

## Appendix C: STATE GRIEVANCE SYSTEM

**[The following information was provided by the Grievance Board and was valid as of September 24, 2007 and may be subject to change during the 07-08 year]**

### **FOR NEW GRIEVANCES AFTER JULY 1, 2007**

#### **LEVEL ONE - STEPS AND TIME FRAMES:**

- Days are always calculated on a standard work week, that being Monday through Friday, excluding Saturday, Sunday, official holidays or any day the employee's work place is legally closed by authority of the Chief Administrator due to weather or like cause. See W. Va. Code §6C-2-2 ( c ).
- An Employee must start their grievance at Level 1 unless the Chief Administrator agrees to skip Level 1 and go to either Level 2 or 3 directly, OR an Employee may file directly at Level 3 if the grievance involves discharge from employment, a suspension without pay, or a demotion or reclassification which results in a loss of compensation or benefits. See W. Va. Code §6C-2-4 (a)(2).
- An Employee has 15 days from an incident to file their grievance by submitting a completed form requesting Level 1 to the Chief Administrator, and sending a copy to the Grievance Board. State employees must also send a copy of the request to the Division of Personnel. The Employee must request either a hearing (which is recorded) or a conference (which will not be recorded). See W. Va. Code §6C-2-4 (a) (1).
- After filing your request for Level 1, the Grievance Board will send out an acknowledgment letter that will provide both the Employee and Chief Administrator with a case name and number which will use to track and reference this grievance from beginning to end.
- The Chief Administrator will notify the employee of the date, time and location of the conference or hearing.
- The Chief Administrator, or their designee, must meet with the employee within ten days of receiving the Request for Level 1. After the meeting, the Chief Administrator has 15 days to issue a written decision concerning the grievance. The decision will be on the Chief Administrator's letter head, signed and dated and will be sent to the Employee and a copy to the Grievance Board. See West Virginia Code §6C-2-4 (a) (2).

- The Grievance Board will acknowledge by letter to both the Employee and the Chief Administrator that they have received a copy of the decision.
- The Employee must file for Level 2 within ten days after the employee receives the written decision from the Chief Administrator at Level 1 if they desire to continue the grievance process. See W. Va. Code §6-2-4 (b) (1)
- The Employee and Chief Administrator may agree to extend or enlarge any of the time lines. See W. Va. Code §6-2-3 (a)
- The Employee and Chief Administrator have a duty to try to resolve the grievance at Level 1 if at all possible. They also have the authority and power to agree not only to extend time frames, but at Level 1 can by agreement pursue almost any lawful means of resolving the grievance before going to Level 2, which would include not only having more than one meeting, or conference, having a hearing of witnesses, or negotiating settlements. See W. Va. Code §§ 6C-2-1 ( c ); 6C-2-3 (a) (2) and 6C-2-4-( c ) (2)

#### **LEVEL TWO - STEPS AND TIME FRAMES:**

- Days are always calculated on a standard work week, that being Monday through Friday, excluding Saturday, Sunday, official holidays or any day the employee's work place is legally closed by authority of the Chief Administrator due to weather or like cause. See W. Va. Code §6C-2-2 ( c ).
- The Employee must file for Level 2 within ten days after the employee receives the written decision from the Chief Administrator at Level 1 if they desire to continue the grievance process. See W. Va. Code §6-2-4 (b) (1)
- The Employee and Chief Administrator may agree to extend or enlarge any of the time lines. See W. Va. Code §6-2-3 (a)
- When filing at level 2 you must use the form provided by the Grievance Board. The first part of the form asks for the Case name and number, which is the Name and number that was provided to the Grievant and Employer at level 1. This name and case number will be used to track and reference this grievance from beginning to end.
- You must select one of the three options available for level 2.

- Mediation by an Administrative Law Judge of the Board, which service is free of charge and which is automatic if the parties do not agree to use one of the two following options.

- Mediation by a third party who is selected by the Chief Administrator and the Employee - both must agree on who the third party will be, and how they will pay for the services of the mediator. Both parties must sign and date the form agreement for a private third party mediator which must also be signed by the mediator. This agreement must be completed before the mediation takes place and must be sent to the Grievance Board.

- Mediation-Arbitration - under this option, both the Chief Administrator and the Employee must agree to mediation-arbitration. In mediation-arbitration an Administrative Law Judge of the Board is assigned to attempt to mediate the grievance, but if mediation fails the parties agree that the Administrative Law Judge may use the presentations of the parties during the meeting and rule on the grievance and enter a binding arbitration order resolving the grievance. This means that the grievance will end at level 2 and both parties will be bound by the ruling, and have no appeal to level 3. In order to use this option the parties must sign and date an agreement for Mediation-arbitration prior to the mediation-arbitration session. Once the mediation-arbitration session begins the parties cannot withdraw from the agreement, and will be bound by the final ruling of the mediator-arbiter.

- After you have submitted your request for level 2, the Board will acknowledge the request and if you are using an Administrative Law Judge of the Board for either mediation or mediation-arbitration the Chief Administrative Law Judge will send an Order out assigning one of the Administrative Law Judges to the grievance. (This Administrative Law Judge assigned at level 2 will have no further involvement with the Grievance if it proceeds beyond level 2)
- The assigned Administrative Law Judge will then contact all of the parties, discuss how mediation or mediation-arbitration works, and schedule a time, date and location for a session for Mediation or Mediation-Arbitration.

- If the session is for Mediation the parties will be required to appear in person, or by a representative with complete authority to resolve the grievance. Mediation is a process of attempting to find a way to bring the parties together and resolve their differences by agreement. If there is an agreement, the agreement will be reduced to writing and recorded, and is then enforceable. If there is no agreement then the Administrative Law Judge will provide the two parties with a neutral evaluation of the grievance, and will discuss discovery with the parties and enter an order for discovery in the event the grievance is taken to level 3.

- If the Session is for Mediation-Arbitration the parties will start with mediation, but if the Administrative Law Judge determines that no agreement is likely to be obtained, then the Administrative Law Judge will allow the parties to make an argument for their positions and

submit some limited evidence. If it is possible then to rule on the grievance the Administrative Law Judge will do so and enter a binding order ruling on the grievance, and the parties will have no appeal of that order. If the Administrative Law Judge cannot make a ruling then they will provide a neutral evaluation of the grievance and enter an order of discovery in the event the grievance is taken to level 3.

- You have 10 days to file for level 3 after receiving the written result at level 2. The only time you cannot go to level 3 is if there has been a resolution by agreement or if there has been an arbitration ruling from mediation-arbitration.

### **LEVEL THREE - STEPS AND TIME FRAMES:**

- Days are always calculated on a standard work week, that being Monday through Friday, excluding Saturday, Sunday, official holidays or any day the employee's work place is legally closed by authority of the Chief Administrator due to weather or like cause. See W. Va. Code §6C-2-2 ( c ).
- The Employee must file for Level 3 within ten days after the employee receives the written result at level 2 where the result is neither an agreed or arbitrated resolution. See W. Va. Code §6-2-4 (c) (1)
- The Employee and Chief Administrator may agree to extend or enlarge any of the time lines. See W. Va. Code §6-2-3 (a)
- When filing at level 3 you must use the form provided by the Grievance Board. This is a three page form. The first part of the form asks for the Case name and number, which is the Name and number that was provided to the Grievant and Employer at level 1. This name and case number is used to track and reference this grievance from beginning to end. (NOTE: if you did not file a grievance at level 1, but rather proceeded directly to level 3 then you will not have a case name and number. In this case skip the first part of the form and fill out the rest)
- The last page of the form is only required if you are filing directly to level 3 without first filing at level 1.
- You must provide a copy of the request for level 3 to the Chief Administrator, and file a copy with the Grievance Board. State employees must also send a copy of the request to the Division of Personnel.

- The Employee and the Chief Administrator will be sent an Order from the Chief Administrative Law Judge assigning an Administrative Law Judge of the Board to the Level 3 case. That assigned judge will contact all parties and have a scheduling conference either in person or by telephone to discuss the grievance case, schedule hearings, review the procedures to be used and set procedures for resolving any issues such as untimeliness, or motions by any party.
- You will be required to provide all other parties with a list of your witnesses, along with their contact information, and copies of any documents or evidence you intend to use or introduce at the hearing.
- A hearing will be set at a location, and on a date and time determined during the scheduling conference.
- After the hearing parties will generally be given an opportunity to submit proposed findings of fact and law for the Administrative Law Judge to consider in preparing a written decision.
- If you wish to appeal the level 3 decision you must do so within 30 days of receiving the decision of the Administrative Law Judge at level 3, and you may only file an appeal in the Circuit Court of Kanawha County. See West Virginia Code, §6C-2-5.