

# EMPLOYEE RELATIONS

## Notes

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### **ADMINISTRATIVE EMPLOYEE GRIEVANCES**

*“No matter how careful you are in putting together a disciplinary action, there is a strong possibility it will be challenged through the grievance or appeal process.” By: Denis Reischl and Ralph Smith*

*You have been dealing with a problem employee for some time; your reasons for taking action are good, the facts are clear, and a disciplinary action has carefully been put together. Therefore, employees cannot challenge your action right? Wrong. In fact, it is common for actions to be challenged. Employees do not need a good reason to challenge an action before filing a grievance, appeal, or other formal challenge. Often, employees grieve an action first, and later find out if the concern is legitimate.*

#### What is a grievance?

*A grievance is any matter of concern brought by an employee to management which affects his/her conditions of work, and is covered under the grievance system. Employees can use the administrative grievance system to resolve matters of concern or dissatisfaction relating to their employment and which are under the control of Agency management.*

#### What is an appeal or formal challenge?

*An employee is entitled by law to file an appeal or formal challenge in other forums for disputes over specific covered matters. Such formal appeal routes include the Merit Systems Protection Board (MSPB), the Equal Employment Opportunity Commission (EEOC), the Office of Personnel Management (OPM) and the Federal Labor Relations Authority (FLRA). Generally, administrative grievances stay within the Agency, and appeals and other formal challenges go to an outside third party with authority to overrule the Agency. Negotiated grievances can, however, go to binding arbitration.*

#### Why do employees grieve?

*Employees often grieve their performance ratings or other work situations with which they are dissatisfied. In the case of a disciplinary action, often employees will not admit that they have done something wrong or believe that others have gotten away with similar behavior. Others may believe that the punishment is too severe or will grieve or appeal in hopes of getting a lesser penalty or avoiding discipline altogether.*

#### Agency Grievance Procedure and Negotiated Grievance Procedure

*The Administrative Grievance System, P&P 463.2, applies to all REE employees who are not part of a bargaining unit. The Negotiated Grievance Procedure in the local union contract covers the employees in a bargaining unit. If you have questions concerning the appropriate procedure, contact your servicing Human Resources Specialist for assistance.*

### Receiving an Informal Grievance

*Grievances are often filed with the employee's immediate supervisor or at the management level that has the authority to resolve the grievance. If a grievance is filed by a bargaining unit employee, you must review the union agreement to ensure that proper steps are followed.*

*Bargaining unit employees are covered by union contracts.*

### Questions to ask when handling a grievance

- *Is the employee covered by the administrative grievance procedure?*
- *Is the employee a Bargaining unit employee and covered by a negotiated agreement?*
- *Did the employee meet the time limit requirements for filing the grievance?*
- *Can the matter at issue be grieved?*
- *Does the grievance contain sufficient information? What are the employees concerns, and hi/her requested relief?*

### Negotiated Grievance Procedures

- *Apply to all employees within the bargaining unit, whether dues paying members or not.*
- *Are negotiated between the Agency and the union and written into an agreed upon contract*
- *Allow employees to choose between statutory appeal procedures or the EEO complaint process, but not both.*
- *Are set in the contract (generally through two to three levels of the agency)*
- *Provide for binding arbitration as the last step*
- *Identifies how the arbitrator will be paid.*
  - *usually it's shared by management and the union. Some contracts may state that the prevailing party will not pay the fees.*

### Administrative Grievance Procedures

*Non-bargaining unit employees must file an informal grievance within 15 calendar days of the act/occurrence or of the date the employee became aware of the act or occurrences that is being grieved.*

*The grievance must be submitted in writing, indicate clearly that it is a grievance, clearly describe the matter(s) being grieved, and specifically state the personal relief or corrective action being sought.*

### Your role in Responding to Administrative Grievances

- *give the grievances prompt consideration*
  - *The Agency process the grievance within 90 days of the initiation of the informal grievance.*
- *Important: Contact your Human Resources Specialist to help you respond to the grievance.*
  - *If the grievance is resolved, Employee Relations will assist you in writing a response to the employee outlining the issues in the grievance and describing the resolution that was reached. If the grievance is not resolved to the employee's satisfaction, the employee is advised in writing that a formal grievance may be filed within 15 calendar days.*
- *Observe time limits in the grievance process*
  - *Employee must file a grievance within 15 days of the act or occurrence or within 15 days of the date the employee became aware of the act or occurrence given rise to the grievance.*
  - *Informal Deciding Official, usually the immediate supervisor, will attempt to resolve the grievance within 30 days of receiving the grievance.*

- *Employee may file a formal grievance within 15 days of receiving the disposition notice of the informal grievance or within 15 days of the effective date of a disciplinary action.*
  - *The Designated Official will propose a disposition on a formal grievance within 90 days from the date the employee originally filed the informal grievance.*
    - *In case the grievance is not resolved within 90 days, the employee must be notified in writing.*
  - *Employee may file for a final Agency Decision within 15 days of receiving the proposed disposition.*
- *Obtain the facts and make a decision on the grievance.*
  - *Do not restrain, interfere, coerce, discriminate, or reprise against an employee or designated representative for filing or participating in a grievance. Grievances are a protected activity of Federal employees.*
  - *Advise the employee of their rights. For example,*
    - *Employees have a right to be represented by a personally chosen representative. The Agency must communicate in writing if the employee's representative is disallowed.*
    - *Employees and their representative (if USDA employees) are entitled to a reasonable amount of official time to present a grievance.*

*When grievances are rejected*

*Grievances are rejected if they are filed untimely, the matter being grieved is not covered, the employee filing the grievance is excluded from coverage, if the deciding official has no control over the matter, if filing requirements of a formal grievance were not met, and if the employee failed to request personal relief.*

*Finally, remember not to view grievances and appeals personally since they are not a personal challenge to your authority, fairness, or ability. Grievances and appeals are another part of doing business as a Federal manager or supervisor.*

*For more information on the Administrative Grievance System, please review REE Policies and Procedures 463.2, or contact your designated Employee Relations Specialist.*