

U.S. DEPARTMENT OF EDUCATION

PERSONNEL MANUAL INSTRUCTION

PMI 771-1
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APPROVED:

FRANK ANTHONY RYAN
DIRECTOR OF PERSONNEL

SUBJECT: Employee Grievances

I. AUTHORITY

5 U.S.C. Part 771 and 5 CFR, Part 771 requires an agency to establish and publish an administrative grievance system. Guidance for the establishment and administration of the system is contained in Chapter 771 of the Federal Personnel Manual.

II. POLICY

The Department of Education, recognizing the importance of employees to the organization and the desirability of prompt consideration and disposition of dissatisfactions or concerns affecting their status and welfare, has established this procedure for the orderly and equitable handling of grievances. Employees are free to use this procedure without restraint, interference, coercion, discrimination or reprisal by management. In most cases, dissatisfactions or concerns between employees and supervisors can be resolved informally. ED encourages the discussion of dissatisfactions or concerns between employees and supervisors, but in the event they cannot be solved in this informal manner, this Instruction establishes a means by which grievances can be reviewed by higher levels of management. It is Department policy that employee complaints be considered fully and fairly and that a management response to dissatisfactions or concerns be made as promptly as circumstances permit.

III. DEFINITIONS

- A. Bargaining Unit Employee - means an employees included in an appropriate bargaining unit for which an exclusive representative has been certified by the Federal Labor Relations Authority.
- B. Employee - means any non-bargaining unit employee of the Department regardless of type of appointment and includes a former employee of the Department for whom a remedy can be provided.

- C. Informal Grievance Officer - means an employee's immediate supervisor unless one of the situations sighted in Section VIII. A. exists.
- D. Deciding Official - means the official at the next higher supervisory level of the employee, or an official designated by the office head to receive and act upon grievances for specified groups of employees, or the lowest level official with capacity to grant the relief; e.g. a safety or staff official.
- E. Grievance - Except as excluded in IV.B below, means a request by an employee, or by a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction relating to the employment of the employee(s) which is subject to the control of Department management.
- F. Official Grievance File - means a separate file established by the Fact-Finder in cases where fact-finding is utilized. This file will contain all documents related to the grievance, including but not limited to any statements of witnesses, records or copies thereof, the report of the hearing when one is held, statements made by the parties to the grievance, and the decision. The file will include a report of findings and reasons for the determination made in a decision.
- G. Grievance Folder - means a file established by the Informal Grievance Officer upon receipt of a grievance. The folder will contain all documents related to the grievance and it will be incorporated in the Official Grievance File where fact-finding is utilized.
- H. Personal Relief - means a specific remedy directly benefiting the grievant(s) and may not include a request for disciplinary or other action affecting another individual or for an apology from another individual.
- I. Fact-Finder - means the person designated to conduct an appropriate inquiry into a grievance, and to make a recommendation for disposition to the Deciding Official.
- J. Reconsideration - means a discretionary review by the Department of final grievance decisions under certain conditions set forth in Section XII of this Instruction, to guard against decisions that are illegal, or clearly arbitrary or capricious.

K. Days - means calendar days unless otherwise specified.

IV. APPLICABILITY

A. Covered as a grievance is any matter of concern or dissatisfaction to an employee relating to his/her employment which is subject to the control of Departmental management. Also covered is a matter in which an employee alleges that coercion, reprisal, or retaliation has been practiced against him/her. Among such matters are:

1. Letters of reprimand or suspensions of 14 days or less;
2. Working conditions and environment;
3. Administrative reassignments and involuntary relocations;
4. Relationships with supervisors, agency officials, and other employees;
5. Application of management policies and procedures and decisions not otherwise excluded from the grievance procedure;
6. Operation of merit promotion programs, except for the exclusion of paragraph IV. B.4. below;
7. Performance ratings, except where the rating is used for the purpose of denying a within-grade step increase or of taking an action based on unacceptable performance under FPM Chapter 432;
8. Coverage under the merit pay system;
9. Suspensions of more than 14 days of non preference excepted employees and preference excepted employees with less than one current continuous year in service; and
10. Denials of within-grade-increases of prevailing rate employees.

B. Matters Not Covered

1. A matter raised by a bargaining unit employee which has coverage under a negotiated grievance procedure;
2. The content of Department regulations and policy,

and official interpretations or memoranda concerning the regulations and policy;

3. A decision which is appealable to the Merit Systems Protection Board or subject to final administrative review by the Office of Personnel Management, the Equal Employment Opportunity Commission, the General Accounting Office, or other appropriate adjudicative authority under law or regulations;
4. Non-selection for promotion from a group of properly ranked and certified candidates, and a decision not to promote an employee noncompetitively, e.g., non-promotion of an employee in career ladder;
5. A preliminary warning or notice of an action which, if effected, would be covered under this grievance system or excluded from coverage by paragraph IV.B. 3 above;
6. A return of a Senior Executive Service Career appointee to the General Schedule or another pay system during the one-year period of probation or for less than fully successful executive performance under Section 3592 of Title 5, U.S.C.;
7. A reassignment of a Senior Executive Service appointee following the appointee's receipt of an unsatisfactory rating under Section 4314 of Title 5, U.S.C.;
8. The termination under Subpart D of 5 CFR, Part 359 of a Senior Executive Service career appointee during probation for unacceptable performance;
9. An action terminating a temporary promotion within a maximum period of 2 years and returning the employee to the position from which he/she was temporarily promoted, or reassigning or demoting him/her to a different position that is not lower than the grade or pay of the position from which he/she was temporarily promoted;
10. An action terminating a term promotion at the completion of the project or specified period, or at the end of a rotational assignment in excess of two years but not more than five years, and returning the employee to the position from which promoted or to a different position of equivalent grade and pay;

11. The substance of the critical elements and performance standards of an employee's position which have been established in accordance with the requirements of subchapter 1 of Chapter 43 of Title 5 U.S.C. and FPM Chapter 430; (the application of the critical elements and performance standards is a grievable matter.)
12. The granting of or failure to grant an employee performance award or the adoption of or failure to adopt an employee suggestion or invention under Sections 4503-4505 of Title 5, U.S.C., or the granting of or failure to grant an award of the rank of meritorious or distinguished executive under Section 4507 of Title 5, U.S.C.;
13. The receipt of, or failure to receive, a performance award under Section 5384 of Title 5, U.S.C., or quality salary increase under Section 5336 of Title 5 U.S.C.;
14. A merit pay increase or the lack of a merit pay increase under the Merit Pay System, or a decision on the granting of or failure to grant a cash or honorary recognition under Chapter 54 of Title 5, U.S.C., and FPM Chapter 540; (This does not include determinations concerning merit pay coverage.) (See IV.A.8 above.);
15. Any separation action, except for non-preference employees in the excepted service and for preference employees in the excepted service with less than one year of current continuous service;
16. A performance evaluation affecting a member of the Senior Executive Service under Subchapter II of Chapter 43 of Title 5, U.S.C.;
17. A return of an employee from an initial appointment as a supervisory or manager to a non-supervisory or non-managerial position for failure to satisfactorily complete the probationary period under Section 3321 (a) (2) of Title 5, U.S.C., and FPM Chapter 315;
18. The decision made on a grievance or the processing of a grievance, and the final decision and how it was processed;
19. Any complaint, written or oral, which does not comply with the specific requirements of this instruction;

20. Any matter currently under audit or investigation by the Department's Office of the Inspector General, the Department of Justice, the Special Counsel of the Merit Systems Protection Board, the General Accounting Office, or other appropriate adjudicative authority, and
21. An action taken accordance with the terms of a formal agreement voluntarily entered into by an employee which: (a) assigns the employee from one geographical location to another or (b) returns an employee from an overseas assignment.

V. GUIDING PRINCIPLES

A. Spirit of Mutual Cooperation

The objective of the grievance system is to provide for the prompt and fair resolution of grievances when the normal supervisor-employee relationship has failed to do so. The grievance system is not intended as a substitute for the normal supervisor-employee relationship in the first instance. Neither can the grievance system substitute for a spirit of cooperation and good will between supervisors and employees.

B. Misuse of the Grievance System

When the necessary understanding and cooperation are lacking in the Deciding Official, the employee, or both, settlement can become hopelessly entangled in delay, fruitless tests of maneuvering, trivial charges and countercharges, or at worst a retreat into inflexible positions of "management prerogatives" and "employee rights". The grievance system, like the normal supervisor-employee relationship, requires sincere and substantive rather than pro forma efforts on the part of management officials and aggrieved employees to reach prompt and fair resolution to grievances. A management official should not view the initiation of a grievance as a reflection on his/her capability as a manager. The employee should not use the grievance system as a means of obtaining

concessions which he/she does not otherwise deserve.

C. Freedom from Reprisal or Interference

Unless all employees feel free to use the grievance system provided in this instruction, the system will not serve the intended purpose of giving the employee a means of review for his/her dissatisfactions. An employee and his/her authorized representative, therefore, must be free to use the system without restraint, interference, coercion, discrimination or reprisal. No supervisor or other person acting in an official capacity for the Department shall take, or threaten to take, any act of reprisal against an employee because he/she has exercised or expressed an intention to exercise any rights under this instruction. To be fully effective, the spirit as well as the letter of the requirement must be enforced. It is not enough for an official to abstain from overt threats or interference. Officials must refrain from making any statements or taking any action that has the flavor of threat, interference, or intimidation. Management officials are subject to disciplinary action for failure to comply with this requirement.

D. Employee Accountability

Employees for their part are accountable for their statements. They may be disciplined for statements which are irresponsible and injure another or which attack, without foundation, the integrity of any part of the Department or an individual.

E. Burden of Proof

The burden of proof shall be carried by the grievant unless the issue grieved is a disciplinary action, in which case the party who initiated the challenged action bears the burden of proof. In the case of a grievance about a

performance rating, the burden of proof is carried by the grievant if the rating is fully successful or better. When the rating is less than fully successful, management carries the burden of proof.

VI. RESPONSIBILITIES AND RIGHTS

A. Responsibilities

1. Management

The heads of offices shall be responsible for administering the grievance system of the Department and for bringing it to the attention of all officers and employees. Authority to administer the system should be delegated to those officials responsible for the employment and utilization of personnel.

2. Supervisors

It shall be the responsibility of supervisors to hear and to try to resolve misunderstandings and to make reasonable adjustment, when appropriate, of any complaints within established time limits.

3. Grievants

It is the responsibility of the grievant to:

- a. Comply with appropriate time limits established in these procedures;
- b. Furnish sufficient detail to clearly identify the matter being grieved; and
- c. Specify the personal relief being requested.

B. Rights

1. Official Time to Present a Grievance

An employee, if otherwise in a duty status, is entitled to a reasonable amount of official time to present (but not to prepare) a grievance. "Presenting" includes discussions with supervisors in the informal stage, and attendance at any hearing, inquiry, or meeting in the formal stage.

2. Official Time to Prepare a Grievance

- a. As necessary, the grievant may have use of official time, not to exceed a total of four hours, to prepare a grievance. Requests for use of official time should be made to the immediate supervisor. Preparation on official time should generally be limited to those activities which normally can be accomplished only during regular duty hours; e.g., visiting the Servicing Personnel Office for the purpose of researching regulations.
- b. In preparing a grievance on official time, a grievant shall not make use of Departmental clerical or other personnel while in a duty status, except for those whose official duties include giving procedural advice to the grievant.

3. Representation

An employee has the right to be accompanied, represented, and advised by a representative. The employee must advise management in writing of the chosen representative as promptly as possible. If the employee designates another Department employee as his/her representative, that employee, if he/she can be made available and agrees to be the representative, is also entitled to a reasonable amount of duty time, if otherwise in a duty status, to present the grievance. The representative may be allowed the same amount of official time to prepare the grievance, not to exceed four hours as is the grievant. Only one Department employee will be granted official time to serve as the representative. If the representative is from another location, the Department will not pay travel costs associated with his/her participation.

4. Disallowance of a Representative

The Department may disallow the choice of a Departmental employee as a representative when it would conflict with the priority needs of the Department, would give rise to unreasonable costs to the Government, or would result in a conflict of position, or conflict of interest.

- a. Conflict of position refers to an incompatibility between the representation function and an employee's official duties. One example would be for a personnel officer

to serve as the grievant's representative in a case concerning a personnel action over which the officer has control, has participated in, or of which the officer has special knowledge of virtue of assigned duties.

- b. Conflict of interest can take many forms. One example would be for a supervisor to be represented by an official of a labor organization that represents employees under the control of the supervisor.

5. Reconsideration of Disallowed Representative

In an employee's representative is disallowed for reasons such as described in the preceding paragraph, the employee may request reconsideration by the Director of Personnel. The request must be filed within 10 days of the employee's receipt of notification that the representative has been disallowed. The Director of Personnel will make a final decision regarding the employee's request.

6. Right of Access to Counselors

- a. An employee, in presenting a grievance, is entitled to communicate with, and seek advice from Departmental officials. These sources provide procedural advice and factual information, but do not address the merits of a grievance. The following officials may be contacted:

- (1) The Servicing Personnel Staff;
- (2) An Equal Employment Opportunity Officer or Counselor;
- (3) The Department's Ethics Official or Alternate Official on matters which may involve a conflict with the employee's official duties, or other prohibited conduct covered by the Department's regulations governing standards of conduct.

- b. This provision for communication with Department officials does not necessarily mean face-to-face consultation. If the employee desires to communicate with

officials who are located in another geographic area, he/she may do so by telephone or by letter. He/she is not entitled, as a matter of right, to official travel time to make a personal visit, although the Department could allow it if the time necessary to make the trip was considered reasonable. The Department will not pay the employee for travel expenses.

VII. REQUIREMENTS FOR GROUP GRIEVANCES

- A. All participants in a group grievance must be serviced by the same Servicing Personnel Office.
- B. All participants in a group grievance must identify themselves at every stage of the grievance procedure and sign the grievance.
- C. Once a group grievance has been initiated at the informal stage, no additional individuals may join in the grievance at a later stage. Members of a group grievance may withdraw their participation at any time.
- D. A group grievance should designate one individual grievant in whose name the grievance will be processed on behalf of the others. If no individual is so designated, the grievance will be processed in the name of the first listed grievant.
- E. The specific rights enumerated in VI.B. above (e.g. to official time and to representation) apply only to the individual in whose name a group grievance is processed.
- F. All participants in a group grievance must accept any decision rendered, without further individual recourse available under the Department's grievance procedures.
- G. When a number of employees have individually filed grievances which are basically identical, at the formal stage the Servicing Personnel Office may on its own initiative combine and process them as a group grievance in accordance with the above requirements.

VIII. INFORMAL PROCEDURE

A. Official To Whom Informal Grievance is Presented

1. To Immediate Supervisor in Most Cases

An employee who wishes to present a grievance

shall present it informally to his/her immediate supervisor, who is designated as the Informal Grievance Officer.

2. General Exception

a. Exceptions to the designation of the immediate supervisor as Informal Grievance Officer may be requested in situations in which:

(1) Absence by the supervisor or the grievant from his/her regularly assigned duties exceeds 90 consecutive days because of temporary detail, extended leave, etc., at the time the grievance is initiated.

(2) The grievance concerns relationships with, or actions taken by, the immediate supervisor where a bonafide effort has already been made to resolve the matter. Such efforts shall be described briefly, and made a part of the Grievance Folder.

b. In any of the above situations, the grievant must request his/her Servicing Personnel Office to designate someone other than the grievant's supervisor as Informal Grievance Officer. The Servicing Personnel Office shall respond to the request within 7 days, and provide the supervisor with a copy of the response.

3. Promotion Complaint Exceptions

a. An employee wishing to grieve a matter concerning a promotion shall present the grievance informally to the selecting official or his/her designee regarding the position concerned.

b. The grievant shall simultaneously furnish the Servicing Personnel Officer with a copy of the grievance.

4. Exception for Grievances about Suspensions

An employee's right to reply orally or in writing to a proposal to suspend is considered tantamount to the opportunity to file an informal grievance

because the nature of the reply could well figure in any adjustment or withdrawal of the proposed action.

5. Exception for Grievances Relating to Performance Ratings

- a. The official annual performance rating is excepted from the informal stage of the grievance procedure because the supervisor must discuss the rating with employee prior to issuance, and the employee will have already had the opportunity to present his/her views; therefore, a grievance will be initiated at the formal stage.
- b. Grievances about ratings must be filed within 15 days of the date of receipt of the rating.
- c. Any grievance about a performance rating must be accompanied by a copy of the grievant's position description, including any evaluation statement, and a copy of his/her performance agreement. (See prescribed format for grievances of ratings at Exhibit 2 of the Appendix A to this Instruction).

6. Waiving Requirement to Use Informal Procedure

In other circumstances where use of the informal procedure would hold little likelihood of resolving the grievance or would tend to be a redundant and unproductive exercise, the Servicing Personnel Officer or his/her designee may in his/her sole discretion waive the requirement to use the informal procedure.

The reason for waiving the informal procedure should be documented and attached to the formal grievance before processing, but the very act of acceptance of a formal grievance by a Servicing Personnel Office (instead of returning it to the grievant for completion of processing under the informal procedure) constitutes a waiver. Any lack of or deficiencies in the formal process will have no bearing on further processing of the grievance at the formal stage.

B. Time Limits for Presenting Grievances

An employee must present a grievance concerning a particular act or occurrence within 15 days of the date

of that act or occurrence or the date he/she became aware of that act or occurrence. An employee may present a grievance concerning a continuing practice or condition at any time.

C. Requirement to Reduce Informal Grievance to Writing

Any informal grievance must be in writing. Instructions are contained in Appendix A. While it need not adhere to all the specific requirements outlined in IX.B. below, it should be in sufficient detail for the Informal Grievance Officer to understand and act upon it, and personal relief must be specified.

The Informal Grievance Officer's decision must also be in writing. This requirement for written presentation and response should not discourage the verbal resolution of grievable problems at the outset.

D. Action by Informal Grievance Officer

The Informal Grievance Officer shall make a reasonable effort to resolve the grievance informally in a manner acceptable to the employee. In doing so, the Informal Grievance Officer shall:

1. Fully and impartially consider all the facts of the grievance;
2. Take into consideration the employee's viewpoint, the rights and interests of others concerned, and the interest of the Department. Consideration may include, as necessary, communication with any or all persons concerned, as well as with appropriate higher authority or any other appropriate official;
3. Adjust the grievance, or furnish the employee a report of his/her disposition of the grievance as soon as practicable, but no later than 10 days after initiation of the informal procedure unless, by mutual agreement, the time limit is extended.
4. In the absence of an adjustment of the grievance, the Informal Grievance Officer's disposition report shall describe the following:
 - a. The nature of the grievance;
 - b. The consideration accorded it;
 - c. The results of efforts to achieve a solution to the grievance;

- d. The dates of the period during which the grievance was under consideration; and
- e. Procedures and time limits for filing a formal grievance.

E. Denial of Informal Grievance

If the Informal Grievance Officer believes that the grievance is not timely or consists of a matter not covered under the grievance system, the employee should be so advised, but must be allowed to submit the grievance for a determination under the formal procedure.

F. Escalation of the Grievance

Failure of the Informal Grievance Officer to respond in a timely manner permits escalation of the grievance to the formal procedure.

IX. FORMAL PROCEDURE

A. Filing a Formal Grievance

When an employee receives a decision under the informal procedure which does not satisfy the grievance, or when the time limit for management action has expired without a decision, the employee may within 5 days thereafter submit the grievance for further consideration under formal procedures.

B. Content of Formal Grievance

1. A formal grievance must:
 - a. Be in writing; (See Appendix A for instructions.)
 - b. Contain the employee's name, grade, title, duty station, and mailing address (preferably home address);
 - c. Contain the name and address of the employee's representative, if any;
 - d. Contain sufficient detail to identify and clarify the basis for the grievance;
 - e. Explain the efforts made to resolve the grievance informally; and

- f. Specify the personal relief requested by the employee.
2. A request for disciplinary action against an agency official or another employee would not be a request for personal relief as that term is used in this instruction.
3. The grievance cannot introduce new issues or remedies at the formal stage.

C. Initial Processing Under the Formal Procedure

1. The formal grievance must be submitted through the Servicing Personnel Office to a Deciding Official.
2. Promptly on receipt of a grievance, the Servicing Personnel Office, acting for the Deciding Official, makes a procedural review of acceptability and within 7 days takes one of the following actions:
 - a. Rejects the grievance if it consists principally of matters excluded from coverage of the grievance procedure, or it was not filed timely and the employee did not show good cause for the delay. The employee is notified in writing of the basis for the rejection and of his/her right, if not satisfied with the determination, to request, within 5 days of receipt of the rejection, a review by the Director, Division of Personnel Investigations and Appeals.
 - b. If the employee did not seek informal adjustment before filing the grievance, (except as provided in VIII. A. 4,5 and 6 above) the Servicing Personnel Office returns the grievance to the employee, informing him/her of the requirement to use the informal procedure. The Servicing Personnel Office will also return the grievance if no personal relief or improper relief is specified by grievant.
 - c. If the employee's formal grievance is significantly different in substance from the informal grievance, the Servicing Personnel Office will return the grievance to the employee and notify him/her in writing that the informal and formal grievances must be

brought into alignment with each other as to substance before a formal grievance may be accepted. This may be accomplished either by amending the formal grievance to conform with the informal grievance and resubmitting it within 7 days; or by written withdrawal of the original grievance and initiating a new grievance containing the new issue at the informal level within 15 days.

- d. If the grievance is acceptable, the Servicing Personnel Office refers the Grievance Folder for consideration to the Deciding Official, and informs the grievant of its action and of the identity of the Deciding Official.

D. Deciding Official

The Deciding Official will attempt adjustment of the grievance unless he/she took an action, or made a decision which is at issue in the grievance. In this event, the Deciding official must disqualify himself/herself from the adjustment process and forward the grievance to the next higher administrative level. Determination of the most appropriate level to serve as Deciding Official in a given case is a management responsibility. In any case in which the identity of the appropriate Deciding Official is in doubt, the Director, Personnel Policy and Program Development Division shall make this determination, taking into consideration any recommendation on this issue which a Fact-Finder may have made.

E. Decision Without a Fact-Finder

When there are no facts in dispute, the Deciding Official proceeds to a decision. A decision shall be in writing, state that there are no facts in dispute, include a "report of finding and reasons for the determination", and state the right to request reconsideration under Paragraph XIII of this Instruction. When the Deciding Official determines that facts are in dispute and is unable to resolve the grievance to the employee's satisfaction, or otherwise opts for a Fact-Finder, he or she shall request a Fact-Finder to make inquiry and provide the Deciding Official with a report of findings and recommendations. The Deciding Official shall issue either the written decision, or request a Fact-Finder within 14 days

after his or her receipt of the formal grievance.
X. FACT-FINDING

A. Selection of a Fact-Finder

1. When the Deciding Official determines that facts are in dispute, he or she will request the Servicing Personnel Office to obtain a Fact-Finder. The Servicing Personnel Office, in turn, within 3 work days, requests the Personnel Policy and Program Development Division to assign a Fact-Finder. This request must be accompanied by the Grievance Folder.
2. The Fact-Finder must be someone who is fair, impartial and objective and must be an individual who has not been involved in the matter being grieved. Further, he/she must not occupy a position subordinate to an official who recommended, advised or otherwise participated in or made a decision regarding the matter being grieved.

EXCEPTION: If the Deciding Official is the Secretary or the Under Secretary the foregoing prohibition does not apply.

3. The Fact-Finder may be an employee of the Department, from another department, or from other appropriate source, as determined by the Director, Division of Personnel Policy and Program Development Division.
4. Fact-Finders are vested with delegated authority to administer an oath or affirmation, to rule on offers of proof, to receive relevant evidence and to regulate the course and conduct of the inquiry.

B. Cooperation with Fact-Finder

Management officials and employees shall cooperate with the Fact-Finder in promptly providing such assistance as the Fact-Finder deems necessary for the inquiry.

C. Responsibilities of Fact-Finder

The Fact-Finder shall conduct an inquiry of a nature and scope appropriate to the issues involved in the grievance. At the Fact-Finder's discretion, the inquiry may consist of:

1. The securing of documentary evidence;

2. Personal interviews;
3. A hearing; or
4. Any combination of 1 through 3 of this paragraph.

D. Conducting the Grievance Inquiry

1. Methods of Gathering Facts

The Fact-Finder shall conduct an inquiry restricted to the issues raised in the written grievance and the personal relief requested. The grievant may not raise additional issues or revise the relief requested during the course of the grievance inquiry. The inquiry shall be conducted as informally as possible consistent with obtaining the facts.

2. Employee's Personal Presentation

The employee has no automatic right to make a personal presentation to the Fact-Finder. If because of distance or other appropriate reasons the personal presentation is impractical, the Fact-Finder may solicit information from the employee by telephone or mail or through proxy. This presentation does not constitute a formal hearing, but is an informal meeting or interview where the employee can offer arguments believed to be significant. The employee may also suggest the names of other individuals to whom the Fact-Finder should talk.

3. Interviewing Interested Parties

The Fact-Finder shall make the final decision of who will be interviewed and how the inquiry will be conducted. The Fact-Finder's goal is to determine the facts of the case as simply and as directly as circumstances will allow. Personal interviews may be recorded by the Fact-Finder for the purpose of preparing the summary.

E. Decision to Hold a Hearing

A hearing should be a last-resort method of developing the facts at issue. The decision to hold a hearing involves the determination that it is the only way to resolve a complex dispute with serious disagreement of fact involving a number of people. Concurrence with

the Director, Personnel Policy and Program Development Division, shall be secured before a hearing is scheduled.

F. Conduct of Hearing, If One Is Held

1. If a hearing is held, the Fact-Finder shall conduct it to conform with the following:
 - a. Attendance at a hearing is limited to persons determined by the Fact-Finder to have direct connection with the grievance;
 - b. The hearing is conducted so as to bring out pertinent facts, including the production of pertinent records;
 - c. Rules of evidence are not applied strictly, but the Fact-Finder shall exclude irrelevant or unduly repetitious testimony;
 - d. Decisions on the admissibility of evidence or testimony are made by the Fact-Finder;
 - e. Testimony is under oath or affirmation;
 - f. The Fact-Finder shall give the parties an opportunity to cross-examine witnesses who appear and testify;
 - g. The Fact-Finder may exclude any person from the hearing for disobedient or disruptive behavior;
 - h. Both parties are entitled to produce witnesses;
 - i. Whenever practicable, employees shall be made available as witnesses when the Fact-Finder so requests;
 - j. If a supervisor determines that is not administratively practicable to comply with the Fact-Finder's request for a witness, the Fact-Finder shall be notified in writing of the reasons for that determination;
 - k. Employees are in a duty status during the time they are made available as witnesses; and
 - l. Witnesses shall be assured freedom from

restraint, interference, coercion, discrimination, or reprisal in presenting their testimony.

2. The Fact-Finder shall communicate with the grievant's Servicing Personnel Office concerning arrangements and/or witnesses in connection with any hearing the Fact-Finder conducts.

G. Costs of Hearing

A grievant's Servicing Personnel Office shall coordinate arrangements with respect to payment of expenses, if any, related to the following:

1. Utilization of a Fact-Finder's services; e.g., fee or reimbursable detail, travel, per diem, court reporter, hearing transcript copies, hearing room, typing services for the Fact-Finder's reports, etc.
2. Payment of any travel and per diem costs for management witnesses, including those who are not Department employees. These costs are the responsibility of the office in which the grievant is employed.

H. Verbatim Transcript or Summary of Hearing

1. The Fact-Finder shall determine how the hearing will be reported. The Fact-Finder shall have a verbatim transcript or written summary of the hearing prepared, including all pertinent documents submitted and those which were accepted.
2. When the hearing is not reported verbatim, a suitable summary of the pertinent testimony shall be made.
3. When agreed to in writing by the parties, the summary constitutes the hearing record and is made a part of the record of the proceedings.
4. If the Fact-Finder and the parties fail to agree on the summary, the parties are entitled to submit written exceptions to any part of the summary, and those written exceptions and the summary constitute the report of the hearing and are made a part of the record of the proceedings.

I. Official Grievance File

The Fact-Finder shall establish and maintain the Official Grievance File containing all documents related to the grievance.

J. File to Parties for Review and Comment

On completion of the inquiry, the Fact-Finder shall make a copy of the Official Grievance File available to the grievant for ten days for review and comment. A copy of the File may also be made available to an Informal Grievance Officer, or comparable official, for review and comment with the same time limits. All comments, if any, shall be included in the File.

K. Findings and Recommendations of Fact-Finder

1. After the parties have been given an opportunity to review and comment upon the Official Grievance File, the Fact Finder shall prepare a report of findings and recommendations, include the report in the Official Grievance File and submit it to the Deciding Official.
2. The Fact-Finder shall furnish a copy of the report to the grievant, the Servicing Personnel Office, and the Director, Personnel Policy and Program Development Division.

L. Challenge of the Fact-Finder

This procedure does not provide for the grievant or management to challenge the selection of a Fact-Finder, his/her qualifications, or his/her conduct of the fact-finding process. Any party to a grievance who is dissatisfied with the Fact-Finder or with any aspect of the fact-finding process, should incorporate the objections with other comments in the Official Grievance File, as provided in Paragraph X.J. above. Such objections then become part of the official record and will be considered by the Deciding Official in reaching a formal grievance decision.

XI. GRIEVANCE DECISION

A. Decision After Fact-Finder's Report

1. Upon receiving the report of findings and recommendations with the Official Grievance File, the Deciding Official shall issue the decision in writing to the employee within 10 days. If the decision disagrees with the Fact-Finder's recommendations when those recommendations are

favorable to the employee, it shall also give a specific statement of the basis for that disagreement.

2. This decision will be the Department's final consideration of grievance, and it is not subject to further administrative review, except in those cases where reconsideration is allowable under paragraph XII.

B. Distribution of Decision

Copies of the decision on a formal grievance shall be transmitted by the Deciding Official to the following persons:

1. The grievant;
2. The Informal Grievance Officer;
3. The grievant's Servicing Personnel Office; and
4. The Director, Personnel Policy and Program Development Division, Personnel Resource Management Service, Washington, D.C., if fact-finding took place.

C. Custody of Official Grievance File or Grievant Folder

Upon completion of the formal grievance process, the Deciding Official shall forward the Official Grievance File or Grievance Folder to the Servicing Personnel Office, in whose custody it shall remain for a period of at least two years from the date of the final decision.

XII. RECONSIDERATION OF FINAL DECISION

- A. Neither this Instruction nor Office of Personnel Management's regulations provide for appeals of grievance decisions. However, the Department has reserved the right, at its discretion, to reconsider grievance decisions issued under this Instruction in certain situations described below. Accordingly, a request for reconsideration does not oblige the Department to issue a decision on the merits or procedures of a grievance and does not extend the grievance procedures. Rather the reconsideration process is provided as a guard against decisions that are in clear, specific and substantive violation of law, or are clearly arbitrary and capricious. (Law includes but is not limited to statute, Executive

Order, or regulations.) A denial of reconsideration does not necessarily mean agreement with the grievance decision. Grievance decisions may be reconsidered only when one of the following two conditions is met:

1. No Fact-Finder was utilized because in the opinion of the Deciding Official the facts surrounding the grievance were not in dispute; or
 2. The decision did not follow the Fact-Finder's recommendation when that recommendation was more favorable to the grievant.
- B. A request for reconsideration must be made within 7 days of the date of the final decision and should be addressed to:

Director, Personnel Policy
and Program Development Division
400 Maryland Avenue, S.W.
Room 1083, FOB-6
Washington, D.C. 20202

Requests must state the address to which the reconsideration decision should be mailed and the mailing address of the official who issued the final grievance decision for which reconsideration is being sought.

- C. A request for reconsideration must at a minimum enclose the following documentation, when applicable:
1. The informal grievance decision;
 2. The Fact-Finder's report of findings and recommendations; and
 3. The formal grievance and final decision.

XIII. CANCELLATION OF A GRIEVANCE

At any stage in the grievance procedure, a grievance will be cancelled:

- A. At the employee's request;
- B. Upon termination of the employee's employment with the Department, unless the personal relief sought may be granted after termination, e.g., back pay;
- C. Upon the death of the employee unless the grievance involved a question of pay;

- D. For failure to prosecute if the employee does not furnish required information and duly proceed with the advancement of the grievance; or
- E. If criminal prosecution of the matter grieved is pending.

XIV. ALLEGATIONS OF DISCRIMINATION

- A. Whenever an employee makes an allegation of discrimination in connection with a grievance being processed under this Instruction, the official considering it promptly terminates the grievance, and refers it through the Servicing Personnel Office to the Equal Employment Opportunity Officer for action under 29 CFR Part 1613 **[now 1614]**.
- B. After the discrimination question has been resolved through EEO channels, the employee may proceed to grieve any non-EEO-related issues. All grievance procedure time limits will be suspended during the course of the EEO resolution; the employee must initiate the new grievance within 15 days of the date of the final EEO decision.

INSTRUCTIONS FOR PREPARATION OF GRIEVANCE

UNDER THE ED ADMINISTRATIVE GRIEVANCE PROCEDURE

The attached transmittal form and sample formats are for use when preparing and presenting a grievance under the agency's administrative grievance procedure. If you are covered by a negotiated grievance procedure do not use these forms but contact your Servicing Personnel Office.

Read the following information carefully before preparing your grievance.

1. Exhibit 1 - This transmittal form will be completed by the grievant (or representative) and attached as a cover sheet for all administrative grievances.

2. Exhibit 2 - This format will be used only for grievances related to specific ratings of performance objectives and/or critical and noncritical elements. The reasons and evidence supporting each contested rating must be expressed separately. Since the overall performance rating is the aggregation of two individual ratings assigned to the objectives and elements, the overall rating normally will not be grievable except in conjunction with grievances of ratings assigned to objectives and elements.

If the final decision on the grievance includes changes in

the ratings assigned to the objectives and elements and if

APPENDIX 771-1-A(2)

those changes mandate a different overall rating, the overall rating may be adjusted accordingly.

All other matters related to the rating process may be grieved under the basic grievance format (Exhibit B).

3. Exhibit 3 - This format will be used for all administrative grievances. EXCEPT those covered by Exhibit A. Documents and evidence attached to the grievance should be listed as indicated by Exhibit 4.

For additional information and guidance, contact your Servicing Personnel Office.

EXHIBIT 771-1-1

ATTACH THIS TRANSMITTAL FORM TO ED ADMINISTRATIVE GRIEVANCES
PRESENTED UNDER PERSONNEL MANUAL INSTRUCTION (PMI) 771-1

Part I - GENERAL INFORMATION (Print or Type)

1. Grievant's name
2. Grievant's position title, series, and grade
3. Grievant's organization
4. Grievant's office or home address
5. Grievant's office telephone number
6. Representative's name and telephone (if a representative has been selected)

Part II - BASIS FOR GRIEVANCE (Check the applicable item/s)

1. Letter of Reprimand_____
7. Operation of merit

promotion program

- | | | | |
|-----|---|------|--------------------------------------|
| 2.* | Suspension (14 days or
less _____) | 8.** | Final approved
performance rating |
| 3. | Involuntary Relocation_____ | 9. | Alleged coercion or
reprisal |
| 4. | Administrative reassign-
ment | 10. | Merit pay overage |
| 5. | Application of policy/
procedure _____ | 11. | Other (Briefly describe) |
| 6. | Personal relationships with
others _____ | | |

*Non-preference and preference employees with less than one current continuous year of service in the excepted service may grieve suspensions of more than 14 days. (Use item #11 for this purpose.

**Performance ratings may not be grieved when they are used to deny within-grade increases or for taking adverse action based on unacceptable performance under FPM Ch. 432.

Attachment: Administrative Grievance

EXHIBIT 771-1-2

SAMPLE OF GRIEVANCE BASED ON

PERFORMANCE APPRAISAL/RATING

ED ADMINISTRATIVE GRIEVANCE PROCEDURE

TO : (Name and title of Formal Deciding Official)

SUBJECT: Formal Grievance

This formal grievance is presented under the provisions of the Departmental Grievance Procedure (PMI 771-1). The grieved rating's was/were assigned under the _____ (Indicate whether Merit Pay Performance Appraisal System or General Performance Appraisal System) for the period _____ to _____. A copy of my position description and performance agreement are attached. The specific rating/s being grieved and the personal relief I seek follow:

1. _____: (Indicate whether Objective, Critical or Non-Critical Element) _____ (Show subject of Objective or Element exactly as it appears in the performance agreement.)
2. The assigned rating is _____.
3. The rating requested as personal relief is _____.
4. The following information and/or attachments are submitted as evidence that this rating is inaccurate: (For this purpose you may attach narrative statements and/or work samples. It is preferable to list all attachments (See Exhibit 4).

(Note: Repeat 1 through 4 for each rating being grieved. Attachments applicable to more than one rating should be so noted.)

Signature
Attachment/s

Date

EXHIBIT 771-1-3

SAMPLE OF BASIC GRIEVANCE

TO : (Name and Title of Deciding Official

SUBJECT: *(Informal or Formal) Grievance

This (informal or formal) grievance is presented under the provisions of the Department Grievance Procedure (PMI 771-1).

The matter being grieved occurred on (give date) and is described in detail as follows: (Provide sufficient detail to identify the matter being grieved.) (If this is a formal grievance attach the informal presentation and decision, if applicable.)

The personal relief I seek is: (Specify clearly.) (NOTE: Personal relief can be a specific remedy directly benefitting you and may not include a request for disciplinary or other action affecting other individuals or for an apology from another individual.)

Signature

Date

Attachment (if applicable use format Exhibit 4)

* Grievances based on Supervisors, Reprimands, and Performance Ratings are initiated at the Formal Stage.

Attachments to Administrative Grievance of _____.
(Name)

Briefly identify any attached materials, statements, or documents presented in support of your grievance and briefly explain their purpose.

Topic or number of attachment	Purpose or relationship to the grievance matter

TABLE OF CHANGES

Remove Page	Insert Page	Explanation of Changes
Entire Instruction	Entire Instruction	Complete revision of Instruction.

REASONS FOR CHANGES

Section IV.A. Applicability. To add number 10. Denial of within-grade-increases of prevailing rate employees.

Section IV.B. Matters not covered. Two exclusions required by regulations have been added. They are: nonpromotion in a career ladder and termination of a term promotion.

Section IV.A. 9 and B. 15 Distinction has been made between preference and non preference excepted employees.

Section VIII. A. 5. c. Requires that a copy of the grievant's position description and performance agreement accompany all grievances of performance ratings.

Section IX. E. Shifts the responsibility for deciding when to request the services of a Fact-Finder from the grievant to the Deciding Official. All information dealing with negative determinations and adjustment proposals is deleted.

Section XI. C. SPO is responsible for retaining the Official Grievance File for two years from date of final decision.

Section XII Provides for reconsideration of final decisions to guard against illegal, arbitrary or capricious decisions.

Section XIV Has been retitled to cover Allegations of Discrimination only. Allegations of Unfair Labor Practice, formerly included, apply to negotiated grievance procedures only and therefore should not be included in the subject procedure. Reference to Negotiated Grievance Systems similarly has been omitted.

Sections IX,X,XI, and XII The Division of Personnel Investigations and Appeals has been replaced by the Personnel Policy and Program Development Division.

