

ORNGCER 771

Human Resources

**Agency Grievance
Procedure for Non-
Bargaining Unit
Employees**

**Joint Force Headquarters
Oregon National Guard
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Civilian Employee
Regulation 771

Human Resources

Oregon National Guard Agency Grievance Procedure

By Order of the Governor:


MICHAEL E. STENCEL
Major General
The Adjutant General

Official:


STUART K. MATHEW
Colonel, ORANG
Chief of the Joint Staff

History. This publication replaces previous ORARNGR 690-6 and ORANGR 36-101, Oregon National Guard Agency Grievance Procedures for Non-Bargaining Unit Members. An agency grievance procedure is required IAW 5 CFR 771.

Summary. This regulation implements and describes the Agency Grievance Procedure (AGP) for the Oregon National Guard. The AGP is an internal system designed for providing prompt and fair resolution of non-bargaining unit Employees' dissatisfactions. Procedures include Alternative Dispute Resolution (ADR).

Applicability. This regulation applies to all Oregon National Guard federal employees, including both T32 USC and T5 USC employees under the administrative control of the Adjutant General (hereafter referred to as employee(s)) except for employees covered under the agency's Collective Bargaining Agreement (CBA). The CBA contains grievance procedures applicable to bargaining unit members.

Proponent and exception authority. The proponent for this regulation is the Director of Human Resources (DHR). The DHR has authority to approve exceptions to this regulation that are consistent with controlling law and regulation. The DHR may delegate this approval authority in writing, to the Deputy Director of Human Resources (DDHR), a branch chief, or specialist in the Human Resources Office as deemed appropriate.

Suggested Improvements. Users are invited to send comments and suggested improvements to the Human Resources Office inbox at: ng.or.orang.mbx.j1-hro@mail.mil.

Distribution. This publication is available through links on several ORNG web sites or in print media, through the Human Resources Office at 503 584 3975.

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Section 1

Introduction

1-1. Purpose

This regulation implements and describes the Agency Grievance Procedure (AGP) for the Oregon National Guard. The AGP is an internal system designed for providing prompt and fair resolution of non-bargaining unit Employees' dissatisfactions. The AGP includes a provision for Alternative Dispute Resolution (ADR).

1-2. References

- a.* 5 CFR, Parts 771 Agency Administrative Grievance System
- b.* 32 USC, Section 709 Employees Employment, use, status

1-3. Policy

The Adjutant General of Oregon provides, through this grievance procedure, a means of communication between management and non-bargaining unit Employees for settlement of disagreements, misunderstandings, and issues of concern and dissatisfaction. Grievances will be processed through the step one stage before being advanced to step two. First level supervisors are delegated the authority for informal resolution of grievances for Employees under their supervision. The step one may include ADR. Participation in ADR does not limit the grievant's rights to continue with the grievance procedure.

1-4. Definitions

- a.* Confidential Employee. "Confidential Employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations. (5 USC 7103(a)(13))
- b.* Grievance. "Grievance" means any complaint by an employee concerning any matter relating to the employment of the employee; any claimed violation, misinterpretation, or misapplication of any law, rule or regulation. (5 USC 7103(a)(9)(A))

1-5. Coverage

The AGP covers all Oregon Army and Air National Guard federal employees who are not members of the bargaining unit and therefore not covered by the negotiated grievance procedure. Non-bargaining unit members include all managers, supervisors, human resources personnel and confidential employees. These grievance procedures apply to matters of concern or dissatisfaction relating to the employment of an individual under the jurisdiction of the Adjutant General and any instance where an employee alleges coercion, reprisal, discrimination or retaliation in association with his/her grievance.

1-6. Exclusions

- a.* The AGP may not be used to grieve:
 - (1) Separation from employment status due to failure to maintain a military assignment with the Oregon National Guard or due to failure to hold a military rank commensurate with the Technician position IAW 32 USC 709(f)(1)(A).
 - (2) Non-selection for a position from a group of properly certified candidates.
 - (3) Non-adoption of a suggestion.

- (4) The results of a classification appeal.
- (5) The content of published Oregon National Guard regulations.
- (6) Any action or issue excluded from coverage of the negotiated grievance procedure.
- b.* The AGP may not be used to grieve a performance review or appraisal. However, an employee may appeal performance appraisals under procedures outlined in ORNGTPR 430/ORNGCER 430 Employee Performance Planning and Appraisal Program.
- c.* The AGP may not be used to grieve the following personnel actions if approved by the Adjutant General IAW 32 USC 702(f):
 - (1) Separation due to failure to meet military security standards.
 - (2) Separation for cause.
 - (3) Reduction in force, removal, suspension, furlough without pay, discharge from employment, or reduction in rank or compensation.
- d.* The AGP may be used to grieve a recommendation to take any action stated in paragraph (c) above, provided the Adjutant General has not made a final decision on the matter.

1-7. Right of All Parties to Seek Advice

In the course of settling a grievance promptly and fairly, either at the step one or step two stage, Employees and/or supervisors may need to seek advice or assistance from other sources. The following sources are encouraged as opportunities for assistance:

- a.* A supervisor or management official of a higher grade than the immediate supervisor.
- b.* The Human Resources, Labor Relations Specialist (HR-LRS).
- c.* The State Equal Employment Manager (SEEM).

1-8. Rights of the Grievant

- a.* An employee has the right to present a grievance free from restraint, coercion, discrimination, and reprisal.
- b.* An employee has the right to an appropriate amount of paid official time (usually up to four hours) for preparation as the grievance is elevated through the process.
- c.* An employee has the right to seek advice and be represented by someone of their own choosing.

1-9. Representation

When an employee designates another employee as a representative, the representative will:

- a.* Be free from restraint, coercion, discrimination, and reprisal.
- b.* Be authorized an appropriate amount of official time (usually up to four hours) for preparation as the grievance is elevated through the process.

Section 2

Grievance Procedures

2-1. The Grievance Procedure (Step One)

- a.* Employees will present the grievance to their immediate supervisor orally and in writing. A grievance concerning a particular act or occurrence must be presented within thirty (30) calendar days of the date the employee became aware of the act or occurrence that gives rise to the grievance. However, an employee may present a grievance concerning a continuing practice or condition at any time.

b. If the grievance is not settled within seven (7) calendar days from the date it was received by the immediate supervisor, the Employee may within the next seven (7) calendar days proceed with the step two grievance procedure outlined below.

c. If either the supervisor or grievant requests ADR assistance from the HRO, the seven (7) calendar day requirement will be waived at the step one level until the HRO can explain the ADR process and options to parties involved. If the parties agree to ADR, the seven-calendar-day requirement will be further waived until the ADR process is complete. If the ADR process is terminated, the seven calendar-day requirement will begin again on the day of ADR termination.

2-2. The Grievance Procedure (Step Two)

a. If the Employee who files the grievance is dissatisfied with the results of the step one procedure, he or she will inform the immediate supervisor and ask that the step two process be initiated. The supervisor will inform the employee of the step two grievance process and contact the HR-LRS. The supervisor will forward the written grievance to HR-LRS along with any supporting documents. The employee may also send a clarifying step two written grievance directly to HR-LRS.

b. Within seven (7) calendar days of receipt by HR-LRS of the step two grievance, the DHR will appoint a management official, who will be responsible to investigate and issue a decision on the step two grievance. To insure impartiality, the DHR will make every effort to appoint a management official from a component other than the one from which the grievance originated (ANG will investigate ARNG grievances and vice versa).

c. When the appointment is made, HR-LRS will immediately notify the grievant and supervisor. HR-LRS will provide the management official with the written grievance and all supporting documents and assist in coordinating contact between the management official and the parties involved.

d. Within ten calendar days of his or her appointment, the management official will investigate and **render a decision in writing** to the grievant and/or grievant's representative. To complete the investigation, the management official will review all material submitted and may consult with ORNG officials, supervisors and employees who may have knowledge and information concerning the grievance. The management official will meet separately with the parties in order to provide an opportunity to present information orally. The management official will maintain a summary of the oral information provided at the meetings. After the management official renders his or her decision, he or she will forward all documents associated with the grievance to HR-LRS.

e. If the grievant is not satisfied with the management official's decision, he or she may, within ten calendar days, forward a letter through the DHR to the Adjutant General requesting a review and final decision regarding the grievance.

2-3. The Adjutant General's Review (Step Three)

a. If the grievant requests an Adjutant General Review, he or she and/or their representative may request a meeting regarding the grievance with the Adjutant General. If such a request is received, the Adjutant General will meet with employee and/or the employee's representative as soon thereafter as possible.

b. The Adjutant General will render a written decision within fourteen calendar days after receipt of the request to review, or after the final meeting on the grievance if a meeting has been requested.

Section 3 Alternative Dispute Resolution (ADR)

3-1. General

ADR is processes encompassing a broad range of joint problem solving techniques with the purpose of settling disagreements promptly, fairly and without litigation. ADR provides a tool for open and constructive communication that achieves early and effective resolution of disputes. ADR provides greater buy-in from the participants by helping them craft their own solutions.

3-2. Purpose

ADR emphasizes cooperation and identifying underlying interests as a means of dealing with conflict. Unlike traditional win-lose methods of dispute resolution, ADR affords the parties processes, which discover and explore common ground and develop a solution that is satisfactory to all parties. Some of these processes are: Mediation, facilitation, conciliation, fact-finding and neutral evaluation.

3-3. Issues Appropriate for ADR

ADR is a supplement, not a substitute, for traditional forms of conflict resolution. There are certain types of issues that are simply not appropriate for ADR. Examples include where there is a need to establish a precedent, maintain a policy position, or there is a desire to litigate. ADR may be the proper approach where a negotiated solution is an acceptable outcome, the dispute involves factual or other non-precedent-setting issues, or the traditional processes appear unlikely to successfully resolve the issue. ADR is also appropriate in situations where the parties want to settle the dispute promptly, the parties want to maintain, establish or restore a good working relationship, or the importance of the issue is minor compared to the potential cost and disruption that would occur if traditional dispute resolution methods were employed. Further ADR may be the better approach when an ADR neutral or panel of Subject Matter Experts (SME) is more likely to understand the complexities of the case than would a judge.

Section 4 Mediation

4-1. General

Mediation is the primary method of ADR used in the ORNG. Mediation is a dispute resolution process that is intended to be non-adversarial in nature. There are no winners or losers, the focus is reconciliation between the disputing parties. This process is provided through the skills of a trained mediator.

The focus of mediation is a mutually satisfactory resolution of disputes. The bottom line with mediation is it is an opportunity for disputing parties to meet in a non-adversarial neutral party setting to resolve problems and reach an agreement.

4-2. Conditions for Mediation

The issue in dispute must be under the control of local management. Both parties must agree to utilize mediation as a viable process to resolve the dispute. Both parties must understand that if they do not arrive at an agreement through mediation, the grieving party may continue to pursue the matter through the AGP.

4-3. Issues Appropriate for Mediation

Any type of workplace dispute or area of employee dissatisfaction on a matter related to employment is appropriate for mediation. Interpersonal disputes that impact productivity and morale in the workplace, or are otherwise a concern to management in maintaining an efficient and effective work environment are appropriate for mediation.

4-4. Issues NOT Appropriate for Mediation

- a. A definitive or authoritative resolution of the matter is required for precedential value.
- b. The matter involves significant questions of agency or NGB policy.
- c. The matter significantly affects persons or organizations who are not party to the grievance.
- d. When relief cannot be provided by the organization.

4-5. Timing of Mediation

Mediation should be attempted at the earliest stage of a dispute, preferably at or before an agency grievance has been filed with the HR-LRS. However, if the grievant involves proposed discipline or adverse action, mediation may be attempted at management's discretion, but not after a decision has been presented.

4-6. Agreement

The parties in dispute must first agree to mediation to attempt resolve their dispute.

4-7. Request for Mediation

A request for mediation will be made through the grievant's supervisor, employee representative or EEO counselor to the HR-LRS as the agency point of contact (POC) for mediation. The agency POC will obtain the services of a qualified mediator/mediators (if a co-mediation is determined as the best course of action) either through its own list of mediators or through the Shared Neutrals program from the Portland Federal Executive Board. The selected mediator/mediators will notify the parties involved and develop a time that all parties can meet and begin the mediation process.

4-8. The Mediation Process

- a. The mediation process will take place in a neutral setting and should be held in the neutral location.
- b. The parties will be seated in such a way that no one feels disadvantaged by the physical arrangement.

c. The mediator/mediators will begin by explaining the mediation process and what the mediator's role is. The mediator will further request that each party be allowed to explain its position without interruption.

d. The mediator/mediators may request one or both parties to express its position, he/she may request to caucus, and the mediator will attempt to get the parties to communicate with each other on any unclear points.

e. If the parties are able to reach agreement, the mediator/mediators will record the agreement as dictated by the respondent and the grievant.

f. If the parties have exhausted all avenues and no agreement is reached, the mediator(s) will dismiss the parties. A record will be kept that merely states when the mediation took place and that no agreement was reached.

g. At this point, the grievant may continue with the grievance process to seek resolution as the previously filed grievance or complaint was merely held in abeyance pending the outcome of the mediation.

4-9. Grievant's Responsibilities

a. Have a clear idea of the problem and remedies. Remedies must be personal and cannot demand discipline of other employees or officials.

b. Have open communications. All information will be confidential (except information related to waste / fraud / abuse / illegal acts). (NOTE: If the written complaint or grievance did not fully state what is viewed to be the real problem, mediation is the place to state the grievant's case as he/she sees it.)

c. Be prepared to state the real problem and request remedies verbally. Listen to the other party and the mediator before drawing conclusions.

d. The mediator/mediators are not judges or decision-makers, and do not decide on the outcome the disputants do. The grievant and the respondent develop the terms of the agreement or they decide that no agreement can be reached.

4-10. Respondent's Responsibilities

a. Study the complaint and requested remedies prior to mediation. Remedies should be personal only, as discipline of employees or officials may not be requested as an appropriate remedy.

b. Obtain expert advice from a technical representative, if necessary.

c. Consider the complaint from different perspectives. Investigate opportunities for acceptable compromise.

d. Maintain open communication during the mediation process.

e. Make every effort to determine the real or underlying problem.

f. Listen carefully to the other party and the mediator before making a decision. The mediator is not a judge or decision-maker, and does not decide on the outcome; the parties do. The grievant and the respondent develop the terms of the agreement or they decide that no agreement can be reached.

4-11. Office of Primary Responsibility

The mediation program for the Oregon Army and Air National Guard will be the responsibility of the DHR and administered by the HR-LRS. One or both parties to a dispute must contact the HR-LRS when both parties agree to utilize the mediation process. Once a case has been

established for mediation, the HR-LRS will select a mediator and notify the individuals. The mediator will be notified by letter and be supplied an information sheet containing the names of the parties and the telephone numbers of all parties involved in the mediation. The parties will decide upon the dates and times for mediation with the mediator.

Appendix A – References

Section I – Required Publications

ORNGCER 430

Employee Performance Planning and Appraisal Program

Title 5 CFR, Administrative Personnel

Parts 771 Agency Administrative Grievance System

Title 5 USC Government Organization and Employees

Section 7103 Definitions; Application

Title 32 USC, National Guard

Section 702 Issue of Supplies

Section 709 Employees: employment, use, status

The Collective Bargaining Agreement between the ORNG and AFGE Local 2986.

Section II – Related Publications

This section contains no entries.

Section III – Prescribed Forms

This section contains no entries.

Section IV – Referenced Forms

This section contains no entries.

Glossary

Section I – Abbreviations

ADR

Alternative Dispute Resolution

AGP

Agency Grievance Procedure

ANG

Air National Guard

ARNG

Army National Guard

CFR

Code of Federal Regulations

DHR

Director of Human Resources

EEO

Equal Employment Opportunity

HR-LRS

Human Resources Labor Relations Specialist

IAW

In Accordance With

HRO

Human Resources Office

NGB

National Guard Bureau

ORNG

Oregon National Guard

POC

Point of Contact

SEEM

State Equal Employment Manager

SME

Subject Matter Expert

USC

United States Code

Section II – Terms

Code of Federal Regulations:

The Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government.

Confidential Employee:

"Confidential employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor/management relations (5 USC 7103(a)(13)),

Grievance:

"Grievance" means any complaint by an employee concerning any matter relating to the employment of the employee; any claimed violation, misinterpretation, or misapplication of any law, rule or regulation (5 USC 7103(a)(9)).

Portland Federal Executive Board:

The federal entity designed to enhance government efficiency and cooperation and which runs the Shared Neutrals federal mediation program.

United States Code:

United States Code (USC) is the consolidation and codification by subject matter of the general and permanent laws of the United States.