Therefore, whether the office of a member of a board of school trustees of a community school corporation to which office no compensation is attached is incompatible with membership on a county board of public welfare, and whether such dual office holding would create a conflict of interest or violate public policy are determinations which must be made by the officer with the authority to appoint a person to the second office.

(3) Your second question need not be answered as to those members of a board of school trustees who are not entitled to serve as members of a county board of public welfare. However, as to those members of a board of school trustees, if any, who may be properly appointed as members of a county board of public welfare, the Welfare Act of 1936, § 19, as amended, Burns § 52-1118, specifies that such school trustee, as the holder of another office, is not entitled to the per diem compensation provided by the statute.

OFFICIAL OPINION NO. 34

December 8, 1966

INDIANA STATE PERSONNEL BOARD—Employees' Right of Appeal in Matters of Employment Severance or Adjustment—Public Employee in no Less Favorable Position than Private Employee.

Opinion Requested by Mr. R. F. McElheny, Personnel Director, Department of Administration.

This is in response to your inquiries concerning appealable cases to the State Personnel Board. Your inquiry essentially concerns the scope of the appellate jurisdiction of the Board.

The Legislature has established a general appellate jurisdiction for the Board. Acts 1941, ch. 139, § 36, as amended by Acts 1949, ch. 235, § 12, as found in Burns IND. STAT. ANN., § 60-1336, provides:

> "Any regular employee who is dismissed, demoted, suspended, or laid off may appeal to the board within fifteen [15] days after such action is taken. Upon such appeal, both the appealing employee and the appointing authority whose action is reviewed shall have the right to be heard publicly and to present evidence. At the hearing of such appeals, the proceedings shall be informal. If the board finds that the action complained of was taken by the appointing authority for any political, social, religious, or racial reason, the employee shall be reinstated to his position without loss of pay. In all other cases, if the decision is favorable to the employee, the appointing authority shall follow the findings and recommendations of the board, which may include reinstatement and payment of salary or wages lost by the employee."

Section 60-1336 should be given a broad interpretation consistent with contemporary development in the area of administrative law. Burns IND. STAT. ANN., § 60-1301. 1965 O.A.G. No. 68, p. 350.

The Personnel Board recognized the broad scope of § 60-1336 when it exercised its rule-making power under Burns IND. STAT. ANN., § 60-1306 and adopted Official Rule 13 (A). Rule 13 (A) reads as follows:

> "Any regular employee in the classified service shall have the right to appeal in writing to the State Personnel Board relative to any situation affecting his employment status or conditions of employment."

Rule 13 (A) and Burns § 60-1336 give the Personnel Board jurisdiction over all state employee grievances. The Board may not arbitrarily or summarily refuse an employee a hearing. It is not confined to hearing only grievances concerning employment status but must also consider questions involving

employment conditions. The many and varied types of employment problems that arise defy giving examples. It can, however, be safely said that the Board's jurisdiction includes the adjudication of all those types of grievances that arise as an incident of the employer-employee relationship. Any area that may be the subject of labor-management relations is a proper subject of adjudication, if a grievance arises, by the Board.

The purpose of such broad adjudicative jurisdiction by the Board is to ensure the state employee a fair redress of his grievances. The history of labor-management relations, whether private industry or public employees, has shown that the absence of a detached and impartial adjudicatory procedure for the redress of employee grievances can lead to bitter strife which is not in the public interest. This led to enactment of the National Labor Relations Act, 29 U.S.C., § 151, *et seq.* and the rise of arbitration clauses in labor-management contracts.

The Legislature, through Burns § 60-1336, as implemented by Personnel Board Rule 13(A), evidences an intent that state employees should not be in a less favorable position in the redress of employment grievances than non-public employees, for we have recognized that despite the inapplicability of the National Labor Relations Act to state employees, they do have a right to organize collectively for bargaining purposes under the First Amendment to the Constitution of the United States, 1966 O.A.G. No. 22, p. 144.

Your inquiries raise the more practical problem of finding a voluminous adjudicatory case load. This problem is not a new one, but has existed almost since the inception of administrative agencies. The problem is met through the use of hearing examiners. It was determined in 1965 O.A.G. No. 68, p. 350, that "the Director of State Personnel has the power to appoint hearing examiners for the Board." The determination by the hearing examiner, after a hearing on the dispute, would be subject to review by the Board, *en banc,* should the party aggrieved by the hearing examiner's decision seek review. The number of hearing examiners required will naturally vary in accordance with the case load.

It is, therefore, my opinion that public policy dictates broad adjudicatory jurisdiction by the State Personnel Board so as to include any employer-employee dispute or grievance.

OFFICIAL OPINION NO. 35

December 12, 1966

COUNTY OFFICERS—Highway Supervisor—Requisite Qualifications of Supervisors—Maximum Salary Allowable—New Contract of Employment from County Commissioners.

Opinion Requested by Hon. Robert W. Jones, State Senator.

This is to answer your recent letter in which you requested an opinion on the following situation. The Fayette County Commissioners appointed a County Highway Supervisor on January 1, 1965 for a salary of $5,000.00 per annum. The individuals did not meet either the experience or "Registered Engineer" requirements for such position and thus was limited to a salary of $5,000.00. The contract was for a period of one year. On January 1, 1966 the individual was reemployed at a salary of $6,000.00. In light of the enactment of Chapter 391, Acts 1965, can such a salary be paid to the County Highway Supervisor?

Acts 1933, ch. 27, § 10 as amended by Acts 1961, ch. 107, being Burns IND. STAT. ANN., § 36-1110, read in part as follows:

> "(b) No person, other than the county surveyor, except such person as provided in subsection (d) of this section shall be employed by the board of county commissioners as the county highway supervisor un-