

ARTICLE 22
GRIEVANCE PROCEDURES

Section 22.01 - Definition and Scope. This Article constitutes the sole and exclusive procedure for the resolution of grievances by employees of the bargaining unit and between the parties. This grievance procedure replaces Management's administrative procedure for employees in the bargaining unit only to the extent of those matters which are grievable and arbitrable under this negotiated Agreement. A grievance means any complaint by:

- (1) Any employee concerning any matter relating to his/her employment; or
- (2) The Union concerning any matter relating to the employment of any employee; or
- (3) Any employee, the Union, or Management concerning:
 - (a) The effects or interpretation, or claim of breach, of this collective bargaining agreement;
or
 - (b) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

Section 22.02 - Statutory Appeals. Adverse actions consist of:

- (1) Reduction in grade or removal for unacceptable performance;
- (2) Removals for misconduct;
- (3) Suspensions for more than fourteen (14) days; and
- (4) Furloughs for thirty (30) days or less.

Adverse actions may, in the discretion of the aggrieved employee, be raised under either:

- (1) The appropriate statutory procedures; or
- (2) Under the negotiated grievance procedure, but not both.

Specific procedures for grieving adverse actions are found in Article 20, Discipline, and Article 21, Unacceptable Performance.

Section 22.03 - Prohibited Personnel Practices. Prohibited personnel practices include the discrimination for or against any employee on the basis of:

- (1) race
- (2) color
- (3) religion
- (4) sex
- (5) national origin
- (6) age
- (7) handicapping condition
- (8) marital status
- (9) political affiliation.

For a more complete definition of prohibited personnel practices, see Article 4, Employee Rights/Standards of Conduct.

In accordance with Section 7121(d) of the Statute, an aggrieved employee affected by a prohibited personnel practice under Section 2302(d)(1) of the Civil Service Reform Act may raise the matter under a statutory procedure or the grievance procedure, but not both.

Section 22.04 - Choosing an Appeals Procedure. Nothing in this procedure shall prejudice the right of the employee to appeal to the Merit Systems Protection Board or the Equal Employment Opportunity Commission pursuant to Section 7121 of the Statute, or file an unfair labor practice or other appeal under the rules of the Federal Labor Relations Authority. Any employee shall have exercised his/her choice to raise a matter under an applicable statutory procedure or the negotiated procedure when the employee:

- (1) timely files a notice of appeal under the applicable statutory procedure or elects to use the statutory Equal Employment Opportunity complaint process (see Section 19.09 (2)); or
- (2) timely files a grievance in writing (see Section 22.12), whichever occurs first.

An employee shall have exercised his/her option concerning EEO discrimination matters at such time as he/she timely files a grievance in writing or files a formal written complaint under the statutory EEO complaint procedure, whichever occurs first. Discussions with an EEO Counselor in no way precludes the filing of a grievance that is otherwise timely.

Section 22.05 - Exclusions. Excepted from these negotiated procedures coverage are the following:

- (1) Any claimed violation of Subchapter III of Chapter 73 of Title 5 (relating to prohibited political activities);
- (2) Retirement, life insurance, or health insurance;

- (3) A suspension or removal under Section 7532 of Title 5 (relating to national security matters);
- (4) Any pre-employment examination, certification, or appointment;
- (5) The classification of any position which does not result in the reduction in grade or pay of an employee;
- (6) Matters already filed with the Merit Systems Protection Board as an adverse action which are, therefore, statutorily precluded from duplicate filing under this procedure;
- (7) Matters already filed with the Equal Employment Opportunity Commission concerning discrimination complaints which are, therefore, statutorily precluded from duplicate filing under this procedure or raised under the Department's statutory Equal Employment Opportunity complaint resolution process;
- (8) Mere nonselection for a promotion from a group of properly ranked and certified candidates where there is no allegation of a violation of this Agreement, law, or regulation;
- (9) The separation of a probationary employee;
- (10) The mere termination of a temporary promotion where there is no allegation of a violation of this Agreement, law, or regulation;
- (11) The mere termination of a temporary appointment where the Standard Form-50 states that the termination was based on a lack of work or lack of funds;
- (12) Complaints by employees with temporary appointments not to exceed six (6) months;
- (13) Oral admonishments which were not recorded (see Section 20.02);
- (14) Progress reports on employee performance including opportunity to improve notices/performance improvement plans;
- (15) The filling of any position outside the bargaining unit;
- (16) The removal, suspension of more than fourteen (14) days, reduction in grade or furlough of nonpreference eligible employee in the excepted service, who has not completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two (2) years or less;

- (17) The filing of a parties grievance which involves the same individual and factual situation as contained in an individual grievance;
- (18) Awards under the IDEAS Program;
- (19) Financial disclosure; and
- (20) The mere granting of or failure to grant a spot award.

Section 22.06 - Time Limits.

- (1) Time limits for the filing of a grievance under this procedure, unless mutually waived by the parties, shall begin to run from the next workday after the grievant became aware or should have become aware of the matter being grieved. The date of expiration of a time limit shall be close of business hours the last day of the stated period, unless that day falls on a Saturday, Sunday, or nonworkday, in which case the following full workday shall be considered the last day.
- (2) Where a grievant fails to meet a time limit, unless extended by mutual consent, the matter shall be considered resolved according to the last Management response.
- (3) Where Management fails to meet a time limit, unless extended by mutual consent, the grievance shall be advanced to the next step of the grievance procedure.
- (4) Management shall serve all grievance responses, and all other communications concerning the grievance, upon the Union representative and to the employee. No time limit for responding or appealing shall begin to run until the grievant has received his/her copy of the Management response or communication.
- (5) Management shall send all grievance responses to the grievant and the appropriate Union representative. The Union's copy of the grievance responses shall be delivered to the Union office. If there is no Union office, the grievance response shall be delivered to the designated Union mailing address. Where the response is mailed, receipt shall be confirmed by using certified mail, return receipt requested.
- (6) In the case of nonpersonal delivery, if Management disputes the date of actual receipt by the employee or the representative, Management shall bear the burden of proving

the date of actual receipt. The burden of proof shall be deemed to have been met by production of a signed receipt, a witnessed statement indicating the date and time of delivery or deposit, or any other evidence indicating delivery.

- (7) For purposes of timeliness, the grievance shall be considered filed when it is personally delivered to the office which is to receive it or when it is postmarked, if the grievant is not in the same location as the grievance control officer or the designated deciding officials.
- (8) Minor errors or omissions in completing the grievance form shall not be used as a basis to reject any grievance.

Section 22.07 - Self-Representation. Nothing shall preclude an employee from presenting a grievance to Management without representation by the Union; however, such an employee may not receive any better or worse treatment than other employees who elect Union representation, and any resolution must be consistent with the terms of this Agreement. Employees who elect to represent themselves shall receive a reasonable amount of official time to prepare and present their grievances. Only the Union can invoke arbitration.

If any employee represents himself/herself in a grievance filed under the grievance procedure contained in this Agreement, the Union shall be notified no less than twenty-four (24) hours in advance of any meetings between Management and the grievant concerning the grievance. The Union may attend any such meetings. The Union shall be provided a copy of any grievance decisions that are issued.

Section 22.08 - Right to Representation.

- (1) The Union shall have the right to represent employees at any stage of this procedure. Management shall pay reasonable travel and per diem for the grievant and shall consider the payment of travel and per diem for the grievant's Union representative to attend any meetings with deciding officials required by this Article. To be eligible for travel and per diem, the Union representative must be a designated Union representative under Article 7 of this Agreement.
- (2) Once an employee has designated a Union representative, Management shall not discuss the grievance with the grievant unless the Union is given an opportunity to attend.
- (3) Only the Union, or a person designated in writing by the Union to act for the Union, may represent an employee under this negotiated procedure.

Section 22.09 - Protection of Grievants. The filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, performance, loyalty, or desirability to the Department.

Section 22.10 - Official Time for Grievants. Management shall grant reasonable official time for an employee to prepare and present a grievance or appeal, including group grievances and arbitration.

Section 22.11 - Informal Resolution. Many grievances arise from misunderstandings or disputes which can be settled promptly and satisfactorily on an informal basis at the immediate supervisory level. Employees are encouraged to discuss issues of concern to them, informally, with their supervisors at any time. Every appropriate effort shall be made by the parties to settle grievances at the lowest possible level.

Section 22.12 - Employee Grievances. All informal attempts to resolve an issue shall be assumed to have been completed before the filing of a grievance in writing. Time limits may be extended by mutual written consent of the parties.

STEP 1

- (1) If informal attempts do not resolve the grievance, on or before forty-five (45) days from the date when the employee became aware of or should have become aware of the matter being grieved, the concerned employee shall advise the immediate supervisor of the matter in writing on the Employee Grievance Form (Appendix C).¹ Performance appraisal grievances will be filed with the reviewing official.
- (2) The supervisor shall respond in writing to the grievant and the representative within ten (10) days.
- (3) If the matter is not satisfactorily settled following the supervisor's response, the employee and representative (if any) may, within seven (7) days of the response, submit the grievance form to the Management representative who is designated grievance officer, who shall identify the Step 2 Management representative and forward the grievance to that official.

¹ In filing a grievance, employees should adequately explain the issue being grieved.

- (4) The Step 2 Management representative shall have the full authority to resolve the grievance. The grievance officer is responsible for monitoring the timely and proper processing of the grievances. In those instances where the Management official who initiated the action which resulted in the grievance is other than the employee's immediate supervisor, the concerned employee shall submit the matter in writing on the grievance form to the grievance officer.

STEP 2

The Management representative designated to handle the grievance shall meet the aggrieved employee and representative, if any, within ten (10) days after receipt of the grievance by the grievance officer. Deciding officials outside of the area where the grievant is located may conduct the meeting by telephone or video conferencing, whichever is practical. Management shall send the employee(s) and Union representative a written reply within fifteen (15) days of the meeting or telephone or video conference call. The reply shall state the grievance findings and action taken, if any, to settle the matter, and the designated official in Step 3 to whom the employee may escalate the grievance.²

STEP 3

If the grievance is not settled at Step 2, the employee or Union representative, if any, may, within seven (7) days of receipt of the written reply, forward the grievance to the Headquarters official designated in the Step 2 Decision. In the Field, the Step 3 Deciding Official shall be the Secretary's Representative, State, or Area Coordinator. That person shall review and take appropriate action to attempt to settle the grievance and issue a final written decision within twenty-five (25) days after receipt of the matter from Step 2. By mutual agreement of the parties, a meeting may be held at Step 3.

The Step 3 Deciding Official shall designate the Management Representative to be notified for the purpose of invoking arbitration and participation in the selection of an arbitrator.

Section 22.13 - Arbitration. Any matter not resolved in the prior steps of this procedure may be referred to arbitration by the grieving party (Union or Management only) in accordance with Article 23. Where the parties mutually agree, mediation may be requested from the Federal Mediation Conciliation Service, prior to invoking arbitration.

² In the Step 2 decision, managers should adequately explain the basis upon which the decision was reached.

Section 22.14 - Questions of Arbitrability. Either party having objection to the appropriateness of a matter for consideration under the grievance procedure shall make the matter known prior to or at Step 3 of this procedure. Grievability/arbitrability determinations shall be contained in one (1) or more of the decisions issued at the various steps of the grievance procedure. Such determinations shall not be issued by the grievance control officer. Such objection shall state the specific grounds as to why the matter is not grievable. Failure to raise the question at this point shall preclude raising the issue at a later time, unless:

- (1) The question of arbitrability is generated by an occurrence happening after Step 3; or
- (2) The failure to give notification is due to an act or omission on the part of the other party.

Any unresolved question shall be considered as a threshold issue should the grievance go to arbitration. Questions of arbitrability shall be submitted to the arbitrator in writing and be decided prior to any hearing unless mutually agreed otherwise. The moving party shall have the affirmative in going forward with the demonstration that the matter is not grievable.

Section 22.15 - Grievance of the Parties.

- (1) Should either party have a grievance over any matter covered by this procedure, it shall inform the designated representative of the other party of the specific nature of the complaint in writing within forty-five (45) days of the date or when the party became aware or should have become aware of the matter being grieved. Either party may grieve a continuing condition at any time.
- (2) Upon request, the parties shall meet within twenty (20) days to discuss informal resolution of the grievance after notice is given.
- (3) Within thirty (30) days after receipt of the written grievance, the receiving party shall send a written response stating its position regarding the grievance. If the response is not satisfactory, the grieving party may refer the matter to arbitration.

Section 22.16 - Group Grievances. Either party may propose to the other party the combining of grievances which are before the same deciding official and which concern issues so similar that they can be efficiently and effectively treated as a group grievance. If the representatives handling the grievances do not agree as to whether the grievances should be combined, the grievances shall be treated individually through the grievance procedure to arbitration. If arbitration is invoked and either party seeks to combine the grievances, the arbitrator shall be asked to determine, as a threshold issue, whether they can be efficiently and effectively treated as a group grievance.