 would make dismissals even more difficult. Under the Standards of Quality, teacher evaluations are required which provide the appropriate documentation as to a teacher's abilities and performance. School boards have these evaluations upon which to base their decisions.

Superintendents remarked that they presently document dismissal recommendations adequately and charge the bill would be extremely time-consuming for administrators and school board members. These opponents also remarked that it would result in a dual hearing system because school board members would desire the opportunity to hear and question parties involved. This additional hearing would extend the time for dismissal actions from fifty-five days to a minimum of seventy-two days and a maximum of ninety-five days. Also, teachers who are not satisfied with the fact-finders decision could appeal to their boards for an additional hearing which would have to be provided even if boards agree with their fact-finders.

Opponents cite several legal grounds for opposing H. B. 1783. Hortonsville Joint School District v. Hortonsville Education Association , 96 S. CT. 2308 (1976) stated that school boards are capable of acting as impartial decision makers. School boards presently can be held accountable by the public while fact-finders would be accountable to no one. Wood v. Strickland , supra. was cited in support of the opponents argument that, unless the board conducts its own hearing, the fact-finding process would not decrease the board's liability. Section 22-203 of the Code of Virginia was referenced since it states that the school board may act to dismiss only upon recommendation of the superintendent. Current law and court decisions Board of Regents v Roth , 408 US 564 (1972) and Perry v. Sinderman , 408 US 593 (1972)]. provide adequate due process for teachers.

The costs of administering this dual hearing process would be burdensome in as much as additional funds would not be made available and funds currently being utilized by the educational system would be drained to pay the cost of fact-finding and the transcript it would generate.

V. RECOMMENDATIONS REGARDING THE CONTINUANCE OF THE

JOINT COMMITTEE.

Several problems relating to the grievance procedures used by institutions of higher education were brought to the attention of the Joint Subcommittee. Serious communication problems between administrators and faculty members as to the use of a grievance procedure have become evident. Since many institutions' procedures vary, it was impossible to conduct a meaningful review of each procedure within the time frame of this study.

The Joint Subcommittee requests the House and Senate General Laws Committees to allow it to continue in existence another year to allow a thorough review of grievance procedures of institutions of higher education.

Respectfully submitted,

Elliot S. Schewel, Chairman

Alan A. Diamonstein, Vice Chairman

James T. Edmunds

Clive L. DuVal, 2nd

* Virgil H. Goode, Jr.

Wiley F. Mitchell, Jr.

Thomas J. Rothrock

James B. Murray

*** Calvin W. Fowler**

*** Dissenting statements**

Dissenting Statement of Senator Virgil H. Goode, Jr.

State employees definitely need a better grievance procedure. However, I am concerned about the employer relations counselor provided for in the Subcommittee's legislation. Two of the concerns are as follows: (1) the office could proliferate and be extremely costly and (2) there is a question as to whether the utilization of this counselor would result in representation as independent as State employees deserve.

Senator Schewel did an outstanding job in chairing this Subcommittee and listening to all viewpoints.

Respectively submitted,

Virgil H. Goode, Jr.

Dissenting Statement of Delegate Calvin W. Fowler

While I agree with the majority of the Subcommittee report, I very strongly disagree with the position taken by the Subcommittee with respect to the office of employee counselor wherein the Subcommittee recommends that the employee counselor, in addition to the other duties prescribed for him in the report, also act as the employee representative at panel hearings. First of all, I feel that this is wrong in principle. While I agree that it may be a proper function for the State, through a counselor, to provide information as to the use of the grievance procedure as well as general information on personnel statutes, policies, rules and regulations, and also to provide the necessary forms for such use, I do not feel that the State should assume the obligation of supplying the claimant with a representative to prosecute his or her case. If the grievant feels that he or she needs a representative or representation at the panel hearing level of the grievance procedure, then he or she should seek such a representative and be personally responsible for the cost of same. The State, in my opinion, has gone far enough when it provides a forum and means for the redress of grievances and someone to explain how to use the grievance procedure. Secondly, in assigning the task of representation to the office of employee counselor, we are in effect creating an office which will proliferate both as to the number of employees and to the cost of operating the same. In order to adequately supply enough counselors to represent all State employees who request their representation, it would almost of necessity require that regional offices be established across the entire Commonwealth, each having its own staff and each requiring its own individual office space. The cost of providing this would, in my opinion, become exorbitant and I do not feel that it is justifiable.

Respectively submitted,

Calvin W. Fowler

APPENDIX I

A BILL to amend and reenact §§ 2.1-114.5 and 15.1-7.1 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 2.1-114.5:1 through 2.1-114.5:6 and 15.1-7.2, relating to the establishment of State and local grievance procedures; personnel training and the creation of the office of employee relations counselor.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-114.5 and 15.1-7.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.1-114.5:1 through 2.1-114.5:6 and 15.1-7.2 as follows:

§ 2.1-114.5. Duties of Department.—The Department shall have the following duties:

A. Make recommendations to the Governor regarding the establishment and maintenance of a classification plan for the service of the Commonwealth, and from time to time, recommend such amendments thereto as may be necessary.

B. Make recommendations to the Governor regarding the establishment and administration of a compensation plan for all employees, and recommend such amendments thereto as may, from time to time, be necessary.

C. Design and maintain a personnel information system which shall support the operational needs of the Department and of State agencies, and which shall provide for the management information needs of the Governor and his secretaries, and of the General Assembly. The system shall provide at a minimum a roster of all employees in the service of the Commonwealth, in which there shall be set forth as to each employee, the employing agency, the class title, pay and status and such other data as may be deemed desirable to produce significant facts pertaining to personnel administration.

D. Establish and direct a program of employee-management relations designed to improve communications between employees and agencies of the Commonwealth. ~~The program shall have at a minimum:~~

~~1. An appeal procedure which shall assure all persons employed under this chapter a full and impartial inquiry into the circumstances of removal and demotion.~~

~~2. 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; however, such procedure shall not be binding on local school boards nor on employees of the General Assembly. The term "grievance" as used herein shall not be interpreted to mean negotiations of wages, salaries, or fringe benefits.~~

E. Establish and administer a system of performance evaluation for all employees in the service of the Commonwealth, based on the quality of service rendered, related where practicable to specific standards of performance.

F. Establish and administer a system of recruitment designed to attract high quality employees to the service of the Commonwealth. In administering this system, applicants shall be rated on the basis of relative merit and classified in accordance with their suitability for the various classes of positions in the service of the Commonwealth, and a record thereof shall be maintained in the open register.

G. Establish and administer a comprehensive and integrated program of employee training and management development.

H. Establish and administer a program of evaluation of the effectiveness of performance of the personnel activities of the agencies of the Commonwealth.

I. Establish and administer a program to assure equal employment opportunity to applicants for State employment and to State employees in all incidents of employment.

§ 2.1-114.5:1. Grievance procedure.—The Department of Personnel and Training shall establish a grievance procedure as part of the program of employee-management relations developed by the Department pursuant to § 2.1-114.5 D. The grievance procedure shall afford an immediate and fair method for the resolution of disputes which may arise between an agency and its employees. The grievance procedure shall include:

A. Definition of grievance.—A grievance shall be a complaint or dispute by an employee relating to his or her employment, including but not necessarily limited to (i) disciplinary actions, involving dismissals, demotions and suspension, (ii) concerns regarding the application, meaning or interpretation of personnel policies, procedures, rules and regulations, as well as, (iii) the arbitrary and capricious exercise of any management right. All complaints shall be grievable except where they involve (i) negotiation of wages or salaries, position classifications or general benefits, (ii) work activity accepted by the employee as a condition of employment, (iii) the contents of ordinances, statutes or established personnel policies, procedures, rules and regulations, (iv) failure to promote except where the employee can show established promotional policies or procedures were not followed or applied fairly, (v) the methods, means and personnel by which such operations are to be carried on, or (vi) discharge, layoff or suspension from duties because of lack of work, reduction in work force, or job abolition.

The classification of a complaint as 'non-grievable' shall not be construed to restrict any employee's right to seek or management's right to provide customary administrative review of complaints outside the scope of the grievance procedure.

Once an employee reduces his grievance to writing he must specify on the appropriate form the specific relief he expects to obtain through the use of this procedure.

B. Management rights.—Nothing in this procedure is intended to circumscribe or modify the existing management right of any State agency to do the following, provided however, that none of these rights may be exercised in an arbitrary or capricious manner: (i) direct the work of its employees as well as establish wages, salaries, position classifications and general employee benefits; (ii) hire, promote, transfer, assign and retain employees within the agency; (iii) maintain the efficiency of governmental operations; (v) relieve employees from duties of the agency in emergencies; and (vi) determine the methods, means and personnel by which operations are to be carried on.

C. Coverage of personnel.—All permanent State government personnel, excluding probationary employees, are eligible to file grievances except for: (i) those appointees of elected groups or individuals; (ii) employees of State-supported colleges or universities; (iii) State department, division, bureau, and agency heads; and (iv) managerial employees who are engaged in agency-wide policy determinations. Employees of local welfare departments and local welfare boards shall be included within the coverage of the State grievance procedure; provided, however, that these employees may be included in a local governing body's grievance procedure at the discretion of the governing body of the county, city or town but shall be excluded from such a local personnel system. Notwithstanding the provisions of § 2.1-116 (1), constitutional officers' employees shall have access to the State grievance procedure if such officer employs fifteen or more persons.

D. Minimum grievance procedure steps.—The Department shall develop a grievance procedure in compliance with the foregoing which shall, at a minimum, include the following: (i) a first step which shall provide for an informal, initial processing of employee complaints by the immediate supervisor through a non-written, discussion format, and (ii) a final step which shall provide for a hearing before an impartial panel, such panel to consist of one member appointed by the grievant, one member appointed by the agency head and a third member selected by the first two from the citizenry at large. In the event that agreement cannot be reached as to the final panel member, the chief judge of the circuit court of the jurisdiction wherein the dispute arose shall select such third panel member. The decision of such panel shall be final and binding. All stages of the grievance beyond the first step shall be in writing on forms supplied by the agency or the employee relations counselor. All grievance hearings at the final step shall allow both the grievant and the respondent to call upon appropriate witnesses and be represented by legal counsel or other representatives. The Director shall promulgate rules of conduct for panel hearings.

The grievance procedure shall prescribe reasonable time limitations for the grievant to submit an initial complaint and to appeal each decision through the steps of grievance resolution. Such limits should correspond

generally or be equivalent to the allotted time which is allowed the response in each comparable situation.

Failure by the grievant to comply with procedure requirements of the grievance procedure will terminate the right to further appeals. Failure of the respondent to comply with procedural requirements of the grievance procedure will automatically advance the grievant to the next step in the grievance resolution process.

E. Resolution or issue of grievability.—Questions of whether or not a matter is grievable shall be made by the Attorney General at the request of the agency or grievant. Such determination of grievability shall be made subsequent to the reduction of the grievance to writing but prior to the panel hearing. The issue of grievability shall be decided prior to the panel hearing or it shall be deemed to have been waived.

§ 2.1-114.5:2. Supervisory training.—A comprehensive training and instructional program shall be implemented before July one, nineteen hundred seventy-nine. This program shall consist of extensive and appropriate training for all supervisory personnel, including the role of the grievance procedure in harmonious employee-employer relations.

The training program shall also include methods for instruction of all non-supervisory personnel by their supervisors in the use of the grievance procedure. Use of the grievance procedure to resolve disputes shall be encouraged.

The Director of the Department of Personnel and Training shall develop in-house resources to allow the Department and its personnel to conduct on-site training of this nature for units and agencies of State government throughout Virginia.

§ 2.1-114.5:3. Office of employee relations counselor created.—There is hereby created the Office of Employee Relations Counselors under the direct control and supervision of the Governor.

§ 2.1-114.5:4. Appointment and duties of Director.—The office shall be headed by a Director who shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at the pleasure of the Governor for a term coincident with his own.

§ 2.1-114.5:5. Director to supervise Office.—The Director of the Office of Employee Relations Counselors shall, under the direction and control of the Governor, be responsible for the supervision of the Office and shall exercise such other powers and perform such other duties as may be required of him by the Governor.

§ 2.1-114.5:6. General powers and duties of Director and office.—The Director shall have the following general powers:

A. To employ such personnel as may be required to carry out the purposes of this chapter.

B. To provide information upon request of any State employee concerning personnel policies, rules and regulations, and statutes including the use of the grievance procedure and to provide such forms as may be necessary for the proper use of the grievance procedure.

C. To establish a toll-free telephone number for the purpose of carrying out the provisions of this section.

D. To act as the grievant's representative at any panel hearing, provided however, that the grievant so desires and provided further that the employee relations counselor deems such representation appropriate under the circumstances.

E. To investigate any and all allegations of reprisal as the result of the utilization of the grievance procedure.

F. To collect information and statistical data in regard to the use of the grievance procedure, such information and statistical data to be reported on an annual basis to the Governor and the General Assembly.

G. To make such recommendations to the Governor and General Assembly as he deems appropriate for the improvement of the grievance procedure and management-employee relations.

H. To do all acts necessary or convenient to carry out such powers and duties.

§ 15.1-7.1. Establishment of grievance procedure, personnel system and uniform pay plan 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 may be included in such a grievance procedure at the discretion of the governing body of the county, city or town 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~~ *2.1-114.5:1* and shall be submitted to the Director of Personnel appointed pursuant to § 2.1-113 for approval ; *provided that any local government's panel composition method approved by the Director of Personnel prior to the enactment of § 2.1-114.5:1 D. shall be considered in substantial compliance with such subsection .* 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 and shall cause the noncomplying locality to promptly apprise its

employees of the applicability of the grievance procedure adopted by the Commonwealth and shall cause such locality to disseminate copies of such grievance procedure to those employees covered by the procedure. The term "grievance" as used herein shall not be interpreted to mean negotiations of wages, salaries or fringe benefits.

§ 15.1-7.2. Provisions of grievance procedure; training.—A. Governing bodies required to establish a grievance procedure under § 15.1-7.1 shall, no later than January one, nineteen hundred seventy-nine, amend such grievance procedures to fully and closely comply with the definition of a grievance and the minimum provisions of the State grievance procedure as described in § 2.1-114.5:1; provided that any local government's panel composition method approved by the Director of Personnel prior to the enactment of § 2.1-114.5:1 D. shall be considered in substantial compliance with such subsection; and provided further, that questions of grievability shall be resolved by the city, town or county attorney, or, if none, by the locality's Commonwealth's Attorney. Appeals of such decision shall be to the Attorney General.

B. Each governing body required hereunder to establish an amended grievance procedure may, in cooperation with the Director of Personnel and Training, develop a comprehensive training and instructional program, to be implemented by July one, nineteen hundred seventy-nine, or as soon thereafter as practicable. Such program may be implemented with the similar State training program developed pursuant to the provisions of § 2.1-114.5:2 and shall include comprehensive training for all local government supervisory personnel with emphasis upon the importance of harmonious employee-employer relations.

The training program may also include methods for instruction of all non-supervisory personnel by their supervisors in the use of the grievance procedure. Use of the grievance procedure to resolve disputes shall be encouraged.

APPENDIX II

A BILL to amend and reenact § 2.1-113 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 2.1-113.1 through 2.1-113.3, relating to the Personnel Advisory Committee.

Be it enacted by the General Assembly of Virginia:

1. That § 2.1-113 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.1-113.1 through 2.1-113.3 as follows:

§ 2.1-113. Governor to be Chief Personnel Officer; Director of Personnel; assistants and employees; advisory committee; assignment of duties; expenses.—The Governor shall be the Chief Personnel Officer of the Commonwealth. He shall direct the execution of this chapter. The Secretary of Administration and Finance shall serve as the deputy personnel officer. The Governor shall appoint a Director of Personnel, who shall hold his position at the pleasure of the Governor. The Director of Personnel shall, under the direction and control of the Governor and the Secretary of Administration and Finance, exercise such powers and perform such duties as are delegated to him by the Governor or conferred or imposed by law upon him; and he shall perform such other duties as may be required of him by the Governor and the Secretary of Administration and Finance. The Governor may employ such other competent personnel assistants and employees as he may require to carry out its provisions. ~~If he so desires, the Governor may appoint to serve at his pleasure an advisory committee on personnel administration, composed of members of the General Assembly and such other persons as he may designate.~~ At his discretion he may assign to officers and employees of the Commonwealth such duties as he sees fit in connection with the administration of this chapter; such officers and employees shall receive no extra compensation for such duties but shall be reimbursed for necessary travel and other expenses.

§ 2.1-113.1. *Personnel Advisory Committee.*—*There is hereby created under the Secretary of Administration and Finance a personnel advisory committee. The Committee shall consist of seven members appointed by the Governor and subject to confirmation by the General Assembly. The members shall serve for four-year terms and no member shall serve for more than two full successive terms. Initial appointments to the Committee shall be made as follows: two for a term of two years, two for a term of three years, and three for a term of four years. A chairman of the Committee shall be elected annually by the Committee.*

§ 2.1-113.2. *Meetings and compensation.*—*The Committee shall meet at least once every three months, and on the call of the chairman, when, in his opinion, additional meetings are necessary. Members of the Committee shall receive compensation at the rate of fifty dollars per day for each day they are engaged in the performance of their official duties, and shall be reimbursed for actual expenses incurred in the discharge of their duties.*

§ 2.1-113.3. Powers and duties.—The Committee shall exercise the following powers and duties and such others as may be provided by law:

A. Advise the Governor, Secretary of Administration and Finance and the Director of Personnel on all matters relating to personnel administration.

B. Review all public employer-employee relations throughout the Commonwealth.

C. Review the Department of Personnel's program of employee-management relations and make recommendations to improve communications between employees and agencies and instrumentalities of the Commonwealth.

D. Carry out such other functions as the Governor and Secretary of Administration and Finance deem appropriate.

APPENDIX III

SENATE JOINT RESOLUTION NO.....

Requesting the Secretary of Administration and Finance to study certain changes in the personnel regulations.

WHEREAS, on occasion State employees are relieved of their duties for purposes of disciplinary investigations; and

WHEREAS, such suspensions are often times without compensation; and

WHEREAS, the State personnel rules and regulations contain no provision for administrative leave, that is, leave with pay pending a disciplinary investigation; and

WHEREAS, such investigations are lengthy in duration leaving the employee without compensation for such period of investigation; and

WHEREAS, such relief from duty without compensation for purposes of investigation for an extended duration of time appear inequitable; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Secretary of Administration and Finance is requested to study personnel regulations and determine necessary changes in order to establish a procedure for administrative leave for employees relieved of duty for purposes of disciplinary investigations.

APPENDIX IV

A BILL to amend and reenact § 2.1-114.5 of the Code of Virginia, relating to the duties of the Department of Personnel and Training.

Be it enacted by the General Assembly of Virginia:

1. That § 2.1-114.5 of the Code of Virginia is amended and reenacted as follows:

§ 2.1-114.5. Duties of Department.—The Department shall have the following duties:

A. Make recommendations to the Governor regarding the establishment and maintenance of a classification plan for the service of the Commonwealth, and from time to time, recommend such amendments thereto as may be necessary.

B. Make recommendations to the Governor regarding the establishment and administration of a compensation plan for all employees, and recommend such amendments thereto as may, from time to time, be necessary.

C. Design and maintain a personnel information system which shall support the operational needs of the Department and of State agencies, and which shall provide for the management information needs of the Governor and his secretaries, and of the General Assembly. The system shall provide at a minimum a roster of all employees in the service of the Commonwealth, in which there shall be set forth as to each employee, the employing agency, the class title, pay and status and such other data as may be deemed desirable to produce significant facts pertaining to personnel administration.

D. Establish and direct a program of employee-management relations designed to improve communications between employees and agencies of the Commonwealth. The program shall have at a minimum:

1. An appeal procedure which shall assure all persons employed under this chapter a full and impartial inquiry into the circumstances of removal and demotion.

2. 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; however, such procedure shall not be binding on local school boards nor on employees of the General Assembly. The term "grievance" as used herein shall not be interpreted to mean negotiations of wages, salaries, or fringe benefits.

E. Establish and administer a system of performance evaluation for all employees in the service of the Commonwealth, based on the quality of service rendered, related where practicable to specific standards of

performance.

F. Establish and administer a system of recruitment designed to attract high quality employees to the service of the Commonwealth. In administering this system, applicants shall be rated on the basis of relative merit and classified in accordance with their suitability for the various classes of positions in the service of the Commonwealth, and a record thereof shall be maintained in the open register.

G. Establish and administer a comprehensive and integrated program of employee training and management development.

H. Establish and administer a program of evaluation of the effectiveness of performance of the personnel activities of the agencies of the Commonwealth.

I. Establish and administer a program to assure equal employment opportunity to applicants for State employment and to State employees in all incidents of employment.

J. Establish and administer rules and regulations relating to disciplinary actions, provided however, that no disciplinary action shall include the suspension without pay for more than ten days of any State employee who is under investigation without a hearing conducted by either a level of supervision above the employee's immediate supervisor or his agency head.

