

Negotiated Grievance Procedure

Section 1.

The Parties agree that this Article establishes the sole and exclusive procedure available to bargaining unit employees and the Parties for processing and settlement of grievances that fall within its coverage, including questions of grievability and arbitrability. The Parties recognize and endorse the importance of bringing to light and resolving grievances in a prompt manner. The Parties agree that the expeditious resolution of grievances is in the public interest. Inasmuch as dissatisfactions and disagreements arise occasionally among people in any work situation, the filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, performance, loyalty, or desirability.

Section 2.

A grievance means any complaint:

- A. By any bargaining unit employee concerning any matter relating to the employment of the employee;
- B. By the Union concerning any matter relating to the employment of a bargaining unit employee; or
- C. By the Union or the Agency concerning:
 - 1. The effect or interpretation, or claim of breach of this Agreement, Supplemental Agreements or Memoranda of Understanding; or
 - 2. Any claimed violation, misinterpretation, or misapplication of law, rule, or regulation affecting conditions of employment.

Section 3.

In addition to any other exclusions contained in this Agreement, the grievance procedure will not apply to:

- A. Any claimed violation of Subchapter III of Chapter 73 of Title 5, U.S.C. (relating to prohibited political activities);
- B. Retirement (5 C.F.R. 831), life insurance (5 C.F.R. 870, 871, 872 and 873) or health insurance (5 C.F.R. 890);
- C. Any examination or certification (5 C.F.R. 332 and 337), or appointment, e.g., the separation of an employee during a probationary period (5 C.F.R. 2, 3, and 8);

- D. A suspension or removal under Section 7532 of Title 5 U.S.C. (Relating to national security matters);
- E. The classification of any position which does not result in a reduction in grade or pay of an employee (5 C.F.R. 511);
- F. A management decision to make or terminate a temporary promotion, detail, or reassignment;
- G. The adoption or non-adoption of a suggestion or the receipt or non-receipt of an honorary or cash award in accordance with the terms of this agreement;
- H. The mere non-renewal or extension of a temporary employee, termination of a temporary appointment due to reduction in force, and any other termination of the appointment of a temporary employee in accordance with applicable policy, law and this Agreement;
- I. Separation of a term or trial employee in accordance with applicable policy, regulation, law, or this Agreement.

Section 4. Other Applicable Procedures

- B. The following actions may be filed either under the appropriate statutory procedure or under the procedure outlined in this Article, but not both:
 - 1. Actions based on unsatisfactory performance (5 U.S.C. 4303);
 - 2. Adverse Actions (5 U.S.C. 7512);
 - 3. Prohibited Personnel Practices (5 U.S.C. 2302 (b) (1));
 - 4. A formal EEO complaint (29 C.F.R. 1614).
- C. Nothing in this Agreement shall constitute a waiver of any further appeal or review rights permissible under 5 U.S.C. Chapter 71.
- D. An employee shall be deemed to have exercised his/her option under this section when they timely initiate an action under the applicable statutory procedure or files a timely grievance in writing under the negotiated grievance procedure in this Article, whichever occurs first.
- E. Employees who have sought informal EEO complaint counseling may still file a grievance, provided that such grievance is initiated within forty-five (45) days of the event or non-event which caused the grievance to be filed, and no formal EEO complaint has been filed. Per 29 C.F.R. Part 1614, initiating one formal process precludes the use of the other.

Section 5.

Only the employee or a representative designated by the Union may be the representative in a grievance under this procedure.

- A. If an employee chooses to represent themselves, the Agency will: (1) provide the Union with a copy of the grievance within one workday of receiving the grievance; (2) provide the Union with advance notice of each meeting between the grievant and the Agency; (3) afford the Union the right to be present at all stages of the process; and (4) provide the Union with copies of Agency written grievance responses and/or settlement agreements/written resolution. Any resolution of the grievance must comply with the terms and conditions of this Agreement, including any applicable supplements, amendments, or Memoranda of Understanding.
- B. If the Union is the grievant's designated representative, the employee will so state in writing at the initial filing of the grievance. Communications under this procedure shall be directed to the representative designated by the Union. Any changes to that designation also will be in writing. Each Party shall have a representative available to meet referenced grievance filing time frames. Extensions may be granted by mutual agreement of the Parties.

Section 6.

- A. A grievance must be filed initially within thirty (30) days of the date of the matter, incident or issue out of which the grievance arose or thirty (30) days after the date the grieving party or person should have been aware of the matter, incident or issue. The use of the word "day(s)" will be interpreted as calendar days. A step of the grievance procedure can be waived by mutual agreement of the Parties.
- B. Requests for extensions to the time limits for filing must be submitted, in writing, to the other Party prior to the expiration of the applicable time limit. Requests for extensions of time limits shall be considered upon receipt of a written request and justification. A written decision will be provided to the requesting Party. If the Agency fails to comply with the time limits at any step of the grievance process, the grievance may be advanced to the next step of the process.
- C. The Agency will provide timely and appropriate responses to information requests from the Union consistent with 5 U.S.C. Section 7114.

Section 7.

A reasonable amount of official time during work hours will be allowed for employees and Union representatives to discuss, prepare for, and present grievances including attendance at meetings with Agency officials concerning the grievance.

Section 8. Employee Grievance Procedure

Informal Grievance:

The Parties recognize that grievances may arise from misunderstandings or disputes that can be resolved promptly and satisfactorily on an informal basis.

At the election of the employee or his/her representative, an employee complaint may be brought to the supervisor or appropriate management official with authority to resolve the matter in an attempt to resolve the matter informally. The supervisor or appropriate Agency official will provide a written response within five (5) workdays of the matter being brought to their attention under this Section. If a matter is not resolved in this manner, the employee or his/her representative, may file a grievance in accordance with the procedures set forth herein. At the election of the employee or his/her representative, this informal process may be bypassed. An election to pursue resolution informally does not toll the required time frames for filing a formal grievance. However, an extension may be granted by mutual agreement of the Parties.

If the dispute cannot be resolved informally or the employee or his/her representative chooses to forego the informal meeting described above, the following formal process must be used:

Formal Step 1

- A. An employee will present his/her grievance in writing to the immediate supervisor, unless the immediate supervisor does not have the authority over the matter grieved. In that case, the employee will present his/her grievance to the Agency official at the level having the necessary authority.
- B. The employee must state specifically that they are presenting a grievance; the personal relief sought; the name, organizational unit and location of the aggrieved; a statement of the items, regulations or agreement alleged to have been violated, citing specific paragraphs or articles; designation by name of the Union representative or statement of self-representation. The grievance must be signed and dated.

Within fifteen (15) calendar days after receipt of the grievance, the step 1 deciding official will issue a written decision. If the grievance is denied, the response will include the name of the Step 2 Agency official who has the

authority to resolve the matter. The Agency's failure to respond to the grievance within the specified time frames, or as mutually agreed to by the Parties, will automatically advance the grievance to the next step.

Step 2

- A. If the matter is not satisfactorily settled following Step 1, the aggrieved employee and/or his/her representative, if any, may, within fifteen (15) calendar days of notification of denial or the date that a response should have been received, present the matter in writing to the Step 2 Agency official identified in the Step 1 decision. The grievance will contain the information submitted in Step 1 plus the Agency response at Step 1.
- B. The Step 2 Agency official shall issue a written decision on the grievance within thirty (30) calendar days of receipt of the grievance. If the grievance is not satisfactorily settled, the Union may refer the matter to arbitration in accordance with the procedures set forth in the Arbitration Article.
- C. If at any time during the processing of a grievance a settlement agreement is accepted by the employee or his/her designated representative, the agreement shall be in writing and the grievance shall be withdrawn in its entirety upon execution of the settlement agreement.

Section 9. Grievance of the Parties

- A. Should either Party have a grievance concerning institutional rights granted by law, regulation or this Agreement, it shall inform the designated representative of the other Party of the specific nature of the complaint in writing, as well as any provision of law, rule, or regulation allegedly violated, and the relief sought, within thirty (30) days of the date of the matter, incident or issue being grieved, or the date the Party reasonably should have been aware of the matter, incident or issue. The grieving Party will file the grievance with the designated representative of the other party at the level of recognition.
 - 1. A local matter will be filed with the designated local representative of the other Party; or
 - 2. A national matter will be filed with the designated national level representative.
- B. Within thirty (30) calendar days after receipt of the written grievance, the receiving party will send a written response stating its position regarding the grievance. If the matter is not resolved, the grieving party may refer it to arbitration in accordance with the Arbitration Article.

Section 10. Alternative Dispute Resolution (ADR)

- A. Alternative Dispute Resolution (ADR) may be used to promote principles and practices that will contribute to an improved working relationship either before or during the processing of a grievance. The ADR process demonstrates a commitment to a positive approach and joint ownership of concerns and solutions. It is intended to resolve disputes quickly and informally.
- B. The ADR program will be guided by the following principles:
1. The employee grievant or his/her representative may opt to use the ADR process at any time during the grievance procedure prior to the Step 2 decision.
 2. Any request for ADR must be filed to the Agency's designated representative in writing prior to the expiration of any controlling time frame in the grievance process.
 3. If a matter is not resolved through ADR, the grievance will continue through the grievance process, beginning at the step where the Party first made a request for ADR. (If the grievant already filed a step 2 grievance and was waiting a reply, the process resumes where it left off.)
 4. This process does not take away statutory rights.
 5. ADR is purely voluntary on the part of the Employee. Participation is open to all aggrieved Parties, i.e., employees, Union, and Agency.
 6. ADR is confidential. The Parties to the ADR process will be advised that the contents of the mediation discussion are confidential. All notes will be destroyed at the close of mediation.
 7. All ADR Settlement Agreements signed by the Parties to the ADR are binding on the Parties and will be recorded. Each Party will be provided a copy of the ADR Settlement Agreement. Copies of agreement with original signatures will be maintained by both Parties.
 8. Any issue subject to the grievance procedure may be considered for ADR.
 9. The Parties agree to educate employees on the ADR process.
 10. If ADR is requested, time frames of the grievance process are tolled until the ADR process is completed.
 11. The ADR process will be completed within 30 (thirty) days.
- C. General Procedures: This Section establishes general procedures and determinations for expenses and choice of mediators for national and local level ADR.

1. Choice of Mediators:

- a. ADR will be mediated by a mediator provided through the Federal Mediation and Conciliation Service (FMCS) or via another neutral mediation service if otherwise agreed to in writing by the Parties. Mediation procedures shall include signing the FMCS confidentiality agreement or equivalent prior to the beginning of the mediation session. Confidentiality will apply to the contents of mediation discussions and the grievant's personal information. The Parties agree that ADR is confidential and will adhere to the Procedures in Section 10.B.6, above.
- b. Employee requests for ADR must be emailed to the Agency's designated representative in writing prior to the expiration of any controlling time frame in the grievance process.
- c. Requests for ADR related to a Grievance of the Parties must be emailed to the other Party's designated representative in writing prior to the expiration of any controlling time frame in the grievance process.
- d. Within three business days of initiating ADR, the Parties will coordinate available timeframes for mediation. Either Party can extend the timeline to five business days by written notice. Once the Parties agree to timeframes for mediation, the Agency will submit a request for an impartial qualified mediator within one business day and copy the Union. If the Agency fails to request a mediator timely, the Union will remind the Agency of its obligation.
- e. FMCS or a neutral mediation service mutually agreed upon by the Parties, will provide the name of an available mediator. Both Parties agree to schedule with the first available mediator, and the Parties agree to coordinate available dates and times for mediation within three business days of being provided the name of the mediator. If either Party has a concern with the first available mediator, an alternate mediator may be requested in accordance with applicable procedures.

2. Procedures:

- a. In accordance with Section 5, the Union is afforded the right to be present at all stages of the grievance process, regardless of whether the grievant is represented by the Union. The Parties may each have two people at the table by default. For the Union, that means the grievant plus a representative of the Union. For the Agency, that means a deciding official or official with delegated decision-making authority and another person (e.g., Human Resources professional, subject matter expert, witness, additional representative). Either Party—

including the grievant if they are not represented by the Union—may unilaterally have one additional person at the table upon written notification to the other.

- b. Either Party may have more than three people at the table upon written agreement by both Parties. Mediation will normally be conducted at the Official Agency Worksite of the employee who filed the grievance or virtually as agreed by the Parties. For remote employees and Grievances of the Parties, the mediation will be conducted virtually.
 - c. Virtual participation in mediation is allowed for any participant in the mediation including a Party, Party representative, the grievant, or the mediator. Mediation schedule, breakout sessions, and break schedules will accommodate both the in-person and virtual participants. Caucuses and breakout sessions will generally be limited to 30 minutes unless Parties agree to a longer period.
 - d. The Parties will express their joint preference to the mediator that the Party invoking ADR will make its presentation first at the first mediation. If necessary, following the first mediation session and every subsequent mediation session, the Parties will jointly communicate with the mediator and each other to select a mutually agreeable date and duration for the next mediation session.
 - e. The 30-day period for ADR identified in Section 10.B.11 shall begin on the day of the first mediation session and will be counted as day one of the 30-day period.
 - f. If the Parties have not selected and met with a mediator and 30 calendar days have elapsed since the Agency submitted a request for an impartial mediator, either Party may withdraw from these procedures and the grievance/arbitration process will recommence from the time when it was suspended to pursue ADR.
3. **Obligation to Participate:** In accordance with 10.B., above, ADR is a voluntary process on the part of the employee. Once the Parties enter into ADR, each Party has an obligation to put forth an earnest effort to participate and attempt to achieve resolution.
 4. **Expenses:**
 - a. Both Parties are of the understanding that the FMCS mediation process is free of charge; however, if there are any costs for an FMCS mediator or other agreed-upon neutral, the Parties agree to split the expense.

- b. The Agency will not pay travel costs for the Union, its representatives, the bargaining unit grievant, or other participants.

For the Union

For the Agency