

## **AN OVERVIEW OF AGREED UPON NON BARGAINING UNIT EMPLOYEE G/P**

### FRC EAST INSTRUCTION 12771.1B

From: Commanding Officer, Fleet Readiness Center East

Subj: ADMINISTRATIVE GRIEVANCE SYSTEM

Ref: (a) 5 CFR 771  
(b) NAVAIRINST 12771.1  
(c) DOD Directive 1400.25-M, Subchapter 771,  
Administrative Grievance System of Dec 96  
(d) 5 U.S.C. §2105

1. Purpose. This instruction applies to the Fleet Readiness Center East (FRC East) Administrative Grievance System (AGS) in accordance with references (a) through (d). It assigns responsibilities and requirements under which this activity can review employee disputes involving working conditions within the control of FRC East's management.

2. Cancellation. FRCEASTINST 12771.1A.

3. Summary of Changes. Merit grievance process updated and administrative changes throughout the instruction.

#### 4. Policy

a. It is FRC East policy that employees shall be entitled to present disputes under the activity's AGS and have them considered fairly, impartially and resolved as quickly as possible. All employees involved in the AGS process shall be free from restraint, interference, coercion, discrimination, and reprisal.

b. Alternative Dispute Resolution (ADR) techniques should be used to resolve disputes. These techniques include a broad range of ideas for dealing with conflict and seeking solutions acceptable to all parties. These techniques include, but are not limited to, problem solving, mediation, facilitation, reconciliation, early-neutral evaluation, fact-finding, settlement conferences, ombudsmen, peer review, and arbitration.

5. Definitions

a. Grievance. A written request by an employee or 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).

b. Employee. A non-bargaining unit employee, an employee in a bargaining unit which does not have a negotiated contract in effect, or any former employee of the Department of the Navy (DON).

c. Bargaining Unit Employee. An employee included in a bargaining unit for which a labor organization has been granted exclusive recognition.

d. Personal Relief. A specific remedy directly benefiting the grievant(s). A request for disciplinary or other action affecting another employee is not an acceptable form of personal relief.

e. Agency. The Department of the Navy.

f. Activity. The Fleet Readiness Center East.

g. Deciding Official. The Commanding Officer (CO) or official designated by the CO to make the final decision(s) on any grievance. The deciding official must be at a higher managerial level than any employee involved in any part of the grievance. This excludes when the Secretary of the Navy is/has been involved.

h. Fact Finder. An individual appointed by a deciding official to conduct an investigation about a grievance. The fact finder must be a person who has not been involved in the matter being grieved. A fact finder cannot occupy a position lower than any official who recommended, advised, made a decision on, or who otherwise, is or was, involved in the matter being grieved. The fact finder may be an employee of the activity, an employee of another activity, or an individual contracted for this purpose.

i. Hearing Examiner. An individual authorized by a deciding official to conduct a hearing on a grievance.

j. Day. Calendar day.

6. Responsibilities. Group/department heads have delegated authority to act as deciding officials on all grievances. This also includes Letters of Reprimand filed by employees in their respective codes, except when personally involved in the events resulting in a grievance. If the group/department head has been involved, the next higher level of management in the chain of command will become the deciding official. The CO will be the deciding official on grievances concerning suspensions of 14 days or less. The authority to act as the deciding official has been delegated to the Executive Officer by the CO. In no case will the delegation be lower than the group/department head level nor that of an individual involved in the matter being grieved.

7. Administrative Grievance System Requirements

a. General. Fleet Readiness Center East employees are entitled to file grievances and to communicate with their immediate supervisors or managers and officials in the Labor and Employee Relations Office (Code 7.3.1). Employees may represent themselves or be represented by someone of their choice. The choice of representative may be denied if it would result in a conflict of interest, a conflict with mission priorities, or unreasonable cost. If a deciding official disallows the grievant's choice of representative, that decision may be grieved within 10 days to the next higher level of management. The decision on that grievance is final and is not subject to further review. Employees and their representative(s) shall have full access to relevant information to file a grievance and shall be given copies of information, unless it would be contrary to law or regulation. Employees shall be allowed a reasonable amount of official duty time, if in a duty status, to file grievances and to communicate with management and personnel. Employees may also be given a reasonable amount of official time to prepare a grievance.

b. Grievance Against Another Activity. An employee of one activity or command may file a grievance to the head of another activity or command which took the action being grieved. Travel expenses and per diem are not authorized. The grievance will be processed following this guide.

c. Allegations of Discrimination. If an allegation of discrimination because of race, age, sex, color, national origin, religion, disability, or an allegation of reprisal is raised in the formal grievance process, the deciding official will inform the grievant in writing that the allegation will serve to end the matter under the AGS. The grievant must be given the opportunity to withdraw the allegation and continue under the AGS or proceed under the discrimination complaint procedure. This will commence with the counseling stage. The grievant's decision must be documented and made part of the grievance file. If the grievant decides to pursue the matter under the discrimination complaint procedure, that section of the grievance shall be canceled. Notification will be given to the grievant indicating the portions of the grievance that have been canceled. If there are no matters remaining in the grievance, the entire grievance shall be canceled. The grievant will be notified, and the grievance file forwarded to Code 7.3.1. The filing of an administrative grievance does not affect the requirement that a complainant must contact an Equal Employment Opportunity Counselor within 45 days of the date that the complainant knew or should have known of the alleged discrimination.

d. Combining Grievances. When two or more employees within the FRC East have identical grievances (i.e., the dissatisfaction expressed and the relief requested are the same) the deciding official may process them as one grievance. The employees will be notified and required to designate a common representative.

## 8. Coverage

### a. Employee Coverage

(1) The AGS covers current non-bargaining unit FRC East employees as defined per reference (d). It also covers former FRC East employees with respect to matters arising during their previous employment at the activity.

(2) The AGS covers bargaining unit employees when a matter cannot be grieved under a Negotiated Grievance Procedure (NGP). This would occur because an NGP is not in effect at the relevant time, or because it does not cover the matter being grieved.

(3) The AGS does not cover reinstatement and transfer-eligibles who have applied for a position under a merit promotion program. Non-citizens recruited overseas and appointed to overseas positions are not covered. This also does not cover non-appropriated funded employees.

b. Subject Matter Coverage. Any employment matter may be grieved under the AGS except for the following:

(1) The content of established agency regulations and policy.

(2) Any matter covered by a negotiated grievance procedure.

(3) Any matter subject to formal review and adjudication by the Merit Systems Protection Board, the Office of Personnel Management, the Federal Labor Relations Authority, or the Equal Employment Opportunity Commission.

(4) Any matter that the employee files under another review procedure, or dispute resolution process within the FRC East.

(5) Non-selection for promotion from a group of properly ranked and certified candidates, or failure to receive a noncompetitive promotion.

(6) Notice of an action that, if effected, would be covered under the grievance system or excluded from coverage under (2) above.

(7) An employee's performance elements, standards, or work objectives.

(8) The determinations concerning awards, additional step increases, recruitment or relocation bonuses, and retention allowances. Physicians' comparability or additional pay allowances, supervisory differentials, critical position pay, and dual compensation waivers are not covered under the AGS.

(9) Any action taken under a voluntary, formal agreement entered into by an employee involving geographic relocation or return from an overseas assignment.

(10) Termination of a probationary employee, return of an employee serving supervisory or managerial probation to a non-supervisory or non-managerial position, or separation or termination of an employee during a trial period.

(11) Termination or expiration of a time-limited excepted appointment or a term or temporary appointment or promotion on the date specified as a condition of employment at the time the appointment or promotion was made.

(12) The termination of a temporary or term promotion at a time other than in subsection (11) above. The employee should have been informed in advance of the temporary nature of the appointment or promotion and returned to his or her former position from which temporarily promoted or to a different position of equal grade and pay.

(13) Oral/Written Admonishment and Letter of Caution.

(14) Any additional exclusion requested by the FRC East and approved by the Department of Defense.

(15) Administrative grievances concerning rankings assigned under the Merit Promotion Program, which must be processed under that procedure.

9. Time Limits. When calculating time limits under the AGS, the day of an action or receipt of a document is not counted. The last day of the time limit is counted unless that day falls on Saturday, Sunday, a legal holiday, or a day on which the employee is not regularly scheduled to work. In those cases, the last day of the timelimit shall be moved to the next regularly scheduled workday. All time limits are counted in calendar days.

10. Grievance File. Code 7.3.1 shall establish and maintain a separate file for each written grievance filed under the AGS and retain it for four years in accordance with applicable laws, regulations, and records retention schedules. The file shall contain all documents or copies of documents related to the grievance.

11. Process. Subsections a and b below contain the basic mandatory processes of the FRC East AGS. Code 7.3.1 has

responsibility for processing all AGS grievances. The use of ADR techniques throughout the AGS process is encouraged.

a. Problem-Solving Process

(1) An employee may informally present a work-related problem to his or her immediate supervisor before filing a formal grievance. If the problem involves a matter or action directly involving that supervisor, and the employee has been unable to resolve the matter with that supervisor, the employee may present the matter to the next higher-level supervisor. The problem must be presented within 15 days following the date of the act or event that the employee believes created the problem. The date the employee became aware of (or reasonably should have become aware of) the act or event may also be considered. The employee may present a matter of concern regarding a continuing practice or condition at any time.

(2) A supervisor must consider the employee's problem and attempt to resolve it within 15 days, and no later than 30 days, from the date the problem is first brought to the supervisor's attention. Where appropriate, the use of a neutral party (e.g., conciliator, facilitator, or mediator) is encouraged. If the employee presents the problem orally, the supervisor's decision may be oral or written. If the problem is presented in writing, the decision must be in writing. If the problem is not resolved, the supervisor shall inform the employee of the time limits for filing a grievance in writing. If the supervisor believes the matter is not covered by the grievance process, the supervisor shall inform the employee and advise the employee of the appropriate process for resolving the problem.

(3) The above time limit for resolving the problem may be extended by mutual agreement to reach a resolution of the dispute.

b. Grievance Process

(1) An employee may file a formal, written grievance with the deciding official when a problem is not resolved during the problem-solving process. An employee may choose to bypass that process and invoke the grievance process. All formal written grievances must be first filed with Code 7.3.1. If the employee used the problem-solving process, the employee must

file a grievance no later than 15 days from the end of that process. When the employee does not use the problem-solving process but raises the matter initially as a grievance, the employee must file the grievance within 15 days following the date of the act or event that the employee believes created the problem. The employee has 15 days following the date the employee became aware of (or reasonably should have become aware of) the act or event. The employee may file a grievance regarding a continuing practice or condition at any time.

(2) An employee's grievance must be signed and dated and must contain a detailed statement of the specific issue(s). It must contain the specific, personal remedy sought and copies of any document(s) the employee has related to the grievance. It must also include the name, address, and telephone number of the employee's representative, if any. The remedy must be personal to the employee and may not include a request for disciplinary or other action affecting another employee. An employee may not grieve the same matter raised in any other grievance, appeal, complaint, or other dispute resolution process or forum.

(3) The deciding official shall determine whether to join similar or identical grievances. He/she must also decide whether to require, and how to conduct an investigation; whether to allow the grievant's requested representative; and how much official time shall be granted to the employee and the employee's representative. The deciding official may also designate an impartial individual to examine a grievance and, when authorized, to make recommendations concerning resolution.

(4) The deciding official shall fully and fairly consider the grievance and issue a written decision with supporting rationale for the decision. The deciding official shall issue the decision as soon as possible but normally no later than 60 days from the filing of the grievance. The deciding official may extend time frames when warranted by special circumstances (e.g., when those involved are geographically dispersed or where fact-finding is used in the process). A grievance decision should be rendered no later than 90 days from the filing of the grievance, unless both parties agree to extend this time limit to allow resolution. If the deciding official fails to render a decision within 90 days absent mutual agreement, the grievant may request review by the next higher-level supervisor.



(5) Wherever possible, the deciding official should rule on the merits of a grievance. The deciding official may cancel or temporarily suspend a grievance, or a portion of a grievance, if any one or more of the following is true:

(a) The grievant requests such action.

(b) The grievant or grievance is excluded from coverage.

(c) The grievant fails to provide sufficient detail to identify clearly the matter being grieved or specify the personal relief requested.

(d) The grievant fails to comply with time limits, requirements, or requests actions be taken against another employee.

(e) The grievant raises the same matters under another formal dispute resolution process.

(6) A deciding official's decision on the merits of the grievance is final and not subject to further review. An employee may request that an individual at the next higher level within the FRC East review a decision to cancel a grievance. The employee's request for review of a grievance cancellation must be submitted within 15 days from the date of receipt of the decision to cancel the grievance.

12. Administrative Grievances on Ratings assigned under the Merit Promotion Program. Employees may submit a grievance regarding a Notice of Rating under the Merit Promotion Program. The following procedure will be followed for all positions not otherwise covered under negotiated agreements:

a. The employee may present his/her concerns to the Employment Information Center (EIC) via email at doneic@navy.mil. He/she must provide the vacancy identification of the position in question. If the EIC can directly answer the applicant based on the notes in the system, they will do so. If they cannot answer the question(s), the inquiry is forwarded to the Office of Civilian Human Resources (OCHR) Philadelphia, and the recruiter who is working that vacancy will provide answers to the question(s), directly to the applicant via e-mail.

b. If after receiving the response, the applicant is still not satisfied, they may request a second-level review. This must again be submitted to the EIC. When received by the OCHR, either a lead or supervisor will review and respond via email.

c. Both the recruiter on the first-level review and the lead or supervisor doing the second-level review will normally do so within ten days of receiving the inquiry from the EIC.

d. The secondary review by either the lead or supervisor is the final decision.

13. Negotiated grievances covered by local bargaining unit agreements must be processed using FRC East 12770/1, "Grievance Submission (Union)," in accordance with local negotiated agreements.

14. Instruction Responsibility. The Personnel Policy and Programs Division (Code 7.3.1) will maintain this instruction in a current status.

15. Forms Required. The following form may be obtained through the Naval Forms Online: FRC East 12770/1, "Grievance Submission (Union)."

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By direction

Distribution: II