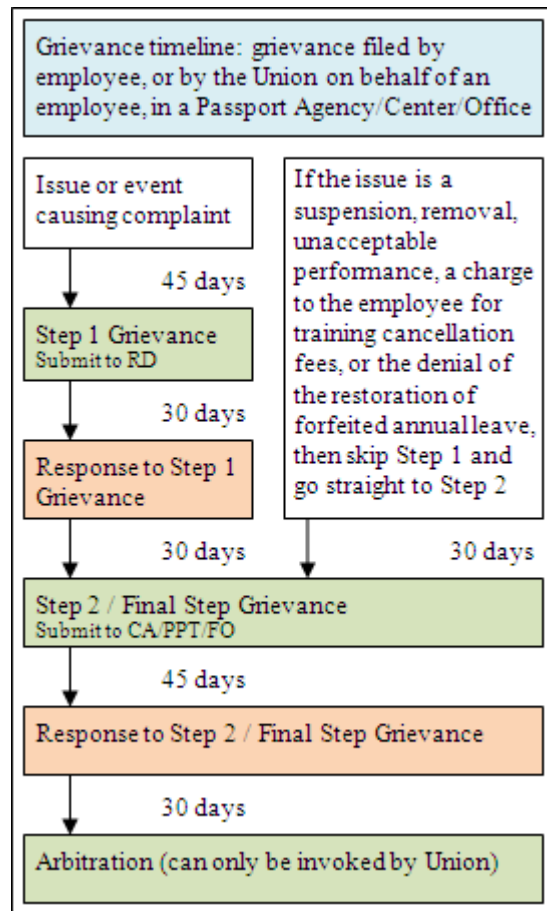


## Grievances - Chapter 9

This chapter covers the negotiated grievance procedure (sometimes called the “NGP”), which is found in Article 20 of the Master Agreement. 5 U.S.C. § 7121 requires that all collective bargaining agreements have a grievance procedure. All Union Stewards need to be familiar with the grievance process and need to know how to prepare, write, and file a grievance.

This chapter includes:

- Important points
- Be prepared
- Purpose of a grievance
  - What is a grievance?
  - Avoiding grievances
  - Why file a grievance?
- What can be grieved?
  - Examples of issues that have been grieved
  - Exclusions from the grievance process
  - Other actions: "only one bite at the apple"
- The grievance process
  - Taking action on a complaint
  - Obtaining guidance
  - Two levels of grievances
  - Skipping the Step 1 Grievance level
  - Deadlines
  - Consequences of missing deadlines
  - Grievance meetings
  - Grievances and ADR
  - Grievances and Arbitration
- How to write a grievance
  - Tips for writing a grievance
  - Level of evidence required
  - A 3-sentence grievance
  - Explanation of parts
  - Step by step process
- Grievance flow chart (detailed view)
- Samples



## **Important points**

- DEADLINES!!! Do not miss deadlines; otherwise you may lose the grievance.
- Remember that certain issues (listed in Article 20, Section 6) have a 30-day deadline and must be submitted at the Step 2 level (skipping Step 1).
- Keep members educated and informed about the process and deadlines.
- Be familiar with Article 20 of the Master Agreement.
- Keep Local 1998 Leadership informed of grievances as they progress.
- Use the samples on the website.
- Arbitration can only be invoked by a vote of the Executive Board.

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## **Be prepared**

Reading material:

- Article 20 of the contract (the negotiated grievance procedure)
- Article 21 of the contract (alternative dispute resolution)
- Article 22 of the contract (arbitration)
- Chapter 8 of the Steward Manual (how to handle complaints)
- Chapter 9 of the Steward Manual – this chapter (how to file grievances)

Well before an employee comes to you with a complaint, you should be familiar with the negotiated grievance procedure. This procedure is located in Article 20 of the Master Agreement, the latest version of which went into effect on July 20, 2009. Even if you have been a Steward for a number of years, you should familiarize yourself with the provisions of this article as there have been a number of significant changes and improvements in the grievance procedure since the previous contract (the July 3, 2001 version).

When an employee comes to you with a complaint, refer to Chapter 8 of this Steward Manual for tips on how to proceed. After investigating the complaint and reviewing the alternatives for resolution, if you have determined that the negotiated grievance procedure is the most appropriate means for seeking correction of the issues giving rise to the complaint then the following information will be useful.



*The negotiated grievance procedure (NGP) is found in Article 20 of the July 20, 2009 CBA*

## **Purpose of a grievance**

### **What is a grievance?**

Article 20, Section 2 of our CBA defines a "grievance" as follows:

A grievance means any complaint by a bargaining unit employee concerning any matter relating to employment of the employee; by the Union concerning any matter relating to the employment of any employee; by any employee, the Union or the Employer concerning the effect or interpretation or claim of breach of a collective bargaining agreement, or any claimed violation, misinterpretation, or misapplication of any law, rule or regulation affecting conditions of employment.

This definition is consistent with § 7103(a)(9) of the FSLMRS (5 U.S.C. 71).

Ultimately, a grievance is a written complaint made by an employee or a Union Steward. The complaint normally cites a legal authority that has been violated and usually includes a solution or request to remedy the problem. Going further into the grievance process simply involves elevating that complaint to higher levels of Management by certain prescribed deadlines. If that process does not end satisfactorily, then the Union may consider invoking arbitration, which involves an outside, independent person sitting in judgment on the merits of the complaint and the remedy requested.

### **Avoiding grievances**

It is never the goal of NFFE Local 1998 to file a grievance, unless it is necessary and warranted. Any problems or disputes that can be resolved amicably, early, and informally without resorting to a written grievance should be. Indeed, the July 20, 2009 CBA lengthened the deadline to file a grievance (in most instances) from 30 days to 45 days partly in order to allow for more amicable resolutions of disputes. However, there will be times when a grievance is necessary, and – as explained in Chapter 4 – a Union Steward should never fail to file a grievance and should always be mindful of timeframes and deadlines.

Some Union Stewards in the past have been reluctant to file grievances. Some did not want to “make waves” or impair their relationship with Management. Avoiding grievances and settling disputes amicably and informally is always the best option. Having a positive relationship with Management is always a good thing, and should be encouraged. However, human nature being what it is, there will be inevitably come a point where – regrettably – a grievance must be filed. At that time, the Union Steward’s job is to file the grievance.

In a roundabout way, Management actually expects the Union to file grievances,

and if the Union does not file any grievances, then Management will view the Union as not doing its job. This happened back in 1989, when Management attempted to decertify the Local 1998 as the Exclusive Representative of Passport Services' Bargaining Unit Employees. Management filed a petition with the Federal Labor Relations Authority (FLRA) in an attempt to remove Local 1998 as the exclusive representative of Passport Services. Part of Management's argument for decertification was the claim that "During the entire three year term of the current contract, the union has failed to prosecute or advance a single grievance. Only once since its recognition in 1982 has the union even proceeded to arbitration." Fortunately, Management was unsuccessful in its decertification efforts. However, the effort shows that even Management expects that grievances will be filed by the Union and that filing grievances is part of the Union's role.

## **Why file a grievance?**

The reason a Union Steward files a grievance is to contest a violation of the law or the CBA, to defend an employee, or to improve or protect working conditions. When an employee is treated unfairly at work, or when Management breaks the rules, a grievance is the means to right the wrong. Simply put, a grievance is filed in order to seek justice.

So, keep in mind:

- Attempt to work out problems (before the grievance deadline) informally, early, and amicably without resorting to a grievance
- As best you can, maintain a positive relationship with Management
- Be prepared to file grievances
- File grievances when necessary – do not hesitate to file a valid grievance
- Get help and guidance from Local 1998 leadership

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## **What can be grieved?**

There are many complaints that can be addressed via the grievance process. Some of these complaints include, but are not limited to, the following issues:

- Annual Appraisal/Evaluations
- Promotions
- Discrimination based on race, color, religion, sex, sexual orientation, national origin, age, marital status, disability, lawful political affiliation, participation in EEO activity, participation in Union activity
- Poor treatment (e.g., lack of respect, treating employees with no respect or common courtesy, creating a hostile work environment)
- Performance-based action (e.g., demotion)

- Disciplinary action (e.g., suspension, admonishment)
- Failure to pay employees overtime properly under the Fair Labor Standards Act (FLSA)
- Denial of official time
- Denial of annual leave or sick leave
- Failure to provide advanced written notification to the Union of a change in working conditions
- Dishonesty by a Management official
- Non-authorized computer surveillance by a Passport Services official
- Termination/suspension of compressed work schedule
- Any violation of the collective bargaining agreement (e.g., failing to abide by mandatory overtime provisions)



*NFFE Local 1998 Union Reps & FLSA Attorney Mike Snider after signing February 2005 settlement agreement.*

It is important to emphasize that the list above is NOT inclusive. There are many other issues and problems that can and have been grieved.

## **Exclusions from the grievance procedure**

Article 20, Section 3 of the contract lists a number of exclusions from the negotiated grievance procedure. Many of these exclusions are copied directly from 5 U.S.C. § 7121(c), while the remainder derive from other legal authorities and decisions. For example, FLRA caselaw establishes that the content of critical elements cannot be grieved, and this is merely restated in Article 20, Section 3(g) in order to avoid confusion. These matters may not be contested via the grievance process:

- a. Those matters excluded by Section 7121(c) of U.S.C.; i.e., any grievance concerning:
  - i. Any claimed violation of U.S.C. Chapter 73, Subchapter III, relating to prohibited political activities;
  - ii. Retirement, life insurance, or health insurance;
  - iii. A suspension or removal for reasons of national security;
  - iv. Any examination, certification, or appointment; or
  - v. The classification of any position which does not result in the reduction of grade or pay of an employee.
- b. Non-selection under promotion procedures from a properly ranked and certified list of candidates
- c. Issuance, suspension, or revocation of a security clearance
- d. Filling of positions outside the bargaining unit
- e. Individual appeals to Reductions-in-Force. This does not prevent the Union from filing a grievance alleging violation of this Master Agreement or violation of appropriate regulation on matters affecting other than an individual case.
- f. Non-adoption of a suggestion, disapprovals of quality step increases,

and performance awards or other kinds of discretionary or honorary awards. However, grievances may be filed alleging violations of Article 19.

- g. The content of critical elements and performance standards. However, grievances may be filed alleging violations of Article 18.
- h. The termination of temporary employees with appointments of 700 hours or less and probationary employees.

This list of exclusions from Article 20 of the CBA is THE LIST. There are no other exclusions. NFFE Local 1998 and Passport Services went to arbitration on May 21, 2009 over the issue of whether admonishments were excluded from the grievance procedure. The Union had filed a grievance on December 2, 2008 after 32 employees were admonished for allegedly conducting an unauthorized search in PIERS years earlier. Management denied the grievance, arguing that admonishments were excluded from the grievance procedure because A) they were not included and B) the 3 FAM excluded admonishments. The Union invoked arbitration on the threshold issue of whether admonishments are excluded. Arbitrator Sean Rogers issued his decision on July 31, 2009 and ruled for the Union. The Arbitrator stated that “[t]he express holding of [the FLRA] is that parties must **negotiate exclusions** from the scope of the grievance procedure and not **inclusions**. Absent an express exclusion of a condition of employment, the condition of employment is included in the scope of the grievance procedure.”



*NFFE's Bill Fenaughty along with Local 1998 VP Rob Arnold and Local 1998 President Colin Walle: heading to May 21, 2009 arbitration hearing on grievance exclusions.*

The fact that these matters are excluded from the grievance procedure does not always mean that they cannot be contested in another forum. For example, an employee who disputes the classification of his position can file a classification appeal, not a grievance. For example, an Executive Order mandates an administrative appeal process for an employee whose security clearance is denied, so he/she may contest that via the Department of State's appeal process (see Article 6, Section 28). For example, a probationary employee who is terminated based on race or gender can file an EEO complaint, while a probationary employee terminated for Union activity or for filing a grievance can file a ULP or an OSC complaint (see Chapter 11).

### **Other actions: “only one bite at the apple”**

While a matter may be subject to the grievance process, if an employee or the Union has already contested that complaint via another procedure, then that may prevent the matter from being grieved as well. For example, if an employee has filed a formal EEO complaint regarding the denial of his promotion, then generally that employee cannot also file a grievance regarding the same matter

(see Article 20, Section 4 of the Master Agreement).

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## **The Grievance process**

### **Taking action on a complaint**

The grievance process begins after the Union Steward has become aware of a potential violation, usually after an employee has asked the representative for assistance. For guidance on how to handle complaints, read Chapter 8 of this Steward Manual.

If the result of the complaint investigation is that a grievance is warranted, then take the following steps:

1. Meet with the employee to advise him/her of the results of your investigation.
2. Prepare the grievance for the employee's review.
3. Verify the remedy sought.
4. Determine if the remedy is obtainable. If not, advise the employee of what may be obtainable. Do not seek remedies that are not obtainable.
5. Do not promise to get the remedy sought.
6. Do not promise that the grievance, if not resolved, will be referred to arbitration.

Some things to remember:

- Be aware of time frames. Prepare a electronic document to keep track.
- Prepare a tracking form to keep track of the time frames.
- Prepare a grievance file with all necessary documents and notes.
  - Make a copy for the Union office, one for the grievance (minus your notes), and your own personal copy.
  - If seeking advice or assistance from the Local 1998 leadership make full copies for them.

### **Obtaining Guidance**

The Union representatives in an office should always keep each other aware of grievances and complaints as early as possible, and should update each other on the latest events relating to the grievance – unless there is a compelling reason offered by the grievant (e.g., conflict of interest) for keeping one or more of the local office representatives “out of the loop”.

The Union representatives should also keep the Local 1998 leadership (President, Vice President, Secretary-Treasurer, Recording Secretary, and Chief

Steward) apprised and up-to-date on any grievances filed. The Local 1998 leadership should be contacted for guidance on grievances, though NFFE Business Representatives may also be contacted directly (see Chapter 1).

- When seeking advice or assistance, remember, the advice or assistance you receive will be based on the information you have compiled.
  - A thorough investigation and good record keeping will result in good advice and assistance
  - Bad or inaccurate information will result in bad or inaccurate advice and could cause the loss of the grievance.
- It is also helpful to write a first draft of the grievance yourself, even if you have not written one before, and then email that draft to the Local 1998 leadership when seeking guidance.

## **Two levels of grievances**

In the July 20, 2009 Master Agreement there are two levels of grievances that can be filed by the Union:

- 1) A Step 1 Grievance, and
- 2) A Step 2 Grievance (also called a “Final Step” Grievance)

The parties agreed to eliminate the “Informal Grievance” that was in the July 3, 2001 CBA. The parties also agreed to have only two steps to the grievance process in the new CBA rather than the four steps (Informal, Step 1, Step 2, and Step 3) found in the old CBA. This will help streamline the procedure, eliminate repetitive work for both parties, and should lead to fewer missed filing deadlines.

Step 1 Grievances are covered by Article 20, Section 7. Grievances should normally be submitted to the senior Management official in the office (e.g., the Regional Director) in writing (normally by email). Local office Union representatives – Senior Stewards and Union Stewards – generally file Step 1 Grievances. Occasionally someone in the Local 1998 leadership may file one of these grievances on behalf of an employee. If a matter is not resolved in response to the Step 1 Grievance, then it can be elevated to Step 2 (normally by a member of the Local 1998 leadership (Union President, Vice President, Secretary-Treasurer, Recording Secretary, and Chief Steward)).

Step 2/Final Step Grievances are covered by Article 20, Section 8 – and by Article 20, Section 6. Step 2 Grievances generally are filed by a member of the Local 1998 leadership. The reason for this is that they are being filed with HQ as the last step prior to possibly invoking arbitration. They are filed with the Passport Services Field Operations’ Office Director, and they must be submitted in writing (normally by email). Nationwide issues affecting more than one office – see Article 20, Section 6(c) – are only submitted by the Local 1998 leadership.

## Skipping the Step 1 Grievance level

Note: It is important to remember that certain issues are submitted directly at the Step 2 level and that they therefore have only a 30-day deadline rather than the 45-day deadline for Step 1. These issues are listed in Article 20, Section 6:

- a. Disciplinary And Adverse Actions: Any action taken under Article 24, except that a Letter of Reprimand or lesser action will still be grieved at Step 1.
- b. Unacceptable Performance: Any action taken under Article 23.
- c. Nationwide Issues: In the case of matters affecting more than one office, the Union may file a Step 2/Final Step Grievance.
- d. Training Agreements: A charge to the employee of any training cancellation fees.
- e. Leave Forfeiture: The denial of the restoration of forfeited annual leave.

## Deadlines

A grievance has to be filed by the deadline specified in the contract. The deadlines can be extended by mutual agreement. The following table applies to all issues except those listed in Article 20, Section 6 (which must be filed at the Step 2 level within 30 days of the act or occurrence).

For the initial Step 1 Grievance, the deadline is 45 days from the act or occurrence, “ or the date the grievant first became aware of the matter”, per Article 20, Section 7a. This means that if an event happened on January 12, for example, but the employee was not aware of this event (e.g., he/she did not receive a copy of an appraisal) until May 1st, then the employee may file the grievance within 45 days of May 1st.

An act or occurrence happens, giving rise to grievance	
Within <b>45</b> days of an act or occurrence, or the date the employee was aware or reasonably should have been aware of the act or occurrence	Can file Step 1 Formal Grievance
Within 15 days	Step 1 Designated Management Responding Official will meet with the grievant or Union rep <i>if a meeting is requested in writing (by email)</i>
Within 30 days of the Step 1 Grievance being filed (or within 45 days, if a meeting is held)	Management response is due
Within <b>7</b> days of the Management response	Can request Alternative Dispute Resolution (this suspends the grievance timelines to allow ADR to

	play out, resulting in an agreement that ends the grievance, or failure to reach agreement, which resumes to clock for the Step 2 deadline
Within <b>30</b> days of Management's response to the Step 1 Grievance	Can file a Step 2 Formal Grievance
Within 15 days	Step 2 Designated Management Responding Official will meet with the grievant or Union rep <i>if a meeting is requested in writing (by email)</i>
Within 45 days of the Step 2 Grievance being filed (or within 60 days, if a meeting is held)	Management response is due
Within <b>7</b> days of the Management response	Can request Alternative Dispute Resolution <u>if not previously requested after Step 1</u> (this suspends the grievance timelines to allow ADR to play out, resulting in an agreement that ends the grievance, or no agreement, which resumes the clock on deadline for invoking arbitration)
Within <b>30</b> days of Management's response to the Step 2 Grievance	Union can invoke arbitration

It is the responsibility of the Senior Steward and Union Steward in each office to ensure that deadlines for filing grievances are met. Simply because guidance has been sought on filing a grievance does not turn the matter over to the Local 1998 leadership or a NFFE Business Representative.

## Consequences of missing deadlines

If Management fails to meet a **response** deadline, then the grievance is elevated to the next level. Under the old July 3, 2001 CBA, the clock started ticking on the date that the Management response was due. That has changed under the new July 20, 2009 CBA. In the new CBA, the grievance can be elevated to the next step at any time after the response was due – there is no deadline. However, if the response arrives late, then the clock starts ticking on that date for the deadline to elevate the grievance to the next level. If the case goes to arbitration, and Management had missed a response deadline at any point during the process, then Management must pay the travel/per diem costs of the arbitrator. See Article 20, Section 8(g) of the Master Agreement.

If the Union or the individual grievant fails to meet a **filing** deadline, then the grievance may be terminated, with no recourse. This is why it is vitally important to meet the deadlines.

## **Grievance meetings**

Article 20, Sections 7(e) and 8(e) require meetings to be held to discuss grievances if requested by the grievance or representative in writing (email is acceptable). The purpose of these meetings is to encourage the amicable resolution of the dispute, as face-to-face meetings can be more effective than an argument on paper.

If you are initiating or invited to attend a grievance meeting with Management, there are some key points to keep in mind in order to effectively make your case. In addition, meetings between Management and any employee regarding a grievance – grievance discussions – are formal meetings (see Chapter 4), and Management must invite you to attend (whether or not you filed the grievance for the employee), so these points may be useful in that context as well.

### Relationship with management

- Steward and management representative have equal status at the grievance meeting.
- A good relationship solves more problems than an adversarial one.

### Your personal conduct

- Collective bargaining and grievance presentation is an “art” which each individual must develop in his/her own unique style.
- Personal attitudes toward Management, your client, and members of the Union will determine how effective you are.
- Remember, you are representing someone. Your conduct could affect the outcome of the complaint.

### Have your facts ready

- Be prepared. This will enhance the resolution of the grievance.

### Time your presentation

- Schedule your presentation at a time that will allow for ample discussion. Try to avoid inconveniencing the supervisor. An irritated supervisor will not do much to resolve your problem.

### Let them save face

- Whether we admit it or not we all do not like to admit we were wrong. The same applies for the supervisor. Find ways to save face.

### Know when to stop talking

- Do not monopolize the discussion.

## **Grievances and Alternate Dispute Resolution (ADR)**

Article 21 of the contract provides for Alternate Dispute Resolution of disputes through grievance mediation offered by the Federal Mediation and Conciliation Service (FMCS). According to Article 20, Sections 7f and 8h, grievance mediation can occur after either the Step 1 or Step 2 response from Management, but not both.

*QUESTION: What is ADR?*

ADR involves the intervention of an acceptable, neutral, third party into the dispute process. Mediators have no decision making authority in the dispute. They do not work for Management, but rather for FMCS, which is an independent body.

*QUESTION: Why invoke ADR?*

When used in a grievance, EEO complaint, or appellate process, ADR attempts to lessen the adversarial relationship and create an atmosphere for resolution.

ADR allows the parties to explore possible remedies to the grievance, complaint, or appeal and develop an acceptable resolution without the use of a formal third party decision maker such as an arbitrator or administrative law judge.

*QUESTION: What are the requirements for ADR*

Participants must have the authority to resolve the issue(s) and enter into a binding agreement. (Note: Exception would be agency-head review of a negotiated labor agreement.)

In the case of a grievance, EEO complaint, or other appeal process, parties are usually asked to sign a statement that: "if an agreement is not reached, neither party will use any of the information developed during the process in any formal proceeding following the failed ADR process." This includes the calling of the third party as a witness. If an agreement is reached, it will be reduced to writing as a Memorandum of Understanding ("MOU") or Memorandum of Agreement ("MOA"). The agreement is enforceable and information developed during the process may be used to enforce a signed agreement.

## **Grievances and Arbitration**

Arbitration is the process by which an impartial third party renders a decision on

a grievance. Arbitration is governed by Article 22 of the contract. The arbitrator is independent and does not work for the Department of State – usually he/she does not work for the government at all. Arbitrators interpret and apply the terms of the contract (including established practices) and laws and regulations bearing on conditions of employment. Once arbitration is invoked, the parties contact FMCS to obtain a list of seven arbitrators. 5 U.S.C. 7121(b)(1)(C)(iii) mandates that negotiated grievance procedures provide for binding arbitration of unsettled grievances.

*QUESTION: What is the role of the Local 1998 leadership and NFFE Business Representatives in arbitration?*

Arbitration cases are handled by the Local 1998 leadership and/or by NFFE Business Representatives. In some cases, the Union may hire outside legal counsel. Senior Stewards and Union Stewards do not represent the Union at arbitration, unless they have sufficient training and experience, and have been specifically designated as the Union's authorized representative by the Local 1998 Executive Board. The reason for this is that arbitration is a very intense, very complicated, very high risk endeavor which requires the most qualified and experienced representatives that the Union has to argue the case. At stake are the outcome of the grievance, possible precedents that affect the rest of the bargaining unit, Duty of Fair representation consequences (see Chapter 3), and the dues paid by the members (if the Union loses).

Management follows a similar policy – for example, Directors, Adjudication Managers, etc. do not argue the agency case in an arbitration hearing. Rather, Management sends either the Department of State's Chief Labor-Management Negotiator and one Department of State employee relations attorney or Management sends two attorneys to advocate Management's position.

*QUESTION: What does a Union representative need to know before invoking arbitration?*

- A thorough knowledge of the grievance/complaint/appeal which includes any and all evidence being presented by both sides. Know the facts of the case.
- Understand that an arbitrator's decision is binding and that neither party has control over what the decision will be.
- Need to remember we are trying to represent the best interest of the employee and the Union, not ourselves. The employee may be ignorant of the arbitration process, possible outcome, etc.
- Need to be realistic in the possible outcome of arbitration or other third-party proceeding. Arbitration costs money, and it should not be entered into lightly or frivolously. Not all grievances should be advanced to arbitration.
- The Executive Board must approve, by a majority decision, a proposal to

- invoke arbitration.
- NOTE: Normally only a member of the Local 1998 leadership invokes arbitration (Union President, Vice President, Chief Steward, Secretary-Treasurer, and Recording Secretary).
- The Union is under no obligation to pursue all unresolved grievances to arbitration.
- A decision to arbitrate must be based on:
  - Merits of the case
  - Affect on the Local
  - Availability of funds
  - Cost versus benefit
- A decision to not arbitrate cannot be based on union membership (see Duty of Fair Representation, Chapter 4)

*What cases has NFFE Local 1998 taken to arbitration? What happened?*

Between 1998 and early 2012, NFFE Local 1998 invoked arbitration well over a dozen times and actually proceeded to arbitration on 5 occasions:

- 2001: A 1-day arbitration hearing was held at PPT/NPC for a grievance over back pay for a promotion from GS-9 to GS-11. The grievance was processed under the 9-23-1991 CBA. The Union lost that case.
- 2004: A 3-day arbitration hearing was held at PPT/SE over the termination of 3 of the 8 CWS schedules available (the 3 that started prior to 7:00 AM). The dispute was settled between the Parties (in the Union's favor).
- 2007: A 1.5-day hearing was held at PPT/FO (Passport Services HQ) over the measurement of desk adjudication performance on overtime. The arbitrator issued a split decision, which the Union considered a victory because it required at least 30 minutes of non-productive time per 8 hours, where previously there had been none.
- 2007: A half-day hearing was held at PPT/FO over the refusal by Management to excuse some employees from mandatory overtime. The arbitrator ruled for the Union.
- 2009: A 1-day hearing was held at PPT/FO regarding the threshold issue of whether admonishments were excluded from the coverage of the negotiated grievance procedure. The arbitrator ruled for the Union.
- 2012: A 2-day hearing was held at PMO regarding the notational standards introduced by the agency in 2010. No decision at the time of this revision
- 2012: A 1-day hearing was held at PPT/BN concerning prolonged denial of official time to the office union representative (also no decision yet).
- 2012: A 1-day hearing was held at PPT/HN concerning the agency's

termination of the night shift CWS schedules (also no decision yet).

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## **How to write a grievance**

### **Tips for writing the grievance for Union Stewards**

- Address the grievance to the appropriate management official (e.g., the RD for Step 1).
- Reference the name of the grievant and job title.
- List the issues giving rise to the grievance including dates and times of occurrence.
- If there is a main issue, list this one first followed by other subordinate issues.
- State the facts of the case briefly. Do not go into a lengthy explanation.
- State your positions on the issues briefly. Do not normally argue your case in writing. Provide any mitigating factors.
- List remedies requested.
- If the grievance is over a disciplinary action that was not taken for just cause you should request that the disciplinary action and all related documents be removed from the record and the employee to be made whole for any lost wages and/or benefits. Add to the remedy: "Should the evidence support the action taken by the employer the penalty should be reduced to...." followed by appropriate reasons to lower the penalty.
- A grievance over disciplinary action should also address the Douglas Factors listed in Article 24, Section 5.
- Request a meeting, if appropriate. This is where you can argue your position contained in the written grievance.
- Request a prompt response as provided for in the Agreement.
- If circumstances warrant it, you may offer management the opportunity to request additional time to respond.
- Use the Union eagle logo letterhead to clearly indicate that the grievance is filed by the Union. Only a Union rep can use the Union letterhead.
- Sign the grievance with your title.



### **Level of evidence required – preponderance or substantial**

If you are making an argument or submitting evidence with a grievance (which is not required – see “A 3-sentence Grievance” in this chapter) then in some cases it is necessary to establish the case with a “preponderance of evidence” or “substantial evidence”. For most grievances, it is simply necessary to make a persuasive argument for the Union's position.

Substantial Evidence: “The degree of relevant evidence that a reasonable

person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree.” This is used as the standard of proof in all adverse actions processed under 5 U.S.C. Chapter 43 (Performance-based actions – also see Article 23).

Preponderance of Evidence: “Degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find a contested fact is more likely to be true than untrue.” This is the standard of proof required in any discipline/adverse action initiated under Chapter 75 (Misconduct – also see Article 24 of the Master Agreement). The same standard of proof is necessary to support an affirmative defense or when grieving/appealing an action the Employer allegedly failed to take or when making an allegation of discrimination or disparate treatment.

### **A 3-sentence grievance**

A grievance does not have to be lengthy, wordy, or written in legalistic jargon to be valid or effective. A grievance can be written in as few as three sentences. Consider this scenario: Joe is a GS-9 Passport Specialist who has been a GS-9 for 3 years and who complains that he has not received his career ladder promotion. He was rated Excellent overall on his most recent annual appraisal. After obtaining official time for yourself and for Joe, interviewing Joe, investigating the case, and seeking guidance, you determine that a grievance is appropriate to address the problem. You can write the following grievance



#### Step 1 Formal Grievance

To: Regional Director

In accordance with Article 20 of the Master Agreement, I am submitting this Step 1 Grievance on behalf of GS-9 Passport Specialist Joe, regarding his career ladder promotion to GS-11. Management has violated relevant legal authorities, including Article 15 of the contract, by not promoting Joe to the GS-11 level. I respectfully request that Joe be made whole, including being promoted to the GS-11 level with back pay plus interest.

Sincerely,

Union Steward

:

That is a complete and valid grievance.

## Explanation of parts

You may also choose, when you feel it is appropriate, to write a lengthier grievance. The reasons for doing this are to make sure that the evidence, legal authorities, and arguments are clear and persuasive to the Management official who will be deciding the case. There are a number of parts to this type of grievance filed by NFFE Local 1998 Union Reps (see samples below for examples). What follows is an explanation of those parts.

### BEGINNING

#### Letterhead

Only a Union Rep may use the Union Letterhead when filing a grievance. Employees filing their own grievances may not use the letterhead.

#### Contact Info

Put your name, position with the Union, and your phone # here.

#### Type of Grievance

Title the grievance appropriately – Step 1 Grievance, or Step 2 Formal Grievance.

#### Date

Be mindful of deadlines/timeframes for filing the grievance.

#### To

Address all Step 1 Grievances to the senior Management official in the office (e.g., Regional Director), and all Step 2 grievances are normally filed with Passport Services Field Operations' Office Director.

#### Re

Briefly explain what the grievance concerns.

#### Intro

The negotiated grievance procedure is found in Article 20 of our contract, so always note that the grievance is filed in accordance with that procedure. The grievance should state that the event or action being grieved was in violation of "appropriate" or "relevant" "legal authorities", and if there are specific citations then say "including" those citations. Note: some of the sample grievances on the website charge a specific violation only, and do NOT follow that example. Always say something along the lines "I am filing this *Informal Grievance regarding a violation of relevant legal authorities, including a violation of Article 15, Section 7*" rather than only citing the article.

### MIDDLE

### Body of the grievance

There are a number of optional formats for the body of the grievance. Three options are given below, but there are many others.

#### 1st Option

Simply state what happened and why it was a violation.

#### 2nd Option

##### Relevant Legal Authorities

Sometimes it is helpful to cite the laws and contract provisions that are alleged to have been violated, as this makes it easier for the reader to focus on what is being grieved.

##### Facts of the Case

“Just the facts, ma’am.” Here is where you put the incontrovertible facts, such as a description of an employee’s work history or details of what transpired in a dispute.

##### Bargaining History

Sometimes it is helpful to include an explanation of how a certain provision in the contract came into being, especially when there is a dispute over its meaning. Of course, this portion should only be written in consultation with one of the Union Negotiators.

##### Union’s Argument

Here is where you explain why what happened was wrong and why Management should take action to fix the problem. The goal is to both persuade the reader that there was a violation and also to persuade the reader on what the corrective action should be.

#### 3 Option

##### Response to Management’s Denial of Earlier Grievance

This is used when Management has rejected an initial grievance and you need to counter the arguments or reasons made by the lower level Manager when attempting to persuade the higher level Manager. Always note that you are incorporating the earlier steps of the grievance and include them as attachments.

END

#### Conclusion

Succinctly wrap up what happened, what was violated, why it was wrong, and why appropriate corrective action should be taken.

### Requested Relief/Remedy

Usually you will want to say something like “make the employee whole” and then include specific examples of how that would transpire. For example, in a delayed promotion case, you would state: “I respectfully request that the employee be made whole, including being promoted retroactively to \_\_\_\_ along with back pay plus interest”.

### Signature

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## **Grievance Flow Chart**

The guide attached to this chapter serves as a general reference to the complaint process. The CBA should always be consulted when filing a grievance.

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## **Samples**

The samples attached to this chapter may be helpful in writing a grievance. Keep in mind that a sample from the time period where the old July 3, 2001 CBA was in effect should be read carefully before being adopted for use under the new July 20, 2009 CBA is in effect.

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*Revised April 11, 2012*