

## DOCUMENT RESUME

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Three basic grievance procedures available to Federal employees are set forth in agreements negotiated by collective bargaining representatives, Civil Service and agency rules and regulations, and statutory provisions. Most Federal employees have access to grievance procedures under an executive order (E.O.) and/or the Code of Federal Regulations (C.F.R.).

Findings/Conclusions: There are many variations among available grievance systems. Some Federal agencies are exempt from requirements of the E.O. and C.F.R. Their grievance procedures range from legislated and highly structured systems, such as the one for Foreign Service employees, to unilaterally imposed and more informal systems, such as the one at the Federal Bureau of Investigation. Effectiveness of grievance procedures depends on flexibility and attitudes as well as broad coverage, impartial review, expeditious handling and resolution of complaints, and avoidance of excessive costs. There has been confusion about subject areas covered by grievance procedures and applicability of procedures to particular complaints. Under some systems, an impartial adjudicator is available but, under others, final review is by higher management. Other shortcomings include delays of up to a year, the grievant's lack of recourse when the agency fails to comply with procedures, and the absence of criteria for determining when a hearing is necessary.

Recommendations: The Chairman of the Civil Service Commission (CSC) should improve agency grievance systems through: the appointment of an impartial grievance examiner (not under agency control) to review unresolved grievances; the development of specific guidance for grievance examiners to use in determining when an employee is entitled to a hearing; a requirement that the examiner's decision be accepted unless the agency head determines that the decision was arbitrary or capricious,

contrary to law, regulation, or policy, or not supported by evidence; and an appeal right to the CSC if the agency fails to comply with requirements. Under E.O. 11491, the scope of grievable issues should be expanded to permit the inclusion of matters now covered by statutory appeal procedures. The C.S.C. should extend coverage of 5 C.F.R. 771 procedures or take steps to ensure that comparable systems are available to employees.

(HTW)

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BY THE COMPTROLLER GENERAL

# Report To The Congress

OF THE UNITED STATES

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## Grievance Systems Should Provide All Federal Employees An Equal Opportunity For Redress

Federal employees and managers confront a maze of grievance and appeal procedures. This report examines some of the current grievance systems. It concludes that improvements are needed to guarantee all Federal employees an equal opportunity for redress, and it recommends to the Civil Service Commission ways to make grievance systems more equitable.



FPCD-77-67  
JUNE 13, 1978



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-184505

To the President of the Senate and the  
Speaker of the House of Representatives

This report analyzes some of the current grievance systems within the executive branch of the Government. It discusses problems associated with these systems and recommends improvements to provide all executive branch employees an equal opportunity for redress.

The information in this report should provide useful insight to the Congress in its consideration of the recently submitted civil service reform proposals that concern employee rights and protections. Implementation of our recommendation on negotiated grievance systems could be accommodated under the proposed Merit Systems Protection Board. Agency grievance procedures that we recommend be improved are not dealt with in the proposals.

Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

We are sending copies of this report to the Director, Office of Management and Budget, and to the Chairman, Civil Service Commission.

  
ACTING Comptroller General  
of the United States

D I G E S T

Grievance systems available to Federal civilian employees vary considerably. Although some variation is to be expected in a labor force of over 2 million people, it is unwarranted for Federal grievance systems to have major differences in both substantive and procedural rights. The result is that many employees are not afforded adequate protections in resolving their complaints.

Most Federal employees have access to grievance procedures under Executive Order 11491 and/or title 5, Code of Federal Regulations, part 771. Procedures under the Executive order are negotiated between the agency and the employees' collective bargaining representative. Procedures under the Code of Federal Regulations are established by each agency after considering the views of employees and their representatives.

A number of Federal agencies are exempt from the requirements of Executive Order 11491 and title 5, Code of Federal Regulations, part 771. Their grievance procedures range from legislated and highly structured systems, such as the one for Foreign Service employees, to unilaterally imposed and more informal systems, such as the one at the Federal Bureau of Investigation.

Factors contributing to the effectiveness of grievance procedures include sufficient flexibility to accommodate unique job situations and career patterns, and constructive attitudes by agency managers, employees, and employee representatives toward each other and the procedures. More tangible aspects include coverage of a broad scope of issues, review of complaints by an impartial adjudicator, expeditious handling and resolution of complaints, and avoidance of excessive costs.

GAO identified a number of shortcomings in existing procedures. Confusion often exists

as to the subject areas covered by grievance procedures and as to what procedure applies to a particular complaint. This problem is compounded by a patchwork of statutory appeal procedures that must be used, when applicable, in lieu of the negotiated or agency grievance procedures. Choice of a procedure often depends more on how a complaint is phrased than on its substance.

Also, while access to an impartial adjudicator is available under some systems, under others the grievant's final option is review by higher management. Other shortcomings include delays which sometimes require grievants to wait up to a year for a final determination; the grievant's lack of recourse when the agency fails to comply with procedures; and the absence of criteria for determining when a hearing is necessary under the agency grievance procedures.

#### RECOMMENDATIONS TO THE CHAIRMAN, CIVIL SERVICE COMMISSION

GAO recommends that the Chairman, Civil Service Commission, take action to improve existing grievance systems. In certain instances, legislative action may be required. GAO specifically recommends, under agency grievance systems (5 C.F.R. 771):

- The appointment of an impartial grievance examiner (not under agency control) to review grievances which are not resolved by the deciding official during the formal procedures in a manner acceptable to the employee.
- The development of specific guidance for grievance examiners to use in determining when an employee is entitled to a hearing.
- A requirement that the grievance examiner's decision be accepted unless the agency head determines that the decision was arbitrary or capricious; contrary to law, regulation, or established agency policy; procedurally defective; or not supported by substantial evidence.

--An appeal right to the Civil Service Commission (or its successor) if the agency fails to comply with established requirements and procedures.

GAO further specifically recommends, under negotiated grievance procedures (Executive Order 11491, as amended), that the scope of grievable issues be expanded to permit the inclusion of matters now covered by statutory appeal procedures, except those for which a separate procedure can be justified.

Certain Federal employees in the executive branch are not covered by 5 C.F.R. 771 or a statutory procedure and, therefore, are not afforded similar rights for redress. GAO recommends that the Civil Service Commission extend coverage of 5 C.F.R. 771 procedures or take steps to ensure that comparable grievance systems are available to these employees. In some instances this can be done by regulation and in others it will require legislation.

#### AGENCY COMMENTS

GAO did not obtain formal written comments from the Civil Service Commission and other Federal agencies. GAO did, however, discuss matters in this report informally with officials of the Civil Service Commission. In general, Commission officials said the report describes many of the problems they have noted with existing agency grievance systems, particularly in relation to the timeliness of grievance processing and the general qualifications of agency grievance examiners.

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## ABBREVIATIONS

AFGE	American Federation of Government Employees
FBI	Federal Bureau of Investigation
FEMTC	Federal Employees Metal Trades Council
IVA	Tennessee Valley Authority

## CHAPTER 1

### INTRODUCTION

Most Federal employees are subject to at least one of three basic procedures to register formal complaints about some aspect of their employment. The procedures are set forth in (1) agreements negotiated by a recognized collective bargaining representative, (2) Civil Service and agency rules and regulations, and (3) statutory provisions. Substantial differences exist both between these basic procedures and between the many individual grievance systems that fall into each category. As a result, applicable methods of resolving grievances, as well as the substantive and procedural rights afforded individual employees, vary considerably.

Grievance procedures often depend on the agency, the basis of the complaint, how the complaint is worded, whether the employee is subject to a collective bargaining agreement, and, in some instances, whether the employee is a veteran. An employee in one agency may be required to use two different systems to resolve two related problems, while an employee with the same problems in another agency may be subject to different procedures.

Since the enactment of Executive Order 10988 in 1961, the Federal labor relations program has expanded greatly. About 52 percent of nonpostal, civilian employees in the executive branch are covered by collective bargaining agreements. Although far fewer Federal employees are actually union members, a union certified as collective bargaining agent must represent both members and nonmembers; therefore, all employees in the bargaining units have access to negotiated grievance procedures. However, because of the limited scope of these procedures, covered employees often use other procedures. For example, matters covered by statutory appeal procedures are precluded, under Executive Order 11491, from coverage by negotiated grievance procedures. Agency grievance procedures, established under 5 C.F.R. 771, apply to most employee complaints not covered by negotiated grievance or statutory appeal procedures.

This report focuses on negotiated and agency grievance procedures. It addresses only tangentially the more than 20 types of actions and decisions for which statutory appeals are available; these were surveyed more completely in our February 3, 1977, letter report to the Chairman, Civil Service Commission. As we reviewed grievance procedures at agencies, the interplay between grievances and statutory

appeals was a recurrent theme. In several instances, employees had what amounted to an option between using a grievance or a statutory appeal procedure based on how they phrased their complaints about particular incidents. For example, an employee who had been disciplined could either file a grievance stating the disciplinary action was unwarranted or unduly harsh or could claim that it was the outgrowth of discrimination and seek redress under an equal employment opportunity statutory appeal. In other agencies, such as the Tennessee Valley Authority (TVA), Veterans Preference Act employees may use the negotiated grievance procedures even where certain statutory appeal procedures are otherwise applicable.

### CONGRESSIONAL INTEREST

Several bills introduced in the 95th Congress would, if enacted, significantly alter the grievance procedures available to Federal employees under Executive Order 11491, 5 C.F.R. 771, and other regulations. Generally, the proposals would increase the number of people and issues covered by negotiated procedures. For example, H.R. 13, as introduced, would permit all statutory appeals, such as classification questions, equal employment opportunity complaints, and reemployment eligibility claims, to be covered by negotiated grievance procedures. H.R. 1589 would extend application of the Federal Labor Management Relations Program to many agencies now excluded from coverage under Executive Order 11491, as amended. These bills would not alter the status of employees who remain ineligible for coverage by negotiated grievance procedures either because of their job classification or because they collectively choose not to be represented by a union. These employees would remain subject to agency grievance and statutory appeal processes.

### ASSESSING GRIEVANCE SYSTEMS

Because the subject of grievances deals with attitudes, emotions, personal judgments, and other factors that are difficult to measure, determining how well a particular grievance system works is necessarily subjective. For example, if a grievance system is not used or is infrequently used, it may indicate complete tranquility and satisfaction among employees. It may, however, show a lack of confidence in the grievance system, that the grievance system does not address matters of concern to the employees, or that the procedure is prohibitively expensive to potential grievants. Similarly, a large volume of grievances does not necessarily reflect either labor unrest or confidence in the system.

The grievance activity may be the outgrowth of a union-organizing campaign designed to demonstrate management shortcomings or may be the result of a major management policy change.

Despite these problems in determining the success of a particular grievance system, some aspects of it can be reviewed and assessed by comparing them to the workings of a model or ideal grievance system. Designing such a system, however, is not an exact science. The ideal may vary depending on the types of employees covered, the work environment, the agency's function, and the desires of employees. Therefore, to some extent, the flexibility of established procedures is crucial to the success of the system. Even if all of these characteristics were fixed, the most effective system would still probably be controverted. There are several attributes of a workable grievance system, however, which are generally perceived by labor relations experts as criteria in assessing the grievance systems.

Experts generally agree that a grievance system should address a broad range of issues about which employees are likely to complain. In some instances a separate procedure for certain grievances may be desirable, but generally a single process is preferable. The present patchwork of procedures frustrates both managers and employees and creates unnecessary and costly bureaucratic structures.

Grievance procedures should provide substantially the same protections for all Federal employees who are performing similar functions. Dissimilar opportunities for employees to have complaints adjusted may provoke unrest among those employees who feel their particular procedures are less equitable.

When an employee files a complaint, the grievance system used should afford a prompt and fair resolution. The special circumstances at each agency or activity will dictate exactly what time limitations constitute a prompt adjustment. Once reasonable processing periods are determined, unilateral delays and dilatory tactics harm the grievance system's credibility.

Once it is determined that an employee has suffered a wrong due to an act or omission by agency management, a major problem that remains is providing adequate relief. Although it is impossible to erase the wrong, redress should, to the fullest extent practical, compensate the grievant. This may require back pay, retroactive promotion, or adjusting leave

balance. These corrections must be in accordance with applicable laws, but the adjustment should be as complete as possible.

The grievance procedure should have several steps, starting with the complainant's immediate supervisor and escalating through the management hierarchy. For economy and efficiency, the system should foster resolution at the earliest and lowest level, but regardless, the management response at each level should be independently determined. Settlements at the lower level involve fewer management resources and are often considered more likely to result in an equitable resolution. This is because the lower level managers and the grievant are more likely to have firsthand knowledge of the situation. Also, review by higher levels may permanently preclude an amicable working relationship between the parties involved.

If a grievance proceeds beyond this initial phase, an employee often needs representation to help clarify the complaint and effectively present it to those who hear grievances during the more formal stages. In many instances grievants may not be fully apprised of their rights and available remedies. Without a representative who can effectively present the grievant's side of a case, substantive rights afforded by the grievance system may be lost.

The monetary cost of processing a grievance should not deter employees who feel they have been wronged. Even though agency management may fear spawning frivolous grievances, the system should operate at little or no cost to the grievant. Legitimate criteria and standards for review, rather than financial considerations, should dictate the progress of a grievance.

At some point grievants must have access to an impartial adjudicator. This person can resolve factual disputes and compare the facts as determined with the applicable contract provision, law, or regulation to determine if a grievable offense has occurred and, if so, the proper redress. Adjudicators must be sufficiently insulated from the control of either party so that their decisions will be credible.

While a grievance system functions primarily to provide redress for employees adversely affected by management action, an effective system may also serve to inform management of problems in either the implementation or propriety of its internal policies and regulations.

The grievance system must also be perceived by all parties as fair. Agency managers, union officials, and employees should feel the system is an objective means of determining the rights of each when disputes occur. Also, labor relations experts believe that the parties' attitudes in handling grievances probably are more important than the exact grievance provisions and constitute, therefore, a major factor in the grievance system's success.

## CHAPTER 2

### GRIEVANCE PROCEDURES FOR MOST

#### FEDERAL CIVILIAN EMPLOYEES

Grievance procedures for most Federal civilian employees are governed by collective bargaining agreements and/or Civil Service and agency regulations. The guidelines for negotiated grievance procedures are set by Executive Order 11491. More than one million employees are covered by this Executive order, which applies to most executive branch employees, except agencies such as the Federal Bureau of Investigation (FBI), Central Intelligence Agency, and TVA. Certain categories of employees, including Foreign Service personnel, supervisors, internal auditors, and certain confidential employees, are not covered by the order.

Agency grievance procedures are governed by title 5, Code of Federal Regulations, part 771. This coverage is broader than that of the Executive order, extending to all executive agencies except the Central Intelligence Agency, National Security Agency, FBI, Nuclear Regulatory Commission, TVA, U.S. Postal Service, and certain categories of employees, such as Foreign Service officers and nonappropriated fund employees.

The two grievance systems cover similar subjects. Both are superseded by statutory appeal procedures when available, and 5 C.F.R. 771 does not apply when the subject of a grievance is addressed by a procedure negotiated under Executive Order 11491. Executive Order 11491 permits an agency and the employees' exclusive representative to negotiate a grievance procedure covering all matters not covered by a statutory appeal procedure.

Three of the agencies we reviewed, the Charleston Naval Shipyard, McClellan Air Force Base, and the U.S. Customs Service, Region VIII, have grievance procedures established pursuant to 5 C.F.R. 771 and Executive Order 11491. A discussion of the grievance procedures at the three agencies follows.

#### U.S. CUSTOMS SERVICE (REGION VIII)

More than 1,400 full-time Customs employees work in Region VIII. Approximately 80 percent of these employees--all except managers, supervisors, professional employees, guards, certain employees performing personnel functions,

and management support and confidential employees--are organized into a local of the National Treasury Employees Union.

The union negotiated a contract containing a grievance procedure in 1972, but the procedure has never been used. Union officials contend that the procedure has been ignored primarily because it lacks any third party resolution machinery and is of little value. Agency managers attribute the inactivity to the contract's vagueness.

Because the procedure has not been used, it is not possible to assess how well it would work, but it is clear that several key attributes of an ideal system are lacking. As the union officials have alleged, there is no provision for an impartial adjudicator. Employees file grievances through the agency hierarchy; ultimate decisions are made by the regional commissioner. Another major obstacle in using the procedure is the limited subject matter coverage. The procedure ostensibly applies to questions of interpreting and applying the agreement, but the range of issues in the agreement is narrow. The negotiated grievance procedure excludes interpretation or application of agency regulations.

The parties were negotiating a new contract during our review. If the revised negotiated grievance procedure parallels those between the National Treasury Employees Union and other Customs regions, it would include an expanded subject matter coverage and an eventual opportunity for binding arbitration.

In large part due to the shortcomings of their negotiated procedure, Customs Region VIII employees rely on their agency grievance procedure established in accordance with 5 C.F.R. 771. This latter procedure was implemented in 1971 and applies to all Customs regions. During fiscal year 1976, 25 formal grievances were resolved in Region VIII using the agency procedure. All of these involved nonsupervisory employees even though the procedures apply to all employees in the region. The complaints raised included questions of overtime, suspensions, performance ratings, and letters of reprimand.

The Customs personnel manual includes the standard 5 C.F.R. 771 definition of a grievance and excludes all matters subject to statutory appeal procedures. The procedure also excludes all grievances which may be processed under a negotiated grievance system, but since none has been



filed in Region VIII, the agency system has, in effect, been the exclusive avenue for redress.

An employee has 15 days from an incident's occurrence to register an informal complaint with the lowest level supervisor with appropriate authority. A written response is due within 10 days. The grievant, if dissatisfied, must appeal to the next supervisory level within 5 days. The deciding official at this level has 10 days to settle the grievance or, if it is not resolved to the grievant's satisfaction, the grievant must have the matter forwarded to a grievance examiner.

Requests for a grievance examiner are forwarded by the regional commissioner to Customs Service headquarters. The examiner, who must be from another region, is selected by headquarters. Once designated, the examiner establishes a grievance file containing all relevant material. Both the employee and the agency can review the file. The examiner has broad discretion in handling the inquiry, which may be based solely on documentary evidence, include group meetings, or be based on a hearing. The examiner's report, which includes findings and recommendations, is presented to the grievant, the grievant's representative, the regional commissioner, and the management official who reviewed the grievance at the informal level.

The regional commissioner may accept or reject the examiner's recommendations. Should the commissioner accept the recommendations, that decision is final. If the recommendations are rejected, the regional commissioner notifies the grievant and transmits the file to Customs Service headquarters for a final decision.

Several aspects of the agency grievance procedure detract from its ability to serve the needs of the Customs Service and the employees. The major complaint of the employee's exclusive union representative is the absence of impartial adjudication. This representative feels, and the procedures appear to verify, that at each stage of the proceedings the grievant is merely requesting a higher level of management to review a lower level decision. Even when there is a nominally impartial grievance examiner, the union's complaints are not assuaged. The grievance examiners are usually mid-level supervisors or managers, and, as the agency grievance procedure states, "supervisors at all levels are a part of management." Even though they are from another Customs region, union officials feel that the geographic mobility of Customs managers and the small size

of the agency impair their independence and objectivity. Even if the grievant convinces the examiner that his or her position should be sustained, the decision is a nonbinding recommendation.

Union officials also complain that examiners lack training and that excessive delays occur between the time a regional commissioner requests an examiner and the time one is designated. Of the 25 formal grievances in fiscal year 1976, the 14 that involved a hearing examiner took an average of 196 days to process. The 11 resolved without an examiner took an average of 90 days. In one instance, 131 days elapsed between the regional commissioner's request for an examiner and the date one was designated; another 54 days elapsed before the examiner's final report was sent to the commissioner.

Excessive delays in the appointment of examiners were not the only deviations from the time guidelines. In 8 of the 25 fiscal 1976 cases, the grievant waited more than the prescribed 15 days from the incident to file an informal grievance. Similarly, in 13 cases the initial management response to the informal complaint took more than 10 days. In 14 cases the grievant did not file a formal complaint within the required period; these delays ranged from a few days to several months.

Grievants were represented by union officials in 19 of the 25 cases; in about 40 percent of the cases, grievants obtained at least partial relief. The union is permitted to be present at all group meetings and hearings, even when an employee does not choose union representation.

Union officials say the agency procedure is perceived as unfair to employees since there is no opportunity for final outside review. They feel that few grievances are actually resolved at the informal level, but because employees have little confidence in the process, many will not pursue their complaints. Since the exclusive representative is presently negotiating a new contract which presumably will contain an expanded grievance procedure, activity for the 80 percent of the Region VIII employees who are in the unit may shift away from the agency procedure.

#### McCLELLAN AIR FORCE BASE

McClellan Air Force Base is headquarters for the Sacramento Air Logistics Center. Of the 18,000 personnel

assigned to the base, about 13,000 are civilians. Of these civilians, 12,000 are covered by one of eight collective bargaining agreements. Personnel records indicate that only one-fourth of the eligible employees are dues-paying members of the union which represents them.

The eight agreements range from those covering small units, such as one with the Technical Skills Association, which applies to 49 petroleum branch employees, to a base-wide agreement with the American Federation of Government Employees (AFGE), Local 1857, which applies to more than 10,000 employees. According to McClellan officials, the most active unions are AFGE 1857 and National Association of Government Employees, Police Local R12-58.

### Agency grievance procedure

The agency grievance procedure applicable to most civilian employees at McClellan is based on 5 C.F.R. 771 and is supplemented by Air Force regulations with certain logistics command amendments. Those employees working in nonappropriated fund activities exempt from 5 C.F.R. 771 are subject to a separate but similar system. Under the regulation, the agency procedure defers to negotiated grievance procedures whenever both would cover the grievance.

Fifteen formal grievances were resolved under the agency procedure during fiscal year 1976. The complaints included matters relating to discipline, leave, promotion policies, and transfers. The system was used by wage grade and general schedule employees. Formal complaints took an average of 146 days to resolve.

Under the agency procedure, grievants must first seek informal resolution of a complaint. If management's response is either unsatisfactory or not given within 5 days, the employees may file a formal complaint with the base personnel office. This office's staff serves as the base commander's representative. If they cannot resolve the grievance, the matter is referred to the Air Force's Appellate Review Office, which docketes the case and assigns it to a grievance examiner.

At this point, the process departs from the agency procedure used at Customs, Region VIII. The Air Force uses only professional, full-time examiners who are assigned to the Appellate Review Office in San Antonio, Texas, and who also review equal employment opportunity

complaints and other personnel actions. The primary requirement for being an examiner is broad experience in the personnel field.

Once the grievance is assigned to an examiner, he or she determines whether it is within the grievance procedure's coverage. If so, the examiner has wide discretion in pursuing an inquiry and resolving the dispute. In about one-half of the cases reviewed, a full evidentiary hearing was conducted. The examiner reports findings and recommendations to the base commander, who either accepts the examiner's recommendations or rejects them and refers the case to Air Force headquarters for review. For the 10 cases referred to a grievance examiner, an average of 75 days passed between the request for an examiner and the issuance of the examiner's report.

In general, union officials felt the agency grievance system at McClellan was unfair because examiners could not render a final decision. They regarded the examiners as objective professionals, but complained that the examiners' decisions were not always followed by Air Force officials. Union officials preferred the negotiated procedure, where the final step was review by an impartial adjudicator whose decision was binding on all parties.

#### Negotiated grievance procedure

The negotiated agreement between McClellan and AFGE 1857 requires employees to discuss grievances informally with their immediate supervisor before a review at the directorate or comparable level. Should the grievant still be dissatisfied, the complaint must be appealed to the commander of the Air Logistics Center, who refers it to a joint labor-management grievance committee. This committee reviews the case and renders an opinion to the center's commander; the commander, however, is not bound by the grievance committee's opinion.

The final step in the process is a review by a professional arbitrator chosen by the parties from a list supplied by the Federal Mediation and Conciliation Service. The grievant cannot proceed to arbitration unless the union agrees. The union and agency are both liable for one-half of the arbitrator's fees and expenses.

Of the agencies with negotiated grievance procedures that we reviewed, only two bargaining units at McClellan have joint labor-management grievance committees. The grievance committee is composed of up to six union and

six management members. Each side has an equal voice in developing findings and recommendations. When the two sides differ, the positions of each are included in the final report to the commander.

Of the 29 formal grievances resolved during fiscal year 1976 involving employees represented by AFGE 1857, 19 went to a grievance committee. In five of these cases, the two sides disagreed and filed separate reports. In each case the commander denied the grievance. Only three grievances were resolved by arbitration during the period and in each case the grievance was denied.

The most common complaint concerned the agency's promotion policies. Another frequent complaint claim was that just cause had not been shown for various disciplinary actions.

The average processing time for the 26 formal employee grievances not appealed to arbitration was 63.2 days. Two of the three grievances processed through arbitration took about a year to resolve.

#### CHARLESTON NAVAL SHIPYARD

Charleston Naval Shipyard employs 7,349 civilian employees of whom 5,576 are prevailing rate employees and 1,773 are general schedule employees. It consists of 14 departments and offices which are further divided into 59 divisions or groups.

Three labor organizations represent exclusive bargaining units at the shipyard. The largest, the Federal Employees Metal Trades Council (FEMTC) of Charleston, represents approximately 5,000 eligible prevailing rate employees and 50 general schedule employees. The American Federation of Government Employees, Local 1864, represents approximately 1,000 graded employees. The Planners, Estimators, and Progressman's Association, Local 8, represents slightly less than 200 employees. The remaining 1,124 shipyard employees are excluded from bargaining units because of their positions.

Each unit is covered by a collective bargaining agreement which includes a procedure covering grievances as to interpretation and application of the agreement. The scope of issues covered by the three negotiated grievance procedures differs because the specific agreement provisions vary. Of the three bargaining units at

Charleston, grievances filed by employees represented by FEMTC were selected for further analysis because this bargaining unit has the greatest volume of grievance activity.

### Agency grievance procedure

All shipyard employees are covered by an agency grievance procedure set up pursuant to 5 C.F.R. 771. The procedures established by the shipyard are published and implemented in accordance with the Department of the Navy's instructions. Variations in the procedure not mandated by regulation are negotiated with the various unions. The agency grievance procedure applies to any matter of concern or dissatisfaction to an employee which is subject to the control of agency management. It excludes grievances covered by grievance procedures negotiated under Executive Order 11491.

Employees are apprised of their rights under the agency grievance procedure during the orientation session given to all new employees, and copies of the procedure are posted on bulletin boards. Employees with questions are referred to the administrative section of their division or to the employee relations division of the industrial relations office, which has responsibility for both agency and negotiated procedures.

The employee relations division staff of four professionals processes all grievances taken beyond the department level. The staff reviews such grievances, attends grievance hearings, and writes the grievance decision for the commander's approval. The staff also assists all parties involved in grievance processing and reviews all disciplinary actions, whether or not a grievance is filed, to determine if required procedures were followed.

The informal steps of the agency grievance procedure involve a discussion between the grievant and his or her immediate supervisor and, if this fails, the grievance is reviewed by the department head. Grievances not resolved at the informal level are submitted in writing to the shipyard commander for a decision. If the commander cannot resolve the grievance within 10 days, the regional office of civilian manpower management is asked to appoint a grievance examiner, who decides whether to hold a hearing. There are no written criteria for determining the need for a hearing. The examiner reports findings and recommendations to the commander, who issues a decision. If the

examiner's recommendations are accepted, the commander's decision is final; if not, the file is forwarded to the Secretary of the Navy for a final decision.

In fiscal year 1976, 13 grievances were resolved under the agency grievance procedure, 3 of which were resolved informally. All 10 agency grievances resolved at the formal level and 2 of the 3 resolved informally were denied. Twelve of the grievances concerned dissatisfaction with numerical ratings for promotion consideration. In all but two cases the grievances were filed by bargaining unit members. The objective of the agency grievance procedure is to complete processing within 90 days, but the grievances took an average of 118 days.

### Negotiated grievance procedure

The three-step negotiated grievance procedure includes both informal and formal levels. The informal involves a discussion between the grievant and his or her immediate supervisor. Although the agency does not maintain records of grievances resolved at the informal stage, FEMTC officials stated that approximately two-thirds of the grievances filed are resolved informally. They also noted that about 90 percent of those not resolved at the informal level are taken to step 1 of the formal procedure.

Formal grievances are first submitted to the group superintendent or division head and, if not resolved at that level, are submitted to the department or office head. The grievant, if not satisfied with the response at this step, may submit the grievance to the shipyard commander for a final decision or have the union submit it to arbitration. Union officials stated that in taking a case to arbitration they consider the effect on all employees of the unit and the availability of funds. The decision on whether to take a case to arbitration is made by the union's executive board.

In fiscal year 1976, 158 grievances were resolved under FEMTC's negotiated grievance procedure. Thirty-three percent of the 147 grievances resolved without arbitration resulted in a decision favorable to the employee.

More than half of the grievances filed under FEMTC's negotiated grievance procedure involved disciplinary action, such as suspension for less than 30 days or a letter of reprimand. Approximately one-fourth concerned overtime and duty assignments.

Time frames are specified for stages of the negotiated grievance procedure. The maximum time for the FEMTC procedure for processing grievances through step 3 is 105 days. Actual average processing of grievances through step 3 was 106 days, although a number of these cases did exceed the average by a significant amount.

Union officials at Charleston said that while the written procedures are fair, they are not always applied in a fair manner and that relief granted varies among similar cases. Although they said they had no definite proof, union representatives maintained that management takes reprisals against employees for filing grievances. The reprisals, they said, vary but primarily involve monetary benefits and discipline. They noted that grievants' primary reason for not pursuing a complaint beyond the informal level is fear of retaliation. One official stated that half of the employees who have filed grievances believe that they have suffered adverse effects, such as undesirable night shifts and overtime assignments.



## CHAPTER 3

### UNIQUE GRIEVANCE SYSTEMS

#### FOR EMPLOYEES EXCLUDED FROM

#### NORMAL PROCEDURES

Different grievance systems are available to a significant number of Federal employees. These employees usually are excluded from the 5 C.F.R. 771 and Executive order procedures because the agency they work for or the work they perform requires special personnel practices.

In some cases where these justifications might warrant excluding only a segment of an agency's work force, all employees are exempted. For example, in the FBI, large numbers of employees, primarily in clerical and technical occupations, perform duties which are virtually identical to those of Federal employees covered by Executive order or C.F.R. grievance procedures. Similarly, two State Department clerical employees, one a Foreign Service employee and the other a general schedule employee, performing the same tasks may be covered by totally different grievance systems.

The systems characterized in this chapter as unique apply to employees of the Foreign Service at the Department of State, TVA, and the FBI. In many respects these systems represent extremes, that is, the very structured system of the Foreign Service and the internal and informal procedures followed at the FBI. The FBI, exempted from both Executive Order 11491 and 5 C.F.R. 771, in accordance with its personnel regulations, permits employees to raise complaints and refers them to various management levels, ultimately to the FBI's Director. In contrast, impartial outside review is central to the statutory grievance system available to Foreign Service employees. This system consists of an appeal through agency channels with final review by a nonagency panel of adjudicators.

The negotiated grievance procedures covering employees at TVA cover most employee grievances and appeals. However, regarding reductions in force, TVA is subject to applicable Civil Service Commission regulations under section 12 of the Veterans Preference Act. It is also subject to certain Civil Service regulations pertaining to employee removal or other adverse actions involving any eligible employee who has completed 1 year of continuous employment. In general, the TVA

labor-management relations program more nearly parallels collective bargaining in the private rather than the Federal sector.

We recognize that consistency can often deprive management of the flexibility necessary to accomplish its mission and prohibit it from adapting to the unique character of its work environment or its work force. For example, in the view of management and higher level union officials, the viability and success of TVA's labor-management program is founded on the flexibility granted by the TVA act in devising its own employment and personnel policies. On the other hand, since the employees' perception of fairness is crucial to the success of a grievance system and since fairness is a relative standard, a lack of consistency between the systems may have a harmful effect. Also, diverse procedures make it difficult for both employees and management to comprehend not only the procedures but how they interrelate with Executive order and Civil Service Commission requirements.

#### DEPARTMENT OF STATE (FOREIGN SERVICE)

The grievance system for the 7,600 Foreign Service employees at the Department of State is a hybrid--grounded in statute with union participation in determining the exact procedures. The enabling statute, Public Law 94-141 (codified as 22 U.S.C. 1037), requires the three foreign affairs agencies--Department of State, U.S. Information Agency, and Agency for International Development--to reach agreement with the union on an agency grievance system. The most innovative feature of the legislation, however, is that it creates the independent Foreign Service Grievance Board, to which grievants may appeal the final decisions of the foreign affairs agencies.

Before a grievance can be presented to the Board, the grievant must exhaust all the steps of the agency's grievance procedure. This begins with an informal discussion between the grievant and either the immediate supervisor or the lowest level official able to adjust the complaint. If the grievant is not satisfied with the response at this level, a written complaint must be filed with the responsible officer. The next reviewer is normally the senior officer of either the post or bureau to which the grievant is assigned. The final agency action in the State Department is done by personnel assigned to the grievance staff of the Deputy Assistant Secretary for Personnel.

Throughout the grievance process, confidentiality of the grievant is emphasized. Written complaints, for example,

are not forwarded to the Deputy Assistant Secretary for Personnel unless the grievant chooses to appeal to that level. Otherwise the complaint and any attendant documents are kept within the control of the responsible officers at the post or bureau. No formal reports of the number or types of grievances resolved at the intermediate processing steps are forwarded to the Department's grievance staff.

Once the grievance is appealed to the Department level, it is reviewed by one of the three Foreign Service officers assigned to the personnel office. Their other activities include counseling potential grievants on the scope of the various systems, investigating complaints, and recommending corrective action to the Deputy Assistant Secretary. They also oversee training activities intended to inform Foreign Service personnel about the grievance system.

As part of their investigative process, the agency grievance staff gathers documentary evidence, interviews supervisors and witnesses, and corresponds with grievants and their representatives. Once a decision is accepted by the grievant, they monitor compliance by the Department. They also represent or assist in representing the Department before the Foreign Service Grievance Board, should a grievant appeal.

The Board is required to have at least five members who are "independent, distinguished," and "well known for their integrity." Eight of the 15 members on the Board, including the chairman, are professional arbitrators. The others are retired Foreign Service employees. Board members are compensated at the GS-18 rate, but only for the days they are actually carrying out Board duties.

Until recently the Board set up three-member panels to make preliminary jurisdiction rulings and to decide whether a particular grievance required a hearing. To facilitate quick processing, the Board now uses only one member to make these initial determinations. A separate three-member panel is convened to decide the case if the Board accepts jurisdiction.

Eight full-time staff officers support the Board. Five act as case officers whose duties include corresponding with grievants, witnesses, and agency officials to accumulate a written record; collecting pertinent documentary evidence; interviewing witnesses; and providing administrative support during and after hearings. Some officials noted that because of the current grievance caseload, they believed the Board was presently overstaffed. Until recently, however, the

Volume of backlogged grievances justified these staff requirements. To ensure fairness, different staff members are used for the data accumulation and for the hearing phases of each grievance. This prevents a staff member from interjecting into the Board's deliberations, material not in the grievance record. Although all of the staff officers are on loan from the foreign affairs agencies, their performance evaluations are prepared by the Board to lessen the appearance of divided loyalties.

The grievance system is available to all Foreign Service employees of the Department of State at all levels, from clerks to senior officers. The executive secretary of the Grievance Board estimated that under normal circumstances, about one grievance a week is appealed to the Board. This caseload includes all three foreign affairs agencies. About 60 percent are from the State Department.

Because of the somewhat ambiguous wording of the statute and the implementing regulations, the subject matter coverage of the grievance system is often disputed. The statute sets forth a broad definition of a grievance, with examples, but then lists specific exceptions. These exceptions include judgments of a selection board in ranking personnel for promotion, termination of time-limited appointments, and complaints for which a specific statutory appeal exists. Further, by attacking the record--specifically the officer evaluation reports--upon which a selection board acts, a grievant can, in effect, question the judgment of a selection board regarding a promotion even though a direct challenge would be prohibited. Often the question of whether or not a particular complaint is within the grievance system's coverage is disputed during processing through the agency procedures and then again before the Grievance Board.

Of the 27 State Department cases before the Board in December 1976, nearly one-third centered on allegedly incorrect or missing reports or falsely prejudicial material in employee official personnel files. A similar number concerned administrative problems, and one-fourth challenged the proposed termination of the grievant's employment.

During 1976, 97 cases were appealed to the Deputy Assistant Secretary for Personnel, the final agency review. More than one-third involved complaints about officer evaluation reports, and about 1 in 10 questioned the grievant's entitlement to various allowances.

Even though many complaints allege improper material in personnel files, the relief sought is often much broader than deleting or correcting the offensive material. Foreign Service officers may be separated if they are not promoted within certain time limits, and officer evaluation reports are often crucial in determining whether an individual is promoted. Personnel alleging the inclusion of improper material, therefore, often request additional relief, such as an extension of their time to compete for promotion or a promotion itself. Only the Grievance Board has authority to recommend to agencies that the grievant be promoted for reasons other than administrative error. The Board is also empowered by statute to order an agency to suspend a proposed agency action, such as a separation or a recovery of funds allegedly overpaid to an employee.

Once a grievance is appealed to the Board, and it is decided that a hearing is not necessary, a case officer solicits written submissions from both the Department and the grievant. If necessary, the case officer sends written questions to agency personnel with knowledge of the grievance. All information which is incorporated into the grievance file is subject to review by both the grievant and the agency, and both must agree that they have nothing further to add to the record before it is submitted to a Board panel.

If the complaint involves disciplinary action or involuntary separation, the statute guarantees the grievant the right to a hearing. If the grievant does not request a hearing, a Board member determines whether one is necessary. A separate panel of Board members conducts the hearing with the grievant, a representative of the grievant's own choosing, and a representative of the foreign affairs agency in attendance. At these hearings, a staff member for the Board serves as an administrative aide to the panel.

The panel's decision must be in writing and based solely on material in the record. It must contain findings of fact and the panel's reasoning. The entire record is available to both the grievant and the agency for review. The Board's decision may direct the foreign affairs agency to correct personnel records, grant compensation improperly denied, retain or reinstate with back pay an employee whose termination was unjustified, or take other remedial action. In cases involving promotions or assignments, among other things, the Board's findings must be presented as a recommendation rather than a directive.

Several aspects of the Board's procedures deserve particular attention. One is that unlike other grievance-resolving bodies or individuals whose sole function is resolving particular grievances, the Board has been given administrative and policymaking responsibilities. These are in addition to merely serving as an impartial third party. For example, the Board must review the performance of its eight full-time staff members and promulgate and revise regulations for its own operations. Other responsibilities, however, such as preparation and control of its budget, are less defined. The legislation creating the Board states that "all expenses of the Board shall be paid out of funds appropriated to the Department for obligation and expenditure by the Board." While the estimated annual budget for the Grievance Board is over \$300,000, Board officials maintain they have only a limited role in the budget process and requests for funds are simply made on an as needed basis to the office of the Secretary of State.

A second salient aspect is the Board's initial reluctance to publish its decision or decision summaries because of its overriding concern with safeguarding the confidentiality of grievants. At the time of our review, Board decisions were only available to the particular agency and employee representatives directly involved in the proceeding. The Board was planning, however, to issue summaries of its decisions in some manner, after taking into account the views of agency and labor organization representatives.

By its own regulations, the Board is committed to preparing summaries of its decisions for distribution within the foreign affairs agencies. If the Board's determinations and interpretations are not circulated within the foreign service community, their precedent-setting value will not be realized. Publicizing the decisions could reduce uncertainty over questioned personnel policies and regulations. Publicizing them might also alert employees with similar problems to the relief available.

Another aspect of the Grievance Board's operations is that almost the entire cost is borne by the Government. Unlike most public and private negotiated procedures where the costs of arbitration are shared equally by the parties, the Board's budget includes funds for salaries of members who hear the case, for the preparation of written transcripts, and for grievant travel and per diem expenses. The statute also permits the liberal granting of official time for grievants, their representatives (assuming these are Foreign Service employees), and any necessary witnesses. The only

expense that falls directly on a grievant would be to retain a personal representative who is outside the agency, if desired.

The Board has certain extraordinary powers to help it resolve disputes. For example, the Board can stay disciplinary actions, separations, or the recovery of funds while the grievance is in progress and can compel the production of documentary evidence.

The Foreign Service grievance system as applied at the Department of State offers several advantages from the employee's standpoint. Because it combines agency procedures with review by an independent board, there is greater likelihood that at each intermediate level of review the responsible management official will act objectively on the complaint. The Grievance Board and its staff are insulated from management control and do not merely render management's decisions. Since the Board combines professional arbitrators and former Foreign Service personnel who have been approved by both the agencies and the exclusive representatives, it is viewed as having (1) the technical knowledge necessary to resolve factual disputes and (2) insight into the employment conditions of the Foreign Service. Members are appointed for staggered 2-year terms, giving the Board permanence and the ability to handle cases consistently.

Although no grievant has yet sought judicial review, the explicit grant of access to the courts would seem to increase employee confidence in the fairness of administrative decisions. Foreign Service personnel, regardless of rank, position, or geographic location, have equal access to the grievance system. The Board has been given broad powers to grant both final and temporary relief, even when the Board's jurisdiction is disputed by the agency.

Employees have several options in selecting a representative while processing a grievance. The statute and regulations, unlike Executive Order 11491, do not give the exclusive representative a right to be informed of grievances and to be present at their adjustment. The exclusive representative is also exempted from the duty of fair representation, but American Foreign Service Association officials stated that they would assist any grievant who sought their help, even if the grievant were not a dues-paying member. However, these officials said they "expected" the employee to be a member by the time a case went to the Board. The grievant can pick any other person, such as another State Department employee or a private attorney, as a representative. If the

personal representative is a State Department employee, which is often the case, the statute authorizes the use of official time to process the grievance.

The system seems to foster informal resolution. Officials in the Deputy Assistant Secretary for Personnel's office, the last level of administrative review, stress to senior officials at bureaus and posts that they should work out satisfactory solutions at the local level.

Timeliness, at least at the formal stages for which records are kept, is not a strong characteristic of this grievance system. The time limits for the various stages are not rigid requirements. Rather, they serve as the minimum time that a grievant must await an agency response before appealing to the next review level.

Once a grievance is appealed to the Grievance Board, it takes an average of 6 months to issue a final decision. Some cases were dropped by the Board for lack of jurisdiction, while others were either withdrawn by the grievant or resolved by the agency before final Board consideration. The lengthy processing time was attributable to several factors, according to a Board official. These included that the Board was new and experiencing problems associated with any new organization, and it was difficult to encourage grievants and their representatives to actively pursue cases once they were filed. Both Board and American Foreign Service Association officials observed that many of the delays occurred because (1) grievants were frequently overseas, and communication problems were therefore inevitable, and (2) it was difficult to schedule panels to decide cases and review records.

One problem with the Foreign Service grievance system may be that it is needlessly legalistic, especially at the formal stages. This is evidenced by the resort to attorneys by both parties and the procedural niceties observed by both management and employee representatives. Foreign Service officials commented on the possibility that this overly legalistic approach discourages employees from pursuing legitimate grievances and that most Foreign Service personnel may feel uncomfortable invoking such an unwieldy and formal process. The number of grievances filed at the agency level has declined sharply since the Board's inception.



## TENNESSEE VALLEY AUTHORITY

The labor-management relations program at TVA, according to management and union officials, is a product of nearly four decades of constructive dealings to resolve differences and achieve common goals. The program's collective bargaining method is more like that of private industry than that of most Federal agency programs. Among the distinguishing features between collective bargaining at TVA and other Federal agencies are the much broader scope of bargaining at TVA, which includes wages, and a union security arrangement whereby management explicitly encourages union membership and considers it a factor in promotion, transfer, and retention.

TVA, established in 1933, is an independent corporate agency of the Government. To give the corporation flexibility in personnel and labor relations policies, TVA was exempted from most Civil Service regulations and its Board of Directors was given the power to regulate employee compensation in accordance with prevailing wage rates in the area.

The liberal attitude toward labor organizations during the New Deal era also characterized the attitude of TVA management. Management did not interfere with efforts by American Federation of Labor craft unions to organize TVA's trade and labor employees immediately after the corporation's creation.

In 1935 the Board of Directors issued a formal statement of TVA's position, known as the employee relations policy. The policy (1) grants employees the right to form and participate in unions, (2) commits management to negotiate with recognized employee groups over annual adjustments in wages, and (3) guarantees employees a grievance procedure. Pursuant to this policy and to pressures for centralization of the fragmented bargaining structure which existed during its first years, recognized craft unions formed the Tennessee Valley Trades and Labor Council in 1937.

In 1940 this council, representing affiliated international unions, negotiated its initial collective bargaining agreement with TVA. Two agreements are now in effect between TVA and the council, one covering construction employees and one covering operating and maintenance employees. Although revised and updated annually, they remain the basic documents governing working conditions for approximately 20,000 TVA employees in blue-collar classifications. These employees are presently represented by 16 individual craft unions.

Following a similar pattern, in 1943 individual white-collar labor organizations were recognized and began representing employees at TVA. These organizations formed the Salary Policy Employee Panel and negotiated an agreement in 1950. The panel agreement presently covers approximately 10,400 employees represented by five labor organizations.

When the Executive order for Federal labor-management relations was issued in 1962, TVA was not excluded from coverage. Inconsistencies between TVA's labor relations policies and those of the order were permitted under a savings clause. In 1976, however, TVA was explicitly exempted by an amendment to the order.

Each negotiated agreement at TVA includes detailed procedures for filing grievances, including provisions for binding arbitration. Approximately 31,000 of TVA's 33,000 employees at or below the first-line supervisory level are covered by one of these procedures. Those employees excluded are primarily management officials. No formal agency or administrative grievance procedures exist for these employees because TVA is exempted from 5 C.F.R. 771.

Under all three negotiated grievance procedures covering TVA employees, a grievance is defined as either a complaint by employees that they have been treated unfairly or a disagreement with a supervisor about the application of a TVA policy. The only matters excluded from the scope of the negotiated grievance procedure are changes in the content of established policies, standards, or procedures. The agreements specify that such changes may only be made through negotiation between the parties.

While most employees of Federal agencies are precluded under Executive Order 11491 from using the negotiated grievance procedure to address issues that are covered by statutory appeal procedures, TVA employees are not subject to most of the latter. For those statutory appeals which do apply at TVA, such as reductions in force, terminations for cause, and demotions, Veterans Preference Act employees have the option of using either the negotiated grievance procedure or the procedure provided by law or Federal regulation.

Union representatives objected to employees using statutory appeal procedures. They noted that although officials at the Civil Service Commission might be adept at reviewing the complaints of Federal employees, for whom suspensions and terminations are unheard of, these officials are not attuned to TVA's type of environment. Union officials asserted that

suspensions or terminations for disciplinary reasons are common among construction workers, both in the private sector and at TVA.

Grievances filed by TVA employees cover a wide spectrum of matters. According to TVA officials, differences in the types of issues raised by salaried, construction, and operating and maintenance employees reflect differences in the employees' positions and in their respective work environments. Of the grievances resolved in fiscal year 1976, operating and maintenance employees and construction employees, particularly the latter, filed a disproportionately greater number of grievances than white-collar salaried employees. Complaints by construction employees dealt primarily with terminations, warning letters, and overtime. Operating and maintenance employees, also represented by the Trades and Labor Council, generally filed complaints regarding such matters as overtime, work assignments, and meal allowances. In contrast, grievances filed by salaried employees concerned position classifications and nonselection for promotion. A breakdown, by issue, of grievances filed by each employee group and resolved in fiscal year 1976 is shown below.

Salary Policy Employee Panel (note a)

<u>Issue</u>	<u>Number of grievances</u>
Position classification	7
Nonselection for promotion	4
Warning letter	1
Service review	<u>1</u>
Total	<u>13</u>

Trades and Labor Council

Construction employees (note b):	
Termination	68
Suspension	9
Warning letter	36
Overtime	14
Rating	12
Other	<u>7</u>
Total	<u>146</u>
Operating and maintenance employees (note c):	
Overtime	8
Termination	5
Work assignment	8
Nonselection for promotion	8
Meal allowance	7
Other	<u>12</u>
Total	<u>48</u>

a/10,357 employees represented.

b/12,300 employees represented.

c/8,023 employees represented.

The procedures for processing grievances filed by blue-collar and white-collar employees, represented by the council and the panel, respectively, contain only minor variations. The procedures consist of three steps with ultimate recourse to arbitration. Step 1 is the employee's discussion of the complaint with the immediate responsible supervisor. Parties on both sides strongly favor resolution of grievances at this level and, although no formal records are maintained, officials estimate that 50 percent of grievances are resolved at this first step.

Step 2 of the procedure is an appeal to the responsible division director. For most issues, either the employee or the division director may request a hearing at this stage. The hearing is conducted by a hearing officer, who normally is the personnel advisor in another division. Based on a review of the hearing record, the division director issues a decision.

This decision may be appealed in step 3 to either the manager of union-management relations or the personnel division director, depending on whether the grievant is subject to the council or panel procedure. In some instances, a conference is held between the parties in an effort to reach a joint settlement. If no settlement is reached, a decision is issued which may be appealed by either the council or the panel to binding arbitration. The table below outlines the level and type of resolution for fiscal year 1976 grievances in each employee category.

Salary Policy Employee Panel

<u>Level of resolution</u>	<u>Number</u>	<u>Decision</u>	<u>Number</u>
Step 2	4	Some relief granted	5
Step 3	2	Withdrawn or denied	<u>8</u>
Arbitration	6		
Other	<u>1</u>		
Total	<u>13</u>		<u>13</u>

Trades and Labor Council

Construction employees:			
Step 2	104	Some relief granted	35
Step 3	42	Withdrawn or denied	<u>111</u>
Arbitration	-		
Total	<u>146</u>		<u>146</u>
Operating and Maintenance employees:			
Step 2	36	Some relief granted	17
Step 3	11	Withdrawn or denied	<u>31</u>
Arbitration	<u>1</u>		
Total	<u>48</u>		<u>48</u>

Both the council and the panel have internal review procedures for deciding whether to proceed to arbitration. Because an employee's victory may adversely affect other bargaining unit members, the union's decision may be based on political factors as well as merit. The grievance is reviewed by a committee composed of international union representatives. If a grievance is taken to arbitration, the negotiated agreements state that the international union with which the grievant is affiliated shares the cost of arbitration with management; officials noted, however, that normally the grievant's local union bears the union's share of the costs.

In general, the processing steps and time frames are similar under both the panel and the council agreements, although council procedures are much more abbreviated. Grievances filed under the panel agreement normally take longer to process because issues raised are frequently more complex. Since council procedures preclude a hearing at step 2 for grievances protesting a letter of warning or reprimand for 6 months or less, this accounts for a shorter average processing time under their procedures. Also, the panel procedure allows 120 days to appeal a step 3 decision to arbitration compared to 30 days under the two council agreements.

The option of a hearing and/or a conference at steps 2 and 3 of the procedures, respectively, results in a longer overall processing time as compared to most Federal sector agreements. Union and management officials supported the procedure, stating that they preferred handling and resolving disputes and problems between themselves rather than relying on arbitrators who tend to be less familiar with the circumstances and the setting at TVA.

Grievants may represent themselves or request union representation at all stages of the grievance procedures. If employees choose to represent themselves, a union representative is permitted to be present at all hearings above step 1 and also receives a copy of the grievance record. In almost all cases, the employee and employee's witnesses are on official time, but union representatives handling grievances are normally full-time union personnel.

Apprising employees of their rights under the negotiated agreement and the grievance procedure is viewed principally as a union rather than a management function. No formal agency training program exists for this purpose. The grievance procedure, however, is discussed with employees

at orientation sessions. At these sessions, new employees are given a copy of the negotiated agreement. On occasion, union and management officials visit TVA plants to discuss the agreement with employees.

Agency officials noted that the need for supervisory training in grievance handling is minimal because most supervisors have come up through the ranks and are familiar with their responsibilities under the agreement. Training supervisory and management officials in their responsibilities in handling grievances is not done through any routine or formal TVA-wide training procedure. Some training is provided, however, by the individual personnel sections. Additional steps taken to inform management include issuing a report to all division and personnel sections following negotiations. This report includes the action taken on each item of the negotiation agenda. Each of the 22 division directors and personnel advisors is primarily involved at step 2 of grievance processing. TVA officials expressed some concern, however, that personnel advisors in divisions with very little grievance activity are much less skilled and adroit at handling grievances than their union counterparts who are normally full-time union representatives.

Two separate staffs handle negotiations, grievance processing, and all other labor relations dealings with the Salary Policy Employee Panel and the Trades and Labor Council. These staffs are headed by the manager for union-management relations and the personnel director, who, as noted above, handle step 3 of the grievance procedure.

#### FEDERAL BUREAU OF INVESTIGATION HEADQUARTERS

Our work at FBI headquarters was limited to reviewing written responses to our questions and examining FBI submissions to the Congress. The data indicates that the grievance procedure at FBI headquarters does not have many of the traits of a model grievance system. All 7,300 employees at the FBI headquarters are in the excepted service and are not subject to many civil service protections. The entire agency is excluded from both 5 C.F.R. 771 and Executive Order 11491.

Less than 800 of the 7,300 headquarters employees are classified as investigative personnel. The remainder includes file clerks, computer programers, mail clerks, and secretaries. About 1,200 of these noninvestigative employees are either supervisors, confidential employees, or engaged primarily in personnel work. These employees would

normally be excluded from coverage by an Executive Order 11491 negotiated agreement. Many of the remaining noninvestigative employees, however, would be eligible to bargain collectively if the FBI were not exempted as an agency.

It is FBI policy, according to its employee handbook, to encourage employees to promptly report any grievance, complaint, or matter of concern to the attention of their immediate supervisor, their division head, the personnel officer, an inspector, or the Director "so that proper action can be taken."

The FBI's manual includes a section on appeals and grievances describing the applicable procedures and appeal routes available. It includes an "informal" procedure for resolving any grievances, complaints, or sources of discontent. The manual also describes certain formal appeal procedures covering performance ratings, position classification, veteran and nonveteran appeal rights relative to adverse action, salary retention, within-grade increases, and equal employment opportunity.

Any grievance, the manual states, should initially be brought to the attention of the employee's immediate supervisor. If not resolved at this level, further discussion may take place with the employee's division head, and subsequently the matter may be brought to the Director's attention in writing. Alternatively, employees may air their problems through use of the FBI suggestion program or by contacting inspectors who periodically conduct division investigations.

The FBI does not maintain a centralized listing of grievances filed or resolved; therefore, no data was available on either the number of grievances filed or their resolution. Copies of all correspondence relating to a grievance or complaint, including any subsequent action or relief, are maintained in the FBI personnel file of the employee initiating the complaint.

## CHAPTER 4

### OUR OBSERVATIONS

Because of the great differences in grievance procedures at Federal agencies, the opportunities for redress vary among Federal employees. To analyze the fairness of existing grievance procedures, we identified the key elements of a model grievance system. The elements are scope of coverage, impartiality of the adjudicator, timeliness, cost to the person filing a grievance, and the employees' perception of fairness. We compared existing systems to the model. While we realize that systems at all agencies need not be identical, our review showed that some groups of employees enjoy much better procedural protections and substantive rights than others.

#### SUBJECT MATTER COVERAGE

As employees' working conditions, socioeconomic levels, career profiles, and agency mission vary, so do the types of complaints they may have. Foreign Service officers at the Department of State, for example, are more likely to file grievances about pejorative or erroneous effectiveness ratings, while the predominant complaints among construction workers at TVA concern disciplinary suspensions and terminations. Restrictive definitions of a grievance system's subject matter coverage do not serve the interests of either party. Having to decide which of numerous routes is applicable to an issue is confusing to agency managers, employees, and employee representatives.

Subject matter coverage varies widely. Under the TVA's negotiated agreements, for example, employees may file grievances whenever they feel they have been treated unfairly or that a policy has been misapplied. The only limitation is that the grievance system cannot be used to change a policy or regulation. At the other extreme are negotiated grievance systems such as the one at the Customs Service, Region VIII, which has such a narrow scope that it has not been used.

In many instances, when it is decided that a complaint is not covered by a system, resolution is frustrated or unduly delayed. So long as the resolution process is fair and impartial and relief is granted consistent with statute, it would seem that a grievance system's jurisdiction should be as broad as the complaints of employees.



In some clearly defined and limited areas, such as classification appeals or denial of a retiree's health insurance coverage, it may be necessary to provide a separate appeals procedure. These issues may require special knowledge of laws and policies. Similarly, in the private sector, items such as pension plans may often be administered separately. Since many other so-called statutory appeals, such as the adverse action appeal procedure, have evolved through Civil Service Commission regulation rather than congressional mandate, continued exclusion of these appeals from grievance systems, whether agency or negotiated, may not be required.

### IMPARTIALITY OF THE ADJUDICATOR

Most grievances allege that agency management has violated an agreement, regulation, or policy to the detriment of the employee. When final review of the grievance rests with management, the grievance procedure's credibility suffers. In the Federal sector, the adjudicator must of necessity be bound by laws and regulations, but he or she should also be impartial and disinterested. We found numerous instances in which such an impartial adjudication is not afforded to Federal employees on many issues.

Agency grievance procedures established under 5 C.F.R. 771 are nominally required to provide for an impartial hearing examiner, who is neither directly nor indirectly under the jurisdiction of an official involved in the grievance nor under the deciding official in the matter. One agency we reviewed uses full-time hearing examiners assigned from a central office. Another used employees whose regular position could be considered a staff function and who are assigned to examine grievances as an additional duty. In some instances, especially when the agency is comparatively small, the disinterest of these part-time examiners is questionable. Moreover, examiner recommendations are merely advisory and can still be rejected by the agency's reviewing official. This rejection need not be based on the conclusion that adopting the recommendations would be contrary to law or regulation. Rather, the deciding management official must only conclude that they are "unacceptable."

At the other extreme, the statutory procedure for Foreign Service employees virtually ensures that an employee's grievance will receive an impartial review. Three examiners, all of whom are insulated from the control of the foreign affairs agencies, consider each grievance on its merits. At least one of the three is likely to be a professional arbitrator. Even the full-time professional staff who prepare the

records which the grievance examiners review are insulated from agency control. If the grievant is dissatisfied with the outcome, the statutes permit judicial review of the decision.

Most negotiated procedures require that an issue within the scope of the agreement ultimately be resolved by an arbitrator whose determination is binding on the agency, unless the arbitrator has exceeded his or her authority or rendered an award inconsistent with law or regulation. If the agency or union considers the award improper, either may appeal it to the Federal Labor Relations Council. However, only a small percent of grievances filed reach this stage.

### TIMELINESS

Employees normally desire a prompt decision on their grievances, and when grievants are confronted by long periods of inaction and delay their agitation and dissatisfaction are likely to increase. Moreover, once relief is finally granted, it may no longer be appropriate because of a change in the employee's status. All but one of the systems we reviewed had time limits for resolving grievances, but in many instances these were not met. In some cases, grievances have remained unresolved for more than a year. At times, extensions are with the consent of both parties, while in others, the delays are caused by agency or grievant inaction.

In conformance with 5 C.F.R. 771, the agency grievance systems at Customs Region VIII, McClellan Air Force Base, and Charleston Naval Shipyard specify that grievances should be resolved within 90 days from filing of the initial complaint. At Customs Region VIII, however, grievances received during fiscal year 1976 averaged about 150 days to resolve; when a grievance examiner was requested, the elapsed time was almost 200 days. At McClellan, the formal grievances took an average of 146 days to resolve, while at Charleston, the average was 118 days.

Several of the grievances filed during fiscal year 1976 took well over 200 days to process. Delays often resulted from the agency's slowness in appointing a grievance examiner or from a supervisor not responding within the time limits specified in the agency regulations. At times the employee was dilatory in pursuing the grievance. When the grievant does not prosecute the complaint, 5 C.F.R. 771 systems permit the agency to cancel the grievances. Employees have no recourse, however, if the agency is dilatory.

The grievance system for Foreign Service employees has a similar 90-day time limit to resolve a complaint. Unlike 5 C.F.R. 771 systems, however, the grievant may appeal to the independent Foreign Service Grievance Board once this period has elapsed without a satisfactory agency resolution. This gives the agency an incentive to conform to the time frame, ensuring the employee a timely review.

Under negotiated grievance procedures at McClellan, if the grievance is not resolved to the employee's satisfaction within the established time, the grievant or the union may proceed to the next step of the grievance procedure. A similar provision applies to the negotiated procedure at the Charleston Naval Shipyard.

#### LITTLE OR NO COST TO GRIEVANT

Employees should be able to seek relief without incurring excessive personal costs. We found that the economic burden on individual employees varies. Foreign Service employees at the Department of State are by statute authorized to use official time to pursue a grievance. If the grievant chooses a fellow employee to help, that person is also entitled by statute to use official time. The cost of counsel is, however, borne by the individual. Once the complaint reaches the Grievance Board--the equivalent of arbitration--all of the expenses of that proceeding, such as the grievant's travel, preparation of a transcript, and Board members' salaries, are absorbed by the Government.

Employees using grievance procedures negotiated under Executive Order 11491, such as the one between the Metal Trades Council and the Charleston Naval Shipyard, typically are permitted by the negotiated agreement to pursue their grievances while on official time. This frequently includes time to prepare and present grievances. Their representatives and witnesses likewise may participate in the grievance process without any loss of pay or leave. If the union decides to pursue the employee's case to arbitration, usually the union and the agency share the costs, which sometimes exceed \$1,000. Only the agency or the union have the authority to invoke arbitration.

Agency procedures pursuant to 5 C.F.R. 771 permit employees' representatives and witnesses employed by the same agency to use reasonable official time for presenting a grievance. Official time is not allowed to prepare grievances. All costs of the grievance examiner's inquiry are borne by the Government.

## PERCEPTION OF FAIRNESS

The test of whether a particular grievance system works is whether employees perceive it to be fair. This will largely depend on the extent to which the procedure embodies the other elements of a model system. Because measuring the subjective appraisals of the entire work force at each agency is impractical, we relied primarily on the opinion of union officials at those agencies which have an exclusive representative. We found that these perceptions vary greatly.

At TVA, officials of both the Trades and Labor Council and the Salary Policy Employee Panel, bargaining agents for blue-collar and white-collar employees, expressed great confidence in the fairness of their negotiated grievance procedures. Trades and Labor Council representatives thought the negotiated procedure should preclude bargaining unit employees from pursuing statutory appeals before the Civil Service Commission.

Officials of the American Foreign Service Association, the exclusive representative for Foreign Service employees in the Department of State, reserved judgment on their statutory grievance procedure because it has only been operational since 1976. Because they were involved in developing the legislation and the attendant procedures, they believed that, on paper at least, the system was fair.

Union officials at Charleston Naval Shipyard said that the negotiated procedures were fair as written, but in many instances were applied unfairly to the employees. For example, one union official said the agency frequently does not make all documentary evidence concerning grievances available to the union. Officials stated that the middle managers who review grievances are rarely able to empathize with employees and to render impartial decisions. They also said that employees of different divisions were treated differently for similar cases.

## CHAPTER 5

### CONCLUSIONS AND RECOMMENDATIONS

#### CONCLUSIONS

Grievance procedures for the Federal work force should provide equal rights for redress. Procedures may be properly adjusted to meet overriding considerations and particular circumstances and must be sufficiently flexible to fit unique job situations and career patterns, but the general protections should be equal. Employees acting through a certified collective bargaining agent should be permitted to adjust these procedures as part of the negotiation process, but the rights of Federal employees should be protected whether or not an individual is included in or excluded from a bargaining unit.

An effective grievance system should aid the agency in carrying out its management functions by reflecting employee concerns and dissatisfactions. These problems, if not aired and resolved, are likely to be magnified out of proportion and have a deleterious impact on employee morale and performance.

Acting through exclusive bargaining representatives, many Federal employees are able to negotiate grievance procedures that have most of the attributes of a model system. The principal limitation of existing negotiated systems is the exclusion of many issues of concern to employees. These employees, as well as those who either choose not to organize or are excluded from collective bargaining, are confronted by a bewildering array of appeals procedures for resolving their work-related complaints. Bringing the majority of these complaints within negotiated procedures and agency procedures could simplify the tasks of both management and employees.

For those employees not included within a recognized bargaining unit, the agency procedures created pursuant to 5 C.F.R. 771 have several shortcomings. Besides the great number of excluded issue areas, the agency procedures often do not provide for an impartial adjudicator and do not give employees a method to compel agency action on grievances. Whether to hold a hearing as part of the inquiry is within the grievance examiner's discretion; however, no written criteria exist for making this determination. If the grievance examiner rules in favor of the grievant, the findings are merely recommendations which may be rejected by the agency. This rejection may be based solely on the grounds that the recommendations are "unacceptable."

Although most agency grievance systems have time limits for agency and grievant action in processing a complaint, in many cases these are not met. The agency is authorized to dismiss a complaint based on grievant inaction, but the grievant has no recourse when the agency similarly fails to comply with established procedures.

RECOMMENDATIONS TO THE CHAIRMAN,  
CIVIL SERVICE COMMISSION

We recommend that the Chairman, Civil Service Commission, take action to improve existing grievance systems. We specifically recommend, under agency grievance systems (5 C.F.R. 771):

- The appointment of an impartial grievance examiner (not under agency control) to review grievances which are not resolved by the deciding official during the formal procedures in a manner acceptable to the employee.
- The development of specific guidance for grievance examiners to use in determining when an employee is entitled to a hearing.
- A requirement that the grievance examiner's decision be accepted unless the agency head determines that the decision was arbitrary or capricious; contrary to law, regulation, or established agency policy; procedurally defective; or not supported by substantial evidence.
- An appeal right to the Civil Service Commission (or its successor) if the agency fails to comply with established requirements and procedures.

We further specifically recommend, under negotiated grievance procedures (Executive Order 11491, as amended), that the scope of grievable issues be expanded to permit the inclusion of matters now covered by statutory appeal procedures, except those for which a separate procedure can be justified.

Certain Federal employees in the executive branch are not covered by 5 C.F.R. 771 or a statutory procedure and, therefore, are not afforded similar rights for redress. We recommend that the Civil Service Commission extend coverage of 5 C.F.R. 771 procedures or take steps to ensure that comparable grievance systems are available to these employees. In some instances this can be done by regulation, and in others it will require legislation.

## AGENCY COMMENTS

We did not obtain formal written comments from the Civil Service Commission and other Federal agencies. We did, however, discuss matters in this report informally with officials of the Civil Service Commission. In general, Commission officials said the report describes many of the problems they have noted with existing agency grievance systems, particularly in relation to the timeliness of grievance processing and the general qualifications of agency grievance examiners.

## CHAPTER 6

### SCOPE OF REVIEW

We reviewed the grievance procedures in six Government agencies. We studied the statutes, regulations, and agency policies applicable to grievance systems in the Federal Government and analyzed case files of formal grievances that had been resolved. We also discussed the various grievance systems with agency officials and, where possible, with labor representatives.

We performed our review at the following locations:

- FBI headquarters, Washington, D.C.
- Department of State, Washington, D.C.
- TVA, Knoxville, Tenn.
- Charleston Naval Shipyard, Charleston, S.C.
- Region VIII headquarters, U.S. Customs Service, San Francisco, Calif.
- McClellan Air Force Base, Sacramento, Calif.



TITLE 5, CODE OF FEDERAL REGULATIONS,PART 771**PART 771—AGENCY GRIEVANCE SYSTEM****Subpart A—General Provisions**

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**AUTHORITY:** 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218; E.O. 10987, 3 CFR, 1959-1963 Comp., p. 519.

**SOURCE:** 39 FR 32542, Sept. 9, 1974, unless otherwise noted.

**Subpart A—General Provisions**

§ 771.101 Purpose.

This part sets forth the regulations under which each agency shall establish an agency grievance system.

§ 771.102 Definitions.

In this part:

(a) Days mean calendar days.

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(b) Employee includes a former employee of an agency.

(c) Examiner means a person utilized by an agency to conduct an inquiry, and, when necessary, hold a hearing on a grievance.

(d) Grievance 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 which is subject to the control of agency management.

## COVERAGE

## § 771.103 Agency coverage.

(a) *Agencies covered.* Except as provided in paragraph (b) of this section, this part applies to the executive agencies and military departments as defined by sections 105 and 102 of title 5, United States Code, and to those portions of the legislative and judicial branches and of the government of the District of Columbia having positions in the competitive service.

(b) *Agencies not covered.* This part does not apply to the Central Intelligence Agency, the National Security Agency, the Federal Bureau of Investigation, the Atomic Energy Commission, the Tennessee Valley Authority, and the U.S. Postal Service.

## § 771.104 Establishment and publication.

(a) Each agency shall establish and administer an agency grievance system in accordance with this part.

(b) In the development of its grievance system, each agency shall give its employees an opportunity to express their views and shall consult or negotiate with recognized labor organizations as required under the form of recognition held.

(c) Each agency shall publish the provisions of its grievance system; make copies available to employees, their representatives, veterans organizations, and recognized labor organizations; and notify employees where copies are available for review.

## § 771.105 Presentation of grievance.

(a) An employee, in presenting a grievance under an agency grievance system, shall:

(1) Be assured freedom from restraint, interference, coercion, discrimination, or reprisal;

(2) Have the right to be accompanied, represented, and advised by a representative of his own choosing; and

(3) Be assured a reasonable amount of official time if he is otherwise in an active duty status.

(b) When an employee designates another employee of the agency as his representative, the representative, in presenting a grievance under an agency grievance system shall:

(1) Be assured freedom from restraint, interference, coercion, discrimination, or reprisal; and

(2) Be assured a reasonable amount of official time if he is otherwise in an active duty status.

(c) The agency shall have the right:

(1) To disallow the employee's choice of another agency employee as his/her representative if that choice conflicts with priority needs of the Government or would give rise to unreasonable costs to the Government; and

(2) To disallow any selection the employee makes with regard to a representative on the grounds of conflict of interest or conflict of position.

(d) The employee shall have the right to challenge the decision to disallow his/her choice of representative to the head of the agency or a person the head of the agency has designated and obtain a decision before proceeding with a grievance, in accordance with procedures described in the agency grievance system. The decision of the head of the agency or his/her designee will be made no later than 10 days after receipt of the employee challenge unless another reasonable time limit is specified in the agency grievance system. The decision will be final.

[39 FR 32542, Sept. 9, 1974, as amended at 41 FR 48110, Nov. 2, 1976]

## § 771.106 Allegations of unfair labor practices.

(a) An allegation of an unfair labor practice made in connection with a grievance under this part shall be incorporated in the grievance and processed under this part; however, the decision on the grievance may not be construed as an unfair labor practice decision under Executive Order 11491, as amended.

(b) If an allegation of an unfair labor practice made in connection with a grievance under this part has already been filed with the Assistant Secretary of Labor, the grievance may not be processed under this part.

## § 771.107 Employee coverage.

(a) *Employees covered.* Except as provided in paragraph (b) of this section,

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this subpart applies to all employees of an agency.

(b) *Employees not covered.* This subpart does not apply to:

(1) A noncitizen appointed under Civil Service Rule VIII, § 3 of this chapter;

(2) An alien appointed under section 1471(5) of title 22, United States Code;

(3) A nonappropriated-fund employee as defined in section 2105(c) of title 5 or section 4202(5) of title 38, United States Code;

(4) A physician, dentist, or nurse appointed under chapter 73 of title 38, United States Code;

(5) A Foreign Service officer, Foreign Service Reserve officer, Foreign Service Information officer, and staff officers and employees appointed under chapter 14, chapter 14A, or chapter 32 of title 22, United States Code; and

(6) An employee otherwise included under paragraph (a) of this section when he is a member of a class of employees excluded from coverage by the Commission on the recommendation of the head of the agency concerned.

#### § 771.108 Grievance coverage.

(a) Except as provided in paragraphs (b) and (c) of this section, this subpart applies to any matter of concern or dissatisfaction to an employee which is subject to the control of agency management or any matter in which an employee alleges that coercion, reprisal, or retaliation has been practiced against him or her.

(b) This subpart does not apply to:

(1) A matter which is subject to final administrative review outside the agency under law or the regulations of the Commission;

(2) The content of published agency policy;

(3) Nonselection for promotion from a group of properly ranked and certified candidates;

(4) A grievance covered by procedures established by an agreement negotiated under section 11 of Executive Order 11491, as amended;

(5) An action terminating a temporary promotion within a maximum period of 2 years and returning the employee to the position from which he was temporarily promoted or reassigning or demoting him to a different position that is not at a lower grade or level than the position from which he was temporarily promoted;

(6) Nonadoption of a suggestion or disapproval of a quality salary increase, performance award, or other kind of honorary or discretionary award; or,

(7) A preliminary warning or notice of an action which, if effected, would be covered under the grievance system or excluded from coverage under subparagraph (1) of this paragraph.

(c) This subpart does not apply to a separation action. However, an agency may extend the coverage of its grievance system to any aspect of a separation action that is not subject to final administrative review outside the agency under law or the regulations of the Commission.

[39 FR 32542, Sept. 9, 1974, as amended at 41 FR 22550, June 4, 1976; 41 FR 30320, July 23, 1976; 41 FR 46866, Oct. 26, 1976]

#### THE GRIEVANCE

##### § 771.109 Right to present grievance.

(a) An employee is entitled to present a grievance under the agency grievance system. The agency shall accept and process a properly presented grievance in accordance with its grievance system except that an allegation of discrimination made in connection with a grievance shall be processed under Part 713 of this chapter.

(b) An employee, in presenting his grievance, is entitled to communicate with and seek advice from:

(1) His servicing personnel office;

(2) The Director of Equal Employment Opportunity of the agency or an Equal Employment Opportunity Officer or Counselor designated under Part 713 of this chapter;

(3) The counselor of the agency, or his deputy, designated under Part 735 of this chapter; and

(4) A supervisory or management official of higher rank than the employee's immediate supervisor.

##### § 771.110 Avoidance of delay.

(a) An agency shall give each grievance full, impartial, and prompt consideration and shall require that the decision on a grievance be issued within 90 days after initiation of the informal procedure established under § 771.112.

(b) To insure orderly processing, an agency shall establish time limits for:

(1) Completion of action under the informal procedure;

(2) Filing a grievance under the formal procedure after completion of action under the informal procedure;

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(3) Adjustment or referral of the grievance under § 771.116(b);

(4) Completion of the examiner's inquiry; and

(5) Issuance of the decision after completion of the examiner's inquiry.

## § 771.111 Cancellation of grievance.

An agency shall cancel a grievance:

(a) At the employee's request;

(b) Upon termination of the employee's employment with the agency unless the personal relief sought by the employee may be granted after termination of his employment;

(c) Upon the death of the employee unless the grievance involves a question of pay; or

(d) For failure to prosecute if the employee does not furnish required information and duly proceed with the advancement of his grievance.

## INFORMAL GRIEVANCE PROCEDURE

## § 771.112 Establishment of informal procedure.

Each agency shall establish a procedure appropriate to its organization and delegations of authority for the informal adjustment of grievances.

## § 771.113 Presenting grievance under informal procedure.

(a) *Time limit.* (1) An employee may present a grievance concerning a continuing practice or condition at any time.

(2) An employee shall present a grievance concerning a particular act or occurrence within 15 days of the date of that act or occurrence or the date he became aware of that act or occurrence. The agency may extend the time limit in this subparagraph for good cause shown by the employee.

(b) *Form of grievance.* An employee may present a grievance under the informal procedure either orally or in writing.

## § 771.114 Mandatory use of informal procedure.

Each agency shall require that an employee complete action under the informal procedure before a grievance concerning the same matter will be accepted from him for processing under the formal procedure.

## FORMAL GRIEVANCE PROCEDURE

## § 771.115 Presenting grievance under formal procedure.

(a) An employee is entitled to present a grievance under the formal procedure

if he (1) has completed action under the informal procedure and (2) presents the grievance within the time limit established by the agency under § 771.110 (b) (2).

(b) The grievance shall (1) be in writing, (2) contain sufficient detail to identify and clarify the basis for the grievance, and (3) specify the personal relief requested by the employee.

## § 771.116 Processing grievance under formal procedure.

(a) The grievance shall be referred to a deciding official at a level of management designated by the agency. The deciding official shall be at a higher administrative level than any official who could have adjusted the grievance under the informal procedure.

(b) The deciding official shall attempt to resolve the grievance. If he cannot resolve the grievance in a manner acceptable to the employee, he shall refer the grievance for inquiry by an examiner.

(c) An examiner who meets the standards of experience and training prescribed by the Commission shall conduct an inquiry on a grievance referred under paragraph (b) of this section. The agency shall provide a method for selecting an examiner who (1) is fair, impartial, and objective, and (2) does not occupy a position which is, directly or indirectly, under the jurisdiction of an official involved in the grievance or the deciding official, except when such an official is the head of the agency. If an agency desires to use an examiner from another agency, the agency shall make the arrangements. When these arrangements are made, the examiner is on a reimbursable detail to the requesting agency.

(d) The examiner shall conduct an inquiry of a nature and scope appropriate to the issues involved in the grievance. At the examiner's discretion, the inquiry may consist of:

(1) The securing of documentary evidence;

(2) Personal interviews;

(3) A group meeting;

(4) A hearing; or

(5) Any combination of subparagraphs (1) through (4) of this paragraph.

(e) If a group meeting or hearing is held, a labor organization which holds exclusive recognition for the unit where the employee is located shall be given an opportunity to be represented.

(f) If a hearing is held the examiner shall conduct the hearing to conform

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with the following. (1) Except as provided in paragraph (e) of this section attendance at a hearing is limited to persons determined by the examiner to have a direct connection with the grievance.

(2) The hearing is conducted so as to bring out pertinent facts, including the production of pertinent records.

(3) Rules of evidence are not applied strictly, but the examiner shall exclude irrelevant or unduly repetitious testimony.

(4) Decisions on the admissibility of evidence or testimony are made by the examiner.

(5) Testimony is under oath or affirmation.

(6) The examiner shall give the parties opportunity to cross-examine witnesses who appear and testify.

(7) The examiner may exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing.

(8) Both parties are entitled to produce witnesses.

(9) The agency shall make its employees available as witnesses before an examiner when requested by the examiner after consideration of a request by the employee or the agency.

(10) If the agency determines that it is not administratively practicable to comply with the request of the examiner, it shall notify him in writing of the reasons for that determination. If, in the examiner's judgment, compliance with his request is essential to a full and fair hearing, he may postpone the hearing until such time as the agency complies with his request.

(11) Employees of the agency are in a duty status during the time they are made available as witnesses.

(12) The agency shall assure witnesses freedom from restraint, interference, coercion, discrimination, or reprisal in presenting their testimony.

(13) The examiner, in his discretion, shall determine how the hearing shall be reported and shall have a verbatim transcript or written summary of the hearing prepared, including all pertinent documents submitted to and accepted by him. When the hearing is reported verbatim, the examiner shall make the transcript a part of the record of the proceedings. When the hearing is not reported verbatim, a suitable summary of the pertinent testimony shall be made. When agreed to in writing by the par-

ties, the summary constitutes the report of the hearing and is made a part of the record of the proceedings. If the examiner 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.

(g) The examiner shall establish a grievance file containing all documents related to the grievance, including statements of witnesses, records or copies thereof, and the report of the hearing when a hearing was held. On completion of his inquiry, the examiner shall make the grievance file available to the employee and his representative for review and comment. Their comments, if any, shall be included in the file.

(h) After the employee and his representative have been given an opportunity to review the grievance file, the examiner shall prepare a report of his findings and recommendations and submit that report, with the grievance file, to the deciding official. The examiner shall also furnish the employee and his representative a copy of the report.

(i) The deciding official shall accept the examiner's recommendations and issue the decision on the grievance, except that:

(1) If the head of the agency is the deciding official, he shall consider the grievance file and make the decision on the basis thereof.

(2) If the deciding official decides to grant the relief sought by the employee, he shall issue the decision accordingly without regard to the examiner's recommendations.

(3) If the deciding official determines that the examiner's recommendations are unacceptable, he shall transmit the grievance file with a specific statement of the basis for that determination to a higher level of authority, designated by the agency, for decision. The deciding official shall also furnish the employee and his representative a copy of that statement.

(j) The decision on the grievance shall be in writing and shall contain findings on all issues covered by the examiner's inquiry.

## NEGOTIATED GRIEVANCE SYSTEMS

§ 771.117 Negotiated grievance systems.

This subpart does not apply to a grievance system established through a ne-

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gotiated agreement between an agency and a labor organization to which exclusive recognition has been granted

**COMMISSION ACTION**

§ 771.118 Employee requests for review.

The Commission does not act on a request by an employee for a review of an agency's action under an agency grievance system.

§ 771.119 Review of grievance systems.

The Commission reviews agency grievance systems through its inspection activity. When it finds that a system or operations thereunder do not conform with the requirements of this part, the Commission requires corrective action to bring the system or operations into conformity.

EXECUTIVE ORDER 11491,  
AS AMENDED--SECTION 13

**Sec. 13. *Grievance and arbitration procedures.*** (a) An agreement between an agency and a labor organization shall provide a procedure, applicable only to the unit, for the consideration of grievances. The coverage and scope of the procedure shall be negotiated by the parties to the agreement with the exception that it may not cover matters for which a statutory appeal procedure exists and so long as it does not otherwise conflict with statute or this Order. It shall be the exclusive procedure available to the parties and the employees in the unit for resolving grievances which fall within its coverage. However, any employee or group of employees in the unit may present such grievances to the agency and have them adjusted, without the intervention of the exclusive representative, as long as the adjustment is not inconsistent with the terms of the agreement and the exclusive representative has been given opportunity to be present at the adjustment.

(b) A negotiated procedure may provide for arbitration of grievances. Arbitration may be invoked only by the agency or the exclusive representative. Either party may file exceptions to an arbitrator's award with the Council, under regulations prescribed by the Council.

(c) [Revoked.]

(d) Questions that cannot be resolved by the parties as to whether or not a grievance is on a matter for which a statutory appeal procedure exists, shall be referred to the Assistant Secretary for decision. Other questions as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement, may by agreement of the parties be submitted to arbitration or may be referred to the Assistant Secretary for decision.

(e) [Revoked.]