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HOUSE BILL NO. 1917

Offered January 8, 2003

Prefiled January 7, 2003

A BILL to amend and reenact §§ 2.2-3003 and 2.2-3006 of the Code of Virginia, relating to the state grievance procedure.

Patrons—Almand and Albo

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3003 and 2.2-3006 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3003. Grievance procedure generally.

A. As part of the Commonwealth's program of employee relations management, the Department of Employment Dispute Resolution shall develop a grievance procedure that includes not more than three successively higher grievance resolution steps and a formal hearing as provided in this chapter.

B. Prior to initiating a written grievance, the employee shall be encouraged to pursue an informal complaint with his immediate supervisor. The supervisor shall have authority to resolve the complaint if it involves actions within his control.

C. An employee may pursue a formal written grievance through the grievance resolution steps if the complaint has been presented to management within thirty calendar days of the employee's knowledge of the event that gave rise to the complaint. Employees' rights to pursue grievances shall not be used to harass or otherwise impede the efficient operations of government.

D. Upon receipt of a timely written complaint, management shall review the grievance and respond to the merits thereof. Each level of management review shall have the authority to provide the employee with a remedy, *subject to the agency head's approval*. At least one face-to-face meeting between the employee and management shall be required. The persons who may be present at this meeting are the employee, the appropriate manager, an individual selected by the employee, and an individual selected by the manager. Witnesses may be called by either party.

E. Absent just cause, all documents, as defined in the Rules of the Supreme Court of Virginia, relating to the actions grieved shall be made available, upon request from a party to the grievance, by the opposing party. Documents pertaining to nonparties that are relevant to the grievance shall be produced in such a manner as to preserve the privacy of the individuals not personally involved in the grievance. A party shall not be required to create a document if the document does not exist.

F. All time limitations prescribed in the grievance procedure, including, but not limited to, submission of an initial complaint and employee appeal of management decisions, shall be reasonable, specific, and equally applicable to the agency and the employee. Expedited grievance procedures shall be established for terminations, demotions, suspensions, and lost wages or salaries.

G. Within five workdays of the receipt of a written notice of noncompliance, failure of the employee or the agency to comply with a substantial procedural requirement of the grievance procedure without just cause may result in a decision against the noncomplying party on any qualified issue. Written notice of noncompliance by the agency shall be made to the agency head. The Director of the Department of Employment Dispute Resolution shall render all decisions related to procedural compliance, and such decisions shall contain the reasons for such decision and shall be final.

H. Grievances qualified pursuant to § 2.2-3004 that have not been resolved through the grievance resolution steps shall advance to a hearing that shall be the final step in the grievance procedure.

§ 2.2-3006. Review of hearing decisions; costs.

A. In grievances initiated by state employees, the Director of the Department of Human Resource Management shall determine within sixty days of the decision whether the decision is consistent with policy. ~~The hearing officer's decision shall be effective from the date issued and shall be implemented immediately unless circumstances beyond the control of the agency delay such implementation.~~

B. Within thirty days of a final decision, a party may appeal on the grounds that the determination is contradictory to law by filing a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose. The agency shall request and receive prior approval of the Director before filing a notice of appeal. After a notice of appeal has been filed by either party, the agency shall then transmit a copy of the grievance record to the clerk of the court. The court, on motion of a party, shall issue a writ of certiorari requiring transmission of the record on or before a certain date. Within thirty days of receipt of the grievance record, the court, sitting without a jury, shall hear the appeal on the record. The court may affirm the decision or may reverse or modify the decision. The decision of the

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59 court shall be rendered no later than the fifteenth day from the date of the conclusion of the hearing.
60 The circuit court hearing shall be at no cost to the Commonwealth or the grievant.

61 *C. The hearing officer's final decision shall be effective from the later of the date issued or the date*
62 *of the conclusion of any administrative review and judicial appeal, and shall be implemented*
63 *immediately thereafter, unless circumstances beyond the control of the agency delay such*
64 *implementation.*

65 ~~€~~ D. Either party may petition the circuit court having jurisdiction in the locality in which the
66 grievance arose for an order requiring implementation of the final decision or recommendation of a
67 hearing officer.

68 ~~Đ~~ E. The court shall award reasonable attorneys' fees and costs to the employee if the employee
69 substantially prevails on the merits of a case brought under subsection B or ~~€D~~.