



# Labor Relations

<b>TOPIC LEARNING OBJECTIVES</b>  Upon successful completion of this topic, the student will be able to:  <div><div>1. Identify the roles of the various organizations involved in the labor relations process.</div><div>2. Identify categories of personnel considered to be “bargaining unit employees” with respect to Federal Service Labor Relations.</div><div>3. Recognize activities where “official time” may be used.</div><div>4. Identify when “official time” is an entitlement and when it must be negotiated.</div><div>5. Recognize employee, Union, and management rights which are protected by Federal Labor Relations law.</div><div>6. Identify when management has the obligation to notify the Union when making changes to personnel policies, practices and working conditions.</div><div>7. Use formal discussion and Weingarten meeting criteria to determine when labor organization representatives should be given the opportunity to be present at meetings.</div><div>8. Identify management and Union unfair labor practices.</div></div>	<b>STUDENT PREPARATION</b>  Student Support Material  <div><div>1. None</div></div> Primary References  <div><div>1. Federal Labor Relations “Basic Concepts”</div><div>2. Executive Order 12871 and DoD Memo</div><div>3. Public Law 95-454</div><div>4. “The Weingarten Right”</div></div> Additional References  <div><div>1. None</div></div>
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# Overview

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- Basic Definitions –Bargaining Units – Coverage –Exclusive Representative
- Employee/Union/Management Rights
- Bargaining Obligations/Past Practice/ Impact and Implementation
- Grievance/Mediation/Impasse Procedures
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# Basic Definitions

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- **Collective Bargaining Unit**
  - A group of employees who are represented by a Labor Union in their dealings with agency management
- **Exclusive Representative**
  - Under the Federal Service Labor-Management Relations Statute, exclusive recognition is normally obtained by a Union as a result of receiving a majority of votes cast in a representational election
- **Collective Bargaining Agreement (CBA)**
  - A legal written contract between an employer and exclusive representative of a bargaining unit representing employees. This document results from extensive negotiations between the parties and covers topics like hours or work, leave, grievance procedures, and other conditions of employment



# Bargaining Unit Coverage

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- Who's covered

- Bargaining Unit Employee: The term “bargaining unit employee” includes an individual “employed in an agency,” regardless of dues-paying union member or not

- Who's not covered

- Management Official: An individual who formulates, determines or influences the policies of an agency.
  - May include non-supervisory employees i.e., human resources advisors, security specialists, confidential employees & certain administrative personnel, depending on their assigned duties
- Supervisor: An individual having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action
- Contractors and uniformed Military personnel



# Bargaining Unit Coverage

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- Who's **not covered**
  - Confidential employee
  - Employee engaged in personnel work other than a purely clerical capacity
  - Employee engaged in administering provisions of the labor chapter
  - Employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security
  - Any employee primarily engaged in the investigation or audit functions relating to the work of individuals employed by the agency whose duties directly affect the national security of the agency





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# Employee Rights

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- Each employee shall have the right to form, join, or assist any labor organization or to refrain from any such activity
- Act for a labor organization in the capacity as a representative, and the right to present the views of labor organization to the heads of agencies, or other officials of the Executive Branch, Congress
- To engage in collective bargaining with respect to conditions of employment through representatives chosen by this chapter





# Union Rights

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- A Union that has been accorded representational rights over a Bargaining Unit must represent all employees covered by that Bargaining Unit, regardless of whether they pay Union dues or not; this is known as the duty of fair representation
- Negotiate agreements for Bargaining Unit employees
- Be present at Formal Discussions with Bargaining Unit members
- Be present at any examination (Weingarten) with a Bargaining Unit member
- To request information from management to be used for representation duties (particularized need)



# Management Rights

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- To determine an agency's mission, budget, organization, total number of employees, and internal security
- To hire, assign direct, layoff, and retain employees or to suspend, remove, reduce in grade or pay, or take other disciplinary action
- To assign work, to contract out, and to determine the personnel by which agency operations shall be conducted
- To fill positions by selecting from properly prepared selection certificates or any other appropriate source
- To take whatever action is necessary during emergencies

*Recommendation: Read and try to understand the nuances of your local union's CBA*



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# Actions Subject to Bargaining

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- Procedures management officials of the agency will use in exercising the rights reserved to management
- Appropriate arrangements for employees adversely affected by the exercise of rights reserved to management
- At the election of management, the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty; the technology, method, and means of performing work



# Impact and Implementation Bargaining – (“I & I”)

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- Collective Bargaining Agreement will outline the procedures to follow. Usually, a fifteen-day notice is required; the period of notice varies between CBAs. Employer may be required to provide the change in writing and the reasons for the change
- Union must request to bargain. If the Union doesn't request to bargain, the Union will have waived its right to bargain. Employer may implement the change
- Mediation: Use of a third party, usually a neutral without authority to impose a settlement, to assist the parties to reach agreement
- Impasse: Inability to reach an agreement



# Past Practice

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- Unwritten rules that can become an enforceable part of the agreement
- Elements necessary to establish a past practice
  - clear and consistent
  - has been followed for a substantial period of time
  - is known to both agency and Union officials
  - is not contrary to applicable laws or regulations



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# Grievance

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- Complaint by an employee
- Complaint by a Union concerning an employee
- Complaint by an agency
- The respective Collective Bargaining Unit Agreement will identify specific exclusions and procedures
- An Alternative Dispute Resolution (ADR) process may apply
  - designed to amicably resolve grievance issues at lowest level



# Exclusions from the Grievance Procedure

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- Claimed violations of 5 USC, chapter 73, subchapter III, relating to prohibited political activities
- Retirement, life insurance, health insurance
- A suspension or removal under 5 USC 7532
- Any examination, certification, or appointment
- The classification of any position that does not result in the reduction in grade or pay of an employee
- Matters covered by 5 USC 2302(b) (1)
- Termination of a temporary or probationary employee, temporary position, or temporary appointment



# Grievance Procedure (Traditional)

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- First Step Grievance: Presented to first level supervisor within fifteen workdays. Management must provide a response within seven workdays
- Second Step Grievance: Must be presented within five workdays of outcome in step one to next level supervisor. Management has ten days to complete response
- Third Step Grievance: Must be presented to CO/XO within five workdays. Management has ten workdays to respond

*A grievance moves from one level of authority to the next higher level until it is settled, withdrawn, or referred to arbitration*



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# Formal Discussions

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- The Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the agency and one or more employees, or their representatives, concerning any grievances, personnel policy, practices, or other general conditions of employment. Management determines the content, time, and location of the meeting
- The Union must be invited to the meeting with as much advance notice as possible. The designated Union representative is entitled to ask questions and make statements about the topic under discussion. They may not ask questions outside the scope of the meeting
- Formality factors: Level and number of management representatives in attendance; location of the discussion; scheduled versus impromptu; duration; agenda; mandatory or voluntary attendance; purpose; notes or minutes



# Weingarten Rights

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- The Union shall be given the opportunity to be represented at any fact finding by a representative of the agency in connection with an investigation if:
  - The employee reasonably believes the fact finding may result in disciplinary action for them, and
  - The employee requests representation
- A wide array of investigative activities qualify under this provision of the statute. Both criminal and non-administrative investigations qualify as “examinations”
- Role of the Union Representative: Cannot interfere with or compromise the integrity of the investigation. May or may not include the right to caucus with the employee in private
- HQ and Command Office of Inspector General investigators are considered representatives of the agency



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# Unfair Labor Practices

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- An Unfair Labor Practice (ULP) is a violation of a statutory right. A ULP charge can be initiated by
  - an employee
  - the Union
  - management
- A ULP is filed with the FLRA who investigates, conducts hearings, and resolves complaints of alleged unfair labor practices
- If an agency or Union is found to have committed a ULP, the FLRA may prescribe a remedy designed to correct the ULP
- Most ULPs can be avoided by a general understanding of the rights of the parties and a common-sense approach to effective relationships



# Official Time

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- Definition: The use of paid, on-the-clock time by Union representatives for the conduct of representational activities
- Allowing Official Time: Subject to the provisions of the Labor-Management Statute and implemented by the agency and the Union to determine the details; usually set forth in the CBA (i.e., procedures for obtaining it, who may use it, how much time can be used, and what functions may be performed while on it). Must report usage annually
- What's covered: Grievance investigations and presentations; negotiations; attending meetings with management serving on various committee; testifying in arbitration or unfair labor practice hearings
- What's not covered: Internal Union business (i.e., efforts to recruit new members, politicking for election to a Union post, and working on Union finances or other internal Union business)



# Management Unfair Labor Practices (ULPs)

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- To interfere with, restrain, or coerce any employee in the exercise of any right under the Statute
- To encourage/discourage membership in a labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment
- To sponsor, control, or otherwise assist any labor organization
- To discipline, or otherwise discriminate against, an employee because the employee has filed a complaint, affidavit, petition, or has given any information or testimony under the Statute



# Management Unfair Labor Practices (ULPs)

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- To refuse to consult or negotiate in good faith
- To fail or refuse to cooperate in impasse procedures and decisions
- To enforce any rule or regulation that conflicts with any applicable CBA in effect before the rule or regulation was prescribed
- To otherwise fail or refuse to comply with any provision of the Statute



# Union Unfair Labor Practices (ULPs)

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- To cause or attempt to cause an Agency to discriminate against any employee in the exercise of any right under the Statute
- To coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering the member's work performance productivity as an employee or the discharge of the member's duties as an employee
- To discriminate against an employee regarding the terms or condition of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or non-preferential civil service status, political affiliation, marital status, or handicapping condition
- To refuse to consult or negotiate in good faith



# Union Unfair Labor Practices (ULPs)

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- To fail or refuse to cooperate in impasse procedures and decisions
- To call or participate in a strike, work stoppage, slowdown, or picketing of an Agency in a labor-management dispute if such picketing interferes with an Agency's operation, or to condone any such activity by failing to take action to prevent or stop such activity
- To otherwise fail or refuse to comply with any provision of 5 USC 7116(b)
- To deny membership to any employee in the appropriate unit, except for failure to meet reasonable occupational standards uniformly required for admission, or to tender due uniformly required as a condition of acquiring and retaining membership



# Unfair Labor Practice (ULPs) Procedures

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- Charges must be filed within 6 months of the event. Federal Labor Relations Authority (FLRA) Regional Office investigates allegations in charge. Informal settlements always encouraged
- If a violation is found, Regional Director issues complaint against charged party:
  - Settlement conference with settlement judge
  - Hearing held before Administrative Law Judge
  - Adverse decision appealable to FLRA and the courts





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# Who's Who in Federal Labor-Management Relations

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- Federal Labor Relations Authority (FLRA): The administrative body given primary authority over most aspects of the federal labor-management relations program. Determines:
  - Appropriate bargaining units
  - Final decisions on negotiability disputes
  - Final decisions on unfair labor practice complaints
- FLRA may review arbitration decisions
- FLRA Office of General Council (OGC): The part of the FLRA that investigates and prosecutes unfair labor practice charges
- Administrative Law Judge (ALJ): An official of the FLRA who conducts unfair labor practice complaint hearings and renders recommended decisions
- Office of Civilian Human Resources (OCHR) and local HRO



# Who's Who in Federal Labor-Management Relations

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- Federal Mediation and Conciliation Service (FMCS): Administrative body that provides mediators who assist agency and Union negotiators in attempting to reach agreement on bargaining issues
- Labor Arbitrators: Independent neutrals, employed neither by a Union nor the Federal government, who preside over grievance and bargaining disputes, and render binding decisions
- Federal Service Impasses Panel (FSIP): Administrative body empowered to render final and binding decisions in bargaining impasses between Federal agencies and Unions



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# Case Studies

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- The following cases all involve situations in which management makes decisions or wants to make decisions which may require negotiation with the exclusive Union prior to implementation
- Please review each case and determine if the decision to make the changes concerns matters over which you would be required to negotiate, ones which are permissively negotiable, or matters which you are prohibited from bargaining as a management right
- If prohibited or permissive, is the decision subject to bargaining on implementing procedures or impact on employees who are adversely affected?



# Case Study #1

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The end of the first performance review cycle under DPMAP is nearing for one of your employees, Howard Jones. You are discussing Howard's performance rating with him and things get more and more awkward. He gets openly hostile as you discuss the quality of his work. You tell him very explicitly how he must improve and that while you are giving him a rating of fully successful on most elements, you are rating his performance on two of the elements as unsuccessful. At that point he shouts, "But if you do that, I won't get my within grade! I want the Union steward in here before this goes any further!"



## Case Study #2

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You have recently been selected as the Head of Engineering. The written policy for sick leave call-in procedures provides that employees should call in and request leave for each day of their absence. For the period your predecessor was in charge (two years), employees were allowed to merely call in on the first day of their absence. You plan to issue a memo to all employees informing them that, consistent with the policy, they will be required to call in each day of their absence to avoid possible disciplinary action



# Summary

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- Who's covered in the context of Collective Bargaining Units?
  - Bargaining Unit Employee
    - The term "bargaining unit employee" includes an individual "employed by the agency"
- Who's not covered?
  - Management official
  - Supervisor
  - Uniformed Military personnel
- Define Unfair Labor Practices
- When must a Union representative be given the opportunity to be present for a discussion?
  - When the discussion concerns any grievance, personnel policy, or practice or other general condition of employment





# Backup

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# Union Goals

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- The ideal goals of the unions are to take care of people:
  - International Federation of Professional and Technical Engineers (IFPTE) (a white collar union):
    - “We exist to give our members an effective voice in the legislative process and issues that affect their careers and families. All of us are impacted by national and local legislation in one manner or another. Through IFPTE, our members able better to advocate to policy makers. This is not the same as being involved in party politics. We pride ourselves has being a union that focuses on the issues that concern our members, not ideology.
    - We exist to raise the standards of professional and technical employees. Working together our members are able to bargain with their employer to gain a contract laying their relationship moving forward to resolve difference and make improvements.
    - We exist so our members can join in solidarity with other professionals in the United States and Canada. By joining together with other organized employees we can share knowledge and assist each other during challenging times.”



# Checklist for Formal Discussions

5 USC 7114(a)(2)(A)

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## I. **Determining a Formal Discussion** - Before the meeting is held, determine whether it is a formal discussion:

### A. Attendance:

\_\_\_\_\_ Is the discussion between one or more management representatives of the agency and one or more bargaining unit employees (or their representatives)? **AND**

### B. Subject: Will the discussion concern

\_\_\_\_\_ Any grievance of a bargaining unit employee, **OR**

\_\_\_\_\_ Any personnel policy, practice or matter affecting working conditions of unit employees?

If condition A or both conditions under B are absent, the meeting is not a formal discussion and the Union does not have an opportunity to be represented under 5 USC 7114(a)(2)(A). If condition A and either condition under B is present, the meeting is a formal discussion and you should proceed to Part II of this checklist.

## II. **Discharging the Obligation** - For formal discussion under 5 USC 7114(a)(2)(A) has management given the exclusively recognized Union the opportunity to be represented by:

\_\_\_\_\_ Notifying the exclusive Union reasonably in advance of the meeting (giving the Union the time, date, place, and general subject of the discussion)?

\_\_\_\_\_ If a Union representative attends, has management allowed the representative to ask relevant questions and to make relevant comments on behalf of the Union?

This checklist is designed to determine only if the Union has a right to be represented under 5 USC 7114(a)(2)(A). The rights of the parties under the law may be supplemented by the terms of a negotiated agreement or by other policies and practices; these possibilities should be considered when applying the results of this checklist.



# CBA March 2020 (Red book-Unit One)

## I. Informal Resolution - Alternative Dispute Resolution (ADR)

**Section 1.** This article represents the parties' agreement on grievance procedures, which was negotiated with the Council in accordance with Article II.

This informal resolution may be utilized by mutual consent between the Employee, The Employee with a Council representative, or Employer for issues related to personnel policies and practices and other matters affecting conditions of employment of Employees within the bargaining unit that fall within the scope of the Employer's bargaining authority with the appropriate supervisor. The employee representing themselves or an employee represented by the Council may choose to go through this informal resolution, that is informal ADR or directly to the formal grievance procedure. If the formal grievance procedure is selected, then the employee (regardless of representation) forfeits their informal resolution option. Issues/Disputes will be raised within seven (7) working days from the date of the incident, or when the employee should have become aware of the incident. The Employee(s) and/or the Council Representative

**Section 8.** The following procedures apply in processing Employee grievances covered by this agreement:

### b. Formal Procedure - Step 1.

(1) Results of informal resolution may be elevated to a formal - Step 1 if the informal decision is not acceptable to the grievant. The Employee will submit the grievance in writing, using the form at Appendix III, to the designated Employer representative, within ten (10) working days after receipt of the informal decision. The written grievance shall contain the details of the complaint, the date the incident occurred, applicable provisions of this agreement, which are relevant to the grievance, the date of receipt of the informal decision and the desired corrective action personal to the grievant. A statement of matters unresolved by the informal process and any additional pertinent information will be added, along with a written designation



process and any additional pertinent information will be added, along with a written designation of the grievant's representative, if any.

(2) The Employer will issue a written decision within ten (10) working days after receipt of the grievance.

#### c. Formal Procedure - Step 2.

(1) If the aggrieved Employee is dissatisfied with the Step 1 decision, they may submit the grievance in writing to the designated Employer representative within ten (10) days of the date the Step 1 decision was received, provided the issue(s) presented are the same as those submitted at Step 1 and the grievant clearly states the reason why the Step 1 decision is unacceptable. The designated official will issue a final written decision regarding the matter within twenty (20) days after receipt of the grievance, or within ten (10) days of the meeting with the grievant, whichever is later.

(2) If at any point in this grievance procedure the aggrieved party decides the matter has been resolved to their satisfaction, the decision shall be final and neither the Employer nor the Council shall take further action concerning the grievance.



# CBA 2019 (Blue Book-Professional Unit)

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Section 6. Submission Requirements. Submission of employee grievances shall be made in accordance with the following:

a. The employee will submit his grievance, in writing, to the appropriate Council steward, normally within 5 work days, by filling in the appropriate spaces on Appendix 5, Grievance Form. The steward, if desired, shall notify the appropriate supervisor or management official of the grievance, and if time permits, attempt to resolve the grievance through informal discussion with that supervisor. If informal discussion fails to resolve the grievance, then the Council steward and the endorsing Council official will complete the grievance form by filling in the appropriate spaces for submission to the appropriate supervisor or management official for processing at Step 1, Section 7 or Section 9.

b. A grievance must be submitted to, and received by, the appropriate official, as outlined below, within 15 work days after the last occurrence or action which caused the grievance, or within 15 work days of the date on which the employee became aware of such occurrence or action, whichever is later. At the time the employee submits the grievance, the employee must indicate on the grievance form which grievance procedure he elects: the THREE STEP GRIEVANCE PROCEDURE or the ALTERNATIVE DISPUTE RESOLUTION (ADR) GRIEVANCE PROCEDURE. The grievance will be processed through the Three Step Grievance Procedure if no election is made at the time of filing.

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Section 7. Grievance Processing. Employee grievances submitted in accordance with this article will be processed under the following steps:

a. Step 1. The official designated (normally the Division Head) to handle the



Section 7. Grievance Processing. Employee grievances submitted in accordance with this article will be processed under the following steps:

a. Step 1. The official designated (normally the Division Head) to handle the first step of the grievance procedure will:

(1) first determine whether the grievance is timely, is covered by this grievance procedure, and has been properly processed. The official may deny the grievance in writing if it was not filed within the specified time limit (if the time limit has not been extended in accordance with Section 6.d. of this article) or consists of a matter or matters not covered by this article.

(2) following determination that the grievance meets the foregoing, discuss the matter with the person or persons involved, including the grievant, his Council representative if any, any necessary witnesses, supervisors and management officials having a definite and direct responsibility in the matter, and when desired, a representative from the Human Resources Office or designee. A decision in writing will be given the grievant and grievant's representative (if one has been designated) within 15 work days following the Step 1 submission by the employee.

b. Step 2. If the employee is dissatisfied with the decision at Step 1, he may, within 15 work days after receiving the decision in Step 1, resubmit his grievance to the appropriate management official (normally department/office head), by completing the appropriate space on the previously submitted grievance form and attaching any additional statement desired concerning the grievance.

(1) The appropriate management official (normally department/office head), will review the grievance. This review may include personal investigation of the matter, interviews with the personnel concerned, an informal group meeting, or any combination of these procedures.

(2) The employee will be provided a reply, in writing, either on the grievance form or in a memorandum attached thereto. The decision will be delivered to the grievant and grievant's representative (if one has been designated) within 15 work days



(2) The employee will be provided a reply, in writing, either on the grievance form or in a memorandum attached thereto. The decision will be delivered to the grievant and grievant's representative (if one has been designated) within 15 work days following the date submitted at Step 2 of this procedure.

c. Step 3. If the decision at Step 2 of this procedure is not acceptable to the employee, he may, within 15 work days of receipt of the decision of Step 2, further process his grievance by completing the applicable portion of the grievance form and resubmitting it to the Deputy Shipyard Commander or designee not directly involved with the grievance.

(1) The Deputy Shipyard Commander or designee not directly involved with the grievance shall review the grievance and within 15 work days following receipt of the grievance, will notify the grievant and grievant's representative (if one has been designated) in writing of his decision.

(2) If the decision at Step 3 is not acceptable, the grievance may be submitted to Arbitration by the Council, in accordance with the procedure and the time limits in Article 20, Arbitration, except that arbitration will not be invoked on grievances regarding letters of caution or requirement.

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