

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

The State Grievance Procedure

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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**COMMONWEALTH OF VIRGINIA
RICHMOND
1985**

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Delegate Clinton Miller, Vice-Chairman
Delegate Jay W. DeBoer
Delegate Alan A. Diamonstein
Senator Virgil H. Goode, Jr.
Senator Wiley F. Mitchell, Jr.
Delegate William S. Moore, Jr.
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**Report of the Joint Subcommittee Studying
The State Grievance Procedure
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
January, 1985**

To: The Honorable Charles S. Robb, Governor of Virginia
and
The General Assembly of Virginia

INTRODUCTION

The following resolution, Senate Joint Resolution No. 38, agreed to during the 1984 General Assembly Session, requested that a joint subcommittee study the following three aspects of the state grievance procedure: panel impartiality, grievances filed by employees terminated because of criminal convictions and the administration of local government grievance procedures.

SENATE JOINT RESOLUTION NO. 38

Requesting a joint subcommittee to study the state grievance procedure.

Agreed to by the Senate, March 8, 1984

Agreed to by the House of Delegates, March 6, 1984

WHEREAS, the state grievance procedure was enacted in 1978; and

WHEREAS, grievance procedures have provided employees with a means to protect their employment and to provide a forum for employees to address their work-related concerns, and to make employers more accountable for their personnel practices; and

WHEREAS, questions have been raised specifically on (i) the criteria for assuring that panel members are impartial; (ii) whether certain criminal convictions of an employee in specific work assignments are so serious and job related that the circuit court should hear the grievance at the panel hearing stage; and (iii) procedural applications in some local government grievance procedures and the substantial compliance of those procedures with the state grievance procedure, as provided by law; and

WHEREAS, it seems appropriate to address these procedural questions; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee be created to study the present state grievance procedure. The joint subcommittee shall be composed of three members of the Senate appointed by the Senate Committee on Privileges and Elections, and five members of the House appointed by the Speaker.

The joint subcommittee shall complete its work and make any recommendations it deems advisable to the 1985 Session of the General Assembly.

The costs of conducting this study, both direct and indirect, shall not exceed \$15,610.

The three Senate members appointed to serve on the subcommittee were Virgil H. Goode, Jr., Wiley F. Mitchell, Jr., and Elliot S. Schewel. The five House members appointed to serve on the subcommittee were Jay W. DeBoer, Alan A. Diamonstein, Clinton Miller, William S. Moore, Jr. and Clifton A. Woodrum.

BACKGROUND

During the 1978 General Assembly Session legislation was passed which substantially modified the state grievance procedure as it existed at that time. Changes in local government grievance procedures were also mandated. The 1978 changes were the result of a joint Senate and House General Laws Committees Study on Grievance Procedures. The study, reported in Senate Document No. 23, 1978, found deficiencies in the procedures themselves as well as in the application of the procedures. The subcommittee found that employees were sometimes reluctant to use the grievance procedure, both because of a lack of knowledge about the procedure and because of a fear of reprisal. The subsequent legislative changes were designed to make the grievance procedure more responsive to employees. The Office of Employee Relations Counselors was created on July 1, 1978, as an independent state agency responsible for helping state employees use and understand the grievance procedure and for developing and administering certain aspects of the state grievance procedure.

Although there have been a number of statutory and policy modifications since 1978, the basic grievance procedure has remained the same.

Senate Joint Resolution No. 38, agreed to during the 1984 General Assembly Session, directed the joint subcommittee to study three specific issues on which questions had been raised.

The first issue, criteria for ensuring that panel members are impartial, was raised because of reports that grievants had selected members of their family or law partners of the attorney representing them in the panel hearing as panel members. Although paragraph 4 of subsection D of § 2.1-114.5:1 prohibits persons having direct involvement with the grievance from serving on the panel and policies developed by the Office of Employee Relations Counselors elaborate on who those persons are, there is no provision that would prohibit other potentially biased persons from serving on the panel.

The second issue, regarding the grievance hearings of employees terminated because of a criminal conviction, was raised by the Department of Corrections. Several Department of Corrections employees had been terminated because of criminal convictions and then reinstated by the grievance panel. The Department of Corrections suggested that a circuit court hearing be substituted for the panel hearing in cases of employees terminated because of criminal convictions and this suggestion was referred to the joint subcommittee for further study.

The third issue to be studied by the subcommittee was the conformity of local government grievance procedures to the state grievance procedure. Localities with more than fifteen employees are required by Virginia Code § 15.1-7.2 to establish grievance procedures that "fully and closely" comply with the provisions of the state grievance procedure as described in § 2.1-114.5:1. Local governments that fall within this statute are required by § 15.1-7.1 to submit their grievance procedures to the Office of Employee Relations Counselors for approval. (Prior to July 1, 1984, local grievance procedures were submitted to the Department of Personnel and Training for approval.)

While most localities have grievance procedures that are in substantial compliance with the state grievance procedure, some localities do not. In some localities an inordinate amount of time passes before a management or panel decision is reached.

ACTIVITIES AND FINDINGS

The joint subcommittee held five meetings, including two public hearings, to ascertain problems with the current grievance procedure and to consider solutions to those problems.

The subcommittee heard from a number of people on the issues of impartiality of panel members and methods of panel selection. The Department of Corrections recommended that family members of the grievant and law partners of the attorney representing the grievant not be allowed to serve on the grievant's panel because of the potential for bias.

Some people testified that the state panel selection method, where each side selects one panel member and those two select the third, is not sound because the first two act as advocates for the side that chose them and the third is the actual decision maker. Statistics presented by the Office of Employee Relations Counselors show that sixty percent of all panel decisions are unanimous, which indicates that the third panel member is not casting the deciding vote. The Secretary of Administration suggested that the state deviate from the usual panel selection method in cases of termination of state employees, by appointing an administrative hearing officer, who is also an attorney, to serve as the third panel member. It is the administration's position that the presence of a hearing officer will reduce the current problem of inconsistent decisions and increase the stability of the grievance process. There is concern that lay panels lack the expertise needed to evaluate cases presented by attorneys. According to the Office of Employee Relations Counselors the estimated cost to the state would be \$30,000 per year.

The subcommittee voted to prohibit the following persons from serving on the panel: persons having direct involvement with the complaint or dispute giving rise to the grievance, managers in a direct line of supervision of a grievant, certain relatives of the grievant and certain persons working with an attorney having direct involvement with the subject matter of the grievance.

The subcommittee also voted to adopt the proposal that an attorney approved by the Virginia Supreme Court as an administrative hearing officer serve as the third panel member in state employee termination cases, with the expense to be assumed by the employing agency of the grievant. Local governments would be explicitly exempted from this requirement. Virginia Code section 15.1-7.1 allows local governments whose panel composition method was approved by the Department of Personnel and Training prior to 1978 to retain their method of panel composition, while other local governments must use the state selection method. A number of local government officials testified that they wish to retain their grandfathered panel composition method. Many explained their particular panel composition method and why it works well for the administration and the employees in their locality. A number stated that because each locality is unique, all localities should not be required to conform to one method. The subcommittee learned that there are numerous methods of panel formation and composition in existence across the State and did not recommend any changes.

The Department of Corrections requested that the subcommittee give serious consideration to the Department's recommendation that a circuit court hearing be substituted for a panel hearing in cases of employees terminated because of criminal convictions. The Department reported that there have been six cases in the past year-and-a-half where an employee terminated because of either a larceny or drug-related criminal conviction, was reinstated by a panel decision. Department spokesmen stated that the Department of Corrections is in a unique situation because its employees supervise persons convicted of criminal offenses. The continued employment of convicted employees leads to disrespect of employees by inmates and lowers morale among employees, which leads to management problems. The Department feels that the circuit court is in a better position to judge an employee's suitability for continued employment in the Department of Corrections than a panel of lay persons.

Some members of the subcommittee were reluctant to further involve the circuit court in state personnel matters and explored the possibility of establishing an administrative hearing. It was suggested that the Department of Corrections could rewrite its Standards of Conduct to require automatic termination of an employee convicted of a criminal offense, with a provision for an administrative hearing to review the termination process. The Attorney General's Office reported that this procedure would be constitutionally sound, but the Department of Corrections felt that the circuit court approach would be preferable. The Department wishes to retain discretion in terminating employees convicted of criminal offenses and felt that it would be difficult to spell out in the Standards of Conduct those offenses for which an employee should be terminated.

The subcommittee voted to follow the Department of Corrections' recommendation and allow Department of Corrections employees who work in institutions and are terminated on the grounds of a criminal conviction or are terminated as the result of being placed on probation under § 18.2-251 of the Code of Virginia, to have a circuit court hearing in lieu of a panel hearing. The recommended legislation specifies that the circuit court's consideration will be a de novo hearing on the merits and that the termination shall be upheld unless it is unwarranted by

the facts or contrary to law or written policy.

The primary local government problem brought to the subcommittee's attention was a twelve-to-eighteen-month delay in reaching the panel hearing stage for employees or former employees of the City of Richmond. A representative of some City of Richmond employees presented the subcommittee with a list of problem areas in the Richmond City grievance procedure which cause confusion and sometimes duplication of time and effort. Many of the problems presented, such as a lack of clarity between what is and is not grievable and lack of familiarity with the grievance procedure by circuit court judges, apply to the state grievance procedure and are not peculiar to local governments.

The Virginia Chapter of the International Personnel Management Association conducted a survey of local government grievance procedures for the subcommittee. According to the Association, survey results indicate that thousands of grievances are being processed in a routine and timely manner and that localities have no major recommendations for change. The survey did indicate that there is some confusion about state law and that training in effective administration of the grievance procedure would be useful in some localities.

The subcommittee voted to revise the procedures that apply when a locality is out of compliance with statutory mandates. Current law provides that failure to comply causes the state grievance procedure to be in effect in the locality. The proposed amendment would allow localities ninety days after receiving written notice of noncompliance from the Office of Employee Relations Counselors before the state grievance procedure would come into effect. Current law requires noncomplying localities to notify employees that the state grievance procedure is in effect and to disseminate copies of the state grievance procedure to employees. The proposed amendment would require the locality to provide individual written notice to each employee that the locality's procedure is not in compliance and that the state grievance procedure is in effect within ten calendar days of the last day of the ninety-day period. The proposed amendment also specifies that the state grievance procedure remains in effect for as long as the locality remains in noncompliance and that copies of the state grievance procedure shall be provided to employees upon request.

The subcommittee considered requiring by statute that local governments include minimum provisions regarding coverage of personnel, procedural steps, role of the circuit court and specific time periods in their grievance procedures. Because the subcommittee wishes to ensure that local government employees have access to an effective grievance procedure, but wishes to allow localities to retain flexibility, the subcommittee decided not to recommend major legislative changes at this time. The subcommittee voted to introduce a resolution urging localities to administer their grievance procedures in a timely, fair and effective manner and to urge noncomplying localities to bring their grievance procedures into compliance with statutory requirements.

The resolution will also request the Office of Employee Relations Counselors to submit to the 1986 General Assembly Session the names of counties, cities and towns whose grievance procedures have not been approved because of a failure to comply with statutory requirements. The subcommittee plans to have the General Assembly reevaluate the need for legislation regarding local government grievance procedures at that time.

The subcommittee adopted a proposal requiring that specific time limitations for submitting grievances and appealing them through each step of grievance resolution be prescribed in the grievance procedure. This amendment is designed to notify localities that specific time frames are required.

The subcommittee heard from a former employee of a regional housing authority about the problems experienced in resolving a grievance under the housing authority's grievance system. Regional housing authorities are not covered by either the state or a local government grievance procedure. A representative of a regional jail testified that it would not be feasible to require regional jails to be included in the state or a local government grievance procedure because the enabling legislation would have to be amended to provide that employees no longer serve at the pleasure of the regional jail board. In addition, regional jails are correctional facilities and personnel actions must be taken with haste at times. Subcommittee members expressed concern that there are quasi-state agencies that are not statutorily required to have grievance procedures

because they are regional in nature. The subcommittee recommended that regional housing authorities with fifteen or more employees be included in the state or a local government grievance procedure.

The subcommittee voted to recommend rewriting paragraphs 2 and 3 of subsection D of § 2.1-114.5:1 to clarify confusing language in the current statute. The only substantive change is the addition of the sentence "If the grievant is represented by legal counsel, management likewise has the option of being represented by counsel." According to the Office of Employee Relations Counselors, the current practice in the Commonwealth is that the agency may not be represented by an attorney even when the grievant is represented by an attorney.

The subcommittee recommended reducing from "ten days" to "five work days" the number of days an agency head is given to determine qualification for a panel hearing under subsection E of § 2.1-114.5:1. All of the other steps in the process have been administratively reduced to five by the Office of Employee Relations Counselors and this would standardize the time frames.

CONCLUSION

The subcommittee conducted an examination of the state and local government grievance procedures, with emphasis on the three issues it was directed to study under Senate Joint Resolution No. 38, 1984. The subcommittee concluded that the grievance procedure as it now exists is basically sound, but that there are some steps that can be taken to improve its operation. Legislation designed to improve the operation of the grievance procedure has been proposed by the subcommittee.

Respectfully submitted,

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Senator Elliot S. Schewel, Chairman

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Delegate Clinton Miller, Vice-Chairman

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Delegate Jay W. DeBoer

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Delegate Alan A. Diamonstein

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Senator Virgil H. Goode, Jr.

.....

Senator Wiley F. Mitchell, Jr.

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Delegate William S. Moore, Jr.

.....

Delegate Clifton A. Woodrum

ADDITIONAL STATEMENTS

We concur in the recommendations made in this report, with the exception of the recommendation to appoint an administrative hearing officer as the third panel member in cases of termination of state employees. We note our reservations concerning the necessity of appointing administrative hearing officers in state employee termination cases.

Respectfully submitted,

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Delegate Clifton A. Woodrum

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Delegate Jay W. DeBoer

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Delegate William S. Moore, Jr.

I am in agreement with nearly all of the changes recommended by the Joint Subcommittee; however, I do not favor having an administrative hearing officer as the third panel member. I don't think it is worth the additional cost and I think it would come to impair the impartiality of the existing system.

Respectfully submitted,

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Senator Virgil H. Goode, Jr.

DISSENTING STATEMENT
AS TO RECOMMENDATION FOR
ADMINISTRATIVE HEARING OFFICER
AS THIRD PANEL MEMBER IN
CASES OF TERMINATION OF STATE
EMPLOYEES (PROPOSED § 2.1-114.5:1 (D) (4))

The information provided to the subcommittee indicated that there has been no significant problem concerning the procedure for selection of third panel members in state grievance matters, nor in the character of the decisions being made by panels in which the third panel member is so designated. No persuasive argument was presented that "...the state panel selection method, where each side selects one panel member and those two select the third, is not sound because the first two act as advocates for the side that chose them and the third is the actual decision maker."

On the contrary, the overwhelming evidence presented to the committee supports the proposition that the third panel member selection process should be retained as is. "Statistics presented by the Office of Employee Relations Counselors show that sixty percent of all panel decisions are unanimous, which indicates that the third panel member is not casting the deciding vote."

It would be an unnecessary change not supported by the facts, to initiate the "Administrative Hearing Officer" concept in our grievance procedure at this time. The cost, thought not anticipated to be extensive, is not necessary.

But the primary objection to this proposed change, is that the Administrative Hearing Officer would be designated by the state without any input from the grievant. The Hearing Officer would be paid by the state and would give a perception of not being impartial, etc.

I strongly recommend that this section of the proposed legislation be amended to eliminate the Administrative Hearing Officer concept in the state grievance procedure and that the previous panel selection method be retained in its entirety.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Clinton Miller", written in a cursive style. The signature is positioned above a horizontal line.

Delegate Clinton Miller

APPENDIX A

SENATE JOINT RESOLUTION NO.....

Requesting local governments to conform their grievance procedures to the state grievance procedure.

WHEREAS, the Joint Subcommittee Studying the State Grievance Procedure was established pursuant to Senate Joint Resolution No. 38 in 1984; and

WHEREAS, the joint subcommittee has heard testimony that, although most counties, cities and towns in the Commonwealth have timely, fair and effective grievance procedures, the grievance procedures of certain counties, cities and towns are not conducted in a timely, fair and effective manner; and

WHEREAS, the General Assembly feels that the employees of the counties, cities and towns of the Commonwealth should have access to a timely, effective and fair grievance procedure; and

WHEREAS, § 15.1-7.1 of the Code of Virginia provides that each county, city and town having more than fifteen employees shall have a grievance procedure which affords an immediate and fair method for the resolution of disputes which arise between the public employer and employee; and

WHEREAS, § 15.1-7.1 of the Code of Virginia provides that the grievance procedures of counties, cities and towns of the Commonwealth shall conform to the requirements of the state grievance procedure and shall be submitted to the Office of Employee Relations Counselors for approval; and

WHEREAS, § 15.1-7.1 of the Code of Virginia provides that the state grievance procedure shall be applicable in counties, cities and towns whose grievance procedures do not conform to statutory requirements; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That counties, cities and towns are urged to administer their grievance procedures in a timely, fair and effective manner; and be it

RESOLVED FURTHER, That counties, cities and towns whose grievance procedures are not in compliance with the requirements of § 15.1-7.1 of the Code are urged to cause changes to be made forthwith which will bring the county, city or town into compliance; and be it

RESOLVED FINALLY, that the Office of Employee Relations Counselors is requested to submit to the 1986 General Assembly Session the names of those counties, cities and towns whose grievance procedures have not been approved because of a failure to comply with statutory requirements.

APPENDIX B

SENATE BILL NO. HOUSE BILL NO.

A BILL to amend and reenact §§ 2.1-114.5:1, 15.1-7.1 and 15.1-7.2 of the Code of Virginia, relating to state and local government grievance procedures.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-114.5:1, 15.1-7.1 and 15.1-7.2 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-114.5:1. Grievance procedure.—The Office of Employee Relations Counselors shall establish a grievance procedure as part of the state's program of employee-management relations. It shall be the policy of the Commonwealth to encourage resolution of employee problems and complaints wherein employees can freely discuss their concerns with immediate supervisors and upper management levels. However, to the extent such concerns cannot be resolved, 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, including dismissals, demotions and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance; (ii) the application or interpretation of personnel policies, procedures, rules and regulations, including the application of policies involving matters referred to in subsection B (iii) below; (iii) acts of reprisal as the result of utilization of the grievance procedure or of participation in the grievance of another state employee; and (iv) complaints of discrimination on the basis of race, color, creed, political affiliation, age, handicap, national origin or sex.

B. Management responsibilities. - Management reserves the exclusive right to manage the affairs and operations of state government. Accordingly, the following complaints are nongrievable: (i) establishment and revision of wages or salaries, position classifications or general benefits; (ii) work activity accepted by the employee as a condition of employment or work activity which may reasonably be expected to be a part of the job content; (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 work activities are to be carried on; (vi) termination, layoff, demotion or suspension from duties because of lack of work, reduction in work force, or job abolition; (vii) the hiring, promotion, transfer, assignment and retention of employees within the agency; and (viii) the relief of employees from duties of the agency in emergencies.

C. Coverage of personnel. - All permanent state government personnel, excluding probationary employees, are eligible to file grievances as provided in this chapter with the following exceptions:

1. Appointees of elected groups or individuals;
2. Agency heads or chief executive officers of government operations, and institutions of higher education appointed by boards and commissions;
3. Law-enforcement officers as defined in Chapter 10.1 (§ 2.1-116.1 et seq.) of Title 2.1 whose grievance is subject to the provisions of Chapter 10.1 of Title 2.1 and who have elected to proceed pursuant to Chapter 10.1 of Title 2.1 in the resolution of their grievance or any other employee electing to proceed pursuant to any other existing procedure in the resolution of their grievance; and
4. Managerial employees who are engaged in agency-wide policy determinations, or directors of major state facilities or geographic units as defined by regulation, except that such

managerial employees below the agency head level may file grievances regarding disciplinary actions limited to dismissals.

Permanent classified employees of the Department of Mental Health and Mental Retardation who are terminated on the grounds of patient abuse , *and permanent classified employees of the Department of Corrections who work in institutions or have client or inmate contact and who are terminated on the grounds of a criminal conviction, or are terminated as a result of being placed on probation under the provisions of § 18.2-251 of the Code of Virginia*, may appeal such termination through the grievance procedure only through the management steps. If resolution is not forthcoming by the conclusion of the last management step, the employee may advance the grievance to the circuit court of the jurisdiction in which the grievance occurred *for a de novo hearing on the merits* in lieu of a panel hearing. In its discretion, the court may refer the matter to a commissioner in chancery to take such evidence as may be proper and to make a report to the court. Both the grievant and the respondent may call upon appropriate witnesses and be represented by legal counsel or other representatives before the court or the commissioner in chancery. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or respondent before the court or commissioner in chancery without being in violation of the provisions of § 54-44 of the Code of Virginia. *A termination shall be upheld unless shown to have been unwarranted by the facts or contrary to law or written policy.* The decision of the court shall be final and binding.

Employees of local welfare departments and local welfare boards shall be included within the coverage of the state grievance procedure; however, these employees may be accepted 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 locality's personnel system.

Notwithstanding the provisions of § 2.1-116 (1), constitutional officers' employees shall have access to the state grievance procedure; however, these employees may be accepted 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 the locality's personnel system unless their inclusion in such local personnel system is agreed to by both the constitutional officer and the locality.

Employees of regional housing authorities created pursuant to § 36-40 shall be included within the coverage of the state grievance procedure if the authority has more than fifteen employees. However, these employees may be accepted in the grievance procedure of a local governing body that contributes financially to the operation of the authority if agreed to by both the authority and the local governing body.

Notwithstanding those exempt from this chapter, every legislative and judicial agency shall promulgate and administer a grievance procedure.

D. Grievance procedure steps. - The Office of Employee Relations Counselors shall develop a grievance procedure in compliance with the foregoing which shall include not more than four steps for airing complaints at successively higher levels of management and a final step providing for a panel hearing.

1. The first step shall provide for an informal, initial processing of employee complaints by the immediate supervisor through a nonwritten, discussion format.

2. Management steps shall provide for a review with higher levels of management following the employee's reduction to writing of the grievance and the relief requested on forms supplied by the agency or the Office of Employee Relations Counselors. *Personal face-to-face meetings are required at these steps.*

3. ~~In the second~~ *With the exception of the final management step* , the only persons who may be present *in the management step meetings* are the grievant, ~~one person~~ representing the appropriate ~~management manager~~ *manager at the level at which the grievance is being heard*, and appropriate witnesses for each side. At ~~subsequent the final management steps step~~ *the final management step* , the grievant, at his or her option, may have present a representative of his or her choice. ~~In cases where the procedure has only two management steps, the grievant, at his or her option, may have present at the second step a representative of his or her choice. Personal face-to-face meetings are required at these steps.~~ Nothing in this section shall be construed to prevent a

local government from having a representative present during the third or fourth steps of a grievance procedure. If the grievant is represented by legal counsel, management likewise has the option of being represented by counsel.

4. Qualifying grievances shall advance to the 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. 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~~ the third panel member. Such panel shall not be composed of any persons having direct involvement with the grievance being heard by the panel, or with the complaint or dispute giving rise to the grievance. Managers who are in a direct line of supervision of a grievant and the following relatives of a participant in the grievance process or a participant's spouse are prohibited from serving as panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin. No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee or co-employee of such an attorney shall serve as a panel member. In cases of termination of state employees, the third panel member shall not be selected in the manner described above, but such panel member shall be appointed on a rotating basis from the list maintained by the Supreme Court of Virginia of lawyers who have been approved by the Supreme Court to serve as administrative hearing officers. The employing agency of the grievant shall bear the per diem expenses and other costs of the administrative hearing officer. Local governments shall not be required to have an administrative hearing officer in employee termination cases, but may do so at their option. In all cases the third panel member shall be chairperson of the panel. The decision of such panel shall be final and binding and shall be consistent with provisions of law and written policies. Both the grievant and the respondent may call upon appropriate witnesses and be represented by legal counsel or other representatives at the panel hearing. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or respondent before the panel without being in violation of the provisions of § 54-44 of the Code of Virginia. The Director of the Office of Employee Relations Counselors shall promulgate rules of conduct for panel hearings.

The grievance procedure shall prescribe reasonable and specific 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.

After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure without just cause will result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five work days of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the agency head. Failure of either party without just cause to comply with all substantial procedural requirements at the panel hearing shall result in a decision in favor of the other party.

E. Determining issues qualifying for a panel hearing. - Decisions regarding whether or not a matter qualifies for a panel hearing shall be made by the agency head at the request of the agency or grievant and such decisions shall be made within ~~ten~~ five work days of such request. A copy of the ruling shall be sent to the grievant, to the Director of the Department of Personnel and Training, and to the Director of the Office of Employee Relations Counselors. Decisions of the agency head may be appealed to the circuit court having jurisdiction in the locality in which the grievant is employed for a hearing de novo on the ~~issues~~ as to issue of whether or not the grievance qualifies for a panel hearing. Proceedings for review of the decision of the agency head shall be instituted by filing a notice of appeal with the agency head within ~~ten~~ five work days after the date of the decision and giving a copy thereof to all other parties. Within ~~ten~~ five work days thereafter, the agency head shall transmit to the clerk of the court to which the appeal is taken: a copy of the decision of the agency head, a copy of the notice of appeal, and the exhibits. A list of the evidence furnished to the court shall also be furnished to the grievant. The failure of the agency head to transmit the record within the time allowed shall not prejudice the rights of the grievant. The court, on motion of the grievant, may issue a writ of certiorari requiring the agency head to transmit the record on or before a certain date. Within thirty days of receipt by ~~the clerk~~ of such records; by the clerk the court,

sitting without a jury, shall hear the appeal on the record transmitted by the agency head and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice require. The court may affirm the decisions of the agency head or may reverse or modify the decision. The decision of the court shall be rendered no later than the fifteenth day from the date of the conclusion of the hearing. The decision of the court is final and is not appealable.

F. Either party may petition the circuit court having jurisdiction in the locality in which the grievant is employed for an order requiring implementation of the decision of the panel.

§ 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 30, 1974, have~~ a grievance procedure for its employees ~~to afford that affords~~ 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 employees and deputies of 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 pursuant to § 2.1-114.5:1 and shall be submitted to the Director of the Office of Employee Relations Counselors ~~appointed pursuant to § 2.1-114.5:4~~ for approval; however, any local government's panel composition method approved by the Director of *the Department of Personnel and Training* prior to the enactment of § 2.1-114.5:1 D and ensuring an impartial panel shall be considered in substantial compliance with such subsection. *Local governments shall not be required to have an administrative hearing officer in employee termination cases, as provided in the state grievance procedure, but may do so at their option.* 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 the Office of Employee Relations Counselors 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 .~~ *Every locality upon receiving written decision of noncompliance from the Director of the Office of Employee Relations Counselors shall have a period of not more than ninety calendar days to come into compliance. If the locality fails to bring its procedure into compliance within this time period, the locality shall within ten calendar days thereafter provide individual written notice to each of its employees of the ruling of noncompliance and the applicability of the state grievance procedure. The state grievance procedure shall be applicable for so long as the locality remains in noncompliance and the locality shall provide its employees copies of the state grievance procedure upon request.* The term "grievance" as used herein shall not be interpreted to mean negotiations of wages, salaries or fringe benefits.

§ 15.1-7.2. Provision of grievance procedure; training programs.—A. ~~Governing bodies~~ *Each governing body* required to establish a grievance procedure under § 15.1-7.1 shall ; ~~no later than January one, nineteen hundred seventy-nine, amend such have a grievance procedures to procedure which fully and closely comply~~ *complies* with the definition of a grievance and the minimum provisions of the ~~State 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 *the Department of Personnel and Training* prior to the enactment of § 2.1-114.5:1 D ~~and ensuring an impartial panel~~ shall be considered in substantial compliance with such subsection ; ~~and provided further, that questions .~~ *Local governments shall not be required to have an administrative hearing officer in employee termination cases, as provided in the state grievance procedure, but may do so at their option. Questions* of grievability shall be resolved by the chief administrative officer of the locality or a department head authorized by such chief administrative officer to decide the issue of grievability. No city, town, county or Commonwealth's Attorney shall be authorized to decide the issue of grievability. Decisions of the chief administrative officer or the designated department head as to grievability may be appealed to the circuit court having jurisdiction in the locality wherein the grievant is employed for a hearing de novo on the issue of grievability. Such appeal shall follow the same procedures

as those established in § 2.1-114.5:1 E.

B. Each governing body required hereunder to establish ~~an amended~~ *a* grievance procedure may, in cooperation with the Director of *the Department of Personnel and Training*, develop a comprehensive training and instructional program ; ~~to be implemented by July one, nineteen hundred seventy-nine~~ . Such program may be implemented with the similar ~~State~~ *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 nonsupervisory personnel by their supervisors in the use of the grievance procedure. Use of the grievance procedure to resolve disputes shall be encouraged.