

## **ARTICLE 9**

### **Grievance Procedure**

#### **Section 1. General.**

A. A grievance is defined as a written complaint alleging that there has been a violation, misinterpretation or misapplication of any condition of employment contained in this Agreement, or of any rule, policy or regulation of the Employer, deemed to be a violation of this Agreement or a claim of discipline without just cause. Nothing shall prohibit the grievant from contending that the alleged violation arises out of an existing mutually accepted past practice. The concept of past practice shall not apply to matters which are solely operational in nature.

B. Employees shall have the right to present grievances in person or through a designated Union Representative at the appropriate step of the grievance procedure. No discussion shall occur on the grievance until the designated Union Representative has been afforded a reasonable opportunity to be present at any grievance meetings with the employee(s).

Upon request, a supervisor will assist a grievant in contacting the designated Steward or Representative. Any settlement reached with a grievant without the accompaniment of a Union Representative shall be communicated to the Union and shall only be implemented following the approval of the settlement by the Union.

C. The Union shall determine the representative(s) at step one, or step two of the grievance procedure not to exceed two representatives in attendance at any grievance conference.

D. Only related subject matters shall be covered in any one grievance. A grievance shall contain the clearest possible statement of the grievance by indicating the issue involved, the relief sought, the date the incident or alleged violation took place, and the specific section or sections of this Agreement involved if any. The grievance shall be presented to the immediate supervisor on a mutually agreed upon form, signed and dated by the grievant(s).

E. All grievances shall be presented promptly and no later than fifteen (15) week days from the date the grievant knew or could reasonably have known of the facts or the occurrence of the event giving rise to the alleged grievance. Week days, for the purpose of the Article, are defined as Monday through Friday inclusive, excluding holidays.

F. The Union, through an authorized Officer or Staff Representative, may grieve an alleged violation concerning the application or interpretation of this Agreement in the manner provided herein. Such grievance shall identify, to the extent possible, employees affected. The Union may itself grieve alleged violations of Articles conferring rights solely upon the Union.

- G. Grievances which by nature cannot be settled at Step One of the grievance procedure may, upon mutual agreement, be filed at Step Two.
- H. Group grievances are defined as, and limited to, those grievances which cover more than one employee and which pertain to like circumstances for the grievants involved. Group grievances shall name all employees and/or classifications and all work locations covered and may, at the option of the Union, be submitted directly to Step Two. Group grievances shall be so designated at Step One of the grievance procedure, although names may be added or deleted prior to the conclusion of the Step Two hearing. The Union shall, at the time of filing such a grievance, also provide a copy to the Office of the State Employer.
- I. It is expressly understood and agreed that the specific provisions of this Agreement take precedence over policy, rules, regulations, conditions and practices contrary thereto, except as otherwise provided in the Civil Service Rules and Regulations.
- J. There shall be no appeal beyond Step Two on initial probationary service ratings or involuntary separation of initial probationary employees which occur during or upon completion of the probationary period, except that grievances alleging unlawful discrimination against a probationary employee may be appealed by the Union to arbitration.
- K. Counseling memoranda, annual ratings, and reprimands are not appealable beyond Step Two of the grievance procedure, but less than satisfactory interim rating, follow up rating, or probationary rating grievances of employees with civil service status, are appealable to arbitration.
- L. The parties agree that as a principle of contract interpretation employees shall give full performance of duty while a non-dismissal and non-suspension-grievance is being processed.
- M. Grievances filed before the effective date of the Agreement shall be concluded only under the provisions of the previous agreement as though that agreement were still in effect.

## **Section 2. Grievance Steps.**

- A. Step One: Informal discussion of complaints between employees and/or stewards and supervisors is encouraged prior to filing of grievances. Within ten (10) week days of receipt of the written grievance from the employee(s) or the designated Union Representative, the supervisor or designated management official will, on his/her own initiative or in response to a request from the Union or the employee, schedule a meeting with the employee(s) and/or the designated the Union Representative to discuss the grievance. Grievance meetings at Step One involving 2nd or 3rd shift employees shall be held as conveniently as possible to the employee's shift and normally precede or immediately follow the employee's shift.

The supervisor or designated management official will return a written decision to the employee(s) and the Union Representative within ten (10) weekdays after the Step One grievance meeting. If no Step One meeting is held, the decision is due within ten (10) weekdays after receipt of the grievance at Step One. The answer will be responsive to the grievance to the extent possible and shall indicate the basis for the determination.

- B. Step Two: If not satisfied with the Employer's answer in Step One, to be considered further, the grievance shall be appealed to the departmental Appointing Authority or his/her designee within ten (10) week days from receipt of the answer in Step One. A Step Two conference shall be mandatory, at the request of either party, on any grievance subject to arbitration under this Agreement.

The Step Two grievance conference is for the purpose of discussing the grievance, discovering the facts, and attempting to reach a mutually acceptable resolution of the grievance. Such conference shall be conducted as an informal discussion and not a formal hearing. The written decision of the Employer will be placed on the grievance form by the departmental Appointing Authority or his/her designee and returned to the grievant(s) and the designated Union Representative within ten (10) week days from the date the Step Two conference is held. If a Step Two conference is not required, the Employer's written response must be given within ten (10) week days from the date of the receipt of the grievance at Step Two.

If the grievant or Union decides to modify or amend a grievance or raise new issues, such action must be taken by the conclusion of the Step Two conference.

- C. Arbitration: If not satisfied with the Employer answer in Step Two, only the Union may appeal the grievance to arbitration within twenty-five (25) week days from the date of the Department's answer in Step Two. If an unresolved grievance is not timely appealed to arbitration, it shall be considered terminated on the basis of the Employer's Step Two answer without prejudice or precedent in the resolution of future grievances. The parties may propose consolidation of grievances containing similar issues.

In the event the department does not provide the required Step Two answer to a grievance within the time limit above, the union may request the Office of the State Employer to schedule and hold a meeting, within ten (10) weekdays, where the department will provide an oral response to the grievance sufficient to enable the Union to make an informed decision regarding its merits.

At the request of the Union following a Step Two denial of a disciplinary grievance, a Staff Representative of the Union and the Department where the grievance originates discuss the matter. An effort shall be made in such discussions to arrive at fair and equitable grievance settlements to avoid the necessity of arbitration. Such settlements, if reached, shall be confirmed in writing when agreed to by the departmental Employer and the Union.

If not satisfied with the Employer answer in Step Two, the Union may appeal the grievance to arbitration by notifying the Office of the State Employer in writing prior to or concurrent with submission of the demand for arbitration according to the provisions of this section.

Before the arbitration hearing, representative(s) of the Union, the Office of the State Employer, and/or the departmental Employer may request a meeting to review the grievance. An effort shall be made in such discussions to arrive at a fair and equitable grievance settlement to avoid the necessity of arbitration. Such settlement shall be confirmed in writing when agreed to by the Union and the Office of the State Employer.

If the grievance is not resolved through such meeting, the Union may continue to arbitration. This process shall not impede or delay the grievance arbitration process. All issues not previously raised, including threshold issues, shall be raised by either party in writing within fifteen (15) week days following the Employer's receipt of the demand for arbitration.

The Union and the Office of the State Employer will each nominate five (5) arbitrators to serve on a panel to hear grievances appealed to arbitration. Any arbitrator nominated by both parties shall serve on the panel. The Employer and the Union may each strike up to three (3) names remaining on the other party's list. All names not stricken shall serve on the panel.

The names of the arbitrators designated to serve on the panel and who agree to serve shall be listed in alphabetical order and shall serve on a rotating basis. Upon notice to the State Employer that a grievance is appealed to arbitration subject to the approval of the Union's grievance committee, the grievance will be assigned to the next arbitrator on the list. Upon notice to the State Employer that the grievance has been approved for arbitration, the Employer will send, within ten (10) weekdays, a request for arbitration to the arbitrator so assigned and provide copies of the request to the affected department and the Union.

Each request for arbitration shall require the arbitrator schedule and hold the hearing within sixty (60) days of receiving the request for arbitration. The parties are expected to set aside all normal business in order to schedule and hold the hearing within sixty (60) days. By mutual written agreement, the parties may waive the sixty (60) day requirement. Upon notice from the arbitrator that the sixty (60) day time limit cannot be met, the State Employer shall send a second request for arbitration to the next arbitrator on the list.

#### C 1 Expedited Arbitration:

- a. An expedited arbitration system shall be used for all appeals to arbitration that involve the involuntary separation of an employee from state employment.

- b. All provisions of section C, above shall apply to expedited arbitration unless modified herein. The arbitrator selected shall be requested to hear the case within 45 calendar days of being assigned to the case. By mutual written agreement, the parties may waive the forty-five (45) day time limit. Upon receipt of notice from the Arbitrator that the forty-five (45) day time limit cannot be met, the Office of the state Employer shall send a second request for arbitration to the next Arbitrator on the list.
- c. Briefs, if any shall be filed simultaneously by the parties within 14 calendar days of the last day of the arbitration hearing.
- d. The decision of the Arbitrator shall be rendered within 14 calendar days of the closing of the record. By mutual agreement, the Arbitrator may issue a bench decision.

During January of each year, the Union and the State Employer have the right to remove one arbitrator each, from the panel. The Union and the Office of the State Employer will mutually agree upon the replacement arbitrator(s).

The Arbitrator will conduct the hearing in accordance with the rules of the American Arbitration Association (AAA), except as otherwise provided for in this agreement. The expenses and fees of the Arbitrator and the cost of the hearing room, if any, shall be borne by the party losing the arbitration. In the event the arbitrator rules that neither party totally prevails in the arbitration, the expenses and fees of the arbitrator and the cost of the hearing room, if any, shall be shared equally by the parties to the arbitration. The expenses of a court reporter shall be borne by the party requesting the reporter unless the parties agree to share such costs.

The Arbitrator shall only have the authority to adjust grievances in accordance with this Agreement, as provided in the Civil Service Rules and Regulations. The Arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in any way the provisions of the Civil Service Rules and Regulations or this Agreement and shall not make any award which in effect would grant the Union or the Employer any rights or privileges which were not obtained in the negotiation process. The authority of the Arbitrator shall remain subject to and subordinate to the limitations and restrictions on subject matter and personal jurisdiction in the Civil Service Rules and Regulations.

The decision of the Arbitrator will be final and binding on all parties to this Agreement, except as may be otherwise provided in the Civil Service Rules and Regulations. Arbitration decisions shall not be appealed to the Civil Service Commission, except any party may file with the State Personnel Director a complaint that the Arbitrator's decision violates, rescinds, limits, or modifies a Civil Service Rule or Regulation governing a prohibited subject of bargaining. When the Arbitrator declares a bench decision, such decision shall be rendered in writing within fifteen

(15) week days from the date of the arbitration hearing. The written decision of the Arbitrator shall be rendered within twenty (20) week days from the closing of the record of the hearing.

- D. Hearing and Record: The arbitrator shall fix the time and place for each hearing. Either party may be represented by representatives of their own choice. A party wishing a stenographic record shall make arrangements directly with a stenographer and shall notify the other party and the Arbitrator of such arrangements in advance of the hearing. The requesting party shall pay the cost of the record unless the parties agree to share such costs. If the transcript is agreed by the parties to be, or in appropriate cases determined by the Arbitrator to be, the official record of the proceeding, it must be made available to the Arbitrator and to the other party.
- E. Attendance at Hearings: Persons having a direct interest in the arbitration are entitled to attend hearings unless a party objects in which case the Arbitrator shall decide on attendance. The Arbitrator shall have the power to sequester any witness or witnesses during the testimony of other witnesses, except for the grievant who shall be entitled to remain during the course of the hearing.
- F. Adjournments: Adjournments may be granted by the Arbitrator upon the request of a party for good cause shown or upon his or her own initiative and shall adjourn if mutually agreed by the Union and the Employer. Cancellation fees, if any, shall be paid by the requesting party unless the adjournment is by mutual request.
- G. Oaths: The Arbitrator may require witnesses to testify under oath administered by the Arbitrator or other qualified person and, if requested by a party, shall do so.
- H. Evidence: The Arbitrator shall be the sole judge of the admissibility of the evidence offered. The legal rules of evidence shall not apply.

### **Section 3. Time Limits.**

Grievances may be withdrawn once without prejudice at any step of the grievance procedure. A grievance which has not been settled and has been withdrawn may be reinstated based on new evidence, not previously available, within thirty (30) week days from the date of withdrawal.

Grievances not appealed within the designated time limits in Steps Two of the grievance procedure will automatically result in the grievance being considered closed. Grievances not answered by the Employer within the designated time limits in any step of the grievance procedure shall be considered automatically appealable and processed to the next step.

Where the Employer does not provide the required answer to a grievance within the time limit provided at Steps One or Two, the time limits for filing at the next step shall be extended for ten (10) additional week days. The time limits at any step or for any

hearing may be extended by written mutual agreement of the parties involved at the particular step.

If the Employer Representative with whom a grievance appeal must be filed is located in a city other than that in which the grievance was processed in the preceding step, the mailing of the grievance appeal form shall constitute a timely appeal if it is postmarked within the appeal period. Similarly, when an Employer answer must be forwarded to a city other than that in which the Employer Representative works, the mailing of the answer shall constitute a timely response if it is postmarked within the answer period.

#### **Section 4. Retroactivity.**

Settlement of grievances may or may not be retroactive as the equities of the particular case may demand as determined by the Arbitrator. In any case, where it is determined that the award should be applied retroactively, except for administrative errors relating to the payment of wages, the maximum period of retroactivity allowed shall be a date not earlier than one hundred and eighty (180) calendar days prior to the initiation of the written grievance in Step One.

Employees who voluntarily terminate their employment will have their grievances immediately withdrawn unless such grievance directly affects their status upon termination or a claim of vested money interest, in which cases the employee may benefit by any later settlement of a grievance in which they were involved.

It is the intent of this provision that employees be made whole in accordance with favorable arbitral findings on the merits of a particular dispute; however, all claims for back wages shall be limited to the amount of straight time wages that the employee would otherwise have earned less any unemployment compensation, workers compensation, long term disability compensation, social security, welfare or compensation from any employment or other source received during the period for which back pay is provided; however, earnings from approved supplemental employment shall not be so deducted.

#### **Section 5. Exclusive Procedure.**

Except as otherwise provided in the Civil Service Rules or Regulations, the grievance procedure set out above shall be exclusive and shall replace any other procedure for adjustment of grievances.

#### **Section 6. Processing Grievances.**

Whenever possible, the Grievant, or group grievance representative, and the designated Union Representative shall utilize non-work time to consult and prepare. When such preparation is not possible, the grievant or group grievance representative(s) and the designated representative will be permitted a reasonable amount of time, not to exceed one-half (½) hour without loss of pay, for consultation and preparation immediately prior to any scheduled grievance step meeting during their regularly scheduled hours of employment. Overtime is not authorized.

One (1) designated Steward or Chief Steward and the grievant will be permitted to process a grievance without loss of pay. In a group grievance a Steward or Chief Steward and/or Union Staff Representative, and up to two (2) grievants shall be entitled to appear without loss of pay to represent the group. The Steward or Chief Steward must have jurisdiction at one of the work sites represented in the grievance.

The Employer is not responsible for compensating any employees for time spent processing grievances outside their regularly scheduled hours of employment. The Employer is not responsible for any travel or subsistence expenses incurred by grievants or Stewards in processing grievances.

### **Section 7. Documents and Witnesses.**

Upon written request, the Union shall receive specific documents or records available from the Employer, in accordance with or not prohibited by law, and pertinent to the grievance under consideration. Discretion permitted under the Freedom of Information Act shall not be impaired by this Section.

Upon request, prior to Arbitration, all documents not previously provided or exchanged which either party intends to use as evidence will be forwarded to the other party. However, such response shall not limit either party in the presentation of necessary evidence, nor shall either party be limited from introducing any document or evidence it deems necessary to rebut the case of the other. Documents requested under this Section shall be provided in a timely manner.

At least ten (10) week days before a scheduled Arbitration Hearing, the Union and the Employer shall exchange a written list of the witnesses they plan to call including those witnesses the Union requests be relieved from duty. Nothing shall preclude the calling of previously unidentified witnesses.

Employees required to testify will be made available without loss of pay; however, whenever possible, they shall be placed on call to minimize time lost from work. Employees who have completed their testimony shall return promptly to work when their testimony is concluded unless they are required to assist the principal Union Representative(s) in the conduct of the case. The intent of the parties is to minimize time lost from work.