

ARTICLE 6 Negotiated Grievance Procedure

Section 1. Sole and Exclusive Procedure

The parties agree that this Article establishes the sole and exclusive procedure available to bargaining unit employees and the Parties for the processing and settlement of grievances that fall within its coverage, including questions of grievability and arbitrability.

Section 2. Grievance Definition

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 any bargaining unit employee, the Union, or the Employer concerning:
 - (1) The effect or interpretation, or claim of breach of a negotiated agreement; or
 - (2) Any claimed violation, misinterpretation, or misapplication of law, rule, or regulation affecting conditions of employment.

Section 3. Exclusions

- A. Statutory Exclusions: Grievances on the following matters are excluded by Section 7121(c)(1) through (5) of the Statute:
 - 1. Any claimed violation of prohibited political activities (Subchapter III of Chapter 73 of Title 5);
 - 2. Retirement (5CFR Sec. 831); life insurance (5CFR Sec. 870, 871, 872, and 873), or health insurance (5 CFR Sec. 890);
 - 3. A suspension or removal for national security reasons (5 CFR 7532);
 - 4. Any examination or certification (5 CFR Sec. 332 and 337) or appointment (5 CFR Sec. 2, 3 and 8); or
 - 5. The classification of any position which does not result in the reduction in grade or pay of an employee (5 CFR Sec. 511).
- B. Other exclusions: Grievances on the following matters are also excluded by this Agreement:
 - 1. Written notice of a proposal to take an action;
 - 2. Management decisions to terminate a detail, reassignment, or temporary promotion,
 - 3. The adoption or non-adoption of a suggestion;
 - 4. Separation of a term, trial or excepted service employee;
 - 5. Removal of a probationary employee during probationary period;
 - 6. Adjudication of claims the jurisdiction over which is reserved by Statute and/or regulation to another department, such as, but not limited to, Department of Labor determinations on workers compensation;

7. Actions taken by the Agency required by lawful court orders (e.g., garnishment of wages for indebtedness or child support) or actions that can be adjudicated in an alternate venue, (e.g., overpayment actions) which can be adjudicated through the Agency's Office of Hearing and Appeals;
8. Performance-based actions appealed under another statutory procedure;
9. Disciplinary or adverse actions appealed under another statutory procedure;

Section 4. Other Applicable Procedures

- A. Nothing in this Agreement shall constitute a waiver of any appeal or review rights permissible under 5 U.S.C. Chapter 71.
- B. If an alleged grievance also constitutes an alleged unfair labor practice, the aggrieved has the option to seek redress under this Article or under the unfair labor practice procedure set forth in 5 U.S.C. 7116 and 5 C.F.R § 2423, but not both.

Statutory Option Selection: An employee may challenge matters that can be raised under both statutory procedures and under this article in accordance with either of those procedures, but not both. An employee shall be deemed to have exercised their option when the employee timely initiates an action under the applicable statutory procedure or files a timely grievance in writing under the negotiated grievance procedure in this article, whichever event occurs first.

- C. 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).
- D. An employee shall be deemed to have exercised their option under this section when they timely initiate a formal action under the applicable statutory procedure or files a timely formal grievance in writing under the negotiated grievance procedure in this Article, whichever occurs first.
 1. Informal EEO Grievance: Employees who have sought informal EEO complaint counseling may still file a grievance, provided that such grievance is filed within 45 calendar 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. Designation of Representative

- A. An employee or EPA Unit President or a designee, a group of employees, the Union or the Employer may initiate a grievance.
- B. When an employee files a grievance on their own behalf, the Union shall have the opportunity to have an observer present at all steps of the grievance process, and the Agency will notify the union at the earliest practicable date in advance of the formal meeting. The union observer will not participate during the employee's presentation of the grievance, but will be allowed to present the Union's position on the grievance or any relief sought at the conclusion of the meeting. Upon request, the Employer will provide the Union with a copy of the grievance decision.
- C. If the Union is the Grievant's designated representative, the employee will state that in writing at the initial filing of the formal grievance. Communications under this procedure shall be directed to the representative designated by the Union. Any changes to that designation must be in writing. Each party shall have a representative available to meet grievance filing time frames. Extensions may be granted with the consent of both parties.

Section 6. Procedure for handling removals, demotion, or suspensions for more than 14 days based on performance or misconduct.

- A. An employee who receives a decision notice regarding a removal, demotion, or suspension for more than 14 days based on performance or misconduct may file an appeal with the Merit Systems Protection Board (MSPB). An MSPB appeal must be filed within thirty (30) calendar days of the effective date of the action, or within thirty (30) calendar days after the date of receipt of the agency's decision, whichever is later.
- B. If the employee decides to seek recourse through this negotiated grievance procedure, notice must be served upon the Employer within thirty (30) days beginning with the day after the effective date of the action.
- C. If the Union wishes to raise new issues not raised before the deciding official, it should, identify any additional issues in its written invocation of arbitration. However, this will not preclude either party from raising any additional or new issues prior to the pre-hearing conference. In no event may the Union or Agency raise new issues before the arbitrator that have not been identified during the prehearing exchange, which in accordance with this Agreement, shall occur no later than 5 pm, Pacific Time, ten (10) work days prior to the arbitration.

Section 7. Filing a Grievance

- A. A formal 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 prior to applicable time limit.
- C. 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.

Section 8. Informal Process

- A. The employee or the employee’s representative may orally present the employee’s grievance to the employee’s supervisor or to the appropriate Agency official with authority to resolve the matter informally.
- B. The supervisor or Agency official may schedule a meeting with the employee and/or the employee’s representative to discuss the dispute.
- C. The supervisor or appropriate Agency official may provide a written response within five (5) workdays of the matter being brought to their attention or any meeting scheduled under this section, whichever is later.
- D. If a matter is not resolved in this manner, the employee or the employee’s representative may file a grievance in accordance with the procedures set forth in this article. At the election of the employee or the employee’s representative, this informal process may also be bypassed.
- E. 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.
- F. If the dispute cannot be resolved informally, or the employee or the employee’s representative chooses to forego the informal meeting described above, the following formal process must be used.

Section 9. Employee Grievance Procedure

- A. Formal Grievance- Step 1
 - 1. If the informal process is not utilized or the matter is not informally resolved, and at the employee’s request, the supervisor may schedule a meeting with the employee prior to issuing the Step 1 grievance decision.
 - 2. An employee must file the grievance in writing to the employee’s immediate supervisor, unless the immediate supervisor does not have the authority over the matter grieved. In the case that the employee’s immediate supervisor does not have such authority, the employee must file the grievance with the authorized Agency official at the level having the necessary authority. The Agency has the sole authority to determine the proper Agency official to respond to any union grievance.

- a. If the employee files with the wrong official, the time limit for responding is automatically extended by the length of time necessary for the receiving official to route it to the proper official; the receiving official will provide the grievant and the Union with written notification that they are routing the grievance to the proper official. If the employee wishes to meet with responding official to discuss their grievance, the request for such a meeting must be included in their Step 1 grievance.
3. The employee must state specifically that the employee is presenting a grievance. The grievance must include:
 - (a) Copies of any existing documentary evidence that supports the employee's grievance;
 - (b) The specific remedy or relief sought;
 - (c) The name, organizational unit and location of the aggrieved;
 - (d) The name, title, organizational unit and contact information of the Agency official that allegedly took the action and a description of the circumstances that gave rise to the grievance;
 - (e) If applicable, a statement of the law, regulation, policy, working condition, or agreement alleged to have been violated, citing specific sections, paragraphs and articles; and,
 - (f) Designation by name of the Union representative or a statement of self-representation.
4. Within 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.
5. The Agency's failure to respond to the grievance within the specified time frames, or as consented to by the parties, will automatically advance the grievance to the next step.

B. Formal Step 2

1. If the matter is not satisfactorily resolved following Step 1, and the aggrieved employee and/or their representative, if any, wish to continue the grievance process, they must file the matter in writing to the Step 2 Agency official identified in the Step 1 decision within 15 calendar days of the notification of denial or the date that the response should have been received. The Step 2 grievance shall include, as attachments, the Step 1 grievance and the Step 1 grievance response.

2. If the employee has requested a meeting with the named Step 2 official, that management official or designee, may schedule a meeting within 15 days of receipt of the Step 2 grievance. The Step 2 Agency official shall issue a written decision on the grievance within 30 calendar days of receipt of the grievance-.
3. If at any time during the processing of a grievance, a settlement agreement is accepted by the employee or the employee's designated representative, the agreement shall be in writing. Execution of the settlement agreement automatically withdraws the grievance in its entirety.

C. Formal Step 3

1. If an employee is dissatisfied with the response provided in Step 2, the employee may appeal the grievance to the Deputy Regional Administrator. Such notice of appeal must be made within fifteen (15) days of receipt of the response in Step 2. The Deputy Regional Administrator may designate another management official as the third level official. If the employee has requested a meeting, the third level official or designee may schedule a meeting. Best efforts will be made to schedule any such meeting within fifteen (15) days of the notice of appeal. Within thirty (30) calendar days of any meeting held, or if there is no meeting, within 30 days after receipt of the grievance appeal, the third level official or designee will issue a written decision.

2. If the grievance is not satisfactorily settled, the Union may refer the matter to binding arbitration in accordance with the procedures set forth in Article __ of this Agreement or mediation as specified in this article. Issues not raised at Step 3 may not be raised in arbitration unless mutually agreed to by the Parties in writing.

a. It is understood that any unanswered information requests made pursuant to 5 USC 7114(b)(4) will toll the time frame to invoke arbitration until a response is provided.

Section 10. Grievance of the Parties.

- A. Should either party have a grievance concerning institutional rights granted by law, regulation or this agreement, the party shall inform the designated representative of the other party of the specific nature of the complaint in writing, as applicable and available, including:
1. The specific evidence, including providing copies of any existing documentary evidence, that supports the grievance;
 2. Any provision of law, rule or regulation allegedly violated, citing specific sections, paragraphs and articles;
 3. The name, title, organizational unit and contact information of the Agency official that allegedly took the action that gave rise to the grievance;

4. The specific relief sought; and
 5. The grievance must be signed and dated.
- B. Time Limits of an Institutional Grievance: In order to avoid stale litigation, a grievance of a party must be filed within 30 calendar 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...
- C. Failure to Raise an Issue: If parties are aware of evidence or issues but fail to raise them at the grievance of the parties stage, that party shall not include or raise the issue at arbitration.
- E. Where to File: The grieving party will file the grievance with the designated representative of the other party authorized to receive a party grievance:
1. A local matter will be filed with the designated local representative of the other party (such as the Regional Administrator or the Union's Executive Director or their respective designees); or,
 2. A national matter will be filed with the designated national-level representative.
- D. Within 10 calendar days after filing the grievance, the parties will determine whether they should meet to discuss the grievance and upon mutual agreement, schedule a meeting.
- E. Decision: Within 30 calendar days after receipt of the written grievance, the receiving party will send a written decision on the grievance.
- F. If the matter is not resolved, the grieving party may refer this to mediation as set forth below or refer it to arbitration in accordance with Article 7 (arbitration article)

Section 11. Mediation

- A. Resolution of a Grievance: The parties, upon request, will explore resolution of all potential grievances before being filed, individual grievances at steps 1, 2, and 3 and party grievances.
- B. Within five calendar days of agreeing to mediation, the parties will request the Federal Mediation and Conciliation Service (FMCS) to provide a mediator.
- C. If the matter is not resolved through ADR, the matter will continue through the grievance procedures at the step and time in which the process was paused for mediation.
- D. Settlement offers and discussion are confidential. Settlement offers or discussions will not be used as evidence or referred to in the remaining steps of the grievance process or at arbitration, if the mediation efforts do not result in agreement. The Parties to the mediation process will be advised that the contents of the mediation discussion, including settlement offers, are confidential. All notes will be destroyed at the close of mediation.

- E. Settlements will be in writing and execution of the settlement agreement automatically withdraws the grievance in its entirety.
- F. All Settlement Agreements signed by the Parties to the mediation are binding on the Parties. Each Party will be provided a copy of the ADR Settlement Agreement.
- G. Any expenses associated with the mediation will be shared between the parties.

Section 12. Disputes of Grievability

All disputes of grievability may be appealed to the next step of the grievance process.

Section 13. Information requests

- A. The Employer recognizes its obligations to provide the Union and its representatives with relevant and necessary data pursuant to the standards set forth in 5 USC 7114(b) (4).
- B. If the Agency denies the request, it will provide a written statement of the basis for the denial of information. Based on the denial, the Union may amend a current grievance, amend a current ULP charge or file a new ULP charge.

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