


MANAGEMENT DIRECTIVE

Commonwealth of Pennsylvania Governor's Office

Subject: Classification Grievance Processing	Number: 590.08 Amended
Date: August 20, 2020	By Direction of:  Michael Newsome, Secretary of Administration
Contact Agency: Office of Administration, Human Resources and Management, Talent Management Office, Bureau of Organization Management, Telephone 717.787.6154	

This directive establishes policy, responsibilities, and procedures for the administration of classification grievances. Marginal dots are excluded due to major changes.

1. **PURPOSE.** To establish policy, responsibilities, and procedures for the administration of classification grievances.
2. **SCOPE.** This directive applies to all departments, offices, boards, commissions, and councils (hereinafter referred to as "agencies") under the Governor's jurisdiction.
3. **OBJECTIVES.**
 - a. To ensure that classification grievance processing is administered consistently and in accordance with established requirements.
 - b. To describe the one-step classification grievance process established with certain employee organizations.
4. **DEFINITIONS.**
 - a. **Arbitration.** Quasi-judicial proceedings overseen by a neutral arbitrator and initiated by an employee organization when a classification grievance is not satisfactorily resolved at previous steps of the applicable grievance procedure. Proceedings result in a final decision regarding the outcome of a grievance.
 - b. **Centralized Job.** A job that requires classification approval by the Office of Administration (OA), Human Resources and Management, Talent Management Office, Bureau of Organization Management (BOOM). Classification approval is required when agencies want to create, transfer, or reclassify a position in or to a centralized job for which they do not have classification authority.

- c. **Classification Grievance.** A dispute arising from classification provisions of a collective bargaining agreement or memorandum of understanding and involving the appropriate job classification of an employee's permanent or temporary duties and responsibilities.
- d. **Employee Organization.** A union or representative of employees that is certified by the Pennsylvania Labor Relations Board to act as an exclusive representative for purposes of collective bargaining, meet and discuss, and contract interpretation issues, including classification grievance proceedings, for Commonwealth employees in designated bargaining units.

5. POLICY.

- a. Where a collective bargaining agreement or memorandum of understanding includes a multi-step classification grievance process, Commonwealth Human Resource (HR) Analysts involved in classification grievance administration are responsible for the investigation of and response to all classification grievances submitted to their level. Attempts should be made to resolve grievances at the lowest level possible consistent with the collective bargaining agreement or memorandum of understanding. In the event a grievance is pursued by an employee or an employee organization, the information and documentation gathered is to be retained and made available to the succeeding steps of the grievance procedure in a timely manner.
- b. Where a collective bargaining agreement or memorandum of understanding includes only a one-step classification grievance process, HR Analysts assigned to BOOM are responsible for the investigation of and response to all classification grievances.
- c. In all cases, the review of classification grievances requires the thorough and timely collection of relevant data through a desk audit and discussions with the supervisor, and the analysis of such data to determine if a grievance should be sustained, denied, or otherwise resolved. Competent investigation, effective communication, and objective analysis serve to preclude the further processing of many grievances.

6. RESPONSIBILITIES.

- a. **Supervisors and Managers** are responsible for:
 - (1) Assigning duties and responsibilities to positions consistent with job specifications.
 - (2) Reviewing and verifying the accuracy of position and organization information.
 - (3) Maintaining up-to-date position descriptions for their staff.
 - (4) Documenting information in dispute.

- (5) Responding to requests for information from their agency's HR Office or HR Delivery Center and BOOM during any step of the classification grievance procedure.

b. Agency HR Offices and HR Delivery Centers are responsible for:

- (1) Serving as the designees to heads of agencies when processing classification grievances.
- (2) Ensuring that position and organization information is current, accurate, and complete.
- (3) Conducting fair, thorough, technically competent, and timely reviews of all classification grievances
- (4) Preparing technical evaluations that contain thorough analysis and application of appropriate classification standards with corresponding recommendation, conclusion, and response.
- (5) Maintaining and forwarding upon request all relevant grievance documentation to BOOM.

c. BOOM is responsible for:

- (1) Conducting reviews of first step classification grievances where the collective bargaining agreement has a one-step process, and maintaining communication with the agency's HR Office or HR Delivery Center throughout the processing of the classification grievance.
- (2) Conducting reviews of all other classification grievances, beyond the first step, or above the agency level, of the applicable classification grievance procedure, and providing training and procedural guidance on conducting classification grievance hearings, analysis, and response.

7. PROCEDURES.

- a.** The number of steps in classification grievance procedures varies by collective bargaining agreement or memorandum of understanding, with some agreements having no provision for processing classification grievances. Refer to the relevant collective bargaining agreement or memorandum of understanding for specific information on classification grievance procedures.
- b.** First-level supervisory employees covered by a memorandum of understanding do not have arbitration rights for classification matters, and therefore, the decision of the employer is final, binding, and determinative of issues raised under the provisions of the memorandum.

- c. The below procedures coincide with the Expedited Grievance Procedure found in some collective bargaining agreements or memoranda of understanding.

- (1) **Step 1.** The first step is the only step at which an agency or HR Delivery Center representing an agency can review a classification grievance. Therefore, it is important that the accuracy of all grievance information be verified, that a technical review of the work occur, and that every effort be made to resolve the grievance. All grievances must be answered timely based on accurate and verified information at Step 1. If the job classification being sought is a centralized job, all phases described below should be completed except that the response should not indicate a technical decision or recommendation. The response should state only that the agency or HR Delivery Center does not have classification authority to resolve the grievance.

The Commonwealth HR Analyst at the agency or HR Delivery Center should complete the review and documentation process in the following manner at Step 1:

- (a) A grievance involving the reclassification of a position is reviewed on the basis of the permanently assigned duties and responsibilities on the date the grievance was filed in writing. A grievance involving temporary assignments is reviewed based on the dates in which alleged temporary work was performed and a description of the alleged work performed.
- (b) The Commonwealth HR Analyst should verify the submission of all position and organizational information, and any additional information relating to the duties and responsibilities assigned either permanently or temporarily to the grievant's position, and request from the employee organization any information missing from the grievance package.
- (c) If the investigation of a classification grievance is expected to extend beyond the collective bargaining agreement time limit for a Step 1 response, the Commonwealth HR Analyst handling the case must request from the employee organization an extension of time to allow for proper investigation and analysis.
- (d) To facilitate the investigation of the grievance, it is recommended that a desk audit involving the grievant and employee organization (if applicable) be conducted on the grievant's position.
- (e) As a result of the desk audit, and/or follow-up discussions with the supervisor and/or other management personnel, the Commonwealth HR Analyst should document the

agreed upon duties and responsibilities and note any duties that remain in dispute. Information concerning the duties and responsibilities should come from management personnel with firsthand knowledge of the grievant's work.

- (f) The Commonwealth HR Analyst should review previous arbitrations for the history of decisions related to appropriate jobs and historical allocation criteria using the password accessible Classification Arbitration Search, http://www.jobclass.state.pa.us/Arbitration/Arbs_Search/Login.asp. HR Delivery Center and agency Commonwealth HR Analysts are also encouraged to consult with BOOM's Grievance and Arbitration Division when needed.
 - (g) The Commonwealth HR Analyst should prepare a technical evaluation and recommendation on the appropriate job for the duties and responsibilities assigned to the grievant's position, either permanently or temporarily. If the appropriate job sought is decentralized, the Agency HR Office or HR Delivery Center should issue a response to the employee organization in writing on the technical merits of the grievance. If the appropriate job sought is a centralized job, the response should state only that the agency or HR Delivery Center does not have classification authority to resolve the grievance.
 - (h) The agency HR Office or HR Delivery Center should maintain a complete file of all classification grievance material that has been compiled. Such material should include an agreed upon position description or an agreed upon statement of alleged temporary higher level duties and responsibilities, a technical evaluation, an organization chart, any statements by the supervisor or manager concerning problems with the employee-prepared position description or list of alleged temporary higher level duties and responsibilities, response to the employee organization, and any other relevant documentation. Upon request, this material is to be provided to BOOM's Grievance and Arbitration Division.
- (2) **Step 2.** Second step submissions of classification grievances are investigated and answered by BOOM's Grievance and Arbitration Division. This is typically the final step before a grievance may be brought before an arbitrator. However, the second step decision is final and binding for grievances filed on behalf of first-level supervisors covered by a memorandum of understanding.

The Commonwealth HR Analyst in BOOM's Grievance and Arbitration Division should complete the review and documentation process in the following manner at Step 2:

- (a) Request relevant classification grievance materials gathered by the agency HR Office or HR Delivery Center at the prior step and any information missing from the grievance package from the employee organization.
 - (b) Based on the agency HR Office's or HR Delivery Center's classification grievance material and the information contained in the grievance package, the reviewing Commonwealth HR Analyst determines the appropriate method of investigation (e.g., grievance meeting, discussion with the grievant's supervisor and/or another manager knowledgeable about the duties, and/or discussion with the reviewing analyst(s) at the previous step).
 - (c) As a result of the information collected and analyzed, a second step response to the grievance is issued in writing to the employee organization. The affected agency HR Office or HR Delivery Center is copied on the response. Any decision not in accordance with a first step response will be made in consultation with the agency.
- (3) **Step 3.** This is the final step in the classification grievance procedure, and it involves either advisory or binding arbitration, depending on the nature of the classification issue and the collective bargaining agreement. The Step 3 procedures are as follows:
- (a) The employee organization indicates in writing its intent to arbitrate the grievance by notifying BOOM's Grievance and Arbitration Division.
 - (b) The employee organization and BOOM's Grievance and Arbitration Division select a neutral arbitrator from a panel of classification arbitrators that have been jointly selected by the parties, or by striking from a list of arbitrators provided by the Department of Labor and Industry, Bureau of Mediation, or by striking from a list of arbitrators provided by the American Arbitration Association for PSCOA grievances.
 - (c) With the assistance of the agency HR Office or HR Delivery Center, management, and supervisor(s), the Grievance and Arbitration Division prepares its case for arbitration and advocates the Commonwealth's position.
 - (d) Upon receipt of the arbitration award, the Grievance and Arbitration Division officially transmits the award to the affected agency HR Office or HR Delivery Center. If the grievance is sustained, direction will be provided to the affected agency HR Office or HR Delivery Center on how to implement the award.

- d. Where a collective bargaining agreement or memorandum of understanding includes a one-step classification grievance process, the following procedures apply:
- (1) Submissions of classification grievances under the one-step process are investigated and answered by BOOM's Grievance and Arbitration Division. This is typically the final step before a grievance may be brought before an arbitrator. However, grievances filed on behalf of first-level supervisors covered by a memorandum of understanding ends with the decision by BOOM and the grievance may not be moved to arbitration.
 - (2) The Commonwealth HR Analyst in BOOM's Grievance and Arbitration Division should complete the review and documentation process in the same manner as described in Step 2 of the Expedited Grievance Procedure set forth above.
 - (3) The Commonwealth HR Analyst in BOOM's Grievance and Arbitration Division will communicate with the agency HR Office or HR Delivery Center, as appropriate, throughout the process to obtain and share information regarding the case. The final decision on the case will be shared with the agency HR Office or HR Delivery Center.
 - (4) If the grievance isn't resolved through the one step process, the final step in the classification grievance procedure follows Step 3 above.
- e. The following may help to investigate and complete the information gathering and analysis of grievances related to Temporary Assignments in a Higher-Level Classification:
- (1) Grievances alleging the performance, in general, of temporary work in a higher-level classification require a somewhat different review than those alleging a change in permanent duties and responsibilities. When reviewing such grievances, the following three basic differences must be considered:
 - (a) **Timeliness:** Payment should be made only for the timely dates presented in the grievance. While the time limits may vary from collective bargaining agreement to collective bargaining agreement, as a general rule, the Commonwealth must include payment for out-of-classification work in the employee's biweekly paycheck once the threshold time requirement, as defined in the appropriate collective bargaining agreement or memorandum of understanding, has been met. If this does not occur, the employee has the right to grieve the nonpayment for a certain number of days subsequent to the Commonwealth's failure to include the payment in the employee's biweekly paycheck. Refer to the appropriate collective bargaining agreement or memorandum of

understanding for the exact number of days required for an employee organization to timely file a grievance.

- (b) There are contractual requirements for a minimum number of full or half days worked at the higher level classification before payment is required. The collective bargaining agreements and memoranda of understanding differ on the exact minimum. Refer to the relevant collective bargaining agreement and memorandum of understanding before investigating grievances of this kind.
 - (c) The alleged higher level work must be separate and distinct from the employee's regular duties and responsibilities. Determinations of whether to pay an employee for temporary work in a higher-level classification should be based on work that is temporary, not permanent, in nature. Temporary work is not a regular and recurring part of the employee's position. Such determinations are easy to support when documentation exists that links the higher-level work to extraordinary work situations such as leave, limited term work, or a special project of a limited duration.
- (2) The following steps for investigating temporary work out-of-classification grievances should be followed:
- (a) Review the regular duties and responsibilities of the grievant's position and determine if the position is properly classified.
 - (b) Identify the alleged out-of-classification work and the dates and times the alleged work was performed.
 - (c) Obtain a description of the circumstances giving rise to the alleged out-of-classification work in order to establish that the work is in fact temporary rather than permanent.
 - (d) Analyze how the grievant's duties and responsibilities changed on the dates and times in question.
 - (e) Secure a description of the absent employee's or vacant position's duties and responsibilities (if applicable) and determine if that position is properly classified.
 - (f) Determine if the grievant performed, in general, the duties and responsibilities permanently assigned to the absent higher-level employee's position or vacant position.
 - (g) Analyze the alleged work performed by the grievant on the dates and times in question against the appropriate job specification.

- (h) Issue a response to the grievance based on the information obtained and the analysis of same.
- f. Allegations concerning the content of job specifications or the assignment of jobs to certain pay scale groups are not addressed through the classification grievance procedures. Responses to such grievances should indicate that the remedy requested is not properly sought through a classification grievance.
- g. Agency HR Offices and HR Delivery Centers are advised to use caution when settling classification grievances. Generally, settlements should be consistent with the collective bargaining agreement, such as the permanent reclassification of a position or payment for temporary work out-of-classification. The provision of extra-contractual remedies or remedies inconsistent with or contrary to collective bargaining agreements or memoranda of understanding shall be discussed with and approved by BOOM's Grievance and Arbitration Division before a settlement is offered to the employee organization. All settlements shall be made without precedent or prejudice to the contractual rights of the Commonwealth and the employee organization unless permission is otherwise granted by BOOM's Grievance and Arbitration Division. No settlements shall be offered by the agency HR Office or HR Delivery Center that would result in the reclassification of a position to a centralized job. Informational copies of all proposed and agreed upon settlements shall be forwarded to BOOM's Grievance and Arbitration Division.

This directive replaces, in its entirety, *Management Directive 590.08*, dated July 9, 2012.