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SENATE BILL NO. 1302

Offered January 21, 1999

A BILL to amend and reenact § 2.1-116.07 of the Code of Virginia, relating to the state grievance procedure; decisions of hearing officers.

Patrons—Hanger and Colgan; Delegates: Davis, Harris, Katzen and Weatherholtz

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 2.1-116.07 of the Code of Virginia is amended and reenacted as follows:

§ 2.1-116.07. Hearing officers; duties; decisions; costs.

A. The Director shall assign a hearing officer to conduct the grievance hearing. All hearing officers shall be selected, on a rotating basis, from the list of administrative hearing officers maintained by the Supreme Court of Virginia pursuant to § 9-6.14:14.1. In addition to the training requirements imposed by the Supreme Court, each hearing officer shall attend annually at least one day of training in employment law or state personnel policies and organizations. Such training shall be conducted by the Department or an organization approved by the Virginia State Bar for continuing legal education.

B. Hearing officers shall have the following powers and duties:

1. Hold conferences for the settlement or simplification of issues;
2. Dispose of procedural requests;
3. Issue orders requiring testimony or the production of evidence;
4. Administer oaths and affirmations;
5. Receive probative evidence; exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs, rebuttals, or cross-examinations; rule upon offers of proof; and oversee an accurate verbatim recording of the evidence;
6. For those issues qualified for a hearing, order appropriate remedies. Relief may include reinstatement, back pay, full reinstatement of fringe benefits and seniority rights, or any combination of these remedies; and
7. Take other actions as necessary or specified in the grievance procedure.

C. The decision of the hearing officer shall (i) be in writing, (ii) contain findings of fact as to the material issues in the case and the basis for those findings, and (iii) be final and binding if consistent with law and policy. In grievances initiated by state employees, the Director of the Department of Personnel and Training shall determine whether the decision is consistent with policy. *In grievances arising out of the Department of Mental Health, Mental Retardation and Substance Abuse Services which challenge allegations of patient abuse, the Director of the Department of Employee Relations Counselors shall determine whether the decision is consistent with law.* The hearing officer's decision is effective from the date issued and shall be implemented immediately unless circumstances beyond the control of the agency delay such implementation.

D. Either party may petition the circuit court having jurisdiction in the locality in which the employee is employed for an order requiring implementation of the hearing officer's decision. The court may award attorneys' fees to either party if such party substantially prevails on the merits of the case and the opposing party's position is not substantially justified, unless special circumstances would make an award unjust.

E. Except for the employee's counsel or advocate fees, the agency from which the grievance arises shall bear the costs for the hearing officer and other associated hearing expenses.

INTRODUCED

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