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# MANAGEMENT DIRECTIVE

590.7  
Amended  
Number

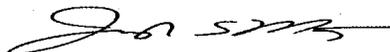
COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE

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Subject:

Labor Relations – Grievance Administration

By Direction Of:

  
Joseph S. Martz, Secretary of Administration

Date:

June 8, 2006

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Grievance administration is part of the continuous collective bargaining process. This directive provides general guidance to Commonwealth administrators responsible for investigating, analyzing, and responding to discipline and contract interpretation grievances, but not classification grievances. This amendment provides additional procedural detail but does not contain changes in policy. Marginal dots have been excluded.

1. **PURPOSE.** To identify the information to be gathered and evaluated during the investigation of and response to grievances.
2. **SCOPE.** Applies to all agencies under the Governor's jurisdiction.
3. **POLICY.** Commonwealth supervisors, managers, and Labor Relations Coordinators involved in grievance administration are responsible for the investigation of and response to all grievances submitted to their level. Accomplishing this objective requires the thorough and timely collection of relevant data, discussion of such data with an employee and/or an employee's representative when possible or when contractually required, and the analysis of such data to determine if a grievance should be sustained, denied, or resolved. Competent investigation, effective communication, and objective analysis serve to preclude the further processing of many grievances. Attempts should be made to resolve grievances at the lowest level possible consistent with the agreement or memorandum and acceptable to both the employer and employee representatives. In the event a grievance is pursued by an employee or an employee's representative, the information and documentation gathered is to be retained and made available to the succeeding steps of the grievance procedure in a timely manner. The provisions of this directive apply both to grievances processed through the Standard Grievance Procedure (SGP) and the Accelerated Grievance Procedure (AGP), but not to classification grievances.
4. **DEFINITIONS.**
  - a. **Grievance.** Dispute arising from the meaning, application, or interpretation of a collective bargaining agreement or memorandum of understanding.

**b. Discipline grievance.** Dispute which contests the employer's action in discharging, suspending, in certain circumstances demoting, reprimanding, or otherwise disciplining an employee.

**c. Contract interpretation grievance.** Dispute over the meaning, application, or interpretation of a provision or provisions of an agreement or memorandum in particular factual situations.

**d. Classification grievance.** Dispute over the job classification appropriate for an employee's permanent or temporary duties. Policies applicable to the processing of classification grievances are contained in *Management Directive 590.8, Classification Grievance Processing*.

## 5. PROCEDURES.

**a. Discipline grievances.** The following general information is to be gathered and analyzed in reviewing discipline cases:

(1) Specifics on the incident or events giving rise to the discipline.

(a) Who was involved? Names and classifications of the principals and all witnesses. Are the witnesses willing to testify?

(b) What transpired? Review the signed and dated witness statements collected at or near the time of the incident. Timely action will preserve their account of the incident. Are the statements consistent? If necessary, attempt to reconcile statements and/or obtain statements from additional witnesses.

(c) When did the incident occur? Document the date, time, shift, etc.

(d) Where did the incident occur? Where factual disputes may occur, gather specific information, including schematics or descriptions.

(e) Why was discipline warranted? Were Commonwealth, agency, or local work rules violated? If so, specify the rule, and determine when and how the employee had been provided with notice of the rule, and how the rule is related to the conduct of Commonwealth business and/or the performance that the Commonwealth may reasonably expect of this employee.

(2) Specifics of management's investigation prior to the imposition of discipline.

(a) Who conducted the investigation? When did it begin and end? If a significant time period elapsed between the beginning and ending of the investigation, can this period be explained?

(b) Did the investigation uncover sufficient evidence to prove that the employee committed the misconduct in question?

(c) If physical evidence was gathered during the investigation, has it been preserved and by whom?

(d) Prior to being disciplined, was the employee informed of the offense and offered the opportunity to meet with management to defend his or her conduct? When?

(e) What was the employee's explanation? Was new information provided by the employee? If so, was this information investigated?

(f) Who was present at that meeting? Was union representation requested and/or provided?

(g) Who made the decision to discipline?

(h) What factors were considered in determining the level of discipline? Was the level of discipline adjusted due to mitigating and/or extenuating factors? If so, what were these factors and why did they alter the level of discipline that would otherwise have been imposed?

(i) How and when was the discipline imposed or implemented?

(j) What specifically was the charge set forth against the employee in the notice of reprimand, suspension, etc. Did it differ from the charge presented to the employee at the predisciplinary conference? If so, why?

(3) The employee's work history.

(a) Length of service – total and in classification.

(b) Performance record – performance evaluation reviews, letters of commendation, awards, etc.

(c) Disciplinary record prior to the instant discipline. Are appeals outstanding on any prior disciplinary actions and, if so, which actions?

(d) Disciplinary record subsequent to the instant discipline. Are appeals outstanding on any subsequent disciplinary actions and, if so, which actions?

(e) Was the employee's work history a factor in assessing the extent of the discipline?

(4) Disparate treatment or discrimination, if raised as an issue either in the grievance submission or in grievance discussions.

(a) Have other employees been similarly situated as the employee in the instant case?

(b) If "yes", what action was taken in those instances?

(c) If treatment of other similarly situated employees differed from that in the instant case, why was this employee treated differently?

(d) If "no", how did the grievant's situation differ from that of the other employee(s) cited by the grievant/union?

(5) Other information that is material to a particular grievance. **Examples:**

(a) In a case involving theft from the Commonwealth or at the workplace, information on whether criminal charges were filed, the disposition of those charges, the value of the property involved, the matter of restitution, etc., should be gathered. If the criminal charges constituted a violation of *Executive Order 1980-18, Code of Conduct*, also see paragraph (d).

(b) In a patient abuse case, medical records and other documentary/ physical/ demonstrative evidence such as photographs of the injury, a patient profile, an assessment of the patient's competency to testify, etc., should be obtained.

(c) In a case involving sick leave abuse, the employee's attendance record, doctor's certificates, leave slips, notice of any leave restriction which may have been imposed, etc., are germane and should be reviewed.

(d) In a case of a violation of the Governor's Code of Conduct due to a criminal charge related to employment or which constitutes a felony, the following information should be gathered: documentation of the charge (e.g., the criminal complaint, affidavit of probable cause, etc.); statement(s) gathered by the police or a copy of the police investigative report; information demonstrating the nexus between the charge and the employee's job duties; dates and outcomes of the criminal hearings; disposition of the charges, etc. Information obtained by the agency during its independent investigation of a criminal charge related to employment should also be gathered and reviewed.

**b. Contract interpretation grievances.** Information to be gathered and analyzed in reviewing contract interpretation cases includes but is not limited to:

(1) Specifics of the incident or events giving rise to the grievance.

(a) Who was involved? Names and classifications of those involved.

(b) What transpired?

(c) When did the incident occur?

(d) Where?

(e) Why does the employee or the employee's representative dispute the agency's action?

What contract provisions are cited?

(2) Evidence on past practice.

(a) Has this situation occurred prior to the instant dispute? At the same work site? Within the agency?

(b) How was the disputed provision applied in those instances?

(c) For what period of time has the disputed application been in effect?

(d) Can it be shown that the employee or the employee representative was aware of the agency's application prior to the instant situation? For example, has the disputed provision been raised as an issue in prior grievances, or at any meetings with or in correspondence between management and the employee/employee representative? If so, what documentation exists?

(e) Do local agreements exist on this subject? Were prior discussions held?

(f) Does the alleged practice conflict with specific contract language or law? Cite the specific provision or statute.

(3) Is/are there relevant bargaining history, arbitration awards, or precedential grievance settlements/decisions?

(4) Other material relevant to the particular grievance. **Examples:**

(a) in a promotion dispute, information on the posting of the vacancy, the bidders, the seniority standing of the bidders, the relative skill and ability of the employees involved, etc., should be reviewed.

(b) in a schedule change dispute, data on the “meet and discuss” prior to implementation, the posting of the change, the former work schedule, the operational reason for the change, the nature of the emergency, etc., must be obtained where applicable.

(c) in an annual leave scheduling dispute, knowledge of who requested leave when, the seniority standing of the involved employees, the accumulated leave entitlements of the individual, their work sites, operational considerations, etc., could be germane and should be gathered.

## 6. Grievance Response.

**Note:** Most grievances filed by rank and file employees are processed through either the Standard Grievance Procedure (SGP) outlined in, for example, the Pennsylvania Social Services Union (PSSU) agreement, or the Accelerated Grievance Procedure (AGP) contained within, for example, the AFSCME Master Agreement. [The AFSCME Master Agreement/Memorandum also include the SGP, but it is applicable only to employees in the Liquor Control Board and the Independent Agencies.] The number of steps in both the SGP and the AGP vary by labor agreement. Also, first-level supervisory employees covered by memoranda of understanding do not have arbitration rights for certain issues and, therefore, the steps of their grievance procedure in those situations are reduced. Finally, some labor agreements permit a grievance to be filed directly to the agency level given certain factual situations. Check the appropriate labor agreement/memorandum for the type of grievance procedure (AGP or SGP), and the number of steps in the procedure.

**a. Standard Grievance Procedure.** The following describes the proper procedures for reviewing/ answering grievances, and the information that should be contained in grievance responses at the first four steps of the standard grievance procedure (See Enclosure 1 for the suggested grievance response format):

(1) **Step 1.** The immediate supervisor is the first person to receive an employee’s grievance orally or in writing. However, some labor agreements and/or agency policies assign the responsibility of review and response at Step 1 to another worksite designee. Check the appropriate labor agreement/agency policy for the proper filing procedure.

Having reviewed the grievance and accompanying written documentation and/or other evidence, the individual responding to the grievance at Step 1 should proceed in the following manner:

(a) The grievance response should first cite the article(s) and/or section(s) of the labor agreement being grieved and the specific labor agreement involved. It should also identify the specific allegations raised in the grievance and the remedy that is being sought to resolve the grievance.

(b) The response should then identify any potential procedural issues. Is the grievance timely, i.e. has it been filed within the timeframe required by the language of the agreement/memorandum? Is the subject of the grievance something that concerns the application, meaning, or interpretation of the agreement? Has the employee also filed an appeal with the Civil Service Commission? If there are procedural issues, the response should identify the issue(s) and state the Commonwealth’s position, e.g. that the grievance is denied as untimely or denied because the issue grieved does not concern the meaning, application, or interpretation of the agreement. However, even when a grievance is denied on a procedural basis, it is still necessary to address the allegations, as discussed in (c), (d), and (e) below.

(c) A specific response should be provided for each alleged violation of the agreement/memorandum or factor raised, stating the union’s assertion, noting available information or evidence to rebut the assertion, and demonstrating that no violation of the contract language occurred. The response should be based on only factual information and the language of the appropriate labor agreement. Avoid personal opinion, conjecture, hearsay evidence, and adjectival responses.

**(d)** If there are other contract articles and/or sections not cited in the grievance, but which apply directly to the given circumstances and those articles/sections support management's position (e.g., Management Rights), they should be identified in the response along with the pertinent language and its applicability.

**(e)** Unless indicated otherwise in the labor agreement, the response should be provided to the employee and appropriate union representative at the site within the established contractual timeframes. If the agency is unable to do so, approval for an extension of the contractual timeframes should be requested from the union before the period for response has expired.

**(2) Step 2.** The second level of review can include the employee's Reviewing Officer, Division Chief, Bureau Director, Institution Head, Executive Director, or appropriate designee. The review and response accomplished at this level is to ensure that the appropriate evidence has been developed and considered, that all mitigating and aggravating factors have been identified and considered, that any procedural flaws have been identified and responded to, and to clarify any other discrepancies either with the grievance or the allegations contained within the grievance. It is the responsibility of the designated respondent to ensure a response in writing is provided to the employee and the union representative within the established contractual timeframes unless an extension has been requested. The Step 2 response should be in the same format as that described for Step 1.

**(3) Step 3.** The third step is the final step at which an agency can review a discipline or contract interpretation grievance, and the respondent will be the agency head or an appropriate designee. Therefore, it is important that the accuracy of all the available evidence and/or documentation be verified, that a thorough investigation into the allegations occurs, and that every effort be made to resolve the grievance if warranted. All grievances must be answered based on factual information and the language of the appropriate labor agreement. Furthermore, it is the responsibility of the agency to respond in writing to the employee and union representative within the established contractual timeframes unless an extension has been requested. The Step 3 response should be in the same format as that described for Steps 1 and 2.

**(4) Step 4.** Fourth Step grievances are investigated and answered by the Standard Grievance Procedure Division in the Bureau of Labor Relations, Office of Administration. This is the final step before a grievance may be brought before an arbitrator. However, in certain circumstances as described in the appropriate labor agreement, the fourth step decision is final and binding. It is also final and binding for grievances filed on behalf of employees covered by a memorandum of understanding when the grievance concerns either an oral/written reprimand or most contract interpretation issues.

The analyst in the Standard Grievance Procedure Division in the Bureau of Labor Relations, Office of Administration, will complete the investigation, documentation and response process in the following manner at Step 4:

**(a)** Obtain all relevant grievance material from the agency and any information missing from the grievance package submitted by the union.

**(b)** Using the agency's grievance material and the information contained in the grievance package, the reviewing analyst determines the appropriate method of investigation: e.g., grievance hearing; discussion with the grievant's supervisor and/or other management representatives, including the field human resources officer, and/or the reviewing analyst(s) at the previous step(s); and discussion with the union steward and/or business agent.

**(c)** Based upon the information collected and analyzed, a fourth step response to the grievance in the same format as that described for Steps 1 through 3 is issued in writing to the union (and employee, if the grievance was filed by the employee). The affected agency human resource office is copied on the response.

(d) The Standard Grievance Procedure Division in the Bureau of Labor Relations, Office of Administration, relies on Steps 1 through 3 to build a foundation for investigating and responding to grievances. Each step has a key role. If each step meets its responsibility, the collection, verification, analysis, and response phases should lead to sound determinations which can be explained and defended before an arbitrator.

**b. Accelerated Grievance Procedure.** The following describes the information that should be contained in grievance responses at Step 1 of the Accelerated Grievance Procedure. (See Enclosure 2 for the grievance response format.)

(1) **Step 1.** The AGP rules of procedure mandate a Step 1 meeting. The written response the union will receive is generated after the Step 1 meeting. Therefore, it is critical that the information discussed below is captured in that document.

(a) The grievance response should identify the article(s) and/or section(s) of the labor agreement being grieved and the specific labor agreement involved. The response should also identify the specific allegations raised and the remedy that is being sought to resolve the grievance.

(b) The date of the Step 1 meeting and the information shared between the parties should be documented.

(c) The response should identify any potential procedural issues. Is the grievance timely, i.e., has the grievance been filed within the timeframe required by the language of the agreement or memorandum? Is the subject of the grievance something that concerns the application, meaning, or interpretation of the agreement? Has the employee also filed an appeal with the Civil Service Commission? If there are procedural issues, the grievance response should include a statement identifying the issue(s) and state the Commonwealth's position, e.g., that the grievance is untimely or is denied because the issue grieved does not concern the meaning, application, or interpretation of the agreement.

(d) A specific response should be provided for each alleged violation of the agreement or factor raised, stating the union's assertion, noting available information or evidence to rebut the assertion, and demonstrating that no violation of the contractual language occurred. The response should be based on only factual information and the language of the appropriate labor agreement. Avoid personal opinion, conjecture, hearsay evidence, and adjectival responses.

(e) If there are other contract articles and/or sections not cited in the grievance, but which apply directly to the given circumstances and those articles/sections support management's position (e.g., Management Rights), they should be identified in the response along with the pertinent language and its applicability.

(f) Unless indicated otherwise in the labor agreement or agreed to by the parties, the written response should be provided to the employee and appropriate union representative at the site within the established contractual timeframes. If the agency is unable to do so, approval for an extension of the contractual timeframes should be requested from the union before the period for response has expired.

(2) **Step 2 and, where applicable, Step 3.** The procedure for resolving grievances at these steps is a joint committee consisting of an equal number of management and union representatives. The parties present their facts/arguments to the committee, and the committee determines the outcome of the grievance (i.e. sustain, deny, deadlock or otherwise settle the grievance). Decisions of the committee are by majority vote; a tie vote results in a deadlock. Depending upon the labor agreement/memorandum, a deadlocked grievance is either automatically advanced to the next step or can be advanced by the union to the next step (unless the agreement/memorandum provides for no further appeal).

**c. Grievance Settlements.** Agencies are advised to make every effort to resolve grievances at their steps of the grievance process if warranted. Agencies are also advised to use care in resolving grievances. Settlements at the agency level should be used to rectify a situation where due process and/or just cause did not exist for a disciplinary action or to effect that which is specifically provided for in the labor agreement. Settlements should be made without precedent or prejudice to the contractual rights of the Commonwealth and the union. No settlements should be offered at the agency level which could have a statewide impact or which could impact on other labor agreements. The agency central office labor relations staff must review situations such as these or unusual situations with either the Standard Grievance Procedure Division or the Accelerated Grievance Procedure Division, as appropriate, in the Bureau of Labor Relations, Office of Administration, before a settlement is offered to the union. The Bureau may require copies of these settlements.

**This directive replaces, in its entirety, *Management Directive 590.7*, dated July 28, 1997.**

**FORMAT FOR STANDARD GRIEVANCE PROCEDURE RESPONSES**

*Current Date*

*Union Representative's Name (or employee's name if filed by employee without union)*  
*Union Identification (unless filed by employee without union)*  
*Mailing Address*

RE: *Grievant's Name*  
*Grievance Number*  
*Department and Work Site*  
*Issue*

Dear \_\_\_\_\_:

This is in response to the above-referenced grievance alleging a violation of [*Article(s) and Section(s) Number(s)*], [*Title(s) of Article(s)*], of the [*Title of Labor Agreement*]. Specifically, the Union contends [*statement of issue, e.g.*] that the Commonwealth lacked just cause to suspend the grievant for three working days without pay and [*union's requested remedy, e.g.*] the union seeks the rescission of the discipline and for the grievant to be made whole.

[*If there are procedural objections, they should be identified and discussed prior to addressing the merits of the case.*]

Our review of this matter finds that on or about [*Date(s)*] [*and description of Alleged Incident(s), e.g.*] April 1, 2006, the grievant became involved in an altercation with a co-worker and engaged in inappropriate behavior, including the use of profanities in a voice loud enough to be disruptive to claimant interviews. A supervisor then had to intervene and diffuse the situation.

[*Statement of results of investigation, e.g.*] Our review further finds the grievant admitted to the behavior at a fact-finding meeting on [*Date of Pre-Disciplinary Conference*], and that his conduct in the workplace had been addressed with him on prior occasions.

[*Agency's position, e.g.*] Given the above, we find the Employer had just cause for the disciplinary action taken against the grievant. Further, we find the Union has not provided sufficient and/or credible evidence of a violation of the Agreement. Therefore, this grievance is denied.

Sincerely,

*Respondent's Name*  
*Title and/or Organization*

cc: [*As appropriate, e.g. employee's personnel file and employee's supervisor*]

[NOTE: Provide a copy to the union of the response to any grievance filed solely by an employee.]

**FORMAT FOR ACCELERATED GRIEVANCE PROCEDURE RESPONSE**

*Current Date*

*Union Representative's Name (or employee's name if filed by employee without union)*  
*Union Identification (unless filed by employee without union)*  
*Mailing Address*

RE: *Grievant's Name*  
*Grievance Number*  
*Department and Work Site*  
*Issue*

Dear \_\_\_\_\_:

On [*Date of Step 1 Meeting*], the parties met at [*Meeting Location*] for the first step meeting concerning the above referenced grievance regarding [*statement of issue, e.g.*] the change of headquarters for the grievant from \_\_\_\_\_ to \_\_\_\_\_. At that time, management presented its packet of documentation to the union in accordance with the rules of the Accelerated Grievance Procedure.

The grievance alleges a violation of [*Article(s) and Section(s) Number(s), Title(s) of Article(s)*], of the [*Title of Labor Agreement*]. [*Statement of results of investigation, e.g.*] It is management's position that there are no contractual violations and that the change of headquarters is within Management's Rights found in Section 2 of the contract. It is management's position that the change of headquarters was based on the operational need and efficiency of operation of the Eastern Region, and the appropriate meet and discuss sessions were held.

[*Agency's position, e.g.*] Therefore, the grievance is denied.

[*Description (listing) of enclosed documents, e.g.*] Enclosed is a copy of the table of contents listing the documents presented at the Step 1 meeting, as well as an arbitration that management intends to use if the matter proceeds to the second step of the Accelerated Grievance Procedure.

If you wish to discuss this matter further, please contact me at \_\_\_\_\_.

Sincerely,

*Respondent's Name*  
*Title and/or Organization*

Enclosures: [*As appropriate*]

cc: [*As appropriate, e.g. employee's personnel file and employee's supervisor*]  
[NOTE: Provide a copy to the union of the response to any grievance filed solely by an employee.]

**Format for Grievance Settlement: Discipline Grievance (AGP or SGP)**

*Current Date*

*Union Representative's Name (or employee's name if filed by employee without union)*

*Union Identification (unless filed by employee without union)*

*Mailing Address*

RE: *Grievant Name*  
*Grievance Number*  
*Department and Worksite*  
*Issue*

Dear \_\_\_\_\_:

As agreed between the parties, the referenced grievance will be resolved in the following manner:

1. The written reprimand dated \_\_\_\_\_ shall be reduced to an oral reprimand.
2. This settlement disposes of all issues encompassed by this grievance, and is made without precedent or prejudice to the contractual rights of either party.

In order to acknowledge your concurrence with this settlement, please sign this copy and return it to my office.

Sincerely,

*Respondent's Name*  
*Title and/or Organization*

\_\_\_\_\_  
Union endorsement/date (or employee endorsement; if filed without union)\*

cc: [As appropriate]

**\* The union must be afforded the opportunity to be present at settlement discussions over any grievance filed solely by an employee. The settlement must be consistent with the terms of the agreement/memorandum.**

**Format for Grievance Settlement: Contract Interpretation (AGP or SGP)**

*Current Date*

*Union Representative's Name (or employee's name if filed by employee without union)*

*Union Identification (unless filed by employee without union)*

*Mailing Address*

RE: *Grievant's Name*  
*Grievance Number*  
*Department and Worksite*  
*Issue*

Dear \_\_\_\_\_:

As agreed between the parties, the referenced grievance will be resolved in the following manner:

1. The grievants will each receive ten (10) hours of overtime pay (time and one-half), less applicable deductions, at their pay rate in effect on \_\_\_\_\_ (date)\_\_\_\_\_.
2. This settlement disposes of all issues encompassed by this grievance, and is made without precedent or prejudice to the contractual rights of either party.

In order to acknowledge your concurrence with this settlement, please sign this copy and return it to my office.

Sincerely,

*Respondent's Name*  
*Title and/or Organization*

\_\_\_\_\_  
Union endorsement/date (or employee endorsement; if filed without union)\*

cc: [As Appropriate]

**\* The union must be afforded the opportunity to be present at settlement discussions over any grievance filed solely by an employee. The settlement must be consistent with the terms of the agreement/memorandum.**