CHAPTER 17

State or Local Employees Grievance Procedure

ARTICLE 3

County and Municipal Employees Grievance Procedure

**SECTION 8‑17‑110.** Legislative findings, declaration of purpose and short title.

The General Assembly finds that a uniform procedure to resolve grievances of county and municipal employees arising from their public employment will contribute to more harmonious relations between public employers and public employees and result in an improvement in public service. The purpose of this article, which may be cited as the “County and Municipal Employees Grievance Procedure Act,” is to implement this principle.

HISTORY: 1962 Code Section 1‑66.11; 1971 (57) 479.

CROSS REFERENCES

Counties, generally, see Title 4.

Municipal corporations, generally, see Title 5.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 58, County and Municipal Employees Grievance Procedure Act.

LAW REVIEW AND JOURNAL COMMENTARIES

Public Employee Strikes. 21 S.C. L. Rev. 771.

United States Supreme Court Annotations

Public employee’s right of free speech under Federal Constitution’s First Amendment—Supreme Court cases. 97 L Ed 2d 903.

NOTES OF DECISIONS

In general 1

1. In general

An at‑will employee of a county police department has no property or liberty interest in his continued employment which would entitle him to a pre‑termination hearing; where a narcotics detective admittedly falsified information in an affidavit in support of a search warrant, and in an incident report, which acts justified his termination, and where the detective failed to request a grievance hearing within the 30‑day period prescribed by the county employee’s personnel manual, no state constitutional, statutory, or contractual basis existed to support a property interest claim; where the detective admitted his guilt and thus became his own accuser, no liberty interest was implicated in his termination, and a pre‑termination hearing would serve no purpose and is not required. Beckham v. Harris (C.A.4 (S.C.) 1985) 756 F.2d 1032, certiorari denied 106 S.Ct. 232, 474 U.S. 903, 88 L.Ed.2d 231.

Apart from activities protected under the state Human Affairs laws and federal Equal Employment Opportunity laws, there is no right under state common law or statute for a municipal employee to “complain” about work‑related issues; instead, municipal employees may submit these concerns to a grievance committee of their peers. Cornelius v. City of Columbia, 2009, 663 F.Supp.2d 471, affirmed 399 Fed.Appx. 853, 2010 WL 4366846. Municipal Corporations 218(1); Public Employment 221; Public Employment 467

A city mayor’s refusal to grant a police officer’s request for a grievance hearing in compliance with Section 8‑17‑120 before discharging him for refusing to submit to a polygraph examination without his attorney being present did not violate South Carolina law, where the officer had obtained a state court order invalidating the city ordinance pursuant to which a hearing had been granted, the order did not require compliance with Section 8‑17‑110, and where the officer did not appeal the order. Baxley v. City of North Charleston (D.C.S.C. 1982) 533 F.Supp. 1248. Municipal Corporations 185(4); Public Employment 456

A fired employee of the county treasurer’s office, even if only an at‑will employee, could recover for retaliatory discharge if her termination violated a clear mandate of public policy. Jones v. Gilstrap (S.C.App. 1986) 288 S.C. 525, 343 S.E.2d 646. Counties 67; Public Employment 281

A complaint filed by former employee against her former employer, the county treasurer, failed to allege that the employee was fired because she had attempted to file a grievance against her employer where the complaint failed to allege that the county had adopted a grievance procedure pursuant to Section 8‑17‑120 and failed to allege that the employee had filed a grievance in accordance with the county’s procedures. Jones v. Gilstrap (S.C.App. 1986) 288 S.C. 525, 343 S.E.2d 646.

Since Title 8 contains no direct reference or implication that it supersedes Title 23, Sections 8‑17‑110 et seq., providing grievance procedure, does not limit rule that deputy sheriff serves at pleasure of sheriff. Rhodes v. Smith (S.C. 1979) 273 S.C. 13, 254 S.E.2d 49.

**SECTION 8‑17‑120.** Adoption of plan for resolution of employee grievances; proper subjects for consideration under such plans.

The governing body of any county or any incorporated municipality in this State may by ordinance or resolution adopt a plan for the hearing and resolution of employee grievances which, if adopted, shall conform substantially to the guidelines set forth in this article. As used in this article, grievances may include, but shall not necessarily be limited to, dismissal, suspensions, involuntary transfers, promotions and demotions. Compensation shall not be deemed a proper subject for consideration under the grievance procedure except as it may apply to alleged inequities within an agency or department of the particular county or municipal jurisdiction.

HISTORY: 1962 Code Section 1‑66.12; 1971 (57) 479.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 58, County and Municipal Employees Grievance Procedure Act.

United States Supreme Court Annotations

Public employee’s right of free speech under Federal Constitution’s First Amendment—Supreme Court cases. 97 L Ed 2d 903.

NOTES OF DECISIONS

In general 1

1. In general

Although police officers have no constitutional property interest in their employment, they are entitled to grievance hearing under County and Municipal Employees Grievance Procedure Act after completing 6 months of satisfactory service. Bunting v. City of Columbia (C.A.4 (S.C.) 1981) 639 F.2d 1090. Civil Rights 1479

A city mayor’s refusal to grant a police officer’s request for a grievance hearing in compliance with Section 8‑17‑120 before discharging him for refusing to submit to a polygraph examination without his attorney being present did not violate South Carolina law, where the officer had obtained a state court order invalidating the city ordinance pursuant to which a hearing had been granted, the order did not require compliance with Section 8‑17‑110, and where the officer did not appeal the order. Baxley v. City of North Charleston (D.C.S.C. 1982) 533 F.Supp. 1248. Municipal Corporations 185(4); Public Employment 456

A complaint filed by former employee against her former employer, the county treasurer, failed to allege that the employee was fired because she had attempted to file a grievance against her employer where the complaint failed to allege that the county had adopted a grievance procedure pursuant to Section 8‑17‑120 and failed to allege that the employee had filed a grievance in accordance with the county’s procedures. Jones v. Gilstrap (S.C.App. 1986) 288 S.C. 525, 343 S.E.2d 646.

**SECTION 8‑17‑130.** Establishment, membership, and powers of grievance committees.

The governing body of each county and incorporated municipality which elects to establish an employee grievance procedure pursuant to this article shall appoint a committee composed of not less than three nor more than nine members to serve for terms of three years, except that the members appointed initially shall be appointed so that terms will be staggered and one third of the terms shall expire each year. Any interim appointment to fill a vacancy for any cause prior to the completion of his term shall be for the unexpired term. Any member may be reappointed for succeeding terms at the discretion of the appointing authority. All members of the grievance committee shall be selected on a broadly representative basis from among the career service or appointed personnel of the several county or municipal agencies, with the provision that, whenever a grievance comes before the committee initiated by or involving an employee of an agency of which a committee member also is an employee, such member shall be disqualified from participating in the hearing.

The committee shall select its own chairman from among its members. The chairman shall serve as the presiding officer at all hearings which he attends but may designate some other member to serve as presiding officer in his absence.

A quorum shall consist of at least two thirds of the committee members, and no hearings may be held without a quorum.

The presiding officer will have control of the proceedings. He shall take whatever action is necessary to insure an equitable, orderly and expeditious hearing. Parties shall abide by his decisions, except when a committee member objects to a decision to accept evidence, in which case the majority vote of the committee will govern.

The committee shall have the authority to call for files, records and papers pertinent to any investigation; to determine the order of the testimony and the appearance of witnesses; to call additional witnesses; and to secure the services of a recording secretary in its discretion.

HISTORY: 1962 Code Section 1‑66.13; 1971 (57) 479.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 58, County and Municipal Employees Grievance Procedure Act.

Attorney General’s Opinions

A municipal employees grievance committee, established pursuant to Sections 8‑17‑110 through 8‑17‑160 (1976), should not include elected officials of the legislative body of the municipality among its membership. 1987 Op Atty Gen, No. 87‑87, p 234.

**SECTION 8‑17‑140.** Findings and decisions of committee; review by local governing body.

The committee shall, within twenty days after hearing an appeal, make its findings and decision and report the findings and decision to the individual or body vested with employment and discharge authority. If the individual or body vested with employment and discharge authority approves, the decision of the grievance committee is final, and copies of the decision must be transmitted by the committee to the employee, to the chief administrative officer, and to the particular department or agency involved. If, however, the individual or body vested with employment and discharge authority rejects the decision of the committee, it shall make its own decision without further hearing, and that decision is final, with copies transmitted to the employee and the employing agency.

HISTORY: 1962 Code Section 1‑66.14; 1971 (57) 479; 1988 Act No. 312, Section 2, eff February 24, 1988.

Effect of Amendment

The 1988 amendment replaced references to governing body with individual or body vested with employment and discharge authority.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 58, County and Municipal Employees Grievance Procedure Act.

NOTES OF DECISIONS

In general 1

1. In general

Police dispatcher’s final termination date was the date on which city council made final decision to terminate dispatcher, after voting to reject grievance committee’s recommendation to reinstate dispatcher, rather than on date the police chief notified dispatcher by letter that she was terminated from her job, although city ordinance stated that police chief had complete authority to remove all employees of police department; city ordinance did not supersede established city disciplinary and grievance policies and practices. Conner v. City of Forest Acres (S.C. 2005) 363 S.C. 460, 611 S.E.2d 905, rehearing denied. Municipal Corporations 185(3); Public Employment 456

The finality of the decision by the county or municipal grievance committee or the governing body does not preclude judicial review of that decision, where the decision at issue is the decision to terminate an employee. Rowe v. City of West Columbia (S.C.App. 1999) 334 S.C. 400, 513 S.E.2d 379. Counties 67; Municipal Corporations 218(9); Public Employment 252

Availability of breach of contract or wrongful discharge actions as forms of collateral review of city’s final decision to terminate police officer rendered certiorari review of decision unavailable. Rowe v. City of West Columbia (S.C.App. 1999) 334 S.C. 400, 513 S.E.2d 379. Municipal Corporations 185(13); Public Employment 752

A terminated city or county employee, like other employees, retains the right to challenge his or her termination by bringing a breach of contract or wrongful discharge action in circuit court, even after a final decision by grievance committee or governing body. Rowe v. City of West Columbia (S.C.App. 1999) 334 S.C. 400, 513 S.E.2d 379. Counties 67; Municipal Corporations 218(9); Public Employment 252

The language in Section 8‑17‑140 that the decision of the body vested with discharge authority shall be “final” refers to the exhaustion of the complaining employee’s administrative remedies. Vaught v. Waites (S.C.App. 1989) 300 S.C. 201, 387 S.E.2d 91.

**SECTION 8‑17‑150.** Request for hearing before committee.

When any permanent county or municipal employee who has completed six months of satisfactory service is unable to resolve an alleged grievance by discussion and negotiation with his employer, he may request in writing a hearing before the grievance committee appointed and constituted as provided for in Section 8‑17‑130. The request for a hearing shall be directed to the governing body of the county or municipality concerned or to such administrative official as may be designated by the governing body. Within ten days of receipt of the employee’s request, the governing body or its designated agency shall schedule the requested hearing and notify the grievance committee and the employee requesting the hearing.

HISTORY: 1962 Code Section 1‑66.15; 1971 (57) 479.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 58, County and Municipal Employees Grievance Procedure Act.

**SECTION 8‑17‑160.** Powers of city managers.

In any municipality which has adopted the council‑manager form of government, the powers and duties otherwise conferred by this article on the governing body shall be exercised by the city manager.

HISTORY: 1962 Code Section 1‑66.16; 1971 (57) 479.

CROSS REFERENCES

The council‑manager form of government, see Sections 5‑13‑10 et seq.

LIBRARY REFERENCES

62 C.J.S., Municipal Corporations Section 545.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 58, County and Municipal Employees Grievance Procedure Act.

Attorney General’s Opinions

Jailers and jail administrators are not subject to grievance procedure adopted by Williamsburg County Council. 1993 Op Atty Gen No. 93‑77.

ARTICLE 5

State Employee Grievance Procedure

**SECTION 8‑17‑310.** Legislative findings; declaration of purpose; short title.

The General Assembly finds that harmonious relations between public employers and public employees are a necessary and most important factor in the effective and efficient operation of government, and that a proper forum for the understanding and resolution of employee grievances will contribute to the establishment and maintenance of harmony, good faith, and the quality of public service. The General Assembly also recognizes that the most effective and cost efficient means of resolving grievances occurs at the lowest level, and state agencies are encouraged to use methods of alternative dispute resolution to avoid a grievance hearing and further litigation. It is for the protection and in the interests of both the employee and the agency via a neutral method of dispute resolution and fair administrative review, that this act, which may be cited as the “State Employee Grievance Procedure Act”, is enacted.

HISTORY: 1982 Act No. 402, Section 1; 1996 Act No. 284, Section 2, eff October 1, 1996.

Effect of Amendment

The 1996 amendment revised this section, inserting the second sentence beginning “The General Assembly also recognizes”, substituting in the last sentence “and in the dispute resolution” for “of the” after “protection”, inserting “neutral method of dispute resolution and” before “fair administrative review,” and deleting “of 1982” after “Act”.

CROSS REFERENCES

Limitation on waiver of governmental immunity from tort liability where the claim is covered by the South Carolina State Employee’s Grievance Act, see Section 15‑78‑60.

Provisions of this Article not applicable to SC Edisto Development Authority, see Section 13‑21‑30.

Provisions of this Article not applicable to SC Midlands Authority, see Section 13‑19‑30.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 59, State Employee Grievance Procedure Act of 1982.

S.C. Jur. Public Officers and Public Employees Section 62, Subject Matter Jurisdiction of the State Employee Grievance Committee.

LAW REVIEW AND JOURNAL COMMENTARIES

Federal Regulation of Collective Bargaining by State and Local Employees: Constitutional Alternatives. 29 S.C. L. Rev. 343.

Public Employee Unionism in the Southeast: The Legal Parameters. 29 S.C. L. Rev. 235.

State Employee Grievances and Due Process: An Analysis of Contract Arbitration and Civil Services Review Systems. 29 S.C. L. Rev. 305.

United States Supreme Court Annotations

Public employee’s right of free speech under Federal Constitution’s First Amendment—Supreme Court cases. 97 L Ed 2d 903.

NOTES OF DECISIONS

In general 1

1. In general

An employee must exhaust his administrative remedies under the State Employee Grievance Act, Sections 8‑17‑310 et seq., before seeking redress for alleged non‑grievable actions under the Whistleblower Act Sections 8‑27‑10 et seq. Ransom v. South Carolina Water Resources Com’n (S.C.App. 1996) 321 S.C. 211, 467 S.E.2d 463.

A trial judge is not required to determine whether a complainant has an excuse for the failure to exhaust administrative remedies where the trial judge had found that the complainant had a grievable action under the State Employee Grievance Procedure Act, Sections 8‑17‑310 et seq., and was required to exhaust his remedies prior to seeking redress under the Whistleblower Act, Sections 8‑27‑10 et seq. Ransom v. South Carolina Water Resources Com’n (S.C.App. 1996) 321 S.C. 211, 467 S.E.2d 463.

A former employee’s action under the Whistleblower Act, Sections 8‑27‑10 et seq., was foreclosed where the employee had failed to exhaust his administrative remedies under the State Employee Grievance Act, Sections 8‑17‑10 et seq. Allen v. South Carolina Alcoholic Beverage Control Com’n (S.C.App. 1996) 321 S.C. 188, 467 S.E.2d 450. Administrative Law And Procedure 229; Public Employment 437

**SECTION 8‑17‑320.** Definitions.

As used in this article, unless the context clearly indicates otherwise:

(1) “Agency” means a department, institution of higher learning, board, commission, or school that is a governmental unit of the State of South Carolina. Special purpose districts, political subdivisions, and other units of local government are excluded from this definition.

(2) “Appeal” means the request by a covered employee to the State Human Resources Director for review of an agency’s final decision concerning a grievance.

(3) “Board” means the Department of Administration.

(4) “Calendar days” means the sequential days of a year. The time must be computed by excluding the first day and including the last. If the last day falls on a Saturday, Sunday, or legal holiday, it must be excluded.

(5) “Class” means a group of positions sufficiently similar in the duties performed, degree of supervision exercised or received, minimum requirements of education, experience or skill, and the other characteristics that the same state class title and the same state salary range are applied to each position in the group by the Office of Human Resources.

(6) “Committee” means the State Employee Grievance Committee.

(7) “Covered employee” means a full‑time or part‑time employee occupying a part or all of an established full‑time equivalent (FTE) position who has completed the probationary period and has a “meets” or higher overall rating on the employee’s performance evaluation and who has grievance rights. Instructional personnel are covered upon the completion of one academic year except for faculty at state technical colleges of not more than two full academic years’ duration. If an employee does not receive an evaluation before the official review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee. This definition does not include employees in positions such as temporary, temporary grant, or time‑limited employees who do not have grievance rights.

(8) “Demotion” means the assignment of an employee by the appointing authority from one established position to a different established position having a lower state salary range.

(9) “Deputy director” means an employee who has been appointed under the provisions of Section 1‑30‑10(E), oversees a division, and reports directly to the agency head.

(10) “Full‑time equivalent” or “FTE” means a value expressing a percentage of time in hours and of funds related to a particular position authorized by appropriations acts enacted by the General Assembly.

(11) “Grievance” means a complaint filed by a covered employee or the employee’s representative regarding an adverse employment action designated in Section 8‑17‑330 taken by an agency.

(12) “Instructional personnel” means employees of an agency that has primarily an educational mission, excluding the state technical colleges and excluding those employees exempted in Section 8‑17‑370(10) who work an academic year.

(13) “Involuntary reassignment” means the movement of an employee’s principal place of employment in excess of thirty miles from the prior work station at the initiative of the agency. The reassignment of an employee by an agency in excess of thirty miles from the prior work station to the nearest facility with an available position having the same state salary range for which the employee is qualified is not considered involuntary reassignment.

(14) “Mediation” means an alternative dispute resolution process whereby a mediator who is an impartial third party acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. The process is informal and nonadversarial with the objective of helping the disputing parties reach a mutually acceptable agreement.

(15) “Mediation‑arbitration” means an alternative dispute resolution process that provides for the submission of an appeal to a mediator‑arbitrator, an impartial third party who conducts conferences to attempt to resolve the grievance by mediation and render a decision that is final and binding on the parties if the appeal is not mediated.

(16) “Probationary employee” means a full‑time or part‑time employee occupying a part or all of an established FTE position in the initial working test period of employment with the State of twelve months’ duration for noninstructional personnel, of the academic year duration for instructional personnel except for those at state technical colleges, or of not more than two full academic years’ duration for faculty at state technical colleges. An employee who receives an unsatisfactory performance appraisal during the probationary period must be terminated before becoming a covered employee.

(17) “Promotion” means an employee’s change from a position in one class to a position in another class having a higher state salary range. Failure to be selected for a promotion is not an adverse employment action that can be considered as a grievance or appeal.

(18) “Punitive reclassification” means the assignment of a position in one class to a different lower class with the sole purpose to penalize the covered employee.

(19) “Reassignment” means the movement within an agency of an employee from one position to another position having the same state salary range, or the movement of a position within an agency which does not require reclassification.

(20) “Reclassification” means the assignment of a position in one class to another class which is the result of a natural or an organizational change in duties or responsibilities of the position.

(21) “Reduction in force” means a determination made by an agency head to eliminate one or more filled positions in one or more organizational units within the agency due to budgetary limitations, shortage of work, or organizational changes.

(22) “Salary decrease based on performance” means the reduction of a covered employee’s compensation based on the results of an Employee Performance Management System (EPMS) evaluation.

(23) “State Human Resources Director” means the head of the Office of Human Resources of the Department of Administration, or his designee.

(24) “Suspension” means an enforced leave of absence without pay pending investigation of charges against an employee or for disciplinary purposes.

(25) “Temporary employee” means a full‑time or part‑time employee who does not occupy an FTE position, whose employment is not to exceed one year, and who is not a covered employee.

(26) “Termination” means the action taken by an agency against an employee to separate the employee involuntarily from employment.

(27) “Transfer” means the movement to a different agency of an employee from one position to another position having the same state salary range, or the movement of a position from one agency to another agency which does not require reclassification.

HISTORY: 1982 Act No. 402, Section 2; 1993 Act No. 178, Section 9, eff July 1, 1993; 1993 Act No. 164, Part II, Section 8A, eff June 21, 1993, and subsec. (11) first applies with respect to employees hired after June 30, 1993; 1994 Act No. 407, Section 1, eff May 25, 1994; 1996 Act No. 284, Section 3, eff October 1, 1996.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Effect of Amendment

The first 1993 amendment by Act No. 164 revised paragraph (11) to redefine probationary employee and in paragraph (14) inserted “one year” in place of “six months or to fill a position requiring seasonal or intermittent work for no more than fifteen hundred hours during any twelve‑month period”.

The second 1993 amendment by Act No. 178 revised paragraph (11), defining probationary employee; and in paragraph (14) inserted “two years” in place of “one year”.

The 1994 amendment, in paragraph (11), added “except for those at state technical colleges, or of not more than two full academic years’ duration for faculty at state technical colleges”, and further added “The provisions of this item apply to employees hired before or after June 30, 1993”.

The 1996 amendment revised the introductory language of this section, deleting “, the following words or phrases shall mean”; revised paragraph (1), adding “of higher learning” after “institution”, deleting “council, division, bureau, center” after “commission,” deleted “, hospital of other facility” after “school”, deleted “Public schools,” before “Special purpose districts,” inserted “political subdivisions,” before “and other units”; rewrote paragraphs (2) through (14); and added paragraphs (15) through (27).

CROSS REFERENCES

Department of Administration, generally, see Section 1‑11‑10 et seq.

South Carolina Human Affairs Law, see Section 1‑13‑10 et seq.

State Employee Grievance Committee, see Section 8‑17‑340.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 28, Definitions.

S.C. Jur. Public Officers and Public Employees Section 51, Reduction in Force.

S.C. Jur. Public Officers and Public Employees Section 52, Dismissal.

S.C. Jur. Public Officers and Public Employees Section 59, State Employee Grievance Procedure Act of 1982.

S.C. Jur. Public Officers and Public Employees Section 62, Subject Matter Jurisdiction of the State Employee Grievance Committee.

NOTES OF DECISIONS

In general 1

Involuntary reassignment 3

Permanent employee 2

1. In general

An employee’s allegation that he was “demoted” did not mean that his grievance was a “demotion” as defined by the State Employee Grievance Procedure Act, Sections 8‑17‑310 et seq., where the employee’s rate of pay was not reduced nor was his job title or classification changed. Ransom v. South Carolina Water Resources Com’n (S.C.App. 1996) 321 S.C. 211, 467 S.E.2d 463.

The trial court did not err in ruling that an employee’s allegation that he was punitively reassigned to a “demeaning position” was grievable under the State Employee Grievance Act, Sections 8‑17‑310 et seq.; a change in job duties for retaliatory or punitive reasons is grievable under the Grievance Act even if the employee suffers no reduction in salary. Ransom v. South Carolina Water Resources Com’n (S.C.App. 1996) 321 S.C. 211, 467 S.E.2d 463.

In an action by an employee for damages under the Whistleblower Statute (Section 8‑27‑30), the court abused its discretion in finding as a matter of law that the employee did not have to exhaust his administrative remedies simply because the statute did not require it. Hyde v. South Carolina Dept. of Mental Health (S.C. 1994) 314 S.C. 207, 442 S.E.2d 582, rehearing denied.

A probationary employee terminated by the Department of Health and Environmental Control (DHEC) was not entitled to a grievance hearing, even though probationary employees of the Finance Commission were granted hearings under similar circumstances, since the DHEC and the Finance Commission are 2 separate state agencies. Fisher v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1992) 309 S.C. 10, 419 S.E.2d 794. Public Employment 1098; States 53

A reclassification of a state employee for punitive reasons may be grievable without a showing of a reduction in pay. However, in order for a reclassification to be grievable, the grievant must allege that the reclassification was punitive. Punitive is defined as a change in duties or responsibilities which has a motive other than simply to reclassify; when the reclassification serves as a pretext ‑ that is, something to conceal its true purpose or object to discipline or punish ‑ then it is punitive. Wise v. South Carolina Tax Com’n (S.C. 1989) 297 S.C. 239, 376 S.E.2d 262.

2. Permanent employee

Former deputy director of the Department of Social Services (DSS) did not become an at‑will employee when DSS was restructured pursuant to the Restructuring Act; deputy director obtained permanent employee status prior to restructuring, was never offered an at‑will deputy director position in the new DSS and, thus, retained his permanent employee rights and remained covered under the State Employee Grievance Act. Shealy v. South Carolina Dept. of Social Services (S.C.App. 1999) 334 S.C. 187, 511 S.E.2d 713, rehearing denied, certiorari granted. Public Employment 316

3. Involuntary reassignment

Executive director of Department of Corrections did not exceed his statutory or administrative authority in creating and executing plan for reduction in force; although disproportionate number of positions within unified school district in Department were eliminated, director legitimately identified education division as being less essential compared to other divisions relating to security, housing, clothing, food, and healthcare, director had regulatory authority to determine competitive areas according to critical needs for Department, involuntary reassignment of educational positions within 30‑mile radius was consistent with applicable regulations, and creation of eleven geographic areas, where there was at least one school within area, was reasonable based on financial considerations, and provided eliminated employees with adequate seniority best opportunity to “bump” others within 30‑mile radius so that they did not have huge commute or relocate to another part of state. Bell v. South Carolina Dept. of Corrections (S.C. 2012) 397 S.C. 320, 724 S.E.2d 675. Prisons 396; Public Employment 311

**SECTION 8‑17‑330.** Agency employee grievance plans; procedures; appeals.

Each agency shall establish an agency employee grievance procedure that must be reduced to writing and submitted for approval to the Office of Human Resources. A copy of the approved agency grievance procedure must be made available to covered employees of the agency. The provisions of the State Administrative Procedures Act apply in proceedings before the State Employee Grievance Committee. At other levels the State Administrative Procedures Act does not apply, but the covered employee has the right to a representative, including counsel. When a final decision is rendered, it must be given to the covered employee or the employee’s representative in writing. If the covered employee chooses to exercise the right to counsel, the employee does so at his own expense.

The procedure must provide that all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action and that the agency shall make a final decision on a grievance within forty‑five calendar days of the filing of the grievance by the covered employee. Failure by the agency to make a final decision on the grievance within forty‑five calendar days after the filing of the grievance is considered an adverse decision, and the covered employee may appeal thereafter to the State Human Resources Director. The internal time periods of the agency grievance procedure may be waived upon the mutual written agreement of both parties. The forty‑five‑calendar‑day period for action by the agency may not be waived except by mutual written agreement of both parties. The time periods for appeal to the State Human Resources Director may not be waived.

A covered employee who wishes to appeal the decision of the agency grievance procedure to the State Human Resources Director shall file an appeal within ten calendar days of receipt of the decision from the agency head or his designee or within fifty‑five calendar days after the employee files the grievance with the agency, whichever occurs later. The covered employee or the employee’s representative shall file the request in writing with the State Human Resources Director. Failure to file an appeal with the State Human Resources Director within ten calendar days of the agency’s final decision or fifty‑five calendar days from the initial grievance, whichever occurs later, constitutes a waiver of the right to appeal.

An employee must not be disciplined or otherwise prejudiced in employment for exercising rights or testifying under these processes.

As used in this article, a covered employee may file a grievance or appeal concerning the following adverse employment actions: terminations, suspensions, involuntary reassignments, and demotions. Reclassifications are considered a grievance only if an agency, or an appeal if the State Human Resources Director, determines that there is a material issue of fact that the action is a punitive reclassification. However, reclassifications, reassignments, and transfers within the same state salary range are not adverse employment actions which may be considered grievances or appeals. Promotions are not adverse employment actions which may be considered grievances or appeals except in instances where the agency, or in the case of appeals, the State Human Resources Director, determines that there is a material issue of fact as to whether or not an agency has considered a qualified covered employee for a position for which the employee formally applied or would have applied if the employee had known of the promotional opportunity. For purposes of this article, when an agency promotes an employee one organizational level above the promoted employee’s former level, that action is not a grievance or appeal for any other qualified covered employee. Salary decreases based on performance are adverse employment actions that may be considered as grievances or appeals. A reduction in force is an adverse employment action considered as a grievance only if the agency, or as an appeal if the State Human Resources Director, determines that there is a material issue of fact that the agency inconsistently or improperly applied its reduction in force policy or plan.

A covered employee has the right to appeal to the State Human Resources Director an adverse employment action involving the issues specified in this section after all administrative remedies to secure relief within the agency have been exhausted.

HISTORY: 1982 Act No. 402, Section 3; 1988 Act No. 375, eff March 14, 1988; 1993 Act No. 164, Part II, Section 8B, eff June 21, 1993; 1993 Act No. 178, Section 10, eff July 1, 1993; 1996 Act No. 284, Section 4, eff October 1, 1996.

Editor’s Note

The fourth paragraph was amended twice in 1993. As set out above, the fourth paragraph reads as amended by 1993 Act No. 178, Section 10.

Effect of Amendment

The 1988 amendment in the third unnumbered paragraph replaced the word “first” with the word “later” in the two places it appeared, and replaced “shall constitute” with “constitutes” at the end of the paragraph.

The first 1993 amendment in the fourth paragraph added the third sentence stating that reclassification, reassignments, and transfers to the same pay grade are not considered grievances; in the fifth sentence added “greater than one organizational level above his present level”; and made grammatical changes.

The second 1993 amendment in the fourth paragraph added the third sentence stating that reclassification, reassignments, and transfers to the same pay grade are not considered grievances; in the fifth sentence added “greater than one organizational level above his present level”; and made grammatical changes.

The second 1996 amendment substantially revised this section so as to reduce the time for filing a grievance and to revise actions which qualify as grievances.

CROSS REFERENCES

The State Administrative Procedures Act, see Sections 1‑23‑310 et seq.

State Employee Grievance Committee, see Section 8‑17‑340.

State employee grievance committee regulations, nature of grievances, see S.C. Code of Regulations R. 9‑775.02.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Colleges and Universities Section 26, Grievance Matters.

S.C. Jur. Labor Relations Section 28, Definitions.

S.C. Jur. Labor Relations Section 29, Procedure.

S.C. Jur. Labor Relations Section 30, Who is Authorized to Grieve.

S.C. Jur. Public Officers and Public Employees Section 51, Reduction in Force.

S.C. Jur. Public Officers and Public Employees Section 52, Dismissal.

S.C. Jur. Public Officers and Public Employees Section 59, State Employee Grievance Procedure Act of 1982.

S.C. Jur. Public Officers and Public Employees Section 60, Role of Director of Division of Human Resource Management.

S.C. Jur. Public Officers and Public Employees Section 62, Subject Matter Jurisdiction of the State Employee Grievance Committee.

S.C. Jur. Public Officers and Public Employees Section 63, Procedure and Hearings Before the State Employee Grievance Committee.

United States Supreme Court Annotations

Public employee’s right of free speech under Federal Constitution’s First Amendment—Supreme Court cases. 97 L Ed 2d 903.

ATTORNEY GENERAL’S OPINIONS UNDER FORMER Section 8‑17‑20

A challenge to the structure of the classification system and not to inequities within the system does not constitute a grievance pursuant to Code 1962 Section 1‑49.16 [Code 1976 Section 8‑17‑20]. 1974‑75 Op Atty Gen, No 4045, p 122.

The 1977 amendments to the Employee Grievance Procedure Act preclude any grievances concerning classification and promotion arising out of the exercise of employers’ discretion made in the ordinary course of operation based on valid factual differences between employees. Proper subjects for consideration under the Grievance Procedure included alleged acts of discrimination concerning classification and promotion involving differential treatment based upon race, religion, sex, national origin, age and handicap. 1978 Op Atty Gen, No 78‑14, p 24.

Employees of the Industrial Commission’s Judicial Department and employees of the Insurance Department have the same rights as other state employees under the State Employee Grievance Procedure Act; all permanent state employees who have completed six months of satisfactory state service are covered by the State Employee Grievance Procedure Act, unless specifically exempted from such act, notwithstanding previous legislation to the effect that such employees are “terminable at will” or serve “at the pleasure” of the agency. 1978 Op Atty Gen, No. 78‑160, p 190.

NOTES OF DECISIONS

In general 1

Construction and application 3

Exhaustion of remedies 2

1. In general

In an action by an employee for damages under the Whistleblower Statute (Section 8‑27‑30), the court abused its discretion in finding as a matter of law that the employee did not have to exhaust his administrative remedies simply because the statute did not require it. Hyde v. South Carolina Dept. of Mental Health (S.C. 1994) 314 S.C. 207, 442 S.E.2d 582, rehearing denied.

A South Carolina Law Enforcement Division employee’s suit for breach of contract was barred on the ground of res judicata by his failure to seek review of the South Carolina State Employee Grievance Committee’s ruling upholding his discharge, even though the grievance committee could not have awarded contract damages if he had prevailed, where both actions sought adjudication that the discharge was unwarranted. Perry v. State Law Enforcement Div. (S.C.App. 1992) 310 S.C. 558, 426 S.E.2d 334. Administrative Law And Procedure 501; Public Employment 741; States 53

A reclassification of a state employee for punitive reasons may be grievable without a showing of a reduction in pay. However, in order for a reclassification to be grievable, the grievant must allege that the reclassification was punitive. Punitive is defined as a change in duties or responsibilities which has a motive other than simply to reclassify; when the reclassification serves as a pretext ‑ that is, something to conceal its true purpose or object to discipline or punish ‑ then it is punitive. Wise v. South Carolina Tax Com’n (S.C. 1989) 297 S.C. 239, 376 S.E.2d 262.

Trial court’s dismissal of petition for writ of mandamus was proper where administrative remedy had not been pursued to conclusion; however, committee attorney for State Employee Grievance Committee is only to assist committee in advisory capacity; role of decision maker cannot be delegated, and committee attorney was in error in interpreting Section 8‑17‑340 as authorizing him to issue amended order of committee decision. Bradley v. State Human Affairs Com’n (S.C.App. 1987) 293 S.C. 376, 360 S.E.2d 537.

Conflicting testimony supported the Employee Grievance Committee’s finding that charge of patient abuse against mental retardation department employee was not supported by the evidence. South Carolina Dept. of Mental Retardation v. Glenn (S.C. 1987) 291 S.C. 279, 353 S.E.2d 284.

2. Exhaustion of remedies

Correctional officers’ claims for wrongful discharge were foreclosed under State Employee Grievance Procedure Act, as they failed to exhaust their administrative remedies; officers were terminated because charges against them for conspiracy to traffic crack cocaine violated Department of Corrections’ (DOC) internal policy regarding employee behavior, they had grievable action under Act which they voluntarily did not appeal, failure to appeal within statutory time period constituted waiver of right to appeal, and any concerns about bias during DOC’s appellate process should have been allayed by fact that, under Act, appeal would have been to state human resources director, who was outside DOC. Law v. South Carolina Dept. of Corrections (S.C. 2006) 368 S.C. 424, 629 S.E.2d 642, rehearing denied. Public Employment 436

3. Construction and application

At the time former employee tendered her resignation to technical college, she was statutorily entitled to file a grievance under state employee grievance procedure, and thus, her failure to initiate a grievance within 14 calendar days of the effective date of the alleged discriminatory action constituted a waiver of her right to appeal. Graves v. Horry‑Georgetown Technical College (S.C.App. 2010) 391 S.C. 1, 704 S.E.2d 350, rehearing denied. Education 1123(6); Public Employment 436

**SECTION 8‑17‑340.** State Employee Grievance Committee; hearings; procedures; appeals.

(A) There is created the State Employee Grievance Committee constituted and appointed to serve as an administrative hearing body for state employee appeals. The State Human Resources Director shall forward to the committee for a hearing all appeals which meet jurisdictional requirements and relate to the following adverse employment actions: terminations, salary decreases based on performance, demotions, suspensions for more than ten days, and reductions in force when the State Human Resources Director determines there is a material issue of fact regarding inconsistent or improper application of the agency’s reduction in force plan or policy. The committee shall consist of at least eighteen and not more than twenty‑four members who must be appointed by the Director of Department of Administration to serve for terms of three years and until their successors are appointed and qualify. All members of the committee must be selected on a broadly representative basis from among the personnel of the various state agencies as recommended by the agency head.

The committee annually shall elect a chairman from among its members to serve for a one‑year term. In addition, the State Human Resources Director may divide the committee into panels of five members to sit at hearings and designate a member to serve as the presiding officer and a member to serve as secretary at all panel hearings. A quorum of a panel consists of at least three members.

Vacancies occurring for a reason other than expiration of a term must be filled by the Director of Department of Administration in the same manner as the original appointments. Members may be reappointed for succeeding terms at the discretion of the Director of Department of Administration. The committee and the State Human Resources Director may recommend to the Director of Department of Administration that it promulgate regulations as necessary to carry out the provisions of this article and the board is authorized to promulgate these and other necessary regulations.

Committee members shall receive their normal pay for the time they are required to be away from their regular assignments. They may be reimbursed as provided by law from funds appropriated to the Department of Administration for expenses, such as meals, lodging, and mileage, when using their personal automobiles, incurred in connection with the performance of necessary committee business.

(B) Whenever an appeal before the committee is initiated by or involves an employee of an agency of which a committee member also is an employee or involves another impermissible conflict of interest, the member is disqualified from participating in the hearing.

(C) The committee chairman or a designee shall conduct the grievance hearing in an equitable, orderly, and expeditious fashion. The committee chairman or a designee is authorized to administer oaths; to issue subpoenas for files, records, and papers; to call additional witnesses; and to subpoena witnesses. The Department of Administration is authorized to request assignment by the Attorney General of one or more of his staff attorneys admitted to practice law in South Carolina to serve in the capacity of committee attorney. If the Attorney General is not able to provide sufficient legal staff for this purpose due to an impermissible conflict of interest, the Department of Administration, with the approval of the Attorney General, is authorized to secure other qualified attorneys to serve as committee counsel. The committee attorney shall determine the order and relevance of the testimony and the appearance of witnesses, and shall rule on all motions, and all legal issues. The parties are bound by the decisions of the committee chairman or a designee or the committee attorney insofar as these hearings are concerned.

(D) At these hearings the employee and the agency are allowed representatives, including counsel. During the course of the hearing the parties and witnesses also shall respond to questions asked by the committee attorney or the committee members. The committee attorney or the attorney for the Office of Human Resources may assist the committee in the preparation of its findings of fact, statements of policy, and conclusions of law. The committee attorney may be present during the committee’s deliberations on its decision only upon the request of the presiding officer. Within twenty calendar days of the conclusion of the hearing, the committee shall render its decision on the appeal. The decision shall include the committee’s findings of fact, statements of policy, and conclusions of law.

(E) The committee may sustain, reject, or modify a grievance hearing decision of an agency as follows:

(1) In cases involving actual or threatened abuse, neglect, or exploitation, to include those terms as they may be defined in Section 43‑35‑10 or 63‑7‑20, of a patient, client, or inmate by an employee, the agency’s decision must be given greater deference and may not be altered or overruled by the committee, unless the covered employee establishes that:

(a) The agency’s finding that the covered employee abused, neglected, or exploited or threatened to abuse, neglect, or exploit a patient, client, or inmate is clearly erroneous in view of reliable, probative, and substantial evidence;

(b) The agency’s disciplinary action was not within its established personnel policies, procedures, and regulations; or

(c) The agency’s action was arbitrary and capricious.

(2) In all other cases, the committee may not alter or overrule an agency’s decision, unless the covered employee establishes that the agency’s decision is one or more of the following and prejudices substantial rights of the covered employee:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(F) The decision of the committee members must be transmitted in writing to the employee and the employing agency and is final in terms of administrative review. As a result of this decision, either the covered employee or the agency may request a rehearing or reconsideration within thirty calendar days from receipt of the decision. A notice of appeal seeking appellate review of the final decision may be made by the covered employee to the Administrative Law Court as provided in Sections 1‑23‑380(B) and 1‑23‑600(D). Only after an agency submits a written request to the Office of Human Resources seeking approval of the Department of Administration may the agency file a notice of appeal seeking appellate review to the Administrative Law Court. However, the agency may perfect the appeal only upon approval of the Department of Administration. The covered employee or the agency who first files the notice of appeal seeking appellate review is responsible for preparation of a transcript and paying the costs of preparation of a transcript of the audio tapes of a hearing required for certification of the record to the Administrative Law Court. Neither the Department of Administration nor the Office of Human Resources nor the State Human Resources director nor the committee may be named in this notice of appeal. However, any of these entities are entitled to make a motion in the Administrative Law Court to be allowed to intervene to participate in the appeal for appropriate reasons including their interest in defending their policies.

HISTORY: 1982 Act No. 402, Section 4; 1993 Act No. 110, Section 2, eff three months after June 11, 1993; 1996 Act No. 284, Section 5, eff October 1, 1996; 2006 Act No. 387, Section 9, eff July 1, 2006.

Code Commissioner’s Note

At the direction of the Code Commissioner, the reference to Section 20‑7‑490 in paragraph (E)(1) was changed to Section 63‑7‑20 in accordance with 2008 Act No. 361 (Children’s Code).

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Editor’s Note

1996 Act No. 284, Section 9, provides:

“SECTION 9. Any members of the State Employee Grievance Committee added pursuant to the amendment to Section 8‑17‑340 of the 1976 Code contained in this act must be appointed with staggered terms that must be noted on the appointment.”

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

Effect of Amendment

The 1993 amendment, in the eighth paragraph, revised the standard for reviewing a case involving exploitation, neglect, or abuse.

The 1996 amendment substantially revised this section, designating subsections (A) through (F), so as to specify what appeals may be heard, to authorize the appointment of additional committee members, and to provide for the operation of and representation before the grievance committee.

The 2006 amendment rewrote subsection (F) to provide for appeals to the Administrative Law Court rather than the court of common pleas.

CROSS REFERENCES

Attorney General and assistants, generally, see Sections 1‑7‑10 et seq.

Department of Administration, generally, see Section 1‑11‑10 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 29, Procedure.

S.C. Jur. Labor Relations Section 31, Relationship Between the Grievance Committee Decision and the Courts.

S.C. Jur. Public Officers and Public Employees Section 51, Reduction in Force.

S.C. Jur. Public Officers and Public Employees Section 61, Role of State Employee Grievance Committee.

S.C. Jur. Public Officers and Public Employees Section 62, Subject Matter Jurisdiction of the State Employee Grievance Committee.

S.C. Jur. Public Officers and Public Employees Section 63, Procedure and Hearings Before the State Employee Grievance Committee.

S.C. Jur. Public Officers and Public Employees Section 64, Judicial Review of Final Administrative Decisions Under the State Employee Grievance Procedure Act of 1982.

United States Supreme Court Annotations

Public employee’s right of free speech under Federal Constitution’s First Amendment—Supreme Court cases. 97 L Ed 2d 903.

ATTORNEY GENERAL’S OPINIONS UNDER FORMER Section 8‑17‑30

The Board of Juvenile Corrections is an agency or department of State government within the meaning of this article and is subject to its provisions. 1971‑72 Op Atty Gen, No 3257, p 48, issued under former Code 1962 Section 1‑49.13.

The State Employee Grievance Committee may hear a question of disputed issue of fact as to whether the policy of the Budget and Control Board has been followed; however, if no disputed factual issue exists between the employees and the employer agency as to the application of the policy, it appears that the matter could be submitted directly to the Budget and Control Board for clarification or interpretation. 1978 Op Atty Gen, No 78‑75, p 106.

NOTES OF DECISIONS

In general 1

1. In general

In an appeal from decision by the State Human Resources Director regarding grievance proceeding involving highway patrolman, circuit court’s recitation of the factual summary did not limit the State Employee Grievance Committee’s ability to make its own findings of fact on remand. Trowell v. South Carolina Dept. of Public Safety (S.C.App. 2009) 384 S.C. 232, 681 S.E.2d 893. Public Employment 577(2)

In an action by an employee for damages under the Whistleblower Statute (Section 8‑27‑30), the court abused its discretion in finding as a matter of law that the employee did not have to exhaust his administrative remedies simply because the statute did not require it. Hyde v. South Carolina Dept. of Mental Health (S.C. 1994) 314 S.C. 207, 442 S.E.2d 582, rehearing denied.

The state personnel director’s failure to explicitly consider the issue of timeliness of a state employee’s grievance was not binding on the State Employee Grievance Committee as a finding of timeliness where the director found that the case was “grievable” and forwarded the matter to the committee without having made a determination as to the employer’s argument that the grievance request was untimely filed. Dawson v. State Law Enforcement Div. (S.C. 1991) 304 S.C. 59, 403 S.E.2d 124. Public Employment 544

The State Employee Grievance Committee may not delegate its role as final decision maker to the personnel director in a matter where the director had found that a case was “grievable” without making a determination as to the employer’s argument that the grievance request was untimely filed, the director had forwarded the matter to the committee, the committee had then found in favor of the employee and adjourned without deciding the pending motion to dismiss for untimeliness, and the committee had then referred the issue of timeliness to the director to decide; the committee, as the final administrative authority, may consider any issue before it. Dawson v. State Law Enforcement Div. (S.C. 1991) 304 S.C. 59, 403 S.E.2d 124.

Conflicting testimony supported the Employee Grievance Committee’s finding that charge of patient abuse against mental retardation department employee was not supported by the evidence. South Carolina Dept. of Mental Retardation v. Glenn (S.C. 1987) 291 S.C. 279, 353 S.E.2d 284.

Grievance committee had authority to order employee of Department of Health and Environmental Control reinstated with further stipulation that transfer of employee to another work situation of equal rank would be acceptable, in recognition of potential difficulties in retaining employee in former assignment; such transfer not requiring employee’s request or acceptance (decided under former Section 8‑17‑30). Earle v. Aycock (S.C. 1978) 270 S.C. 326, 242 S.E.2d 402.

**SECTION 8‑17‑345.** Mediation‑arbitration of employment action appeals.

The State Human Resources Director shall forward to a mediator‑arbitrator all appeals which meet jurisdictional requirements and relate to the appeal of the following adverse employment actions: lack of promotional consideration and punitive reclassifications when the State Human Resources Director determines there is a material issue of fact regarding these issues, suspensions for ten days or fewer, and involuntary reassignments. In these cases, the arbitration decision is final. The provisions of the State Administrative Procedures Act do not apply to the mediation‑arbitration proceedings.

The mediator‑arbitrator must be assigned by the State Human Resources Director and shall serve as an impartial third party to hold conferences to mediate the appeal and if the appeal is not mediated, determine whether the covered employee substantiates that the agency’s decision was not reasonable. The mediator‑arbitrator shall review the documents which have been submitted by each party and shall schedule a time to meet with both parties, jointly or independently. Failure of the covered employee or the employee’s representative to attend a conference without reasonable justification constitutes a waiver of the employee’s rights to pursue the appeal further. The State Human Resources Director shall determine whether or not reasonable justification exists based on documents submitted by the parties.

The conferences with the parties are confidential and limited to the parties and their representatives, but other persons may attend with the permission of the parties and the mediator‑arbitrator. The parties or their representatives attending a conference must have full authority to negotiate and recommend settlement. The mediator‑arbitrator may not be compelled by subpoena or otherwise to divulge any records or discussions or to testify in regard to the mediation‑arbitration in any adversary proceeding or judicial forum. All records, reports, documents, discussions, and other information received by the mediator‑arbitrator while serving in that capacity are confidential, except the documents which have been submitted by each party shall be the record during judicial review.

If an agreement by the two parties is not reached, the mediator‑arbitrator shall transmit to both parties a final written decision based on the information presented during the process concerning the appeal within forty‑five calendar days after the mediator‑arbitrator conducts a conference with either or both parties. This forty‑five‑day period may be extended by the State Human Resources Director under extenuating circumstances. The mediator‑arbitrator shall request assistance from the attorney for the Office of Human Resources in the preparation of the final written decision. As a result of this decision, either the covered employee or the agency may request a reconsideration within thirty calendar days from receipt of the decision. The mediator‑arbitrator shall request assistance from the attorney for the Office of Human Resources in the preparation of the written response to the request for reconsideration. Petition for judicial review of the final decision may be made by the covered employee to the court of common pleas of the county in which the covered employee’s place of employment is located. Only after an agency submits a written request to the Office of Human Resources seeking approval of the Director of the Department of Administration may the agency initiate a petition for judicial review to the court of common pleas of the county in which the covered employee’s place of employment is located. However, the agency may perfect the petition for judicial review only upon approval of the Director of the Department of Administration. The record for judicial review shall be limited to the documents which have been submitted by each party and the final written decision of the mediator‑arbitrator. Neither the Director of the Department of Administration nor the Office of Human Resources nor the State Human Resources Director nor the mediator‑arbitrator may be named in this petition for judicial review. However, any of these entities are entitled to make a motion in the court of common pleas to be allowed to intervene to participate in the petition for judicial review for appropriate reasons including their interest in defending their policies.

HISTORY: 1996 Act No. 284, Section 1, eff October 1, 1996.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

**SECTION 8‑17‑350.** Duties of state personnel director relative to grievance appeals from agency decisions.

When an appeal is filed, the State Human Resources Director shall assemble all records, reports, and documentation of the earlier proceedings on the grievance and review the case to ascertain that there has been full compliance with established grievance policies, procedures, and regulations within the agency involved and shall determine whether or not the action is grievable to the committee or a mediator‑arbitrator. The attorney for the Office of Human Resources or a committee attorney shall provide the State Human Resources Director legal advice requested to assist the State Human Resources Director in complying with the provisions of this article. If the State Human Resources Director determines that the action is grievable, he shall forward the appeal and documents either (1) to the mediator‑arbitrator for mediation‑arbitration or (2) after the mediation process has been completed, to the designated committee panel and to the committee attorney for a hearing, whichever is appropriate based on the type of adverse employment action. The State Human Resources Director shall notify committee members, the committee attorney, and the parties concerned of the date, time, and place of hearings. The documents transmitted by the State Human Resources Director to the designated committee panel and committee attorney must be marked into evidence as “Committee Exhibit I” during the committee chairman’s opening statement at the beginning of the hearing unless excluded by the committee attorney based on a prior objection raised by either party.

The State Human Resources Director is responsible for recording the hearings, and shall provide to the committee from the resources of the Office of Human Resources, the administrative and clerical services required.

HISTORY: 1982 Act No. 402; 1996 Act No. 284, Section 6, eff October 1, 1996.

Effect of Amendment

The 1996 amendment substantially revised this section to conform its provisions to the revised procedures provided in Sections 8‑17‑310 et seq., and to provide for legal advice to the State Human Resources Director.

CROSS REFERENCES

State personnel director, generally, see Sections 8‑11‑230 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 29, Procedure.

S.C. Jur. Public Officers and Public Employees Section 60, Role of Director of Division of Human Resource Management.

S.C. Jur. Public Officers and Public Employees Section 64, Judicial Review of Final Administrative Decisions Under the State Employee Grievance Procedure Act of 1982.

ATTORNEY GENERAL’S OPINIONS UNDER FORMER Section 8‑17‑40

Instructors at technical education centers are State employees and are, therefore, subject to provisions relating to salary and grievance matters applicable to such employees. 1974‑75 Op Atty Gen, No 4060, p 138.

A physician’s assistant can carry out administrative tasks and conduct routine tests such as checking blood pressure, weight, etc., for a new patient but cannot perform any task requiring the exercise of independent medical judgment or medical interpretation; moreover, all tasks performed by a physician’s assistant must be individually approved by the State Board of Medical Examiners; a physician’s assistant cannot write patient care orders except when a physician is physically present and dictates to the assistant; under no circumstances can a physician’s assistant prescribe medicine. 1978 Op Atty Gen, No 78‑149, p 182.

A faculty member of a state college or university may appeal to the State Employee Grievance Committee once he has completed six months of satisfactory service, or after an official extension of not to exceed three months and he is appraised satisfactorily. 1978 Op Atty Gen, No 78‑150, p 183.

Whether an employee is classified or unclassified does not control participation in the State Employee Grievance Procedure. 1979 Op Atty Gen, No 79‑1, p 5.

NOTES OF DECISIONS

In general 1

1. In general

Substantial rights of highway patrolman were prejudiced due to the arbitrary and capricious nature of the Department of Public Safety’s interpretation of its grievance procedure; the rule that the time for patrolman’s appeal of decision at Step II Grievance Hearing began to run upon service by facsimile was not included in any written materials or guidelines available to the public or the bar, and thus, service of department’s letter upholding his Step II Grievance was not perfected upon facsimile of its final agency decision, but rather the time period for filing appeal began to run once patrolman’s attorney received certified copy of letter. Trowell v. South Carolina Dept. of Public Safety (S.C.App. 2009) 384 S.C. 232, 681 S.E.2d 893. Public Employment 515

In an action by an employee for damages under the Whistleblower Statute (Section 8‑27‑30), the court abused its discretion in finding as a matter of law that employee did not have to exhaust his administrative remedies simply because the statute did not require it. Hyde v. South Carolina Dept. of Mental Health (S.C. 1994) 314 S.C. 207, 442 S.E.2d 582, rehearing denied.

Where the petition of a former employee who had been discharged from the Division of General Services of the South Carolina Budget and Control Board sought an order requiring his immediate supervisor to proceed with grievance procedures under former Section 8‑17‑40, it was error to dismiss the petition on the basis of the doctrine of sovereign immunity. Contract actions are not within the purview of suits proscribed by the doctrine of sovereign immunity. Hutchins v. South Carolina Budget and Control Bd.; Div. of General Services (S.C.App. 1985) 284 S.C. 485, 327 S.E.2d 353, appeal dismissed 285 S.C. 275, 328 S.E.2d 481.

**SECTION 8‑17‑360.** Mediation of grievances by state personnel director.

Once an appeal has been made to the State Human Resources Director and has been determined to meet all jurisdictional requirements, but before forwarding the appeal to the committee, the State Human Resources Director shall appoint a mediator to the appeal of the following adverse employment actions: terminations, salary decreases based on performance, demotions, suspensions for more than ten days, and reductions in force when the State Human Resources Director determines there is a material issue of fact regarding inconsistent or improper application of the agency’s reduction in force plan or policy. The mediator must be an impartial third party who shall act to encourage and facilitate the resolution of the dispute through mediation. The mediator shall review the documents which have been submitted by each party and shall schedule a time to meet with both parties, jointly or independently, to attempt to resolve the matter. Mediation conferences are confidential and limited to the parties and their representatives. Other persons may attend only with the permission of the parties and the mediator. The parties or their representatives attending a mediation conference must have full authority to negotiate and recommend settlement. Failure of the covered employee or the employee’s representative to attend a mediation conference without reasonable justification constitutes a waiver of the employee’s rights to further pursue the appeal. The State Human Resources Director shall determine whether or not reasonable justification exists based on documents submitted by the parties.

The mediator may not be compelled by subpoena or otherwise to divulge records or discussions or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports, documents, discussions, and other information received by the mediator while serving in that capacity are confidential.

HISTORY: 1982 Act No. 402, Section 6; 1996 Act No. 284, Section 7, eff October 1, 1996.

Effect of Amendment

The 1996 amendment substantially revised this section to conform its provisions to the alternative dispute provisions of Sections 8‑17‑310 et seq. and to provide for the handling of appeals by a mediator.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 29, Procedure.

S.C. Jur. Public Officers and Public Employees Section 59, State Employee Grievance Procedure Act of 1982.

S.C. Jur. Public Officers and Public Employees Section 60, Role of Director of Division of Human Resource Management.

NOTES OF DECISIONS

In general 1

1. In general

In an action by an employee for damages under the Whistleblower Statute (Section 8‑27‑30), the court abused its discretion in finding as a matter of law that employee did not have to exhaust his administrative remedies simply because the statute did not require it. Hyde v. South Carolina Dept. of Mental Health (S.C. 1994) 314 S.C. 207, 442 S.E.2d 582, rehearing denied.

**SECTION 8‑17‑370.** Exemptions.

The provisions of this article do not apply to:

(1) members, officers, or employees of the General Assembly;

(2) employees within the Office of the Governor who work at the mansion or in the State House or those employees appointed by the Governor to serve at or above the organizational level of assistant directors of the individual program components;

(3) elected public officials of this State or persons appointed to fill vacancies in these offices;

(4) all judges, officers, and employees of the Judicial Department; jurors; all employees of the Commission on Prosecution Coordination; and the judges, officers, and employees of the Administrative Law Court;

(5) members of state boards, commissions, councils, advisory councils, or committees compensated on a per diem basis;

(6) inmate help in a charitable, penal, or correctional institution, residents of rehabilitation facilities, or students employed in institutions of learning;

(7) part‑time professional personnel engaged in consultant or contractual services;

(8) an agency head who has the authority and responsibility for an agency within state government including the divisions of the Department of Administration and the State Fiscal Accountability Authority;

(9) employees of the Public Service Authority, State Ports Authority, the Jobs‑Economic Development Authority, or the Division of Public Railways and the Division of Savannah Valley Development of the Department of Commerce;

(10) teaching or research faculty, professional librarians, academic administrators, or other persons holding faculty appointments at a four‑year post‑secondary educational institution, including its branch campuses, if any, as defined in Section 59‑107‑10;

(11) athletic coaches and unclassified employees in the athletic departments of four‑year post‑secondary educational institutions as defined in Section 59‑107‑10;

(12) deputy directors as defined in Section 8‑17‑320;

(13) regional and county directors of the Department of Social Services as defined in Section 43‑3‑40(B);

(14) employees of the Medical University Hospital Authority, provided the Medical University Hospital Authority has promulgated an employee grievance plan in accordance with its enabling provision;

(15) presidents of the South Carolina Technical College System;

(16) a retired member of the South Carolina Police Officers Retirement System or a retired member of the South Carolina Retirement System who is hired by an agency to fill all or some fraction of a full‑time equivalent (FTE) position covered by the State Employee Grievance Procedure Act; and

(17) notwithstanding the provisions of Section 9‑1‑2210(E), any participant in the Teacher and Employee Retention Incentive Program.

(18) the chief investment officer and all other employees of the Retirement System Investment Commission.

(19) employees of the Office of the Lieutenant Governor if the employees report directly to the Lieutenant Governor or report directly to a person who reports directly to the Lieutenant Governor.

(20) the executive director, assistant directors, and the area directors of the South Carolina Department of Employment and Workforce created pursuant to Section 1‑30‑10(A)(20).

HISTORY: 1982 Act No. 402, Section 7; 1993 Act No. 177, Section 1, eff June 16, 1993, and applies to personnel actions taken after that date; 1993 Act No. 181 Section 73, eff July 1, 1993; 1994 Act No. 452, Section 8, eff June 16, 1994; 1996 Act No. 284, Section 8, eff October 1 1996; 2000 Act No. 264, Section 3, eff May 1, 2000; 2002 Act No. 171, Section 1, eff February 7, 2002; 2002 Act No. 356, Section 11, eff July 1, 2002; 2005 Act No. 153, Pt II, Sections 3.A, 3.B, Pt IV, Section 4, eff July 1, 2005; 2008 Act No. 353, Section 2, Pt 25B, eff July 1, 2009; 2010 Act No. 146, Section 6, eff March 30, 2010.

Code Commissioner’s Note

Pursuant to the directive to the Code Commissioner in 2010 Act No. 146, Section 114, “Department of Employment and Workforce” was substituted for “Department of Workforce”.

Pursuant to the directive in 2004 Act No. 202, Section 3, at the direction of the Code Commissioner, reference to “Administrative Law Judge Division” was changed to “Administrative Law Court”.

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

At the direction of the Code Commissioner in 2016, in (8), added reference to the State Fiscal Accountability Authority, which was inadvertently omitted when name changes were made pursuant to the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

Editor’s Note

This section was amended by 1993 Act No. 177, Section 1, but that Act made no change in paragraph (9). Paragraph (9) was amended by 1993 Act No. 181, Section 73. As set out above, paragraph (9) reflects the amendments made by Act No. 181, Section 73, pursuant to the direction of 1993 Act No. 181, Section 1614, which reads:

“SECTION 1614. Notwithstanding any permanent or temporary provision of law, any enactment, or portion thereof, of the General Assembly in 1993 in conflict with any provision of this act shall be suspended as to its force and effect until March 1, 1994. Where there is no conflict the provisions of any other enactments shall supersede the provisions of this act. For the purposes of this section, ‘conflict’ shall not include:

“(1) where provisions of the Code of Laws of 1976, as amended, are repeated herein so as to incorporate only changes in the names of agencies, divisions or departments, except so far as such change in name conflicts with another enactment or a portion of another enactment, or.

“(2) where provisions of the Code of Laws of 1976, as amended, are repeated herein so as to incorporate only changes in the governance or structure of an agency, division or department except so far as such governance or structure is in conflict with another enactment or some portion of another enactment.”

2005 Act No. 153, Pt II, Section 3.C, provides as follows:

“Notwithstanding the provisions of Section 9‑1‑2210(E) of the 1976 Code, as amended by this part, the provisions of Section 8‑17‑370(17) of the 1976 Code, as added by subsection B. of this section, apply for persons becoming TERI program participants after the ratification date of this act.”

Effect of Amendment

The first 1993 amendment, in paragraph (4), added “and all employees of the Commission on Prosecution Coordination”; added paragraph (11) concerning athletic personnel; and made grammatical changes.

The second 1993 amendment, in paragraph (9), substituted “Division of Public Railways of the Department of Commerce” for “Public Railways Commission”.

The 1994 amendment in paragraph (4) added “, and the judges, officers, and employees of the Administrative Law Judge Division”.

The 1996 amendment revised paragraphs (4) and (7) through (10), added paragraphs (12) and (13) and made nonsubstantive changes.

The 2000 amendment added paragraph (14).

The first 2002 amendment, in subsections (10) and (11), inserted “four‑year post‑secondary” and deleted the “technical education colleges and centers” exception; and added subsection (15) concerning technical college presidents.

The second 2002 amendment added subsection (16).

The 2005 amendments, in item (16), added “or a retired member of the South Carolina Retirement System”; and added items (17) and (18).

The 2008 amendment added item (19) relating to employees of the Lieutenant Governor effective July 1, 2009.

The 2010 amendment added subsection (20), relating to directors of the Department of Employment and Workforce.

CROSS REFERENCES

Exclusion of academic personnel included in item (10) of this section from definition of “instructional personnel”, see Section 8‑17‑320.

Exclusion of persons enumerated within the provisions of this section from the definition of “employee” for purposes of employment protection for reports of violations of law or regulation, see Section 8‑27‑10.

Grievance and performance appraisal procedures for academic personnel included in item (10) of this section, see Section 8‑17‑380.

Provisions of Sections 8‑17‑310 et seq. not applicable to South Carolina Jobs ‑ Economic Development Authority, see Section 41‑43‑90.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Colleges and Universities Section 26, Grievance Matters.

S.C. Jur. Labor Relations Section 30, Who is Authorized to Grieve.

S.C. Jur. Labor Relations Section 41, Coverage.

S.C. Jur. Public Officers and Public Employees Section 59, State Employee Grievance Procedure Act of 1982.

ATTORNEY GENERAL’S OPINIONS UNDER FORMER Section 8‑17‑50

The 1992 joint resolution concerning the South Carolina Board of Social Services does not expressly repeal Chapter 3 of Title 43 but, instead, changes the role of county boards of social services to advisory. The county departments remain intact with the county director as the chief executive officer who has been placed temporarily under the authority and control of the State Commissioner of Social Services. Thus, the impact of the joint resolution on grievance rights of county directors of social services is unclear. Legislative or judicial clarification is recommended, however. 1992 Op Atty Gen No. 92‑39.

Agency, institution and division heads are exempt from the State Employee Grievance Procedure. 1979 Op Atty Gen, No 79‑1, p 5.

NOTES OF DECISIONS

In general 1

1. In general

In an action by an employee for damages under the Whistleblower Statute (Section 8‑27‑30), the court abused its discretion in finding as a matter of law that employee did not have to exhaust his administrative remedies simply because the statute did not require it. Hyde v. South Carolina Dept. of Mental Health (S.C. 1994) 314 S.C. 207, 442 S.E.2d 582, rehearing denied.

**SECTION 8‑17‑375.** Reassignment, termination, or reduction of compensation of unclassified executive department employees appointed by governing board subject to Senate confirmation.

Notwithstanding any other provision of law, employees of an executive department of this State, except for the Department of Transportation, enumerated in Section 1‑30‑10(A) with a governing board who are unclassified, whose employment or compensation are decided by the governing board subject to specified approvals provided by law, and whose appointment or employment is subject to Senate confirmation may not be reassigned, terminated, or have their compensation reduced, except by majority vote of the governing board and approval by the Senate upon advice and consent prior to the action being taken or an interim appointment being made.

HISTORY: 2008 Act No. 353, Section 2, Pt 20H, eff July 1, 2009.

**SECTION 8‑17‑380.** Grievance and performance appraisal procedure for academic employees.

With respect to the teaching and research faculty, professional librarians, academic administrators, and all other persons holding faculty appointments at any post‑secondary educational institutions described in item (10) of Section 8‑17‑370, each such institution, subject to the approval of the Director of the Department of Administration or its designee and the Commission on Higher Education, shall establish in writing:

(a) A performance appraisal procedure which shall assure:

(1) annual review and evaluation of such employees;

(2) written findings;

(3) review of evaluations with each covered employee;

(4) retention of performance appraisals and written comments of such employee, if any, in a permanent file with right of full disclosure to the employee.

(b) A grievance procedure which shall at an appropriate stage provide a hearing for such employees before an individual or committee designated for such purposes, at which the employee shall have the right to representation by counsel and the opportunity to present evidence in his behalf. Any such procedure shall include the right of the employee to appeal the post‑hearing decision to the governing board of the institution, or a committee designated by the board for this purpose, such appeal to be limited to the record of the hearing. Discrimination in compensation, promotion, and work assignment shall be subjects for consideration by such grievance procedure. Dismissal of tenured or other permanent employees and dismissal prior to the end of an employment contract term shall be only for cause, and shall be subject for consideration by such grievance procedure. The granting or the failure to grant tenured status to such employees or nonrenewal of employment contracts at the end of the contract term shall not be subjects for consideration by such grievance procedure.

The grievance and performance appraisal procedure provided for herein shall be submitted to the Department of Administration or its designee and the Commission on Higher Education for approval within six months after the establishment of any new institution.

HISTORY: 1982 Act No. 402, Section 8.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Colleges and Universities Section 16, Overview.

S.C. Jur. Colleges and Universities Section 24, Appointment and Removal.

S.C. Jur. Colleges and Universities Section 25, Tenure.

S.C. Jur. Colleges and Universities Section 26, Grievance Matters.

S.C. Jur. Public Officers and Public Employees Section 59, State Employee Grievance Procedure Act of 1982.

S.C. Jur. Public Officers and Public Employees Section 62, Subject Matter Jurisdiction of the State Employee Grievance Committee.

NOTES OF DECISIONS

In general 1

1. In general

In an action by an employee for damages under the Whistleblower Statute (Section 8‑27‑30), the court abused its discretion in finding as a matter of law that employee did not have to exhaust his administrative remedies simply because the statute did not require it. Hyde v. South Carolina Dept. of Mental Health (S.C. 1994) 314 S.C. 207, 442 S.E.2d 582, rehearing denied.