

DEPARTMENTS OF THE ARMY AND THE AIR FORCE
JOINT FORCES HEADQUARTERS - ALASKA
Human Resources Office (HRO)
P.O. Box 5800
Fort Richardson, Alaska 99505-0800

January 5, 2009

MEMORANDUM FOR ALASKA NATIONAL GUARD SUPERVISORS AND TECHNICIANS

FROM: JFHQ-AK/J-1

SUBJECT: Grievance Policy for Alaska National Guard Outside the Bargaining Unit (HRO Policy Letter 09-01)

1. **SUMMARY.** This policy supersedes Federal Technicians Outside of the Bargaining Unit Grievance Plan dated 15 November 2005. Bargaining unit employees are covered by the negotiated grievance procedure in the applicable negotiated collective bargaining agreement. This policy applies to the non-bargaining unit technicians regardless of their appointment status, i.e., competitive, excepted, temporary or career. Alleged coercion, reprisal or retaliation in connection with the processing of a grievance by a technician covered by this regulation will be not be tolerated and will be processed in accordance with this regulation. Grievance procedures are administered by the Human Resources Office (HRO) Labor Relations Specialist (LRS).

2. **AUTHORITY.** 5 U.S.C. 1302, 3301, 3302, 7301. Code of Federal Regulations (CFR), Title 5: Administrative Personnel, Section 770, Part 771 – Agency Administrative Grievance System, Sub Section 771.101, Technician Personnel Regulation, (TPR) 700.

3. **EXCLUSIONS.** The following items are excluded from coverage by this policy. Generally speaking, any item that would not be grievable by a bargaining unit employee under the labor statute, to include:

a. Any matter which is subject to final administrative review outside the Alaska National Guard under law or the regulations of the Office of Personnel Management or the National Guard Bureau, i.e., compatibility requirements, manning structure, etc.

b. The content of published agency regulations and policy.

c. Non-selection for promotion from a group of properly certified candidates.

d. A preliminary warning or notice of an action which, if effected would be covered under appeals system or excluded from coverage under sub-paragraph (a) above.

e. An action terminating a temporary promotion, regardless of the length, or basis for the action.

f. Any action which has an appeal procedure established by law or regulation.

g. Non-adoption of a suggestion or disapproval of a quality step increase, performance award, or other type of honorary or discretionary award.

h. The substance of the critical elements, and performance standards of the technician's position.

i. A merit pay determination or a merit pay increase or the lack of a pay increase.

j. A performance evaluation.

k. The termination of a probationer for unsatisfactory service.

l. Any action taken pursuant to 32 USC 709 (c).



4. **REPRESENTATION.** A technician also has the right to be accompanied, represented, and advised by one representative of his/her choice at any stage of the proceedings. The representative must be designated by the technician in writing. The technician may choose another technician of the Alaska National Guard unless such representation would: (1) contribute appreciably to the neglect of that individual's regular duties, or (2) constitute a clear conflict of position (for example, members of the staff of the Human Resources Office or the legal advisor to the Adjutant General).

5. **USE OF OFFICIAL TIME.** A technician is entitled to a reasonable amount of official time for the preparation and presentation of a grievance. Technicians must make advance arrangements with their supervisors for the use of official time.

6. **INFORMAL GRIEVANCE PROCEDURES.**

a. A technician must first seek informal adjustment of the matter through supervisory channels. Initial presentation, which must be written, is normally made to the immediate supervisor. When the complaint concerns relationships with or actions taken by a supervisor, the dissatisfaction may be presented to the next higher level supervisor in the chain of command or the technician may choose to use the Alaska National Guard Alternative Dispute Resolution (ADR) process. A technician may present a grievance concerning a continuing practice or condition at any time, but must present a grievance concerning a particular act or occurrence within 15 workdays of the date of the act or occurrence or within 15 workdays after the technician became aware of the act or occurrence. A technician, in presenting a grievance is entitled to communicate with and seek advice from the HRO LRS.

b. The supervisor to whom a grievance has been presented for formal adjustment will attempt to resolve the issue(s) as expeditiously as possible and will give the technician their decision, in writing, not later than 5 workdays after the date of written presentation. If the adjustment sought cannot be granted, the technician will be informed of the reasons and of the right to request further consideration under the formal procedures in paragraph 6 below. The technician will also be informed that procedural assistance may be obtained from the HRO.

c. A grievance may not be rejected during the informal procedures for any reason. If the supervisor believes that the grievance is not timely or consists of a matter not covered under the grievance system, the technician will be so advised in writing and will be allowed to submit the grievance for a determination under the formal procedures.

7. **FORMAL PROCEDURES.**

a. When a technician receives a decision under the informal procedures which does not satisfy the grievance, or when the time limit for management action has expired without a decision, the technician may within 5 workdays submit the grievance for further consideration. The grievance must be in writing and be signed by the technician. The grievance is submitted to the HRO through the chain of command. An advance courtesy copy should be forwarded to HRO (LRS). Each level of command is granted 5 workdays to resolve/address the technician's complaint and will provide a written determination/justification. It is suggested that each subsequent level of command make personal contact with the grievant.

b. The grievance must contain sufficient detail to identify and clarify the basis for the grievance, explain the efforts made to resolve the grievance informally, and specify the relief sought by the technician. If the technician has a representative, the representative's name, address and telephone number must also be included. Copies of any documents related to the grievance or to the efforts at informal resolution must be attached. On receipt of a grievance filed under this section, the Human Resources Office reviews the grievance and within 5 workdays takes one of the following actions:

(1) Rejects the grievance if it consists wholly of matters excluded from coverage of the grievance procedures or if it was not timely filed and the technician did not show good cause for the delay. The technician is notified in writing of the basis for the rejection and of the right, if not satisfied with the determination, to request a review of the rejection decision by the Adjutant General within 10 workdays after receipt. If appropriate, the notice also includes advice to the technician of any other procedure available for resolution of the technician's dissatisfaction.

(2) If the technician did not seek informal adjustment under paragraph 5 before filing the grievance, return the grievance to the technician and inform the technician of the requirement of using the informal procedure.

(3) If the grievance is acceptable, a grievance file will be established in preparation for a review by The Adjutant General.

8. APPEAL TO THE ADJUTANT GENERAL.

a. If the technician is not satisfied with the final level of command's decision, the grievant may within (10) working days present the grievance to the Adjutant General or designated representative which will include previous correspondence and any other pertinent material or information.

b. A decision by the Adjutant General or his/her designated representative shall be rendered within ten (10) workdays to the grievant.

c. The decision on a grievance will be in writing and addressed to the grievant. It will include 1) Findings on all issues; and 2) A specific statement of the corrective action that will be taken; and 3) that the decision is final and no right of appeal extends beyond the Adjutant General.

d. When the decision cannot be issued within the specified time limits, the grievant will be notified of the reasons and the anticipated date of decision in writing.

9. REMEDIAL ACTION.

a. When a grievance is resolved in favor of the technician, appropriate remedial action will be taken promptly insofar as possible under law and regulations. Subject matter regulations must be consulted in determining the remedial action to be taken.

b. While disciplinary action against a supervisor or other official or technician may be a direct result of a decision on the merits of a grievance, it is not a personal relief that may be demanded by a technician. The technician is not entitled to know the action which management will take to correct the situation if the complaint was found to be alleged, but only that appropriate corrective action is being taken.

10. **ALTERNATIVE DISPUTE RESOLUTION (ADR)** may be employed at any point in the grievance process to settle disagreements promptly, fairly, and without litigation. It would be a preferred approach when a negotiated solution is an acceptable outcome, the dispute involves factual or other non-precedent-setting issues, the parties want to settle the dispute promptly, the parties want to maintain, establish or restore a good working relationship, the importance of the issue is minor compared to the potential cost and disruption that would occur if traditional dispute resolution methods were employed, and when an ADR neutral is more likely to understand the complexities of the case than would a judge or hearing examiner.



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