

ARTICLE 51 GRIEVANCE PROCEDURES

Section 51.01- 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. These procedures replace 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 effect or interpretation, or a 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 51.02 - 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:

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

Specific procedures for grieving adverse actions are found in Article 12, Discipline, and Article 13, Unacceptable Performance.

Section 51.03 - Discriminatory Prohibited Personnel Practice. Prohibited personnel practices include the discrimination for or against any employee on the basis of: Race; Color; Sex; Religion; Age; National Origin; Disability; Sexual Orientation; and Genetic Information.

Section 51.04 - 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.
- (2) Timely files a grievance in writing, 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 51.05 - 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 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) Where there is no allegation of a violation of this Agreement, law, or regulation, the non-selection for a promotion from a group of properly ranked and certified candidates;
- (7) The separation of a probationary employee as defined by applicable law;
- (8) Where there is no allegation of a violation of this Agreement, law, or regulation, the termination of a temporary promotion;
- (9) The 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;
- (10) Complaints by employees with temporary appointments not to exceed one (1) year;
- (11) Verbal counseling;
- (12) Progress reports on employee performance including opportunity to improve notices/performance improvement plans;
- (13) The filling of any position outside the bargaining unit;

- (14) The removal, suspension of more than fourteen (14) days, reduction in grade or furlough of non-preference 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;
- (15) The filing of a parties grievance which involves the same individual and factual situation as contained in an individual grievance;
- (16) Financial disclosure; and
- (17) The granting of or failure to grant a spot award.

Section 51.06 - Time Limits.

- (1) Time limits for the filing of a grievance under this procedure, is, at a minimum, forty-five (45) calendar days, unless extended. The time period shall begin to run from the next workday after the grievant became aware or should have become aware of the matter being grieved. A continuing violation may be grieved at any time. 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 non-workday, in which case the following full workday shall be considered the last day. Either party may grieve a continuing condition at any time. Where a grievant fails to meet a time limit, unless extended by mutual consent, the matter shall be considered resolved according to the last response.

Where the receiving party of a grievance fails to meet a time limit, the grievance shall be advanced to the next step of the grievance procedure. (3) Management shall serve all grievance responses, and all other communications concerning the grievance, upon the Union representative. No time limit for responding or appealing shall begin to run until the union representative has received the Management response or communication.

- (2) Management shall send all grievance responses to the appropriate Union representative. The grievance response shall be delivered to the Union office. If there is no Union office, the grievance response shall be delivered to the designated Union e-mail address. Where the response is e-mailed, receipt shall be confirmed by using return receipt requested.
- (3) In the case of non-personal 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.
- (4) For purposes of timeliness, the grievance shall be considered filed when it is delivered to the appropriate Labor Relations office, an assigned grievance control officer, or the grievance deciding official HUD will accept electronically submitted documents.
- (5) Each grievance should propose a remedy. Minor errors or omissions in completing the grievance form shall not be used as a basis to reject any grievance.

Section 51.07 - 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 duty 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 as an observer. The Union shall be provided a copy of any grievance decisions that are issued.

Section 51.08 - Right to Representation.

- (1) The Union shall have the right to represent employees at any stage of this procedure and will make every effort to ensure that the time limits of this Article are met. If other forms of communication are not available or appropriate, the Department will pay reasonable travel expenses for the employee or Union to ensure Union representation.
- (2) Once an employee has designated the Union as 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, may represent an employee under this negotiated procedure.

Section 51.09 - Protection of Grievants. The filing of a grievance shall not reflect unfavorably on an employee's good standing, performance, loyalty, or desirability to the Department. All Grievants will be protected from reprisal.

Section 51.10 - Duty Time for Grievants. Management shall grant reasonable duty time for an employee to prepare and present a grievance or appeal, including group grievances and arbitration.

Section 51.11 - 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. Every appropriate effort shall be made by the parties to settle disputes at the lowest possible level.

Section 51.12 – Mediation.

In an interest-based attempt to resolve grievances, a mediation process shall be available. Should either party invoke mediation after the last step of the grievance procedure, participation of the parties becomes mandatory. The parties agree to make every effort to reach agreement, however, neither party is obligated to reach Settlement. (see Article 10 for mediation process) Time frames for filing arbitration shall be held in abeyance until the mediation is completed.

Section 51.13 - Employee Grievances.

Step 1

If the dispute is not resolved informally, 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 employee or Union shall submit the grievance on an Employee Grievance Form. Management will designate the Deciding Official who will have the full authority to resolve the grievance. A Deciding Official shall be at the same level or higher than the initiating official.

The Deciding Official shall meet with the grievant and representative, if any, within twenty (20) days after receipt of the grievance. Deciding officials outside of the area where the grievant is located may conduct the meeting in person, by telephone or video conferencing. Management shall send the employee(s) and Union representative a written reply within fifteen (15) days of the meeting. The reply shall include the grievance findings, and action(s) taken, if any, to settle the matter.

If the matter is not satisfactorily settled following the deciding official's response, the employee and representative (if any) may, within seven (7) days of the response, advance the grievance to the designated grievance officer.

Step 2

In the Field, the Step 2 Deciding Official shall be the highest level local official in the office, or their designee. In Headquarters, the Step 2 Deciding Official shall be the highest level official in the grievants' Program Area, or their designee. The Deciding Official 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 1. By mutual agreement of the parties, a meeting may be held at Step 2.

The Step 2 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 51.14 - Questions of Grievability or Arbitrability. Questions of arbitrability may be raised at any step of the grievance procedure, including the arbitration stage. If the issue of arbitrability is raised at the arbitration stage, then the party raising the issue (if successful) will pay all arbitration costs including travel for all parties, arbitrator fees, etc. 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 bears the burden of demonstrating that the matter is not grievable.

Section 51.15 - 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) of the date or when the party became aware or should have become aware of the matter being grieved.

- (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 51.16 - 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.