SHADOWS Larger Than ...reality

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I. INTRODUCTION

Santa Claus, the "Tooth Fairy," Halloween ghouls and goblins, "Lady Luck," and a seemingly endless list of happy or sad, loved or feared, idolized or dread personalities affect each of our lives from our very first to our very last breaths. Aside from the opportunities and problems which accompany them, these spirits present a very special challenge. For example, how many times has a child asked, "Is there <u>really</u> a Santa Claus?" Or "Who <u>really</u> put that dime under my pillow?" On a more mature level perhaps, the adult with childlike enthusiasm and fantasy says, "I've got a feeling that I'm <u>really</u> going to 'hit it big' at the race tracks this time!"

Fact or fiction, substance or myth, person or personality, where does reality end and where does perception begin? With children the answers are fairly straightforward; but with age and more complex issues, distinctions often blur. In a very real sense, people are challenged in every aspect and at every stage of their lives to separate the real from the not-so-real and to distinguish shadows from figures. In formulating one lesser-known version of his theory

of relativity, Albert Einstein meshed two factors--figures and time--with his remark, "When a man sits with a pretty girl for an hour, it seems like a minute. But let him sit on a hot stove for a minute--and it's longer than any hour. That's relativity."[1]

Unlike Santa Claus, the "Tooth Fairy," Halloween spirits, and "Lady Luck," employee unionism is no myth. Because employers in both the public and private sectors fear employee unionism, literally hundreds of training programs and countless thousands of dollars are expended each year either directly or indirectly toward the goal of what one consultant has termed "making unions unnecessary."[2] Although slightly disguised, no doubt, among some observers, just such an effort occurred in Virginia during the 1970's when the General Assembly considered a series of proposals to enact uniform grievance procedure legislation among state and local government employers. For either the participant in the legislative process at that time or the casual observer even today, these statutes demand a determination of the relative importance of this legislation per se as contrasted with the shadows which it continues to cast upon public

employee relations in the Commonwealth of Virginia.

II. PROPOSALS FOR ORGANIZED REPRESENTATION OF PUBLIC EMPLOYEES

The Virginia General Assembly considered basically two types of legislation of a public employee relations nature during the decade of the 1970's. The first and most frequently discussed category of these proposals focused upon formal collective representation of employee groups.

Prior to 1970, the Virginia General Assembly considered and dismissed only one proposal for employee bargaining legislation; but from January 1970 through the conclusion of the decade, various members of the Virginia Senate and the Virginia House of Delegates sponsored no less than fifty-four (54) bills to promote the formation and organized representation of public employees throughout the Commonwealth. Ranging from collective bargaining to "meet and confer" status, these proposals also varied greatly in format from voluminous statuatory drafts with intricate details as to permissible relationships, roles and guidelines for employers and employee groups

to one exceptionally brief proposal of only a few lines which sought merely to enact legislation to facilitate employer relationships with organized public employee groups without any attention whatsoever to such matters as relationships, roles, permissible activities, prohibited activities, and the bounds for discussions or negotiations.[3]

A. General Assembly Sessions of 1972 and 1973

In terms of the sheer numbers of legislative proposals to permit public employee bargaining, the 1972 and 1973 sessions were by far the most noteworthy. In 1972 six members of the Virginia Senate and four members of the House of Delegates sponsored ten (10) bills to permit public employee bargaining; and only one year later, in 1973, four Senators and eight Delegates submitted fifteen (15) legislative proposals with this same objective. These two successive sessions of the General Assembly considered nearly one-half of all public employee bargaining bills which were presented during an entire ten-year period of legislative activity.[4]

Aside from numbers of proposals as a measure of legislative activity, several actions by the 1973 General Assembly were especially significant. First, in rejecting all public employee bargaining bills, the General Assembly added insult to the efforts of bargaining proponents by enacting House Bill 1340 which placed Virginia public employees under the provisions of the right-to-work law. Second, accompanying the twenty-five (25) proposals for public employee bargaining during the 1972 and 1973 sessions were numerous statements by legislative proponents regarding the existence of extensive public employee relations problems and the readiness of public employers to resolve these problems if the General Assembly would simply remove the legal impediment to effective management.[5] Amidst this climate, it is of little surprise that the 1973 General Assembly adopted House Bill 1893 which placed Virginia in the unique position among all other states of having enacted grievance procedural requirements for state and local government agencies.[6]

B. General Assembly Session of 1974

Six months before the July 1, 1974 effective date on which public employers throughout Virginia were required to implement procedures for the resolution of employee grievances, the General Assembly convened once again. Although armed with a significantly-reduced number of proposals, the proponents of public employee bargaining legislation were prepared to battle fiercely for enactment of any of the three draft statutes and particularly for House Bill 591--all of which were sponsored by James M. Thomson of Alexandria, the Majority Leader of the House of Delegates.[7] Rebounding from a close 50-46 defeat of the same proposal by the House in 1973, Delegate Thomson resubmitted this proposal in 1974. In defense of its resubmittal, he said, "I suggest that the time has come when those jurisdictions who want to meet and resolve their public employee problems be given the right to do so. In 1973, only five jurisdictions fell into this category. Thusfar in 1974, there are 10 such jurisdictions."[8] House Bill 591 proposed to legalize bargaining between public employers and employees and

included fines of $15,000 per day and a three-year loss of legal bargaining recognition for units which ignored its no-strike clause. In discussing the proposal, Delegate Thomson frequently noted its protection for management rights[9] and depicted its no-strike clause as the "strongest prohibition against strikes that there is in the United States."[10]

On Monday, February 25, 1974, the House of Delegates once again considered House Bill 591. Considerable debate ensued with Delegate Frank Slayton of South Boston leading the opposition saying, "A vote for this bill is a vote of no confidence in state government," and with Delegate Thomson chastising the opposition for "lashing at waves with whips."[11] Shortly before 1:00 a.m. on Tuesday, February 26, the vote came with Thomson scoring a 55-42 victory to send House Bill 591 to the Virginia Senate. Thereafter, the Senate Commerce and Labor Committee considered the proposal; and refusing to forward it to the full Senate for final action, the Committee voted on March 6, 1974, to table the proposal for

further study. Rather than to accept this outcome, Delegate Thomson chose to withdraw the bill.[12]

C. Subsequent Legislative Efforts

Together all five subsequent sessions of the Virginia General Assembly during the decade of the 1970's witnessed a total of seventeen (17) proposals for public employee bargaining legislation. Of this number, Delegate Thomson submitted four (4) proposals prior to his 1977 defeat for re-election--a loss which was generally attributed to his stance against the Equal Rights Amendment (E.R.A.). The reduced number of legislative proposals to promote public employee bargaining from the 1975 through the 1979 sessions of the General Assembly has caused some observers such as Charlie Stebbins with the Management Relations Committee for the Virginia State Chamber of Commerce, to conclude that "They [the proponents of public employee bargaining] lost their steam when Jim Thomson got defeated."[13] While this factor has, no doubt, contributed to some reduction in the level of activity, the extent of its

impact is impossible to measure. It is important to note, however, that the public employee bargaining legislation which Delegate Thomson sponsored during the 1970's represents only about one-eighth of the proposals regarding this issue which the General Assembly considered during the decade. Furthermore, despite his departure, statistical data indicate that the issue of public employee bargaining remains dear to the interests of Northern Virginia and the General Assembly representatives from this region of the Commonwealth. For example, of the fifty-four (54) legislative proposals for public employee bargaining which were considered by the General Assembly from 1970 through 1979, sponsorship according to region of the Commonwealth was as follows:

1. Public Employee Bargaining Proposals: Legislative Sessions 1970-1979

Region	Proposals (#)	Percentage (%)
Northern Virginia	35	65
Tidewater	15	28
Richmond	3	5
Other areas	1	2
	54	100

Of the seventeen (17) proposals which were considered by the General Assembly in sessions from 1975 through 1979, sponsorship according to region was as follows:

2. Public Employee Bargaining Proposals: Legislative Sessions 1975-1979

Region	Proposals (#)	Percentage (%)
Northern Virginia	15	88
Tidewater	2	12
Richmond	0	0
Other areas	0	0

If it were possible to extract Delegate Thomson's 1973-1977 proposals from these statistics, the proposals of Northern Virginia members of the Senate and the House of Delegates would continue to constitute nearly sixty percent of the total of all public employee bargaining proposals before the Virginia General Assembly during the decade of the 1970's and nearly eighty-five percent of the total proposals during the five-year segment from 1975 through 1979. There can be no bonifide denial of the fact that statistics notwithstanding, the assistance of Delegate Thomson and his important leadership role as Majority Leader contributed significantly both to the efforts for public employee bargaining in Virginia during the 1970's and to the

brief victory which House Bill 591 enjoyed for about one week during the Winter of 1974.

III. PROPOSALS FOR IMPROVED PUBLIC EMPLOYEE RELATIONS WITHOUT ORGANIZED REPRESENTATION

During the decade of the 1970's, two legislative efforts were pursued in another approach toward improved employee-employer relations in state and local government agencies throughout the Commonwealth. One effort established statuatory guidelines to assure public employees throughout Virginia of equitable procedures in the review and resolution of employment-related grievances while a second effort sought to improve the job security for one group of public employees--namely, law enforcement officers.

A. Initial Legislation To Enact A Required Grievance Procedure for Public Employees

Aside from salary and wage considerations, grievance procedures generally constitute one of the most important benefits which employees secure through formally organizing themselves into labor unions. If an employer is reasonably

responsive to the real economic needs of employees, is it also possible for an employer to grant reasonable job security via a workable grievance procedure in order to offset any material benefit which would accrue to employees through unionization? Or restated more succinctly, is "making unions unnecessary" among Virginia public employers a realistic goal? Certainly these questions and many other concerns as well were commonplace among the members of the Virginia General Assembly when they adopted House Bill 1893 in 1973 which included in part a requirement for "An employee grievance procedure to afford an immediate and fair method for the resolution of disputes which may arise between an agency and its employees; ..."[14] Although specifying no specific procedural provisions, these legislative statutes which were incorporated into Section 15.1-7.1 of the Code of Virginia stipulated that all but the very smallest of counties, cities, and towns throughout the Commonwealth should adopt grievance procedures which "...shall conform to like procedures established by the Governor..."[15]

The 1973 enactment of House Bill 1893 is particularly noteworthy in several aspects. First, this legislation formally expressed the need for grievance procedures within state and local government as a legitimate means for resolving employee complaints of a work-related nature. Second, while recognizing a procedural need, these statutes did not dictate the terms and conditions for such procedures; and fortunately, the absence of such detailed requirements permitted the design of varying procedures in order to respond to unique local conditions. Unfortunately, however, the absence of broad procedural guidelines also contributed to some subsequent difficulties including disregard for the grievance procedure in some instances and the occasional creation of grievance procedures which were so unorthodox as to discourage usage by employees.

Another factor regarding House Bill 1893 requires special mention--namely, its patrons. Ranging from its chief sponsor Delegate Thomson of Alexandria to Delegate Claude W. Anderson who represents Appomattox, Buckingham, Cumberland, Prince Edward

and a portion of Amelia counties, the five patrons of House Bill 1893 represented extremely diverse philosophical, political, and personal interests and motives. It was generally acknowledged, for example, that public employee bargaining proponents supported this legislative proposal in the belief that the responses of state and local governments to the grievance procedure requirement would prove so woefully inadequate as to force state legislators over the threshold toward bargaining legislation. Recoiling from the 1972-1973 deluge of legislative proposals for public employee bargaining, other members of the General Assembly honestly envisioned effective grievance procedures either as an alternative to public employee bargaining under the best of conditions or as a last resort effort to foil "labor union" legislation. In the words of one observer, "You don't need a bargaining bill if people [public employees] have recourse";[16] and in the minds of some legislators, the grievance procedure requirement of House Bill 1893 provided that recourse.

B. Legislative Proposals For A "Police Officers' Bill-Of-Rights"

Only six months following the July 1, 1974 date for the required implementation of grievance procedures for public employees in Virginia, the General Assembly was again in session; and Delegate Erwin "Shad" Solomon of Bath County proposed special legislation to enhance the employment security of one group of state and local government employees--the police officers. Known as the "Police Officers' Bill-of-Rights," this legislation was initially defeated by committee during 1975; but convinced of its merits, Delegate Solomon resubmitted this proposal for further consideration in the 1976 Assembly session. In response to the comments of law enforcement and management officials from throughout the Commonwealth, the General Laws Committee of the Virginia Senate designated a special sub-committee to consider this proposed House Bill 973. While that sub-committee unanimously recommended the "carry-over" of this legislative proposal to the 1977 session of the General

Assembly, last-minute compromises between opposing factions produced a sudden Committee decision to submit House Bill 973 for further consideration by the full membership of the Virginia Senate during the 1976 session. By a vote of 21-15, the Senate adopted the "Police Officers' Bill-of-Rights" despite the warnings of some Senators including Elliot S. Schewel of Lynchburg. The misgivings regarding this Assembly-adopted legislation generally focused upon the following two shortcomings: (a) a last-minute compromise by which House Bill 973 mandated one-member hearing panels in lieu of the statuatorily-prescribed grievance procedure for resolving the work-related complaints of police officers; and (b) the destructive effects which the "Police Officers' Bill-of- Rights" would inflict upon state and local government grievance procedures as a result of segregating police officers from other public employees.[17] Many opponents of House Bill 973 were further convinced that these two conditions, if allowed to

materialize, would produce an intolerable public employee relations climate in Virginia which, in turn, would foster the enactment of public employee bargaining legislation. Consistent with the concerns regarding segregating public employees by groups, General Assembly adoption of the "Police Officers' Bill-of-Rights" in 1976 was followed only one week later by a request from Dr. Beth Nelson, then-President of the Virginia Education Association, for legislative consideration of a "Teachers' Bill-of-Rights" to include a right-to-strike.[18] Based upon his perception of the potential consequences, Governor Mills E. Godwin, Jr., vetoed the "Police Officers' Bill-of-Rights" in 1976.

During the 1977 session of the General Assembly, amendments to this proposed legislation were accomplished including provisions to establish hearing panels for considering complaints or grievances within the framework of the "Police Officers' Bill-of-Rights", and to permit police officers to submit their grievances for resolution via either this mechanism or the grievance procedure of the respective state or local government.

By votes of 80-5 in the House of Delegates and 32-6 in the Senate, the General Assembly repeated its adoption of the "Police Officers' Bill-of-Rights." Once again in 1977 Governor Godwin chose to veto this legislation.[19]

Unruffled by these events, Delegate Solomon resubmitted the "Police Officers' Bill-of-Rights" to the 1978 session of the Virginia General Assembly. By votes of 91-2 in the House of Delegates and 31-6 in the Senate, the General Assembly adopted this legislation once again. Explaining his decision not to veto the "Police Officers' Bill-of-Rights," Governor John N. Dalton stated, "This time the bill arrived in my office two weeks before the General Assembly was scheduled to adjourn. Therefore, I must either sign the bill or veto it while they are here to consider a veto. With only eight legislators out of 140 opposing this bill this year, I think you would agree a veto would be overridden in quick order."[20]

C. Legislative Measures To Enact An Improved Grievance Procedure For Public Employees.

Lynchburg Senator Elliot Schewel was one of the few members of the Virginia Senate who consistently opposed the "Police Officers' Bill-of-Rights" during each of the three successive sessions (1976, 1977, and 1978) in which the General Assembly adopted this legislation. In a July 1978 letter to a colleague in another Virginia community, former Lynchburg City Manager David B. Norman praised the State Senator's efforts noting, "Senator Schewel undauntedly represented the views of both the Lynchburg City Government and himself..."[21]

In initially opposing this special legislation for one group of public employees in 1976, Senator Schewel became uncomfortable with the absence of an alternative proposal which would enhance the employment security for all state and local government employees in Virginia. Through subsequent conversations, he learned of the very comprehensive grievance procedure which the Lynchburg City Administration had enacted in July 1974; and he considered the possibility of incorporating

similarly positive features into the grievance procedures of the state and local governments throughout Virginia. Unlike the grievance procedures of other Virginia public agencies which were implemented in accordance with the general mandate of House Bill 1893 of the 1973 Assembly session, the Lynchburg grievance procedure included provisions which (a) permitted the grievability of the most serious concerns in any employee-employer relationship--namely, dismissals and demotions, and (b) vested the final authority for grievance resolution in an objective, independent hearing group or panel.[22] Unifying his fundamental concerns regarding the weakness of grievance procedures among Virginia state and local governments was a broader objective for Senator Schewel--namely, improving the provisions and administration of these grievance procedures in order to render public employee unionism unnecessary in the Commonwealth.

Working closely with officials of the Lynchburg City Government, Senator Schewel submitted a series of legislative

proposals to the 1977 session of the General Assembly. While these proposals were not adopted during that session, his colleagues agreed with his assessment of the need for substantial legislative improvements and appointed a Joint Senate/House of Delegates Subcommittee with Senator Schewel as chairman to conduct public hearings throughout Virginia with a goal of submitting appropriate proposals during the 1978 session for improvements to the existing grievance procedure statute.

Five (5) public hearings were conducted by the aforementioned Joint Subcommittee between May and September, 1977, for the purpose of receiving input from state and local government employees and employers concerning suggestions for improved grievance legislation. Separate sessions for managerial personnel and non-supervisory employees were conducted at each of the five hearing sites throughout the Commonwealth (Richmond, Annandale, Staunton, Newport News, and Abingdon); and local government officials as well as employees addressed the Joint Subcommittee on numerous occasions.

Following these hearings, which were extensively reported by the news media, the Joint Subcommittee convened repeatedly to formulate legislative proposals, the most noteworthy items of which were incorporated into Senate Bill 135 which sought enactment of a comprehensive "minimum standards" grievance procedure to replace the existing grievance statute. Simultaneous with these events, many public addresses and panel discussions were conducted with regard to the activities and findings of the Joint Subcommittee. Several of the more prominent presentations in this regard occurred during latter 1977 at the annual conventions of the Virginia Association of Chiefs of Police and the Virginia Municipal League, and at the meeting of the Board of Directors of the Virginia State Chamber of Commerce. All three organizations subsequently supported the efforts and proposals of the Joint Subcommittee during Assembly consideration.

As is customary, numerous hearings and discussions of these proposed improvements were conducted during the legislative process during the 1978 session of the General Assembly.

Contrary to custom, however, only one noteworthy alteration occurred to modify slightly the final determination of grievability within these very historic legislative proposals. By votes of 82-2 in the House of Delegates and 35-0 in the Senate, S.B. 135 was adopted and subsequently became law by endorsement of Governor John Dalton. In closely-related efforts, Senator Schewel successfully sponsored legislation to establish both a Personnel Relations Advisory Committee to advise the Governor in such matters and an Office of Employee Relations Counselors within the state government. The latter Office was assigned to "... provide assistance to employees in the resolution of work related problems, concerns, and grievances; to assure compliance with the formal State grievance procedure; and to make recommendations for the improvement of management-employee relations in State government."[23]

IV. THE EXPERIENCE OF TWO GOVERNMENT AGENCIES IN THE RESOLUTION OF EMPLOYEE GRIEVANCES

Following enactment of grievance procedure statutes in 1973 and

in 1978, legislative pressure in terms of the number of proposals for public employee bargaining subsided greatly. For example, during the General Assembly sessions of 1970, 1971, 1972, and 1973, an average of 8.5 proposals for public employee bargaining were sponsored for consideration during each Assembly session. Following the enactment in 1973 of the initial statuatory requirement for a grievance procedure to serve all state and local government employees, the sponsorship of public employee bargaining legislation dipped to an average of 3.0 proposals during each Assembly session through 1978. Subsequent to the 1978 enactment of a comprehensive "minimum standards" grievance procedure, the sponsorship of public employee bargaining legislation decreased further to an average of 1.5 proposals during each Assembly session through 1982. Although the sheer volume of proposed legislation regarding a single issue does not necessarily represent an accurate measure of the intensity of legislative pressure, a steady decline in the number of such proposals is, nevertheless, noteworthy.

If there exists a direct relationship between the effective resolution of employee grievances and the employee-employer relations climate within an organization and if one also assumes that there exists a causal relationship between the employee-employer relations climate and the pressure for organized or union representation of employees, is there then a direct relationship between the effective resolution of employee grievances and the pressure for organized or union representation within an organization? While it is impossible to determine the extent of such a relationship, it is possible to examine the experience of two government employers in Virginia regarding the resolution of employment-related grievances.

A. Lynchburg City Government

On July 1, 1974, the Lynchburg City Government formally implemented a comprehensive procedure which was aimed at the effective resolution of employment-related grievances. Unlike the grievance procedures of other Virginia state and local governments, the Lynchburg Grievance Procedure closely resembles even today the procedure which was initially implemented in

1974. The reasons for this phenomenon relate to at least two primary components which initially distinguished this Lynchburg policy from similar policies of other public agencies throughout the Commonwealth--namely, the definition of all disciplinary measures including dismissals and demotions as issues for which employees had a procedural right to grieve, and the vesting of final authority for grievance resolution in an objective, independent hearing group or panel. Because of these two most important strengths as well as other positive features of the Lynchburg Procedure, Senator Elliot Schewel quickly identified the Grievance Procedure of the Lynchburg City Government as the "model" for his 1977 legislative proposals to improve the grievance procedures of Virginia government agencies and ultimately the entire environment of public employee-employer relations throughout the Commonwealth.

Since 1974, the Lynchburg Grievance Procedure has included the following four steps for the resolution of grievances. The first step provides for an oral, non-written discussion of

eligible employment-related complaints between the aggrieved employee and the immediate supervisor; and ideally the resolution of most complaints should occur at this initial step as a result of careful communications and improved supervisory understanding of the aggrieved employee's concerns. In the absence of any mutually-satisfactory resolution between the employee and the supervisor as a result of this discussion, the concerned employee may file a written appeal for a second step hearing of his complaint by the affected department director. If dissatisfied with the response of the department director at the second step, the employee may appeal for a step three hearing by the City Manager or his designee by stating his reasons for rejecting the second step response. If dissatisfied with the response of the City Manager or his designee at step three, the employee may appeal for a step four hearing by a final hearing group which consists of one supervisory employee, one non-supervisory employee, and from one to three citizens depending upon the nature and the severity of the particular

grievance.

During the eight-year period from July 1974 through June 1982, seventy-six (76) formal or written grievances were resolved within the second, third, and fourth steps of the Lynchburg Grievance Procedure. Of this number, one employee filed a total of eighteen (18) grievances in 1978 in conjunction with his efforts to promote organized employee representation or unionization within the Lynchburg Fire Department. While thirteen of his complaints were found to be of a "non-grievable" nature, even these non-grievable complaints are included within the following statistical information regarding these seventy-six grievances:

3. Lynchburg City Government-Resolution of Employee Grievances: July 1, 1974 - June 30, 1982

	Upheld Original Decision of Supervisor	Overturned or Modified Original Decision of Supervisor	Dropped By Grievant	Ruled Non-Grievable	Total Each Step
STEP 2 Departmental Hearing	17	8	6	4	35
STEP 3 City Manager Hearing	5	12	1	16*	34
STEP 4 Panel Hearing	5	2	0	0	7
Totals	27	22	7	20	76

*Note: Thirteen of these complaints which were ruled "non-grievable," were part of a total of eighteen grievances submitted by a single employee.

By far the largest segment of these grievances have involved disciplinary actions; and of this group, the overwhelming majority were related to dismissals and demotions -- the most serious employment-related concerns for any employee and issues which were regarded as "non-grievable" in the grievance procedures of other Virginia state and local governments prior to the enactment of comprehensive improvements to the grievance statutes in 1978. Other grievances have focused upon issues such as work assignments,

interdepartmental transfers, the application of policy, and working schedules.

It is interesting to note that during this 1974-1982 period, almost an identical number of grievances were resolved at steps two and three; and only seven (7) or nine percent of all grievances required hearings at the fourth and final step. Of the forty-nine (49) complaints which both constituted grievable issues and were pursued for resolution by employees, twenty-seven (27) or fifty-five percent of this number resulted in decisions which ultimately upheld the original supervisory actions while twenty-two (22) or forty-five percent of this number resulted in decisions in some support for the employees' positions by either overturning or modifying the original supervisory actions. These records also suggest that the original supervisory actions were upheld in sixty-eight percent of the grievances which were resolved at step two while the original supervisory actions were either overturned or modified in seventy-one percent of the grievances which were resolved at step three. In terms of success rate in resolving complaints which were both

grievable and pursued through appeal by the aggrieved employees, successful resolution occurred in fifty-one percent of all grievances which were considered at step two; and successful resolution occurred in seventy-one percent of all grievances which were considered at the third step of the procedure.

According to source and frequency, these seventy-six employee grievances originated as follows:

4. Lynchburg City Government--Employee Grievances By Source, Year: July 1, 1974 - June 30, 1982

Department/Year	1974[a]	1975	1976	1977	1978	1979	1980	1981	1982	Totals
Fire	0	1	1	6	26[b]	0	7	1	3	45[b]
Police	0	0	1	1	1	2	3	4	1	13
Human Services[c]	0	0	0	1	0	1	1	2	0	5
Public Works	0	0	0	2	0	2	5	0	2	11
Central Services	0	0	0	0	0	2	0	0	0	2
Totals	0[a]	1	2	10	27	7	16	7	6[d]	76

Notes: (a) Reflects experience from program inception on July 1, 1974 through December 31, 1974; (b) includes eighteen grievances by one individual; (c) the Division of Social Services is included within the State Grievance Procedure while all other divisions of the Department of Human Services are within the purview of the City Grievance Procedure; and (d) includes all grievances which were resolved as of June 30, 1982.

While a simple average would suggest approximately ten (10) grievances per year are resolved within the Lynchburg City Government, a cursory review reveals considerable fluctuation from year-to-year. When adjusted for the 1978 incident in which one individual filed eighteen grievances, an average of approximately seven grievances per year results; but even this average is distorted by year-to-year fluctuations and by employee reluctance to utilize the Grievance Procedure during the first few years following initial implementation of this policy. Perhaps the most accurate assessment regarding the frequency of grievances simply acknowledges that no apparent pattern exists.

During the eight-year period of grievance experience, over three-fourths of all grievances originated within the two public safety departments of the city government. When adjusted once again for the 1978 incident in which one firefighter filed eighteen grievances, this combined public safety ratio decreases only slightly to sixty-nine percent with the Lynchburg Fire Department representing the source department for grievances in nearly one-half of all

instances. Both the nature of public safety activities and the quasi-military organizational setting offer some insight into the high frequency of grievances from these two public safety departments; and the working schedule and setting for municipal fire operations serve as catalysts for the nurturing of employment-related complaints and grievances. What is encouraging, however, from an overview of this data is the fact that during the past four years grievances from the Lynchburg Fire Department have decreased to an average frequency of approximately three per year.

B. Virginia State Government

During the three fiscal years from July 1978 through June 1981 following enactment of substantial changes to grievance procedure statutes, the Office of Employee Relations Counselors reports continual growth in the willingness of state government employees to seek relief through use of the grievance procedure. This utilization increased by nearly forty percent from the 1978-79 fiscal year to the 1979-80 fiscal year which was followed by a further increase of approximately twenty-five percent during the 1980-81 fiscal year. In

similarity to the Lynchburg City experience, an overwhelming number or forty-seven percent of these grievances involved dismissals and disciplinary actions, issues which were defined as "non-grievable" by the grievance procedure of the state government prior to the enactment of improved grievance procedure statutes during the 1978 session of the General Assembly.[24]

A total of 1,165 employment-related complaints were submitted to the state government during this three-year period; and 691 of this number were both grievable and pursued toward resolution by the aggrieved employees. By contrast to the experience of the Lynchburg City Government and as depicted in the following chart, a much lesser percentage of grievances are resolved by the state government prior to the final procedural step:

5. Level of Grievance Resolution (By Step)

/Unit of Government Step of Resolution	Commonwealth of Virginia	City of Lynchburg
Step Two	31%	46%
Step Three	34%	45%
Step Four	35%	9%

While the 1981 Annual Report of the Office of Employee Relations Counselors does not include information regarding the outcome of those grievances which were resolved at steps two and three, three years of experience indicate that final panel hearings at step four of the state government procedure produced decisions in favor of the agency in fifty-four percent of the grievances with decisions in support for the employee in the remaining forty-six percent of the grievances. Despite the high volume of grievances which were resolved at the final step of the state government procedure, it is noteworthy that this statistic is within one percentage point of the experience of the Lynchburg City Government with regard to the outcome at all formal or written steps of grievance resolution.[25]

Moreover, these percentages are remarkably similar to the findings of Harry Graham in a recent issue of Public Personnel Management. In studying public sector arbitration from 1971 through 1979, Mr. Graham found that union "wins" generally exceeded "losses" during the eight year period of his study by six to ten percentage points; but he also notes, "Thus, if the 1976-79 period is considered, unions have a

losing record, winning 148 cases but losing 188. This is a win rate of 44 percent which represents a substantial change from the figure for the 1971-79 period as a whole."[26] [emphasis added]

Of the 1,165 grievances which were filed within the state government from July 1978 through June 1981, two of the Secretariats within the state government -- Public Safety and Human Resources -- were sources for seventy-four percent of the total number of grievances. Some 475 grievances or approximately forty-one percent of the total number of grievances during this period resulted from the Public Safety agencies which represent fifteen percent of the workforce of the entire state government. This volume of grievances represents 0.0148 grievances per public safety employee per year in the state government; and when adjusted for the 1978 incident in which one Lynchburg firefighter filed eighteen grievances, a rate of 0.0143 grievances per public safety employee per year has occurred in the Lynchburg City Government.[27]

V. FUTURE SHADOWS

While it is impossible to predict the future for public employee bargaining legislation in Virginia, the enactment of substantially-improved grievance procedure legislation in 1978 has greatly enhanced the opportunity for Virginia state and local governments to remain "union-free." To seize this opportunity, however, will require the best efforts of state and local government officials to resolve employee grievances effectively and to maintain a climate for employee-employer relations which is not only fair and impartial but which also projects the appearance of impartiality. This latter requirement was expressed most effectively by former Lynchburg City Manager David B. Norman in an early 1978 letter to Senator Adelard Brault and Delegate Thomas Moss who served at that time as Chairman of the General Laws Committee for their respective houses of the Virginia General Assembly. The former City Manager wrote as follows:

> In 1974 the Lynchburg City Administration developed and implemented a comprehensive grievance procedure which vests ultimate appeal authority in an impartial body which is comprised of duly-elected employee members and designated

> citizen representatives. In relinquishing the authority for final grievance appeals, I as City Manager expressed my confidence in the decision-making abilities of a truly unbiased, grievance panel; and most importantly, through this action I displayed my sincere commitment to provide this Government's employees with a procedure which they could respect for its ultimate fairness. Had I retained authority in my position for final grievance appeals, the procedure's credibility would have been sacrificed because employees would naturally have perceived the procedure as being biased in the favor of management.
>
> The Lynchburg grievance procedure has served well this Government and its employees. Our experience indicates that to function effectively, grievance procedures must not only be fair; but also, employees must be convinced of their fairness.[28]

As Mr. Norman's words may imply, simply dealing fairly with public employee-employer relations issues cannot alone protect Virginia's "union-free" status. For effectiveness in this objective requires a new skill of state and local government administrators throughout the Commonwealth--namely the ability to comprehend the images which these issues engender in the minds of employees and to recognize that these images possess the potential for affecting the organizational environment far more than the issues themselves. Fortunately, this challenge is neither frighteningly new nor one to which people are unaccustomed. A successful response, however, will require no less than the same measure of courage with which wide-eyed

children face directly and learn to adjust perceptually to shadows larger than reality.

FOOTNOTES

[1]Braude, Jacob M., Remarks of Famous People: 1971; Prentice-Hall, Inc., p. 85.

[2]Hughes, Dr. Charles, "Making Unions Unnecessary": 1979; Executive Enterprises, Inc.

[3]Stebbins, Charlie, Management Relations Committee of Virginia State Chamber of Commerce - Source of listing of proposed public employee bargaining legislation in Virginia from 1969 through 1982.

[4]Ibid.

[5]Thomson, James M., "Thompson Explains Bargaining Bills," Richmond Times-Dispatch: February 25, 1974.

[6]Culverhouse, E. Allen and Whitley, C. Reggie, "Grievance Policy Implementation: Lynchburg's Innovative Public Employee Program," Virginia Town and City, July 1974.

[7]Thomson, James M., op. cit.

[8]Ibid.

[9]Ibid.

[10]Hunt, Don, "Bargaining Bill Sent To Senate," The Roanoke Times: February 27, 1974, p. 7.

[11]Ibid.

[12]Stebbins, Charlie, op. cit.

[13]Ibid.

[14]Virginia General Assembly, Acts of Assembly - 1973; Chapter 256, Section 15.1-7.1, p. 326.

[15]Ibid., p. 327.

[16]Stebbins, Charlie, op. cit.

[17]Culverhouse, E. Allen, Letter to the Honorable Mills E. Godwin, Jr., Governor of the Commonwealth of Virginia, April 2, 1976.

[18]Culverhouse, E. Allen, Letter to the Honorable John A. Dalton, Governor of the Commonwealth of Virginia, February 21, 1978.

[19]Ibid.

FOOTNOTES (Continued)

[20]Dalton, Honorable John A., Governor of the Commonwealth of Virginia, Letter to E. Allen Culverhouse, March 1, 1978.

[21]Norman, David B., Letter to Arthur L. Lane, Jr., July 27, 1978.

[22]Culverhouse and Whitley, op. cit.

[23]Office of Employee Relations Counselors, "Mission Statement," Annual Report FY 1980-81: December 1, 1981.

[24]Ibid., p. 11.

[25]Ibid., p. 14.

[26]Graham, Harry, "Arbitration Results in the Public Sector," Public Personnel Management: volume 11, no. 2, 1982, p. 115.

[27]Office of Employee Relations Counselors, op. cit., p. 9.

[28]Norman, David B., Letter to Honorable Adelard L. Brault, Chairman, General Laws Committee of the Virginia Senate, February 6, 1978.