

U.S. NUCLEAR REGULATORY COMMISSION MANAGEMENT DIRECTIVE (MD)

MD 10.101	EMPLOYEE GRIEVANCES	DT-16-43
<i>Volume 10,</i>	Personnel Management	
<i>Part 4:</i>	Labor Relations, Discipline, Grievances, Appeals, RIFs	
<i>Approved By:</i>	Miriam L. Cohen Chief Human Capital Officer	
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<i>Issuing Office:</i>	Office of the Chief Human Capital Officer Policy, Labor and Employee Relations Branch	
<i>Contact Name:</i>	Bi Smith	
EXECUTIVE SUMMARY		
Management Directive (MD) 10.101, "Employee Grievances," replaces Manual Chapter and Appendix 4157. MD 10.101 defines the responsibilities, requirements, and basic provisions that govern the NRC administrative grievance procedure covering NRC employees.		

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I. POLICY

It is the policy of the U.S. Nuclear Regulatory Commission to encourage the prompt and informal resolution of disputes at the earliest opportunity and at the lowest possible supervisory level.

II. OBJECTIVES

- A.** Define the responsibilities, requirements, and basic provisions that govern the NRC administrative grievance procedure covering NRC employees.
- B.** Provide an orderly method by which an employee, or a group of employees acting as individuals, have a right to present a grievance to appropriate management officials, and may obtain timely administrative review and decision on a matter of concern or dissatisfaction regarding their employment with freedom from interference, restraint, coercion, discrimination, or reprisal.

III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY

A. Chairman

Provides general oversight and direction to the Executive Director for Operations (EDO) on the NRC administrative grievance procedure.

B. Executive Director for Operations (EDO)

Approves exceptions to or deviations from the provisions of this management directive (MD). Such exceptions or deviations are made a matter of record in the grievance file.

C. General Counsel (GC)

Designates counsel to represent NRC management at any hearing on a grievance that may take place under these procedures.

D. Inspector General (IG)

Directs the administration of and approves exceptions to the administrative grievance procedure for employees of the Office of the Inspector General.

E. Chief Human Capital Officer (CHCO)

1. Administers the process set forth in this MD and develops procedures, instructions, and guides for the submission and review of grievances.
2. Provides final interpretations regarding the intent and applicability of this MD.

F. Regional Personnel Officer

1. Responds to requests of employees and supervisors in regional offices when this MD requires coordination with or concurrence of the Chief, Policy, Labor and Employee Relations Branch (PLERB), Office of the Chief Human Capital Officer (OCHCO).
2. Coordinates all appropriate actions with and obtains required concurrences from the Chief, PLERB, OCHCO, as stated in this MD.

G. Chief, Policy, Labor and Employee Relations Branch (PLERB), Office of the Chief Human Capital Office (OCHCO)

1. Assists in resolving employee concerns and grievances through consultation with supervisors, employees, and grievance reviewing examiners, and through informing employees of their rights described in this MD.
2. Provides NRC staff assistance on the application of the provisions of this MD.
3. Provides a list of grievance reviewing examiners to reviewing officials when requested.

H. Managers and Supervisors

1. Managers and supervisors are responsible for fully participating in the procedures and processes described in this MD, including, but not limited to—
 - (a) Meeting with employees to informally resolve grievances;
 - (b) Providing information and records to first and second level officials, servicing human resources representatives, and grievance reviewing examiners concerning the circumstances surrounding the grievance;
 - (c) Serving as a first- or second-level official; and
 - (d) Taking other appropriate steps required to process the grievance.
2. In addition, managers and supervisors are responsible for communicating with employees on day-to-day issues and decisions that may arise in the workplace and encouraging informal resolution of employee dissatisfactions as they arise and at the lowest possible supervisory level before they become formal grievances.

I. Employees

1. An employee who files a grievance is responsible for:
 - (a) Complying with the policy and procedures contained in this MD, including all appropriate time limits;
 - (b) Providing sufficient detail to identify the matter being grieved;
 - (c) Providing all relevant information at the time the grievance is filed;
 - (d) Identifying the personal relief requested; and
 - (e) Cooperating in any resulting inquiry related to the grievance.
2. The employee may be granted a reasonable amount of duty time (usually hours, not days) to prepare and present a grievance. However, the employee is responsible for any additional costs associated with the preparation and presentation of a grievance. An employee's request for official time will be presented to the supervisor, who will coordinate with the Chief, PLERB, OCHCO, and respond to the employee. Management responses to employee requests for official time are final and are not grievable.

IV. APPLICABILITY

The provisions of this directive and handbook apply to all NRC non-bargaining unit employees and to all NRC bargaining unit employees grieving matters that are within the scope of this directive but not within the scope of the negotiated grievance procedure in the collective bargaining agreement with the employees' exclusive representative.

V. NEGOTIATED GRIEVANCE PROCEDURE

The negotiated grievance procedure is the exclusive procedure for resolving bargaining unit employee grievances that fall within its coverage. This MD applies to bargaining unit employees with regard only to matters not covered by the negotiated grievance procedure. (See the Collective Bargaining Agreement Between U.S. Nuclear Regulatory Commission and NTEU.)

VI. DIRECTIVE HANDBOOK

Handbook 10.101 contains the policies and procedures for the resolution of grievances.

VII. REFERENCES***Code of Federal Regulations***

5 CFR Part 771, "Agency Administrative Grievance System."

Nuclear Regulatory Commission Documents

“Collective Bargaining Agreement Between U.S. Nuclear Regulatory Commission and National Treasury Employees Union.”

NRC Forms Library:

<http://fusion.nrc.gov/nrcformsportal/default.aspx>.

“Nuclear Regulatory Commission Policy and Procedure for Preventing and Eliminating Harassing Conduct in the Workplace.”

Office of the Federal Register

NRC’s Privacy Act System of Records, NRC-8, “Employee Appeals, Grievances, and Complaint Records” (65 FR 56420).

United States Code

Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.).

Employee (5 U.S.C. 2105).

Energy Reorganization Act of 1974, as amended (42 U.S.C. 5801 et seq.).

Equal Pay Act of 1963, as amended (29 U.S.C. 206(d)).

Freedom of Information Act (5 U.S.C. 552).

Government Organization and Employees (5 U.S.C. 101 et seq.).

Hatch Act of 1939 (5 U.S.C. 7321-7326).

Inspector General Act of 1978, as amended (5 U.S.C. App.3).

Labor-Management Relation (5 U.S.C. Chapter 71, Subpart F).

National Security, Chapter 75, Subchapter IV (5 U.S.C. 7532).

Performance Appraisal in the Senior Executive Service (5 U.S.C. Chapter 43, Subchapter II).

Privacy Act of 1974, as amended (5 U.S.C. 552a).

Removal, Reinstatement, and Guaranteed Placement in the Senior Executive Service, Chapter 35, Subchapter V (5 U.S.C. 3592).

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I. GRIEVANCES

A. Grievable Matters

Except as provided in Section II of this handbook, U.S. Nuclear Regulatory Commission employees may grieve matters that fall within the definition of “grievance,” such as the following:

1. Working conditions and work environment;
2. Working relationships with supervisors and other NRC employees;
3. Application of NRC personnel policies to an individual employee or a group of employees;
4. Admonitions, reprimands, and suspensions of 14 days or less;
5. Denial of within-grade increases;
6. Allegations of discrimination not covered under the discrimination complaint process administered by the Office of Small Business and Civil Rights (SBCR) and Executive Orders;
7. Allegations of retaliatory actions taken for having expressed a differing view or alternative position; and
8. Performance ratings of record.

B. Non-Grievable Matters

Employees may not grieve the following matters:

1. Any matter that is appealable to or under the jurisdiction of the Merit Systems Protection Board, the Office of Personnel Management, the Federal Labor Relations Authority, the Office of Special Counsel, the Equal Employment Opportunity Commission, Department of Labor, and any matter included in the discrimination complaint process administered by SBCR, including, but not limited to the following:
 - (a) Appeals from adverse actions (including suspensions of more than 14 days, removal, or change to lower grade) or reduction-in-force actions;
 - (b) Complaints of alleged unfair labor practices (see the collective bargaining agreement with the employees’ exclusive representative);
 - (c) Alleged discrimination because of sex, gender identity, age, race, color, religion, disability, or national origin;
 - (d) Actions taken as a result of a violation of the Hatch Act;
 - (e) Pay setting claims; and
 - (f) Equal Pay Act claims.

2. Matters concerned with classification of positions, including determinations of non-competitive career promotion potential of positions. Alleged “de facto details,” (i.e., alleged details to higher graded duties that are not affected by a Standard Form (SF) 50, “Notification of Personnel Action,” approved by an authorized official) are not grievable. (SF 50 is available in the NRC Forms Library, at <http://fusion.nrc.gov/nrcformsportal/default.aspx>.)
3. Determinations concerning eligibility for security clearance.
4. Rejection of a grievance in accordance with the procedures in this handbook.
5. A suspension or removal under 5 U.S.C. 7532 (in the interests of national security).
6. For bargaining unit employees, any matter that falls within the scope of the negotiated grievance procedure in the collective bargaining agreement with the employees’ exclusive representative.
7. Oral or written counseling.
8. A notice of a proposed disciplinary or adverse action.
9. A performance appraisal progress review or performance mid-year review.
10. Placement on a Performance Improvement Requirement Memorandum.
11. The content of, or proposals to change, established NRC policies, standards, and procedures.
12. Failure to be selected for promotion or the potential for promotion from a group of properly rated and certified candidates including non-selection to any leadership potential program, graduate fellowship program, or Senior Executive Service (SES) candidate development program (however, alleged failures to follow promotion policies or procedures and alleged inequity in evaluating candidates are grievable).
13. Denial of access to records under the Privacy Act or the Freedom of Information Act.
14. A performance appraisal of a member of the SES under 5 U.S.C. Chapter 43, Subpart II.
15. An action that returns an employee from the SES to the General Grade (GG) schedule during the 1-year probationary period, or for less than fully successful performance under 5 U.S.C. 3592.
16. An action that terminates a temporary promotion and returns the employee to the position from which the employee was temporarily promoted or to one of no lower grade or pay.
17. The substance of the performance elements (critical and non-critical) and standards of an employee’s position.
18. The granting of or failure to grant an employee an award or high quality increase, or the adoption of or failure to adopt an employee suggestion or invention.

19. The termination of an employee serving a probationary or trial period.
20. The termination of a temporary or term employee on the not-to-exceed date of his or her appointment, or at any time for lack of work or funds.
21. The termination of an employee with an NRC Limited (Excepted) appointment who does not have return rights; or the return of an employee with an NRC Limited (Excepted) appointment who **does** have return rights, to his or her former position or one of no lower grade or pay.
22. Results of drug tests.
23. Findings of the NRC's "Policy and Procedure for Preventing and Eliminating Harassing Conduct in the Workplace."

II. RIGHTS OF EMPLOYEES, REPRESENTATIVES, AND UNIONS

A. Employee Rights

Each employee shall have the right to do the following:

1. Obtain administrative review and decision on a grievance free from interference, restraint, reprisal, coercion, or discrimination.
2. Meet with persons responsible for reviewing or acting upon his or her grievance.
3. Be accompanied, represented, and advised at all stages of the grievance by an individual of his or her choosing in presenting grievances. However, the Chief, Policy, Labor and Employee Relations Branch (PLERB), Office of the Chief Human Capital Officer (OCHCO), may disallow the choice of an individual as a representative if that choice would:
 - (a) Result in a conflict of interest or position, or
 - (b) Conflict with the priority needs of the NRC.
4. Have a reasonable amount of duty time (usually hours not days) to prepare and present grievances (if the grievant is otherwise in duty status) as determined by the first- or second-level officials. An employee desiring to use duty time in accordance with this handbook must request permission and receive approval from his or her supervisor in advance and must report the time consistent with applicable agency time and labor reporting requirements.
5. Present facts pertinent to a grievance, orally, in writing, or both to the first- or second-level official. However, an employee may not call witnesses to testify in any oral presentation.
6. Examine all documents or other evidence considered in the resolution of a grievance. (Information that cannot be made available in the form in which it was received must be made available in a form that the grievant and his or her representative can review

or must not be used by management in the grievance procedure.)

7. Proceed directly to a second-level grievance if the grievance concerns a disciplinary matter where there has been a proposed action, an opportunity to respond, and a decision on the proposed matter. The filing of such second-level grievance will not delay the effective date of the disciplinary action. The second-level official must be someone who did not issue the proposal or disciplinary decision. The Chief, PLERB, OCHCO, (through the Regional Personnel Officer (RPO), as appropriate) will appoint the second-level official. (See Section VI.A and VI.B of this handbook for description of first- and second-level grievance.)

B. Rights of Representatives

1. An employee who is designated by the grievant as his or her representative in a grievance action shall be assured freedom from restraint, interference, coercion, discrimination, or reprisal in connection with the presentation of the grievance.
2. The representative shall also be granted a reasonable amount of duty time (usually hours, not days) for the purpose of preparing and presenting a grievance if the representative is an NRC employee and otherwise in duty status. A representative desiring to use duty time in accordance with this management directive (MD) must request permission and receive approval from his or her supervisor in advance and must report the time consistent with applicable agency time and labor reporting requirements.

C. Employee Unions

1. When the grievant is a bargaining unit employee, an employee union that has been granted exclusive recognition for the bargaining unit in which the grievant is located shall have the opportunity to be represented at formal discussions between the grievant and NRC officials that relate to the adjudication of the grievance.
2. Nothing in this provision shall preclude an employee from presenting his or her own grievance(s) or choosing his or her own representative.
3. The exclusive union representative may not initiate an employee's grievance under the provisions of this MD.

D. Confidentiality

1. Any person involved in the processing of a grievance must protect the confidentiality of all related communications with the grievant and other persons involved in the grievance and the right of the individuals to privacy.
2. Persons with access to information related to the grievance must not disclose that information to anyone except those who have a need to know.

III. ELECTION BETWEEN THE GRIEVANCE AND EQUAL EMPLOYMENT OPPORTUNITY (EEO) COMPLAINT PROCESSES

- A.** If an employee has already filed a formal Equal Employment Opportunity (EEO) complaint on a subject, he or she cannot then file a grievance on the same subject or a grievance arising from the same factual basis.
- B.** If an employee files a grievance on a subject and, before a final decision is made (i.e., a decision is issued), the employee files a formal EEO complaint on the same subject, the grievance will not be processed further because the filing of an EEO complaint is a binding election of the EEO complaint process.
- C.** If an employee files a grievance on a subject and a final decision is made on it, he or she cannot then file an EEO complaint on the same subject.

IV. TIMELINESS

A grievance may be rejected at any level if the grievant fails to comply with the time limits specified in this handbook, before such rejection, the Chief, PLERB, OCHCO, (through the RPO, as appropriate) shall be notified by the appropriate grievance level official and concur, as appropriate.

V. PRE-GRIEVANCE RESOLUTION BY INFORMAL DISCUSSION

Whenever possible, before an employee concern reaches the formal grievance stage, an employee is encouraged to attempt to informally resolve any grievance by initially discussing the matter with his or her immediate supervisor or other individual whose decision or action precipitated the employee's concern. In addition, managers and supervisors are responsible for communicating with employees on day-to-day issues and decisions that may arise in the workplace and encouraging informal resolution of employee dissatisfactions as they arise and at the lowest possible supervisory level before they become formal grievances.

VI. LEVELS IN THE GRIEVANCE PROCEDURE

There are a maximum of two levels within the NRC for formally resolving a grievance. Each process will be explained in more detail in Section VII and VIII of this handbook.

A. First Level

1. The grievant submits a written grievance to the appropriate first-level official who shall examine the relevant facts and provide the employee a decision in writing.
2. When the grievance involves a disciplinary action (not excluded from the grievance process in Section I.B.1 of this handbook) where there has been a proposed action, an opportunity to respond, and a decision on the proposed matter, the first-level step is waived.

B. Second Level

1. If the employee is dissatisfied with the first-level official's decision or the grievance involves a disciplinary matter where there has been a proposed action, an opportunity to respond, and a decision on the proposed matter, he or she may request, in writing, a review of that decision by the second-level official.
2. The second-level official must give the grievance due consideration by thoroughly reviewing the contents of the grievance and associated documents provided by the grievant or his or her representative.
3. At the request of the grievant, the second-level official shall appoint a grievance reviewing examiner to conduct a hearing and make a written report of proposed findings and recommendations regarding resolution of the grievance to the second-level official.
4. The second-level official shall inform the employee, in writing, of his or her final decision.

VII. FIRST-LEVEL GRIEVANCE**A. Time Limits**

1. Grievance Concerning a Continuing Practice or Condition

An employee may present a grievance concerning a continuing practice or condition at any time. Once a practice or condition has ceased, the time limit for filing a grievance is the same as described in Section VII.A.2(a) of this handbook.

2. Grievance Concerning a Particular Act or Occurrence

(a) A grievance concerning a particular act or occurrence must be filed in writing with the appropriate first-level official within 14 days after the occurrence, or within 14 days after the date the grievant should have been reasonably aware of the occurrence, unless such period is extended for good cause by the first-level official.

(b) The date of the occurrence, or of the grievant's awareness of the occurrence, shall not be counted in computing timeliness.

B. Submission of Grievance

1. The grievant shall file the grievance with the appropriate first-level official. (In the case of a grievance when the appropriate first-level official is the Executive Director for Operations (EDO) or a Commissioner, there is no second-level official; the first-level official will perform the functions of the second-level official, including appointing a grievance reviewing examiner, if requested by the grievant.)

2. The grievance at this stage shall be in writing and shall include the following:
 - (a) Identification of the grievant;
 - (b) An explicit statement of the grievance, including sufficient detail to clearly identify the matter being grieved, and, if applicable, reference to the specific policy, regulation, or procedure alleged to have been violated;
 - (c) A brief summary of any relevant previous discussions with the grievant's supervisor(s) or other management officials;
 - (d) A statement of the personal relief desired;
 - (e) If desired, a request for a presentation to the first-level official;
 - (f) The identity of the grievant's personal representative, if any;
 - (g) Whether the grievant has filed an informal or formal EEO complaint on the same matter;
 - (h) Whether the grievant has filed an allegation under the Preventing and Eliminating Harassing Conduct in the Workplace policy ([ML16201A053](#)); and
 - (i) Any other information the grievant believes to be pertinent to his or her grievance.
3. At the time the employee submits a grievance to the first-level official, the employee shall furnish a copy (through the (RPO), as appropriate) to the Chief, PLERB, OCHCO.

C. Action by First-Level Official

Upon receiving the written grievance, the first-level official shall—

1. Notify the Chief, PLERB, OCHCO, (through the RPO, as appropriate) of receipt of the grievance.
2. Examine the facts and circumstances relevant to the grievance.
3. Determine whether or not the grievance will be rejected in accordance with Section VII.E.2 of this handbook.
4. Offer the employee an opportunity to make a presentation to the first-level official to discuss the grievance. (If the grievant and the official are in different commuting areas, the presentation will normally be by telephone.) Witnesses cannot be examined as a part of this presentation.
5. Summarize the presentation, if any, in writing, including the date of the presentation. The summary is to be included in the grievance file.
6. Render a decision to the employee within 10 workdays from receipt of the grievance if practicable. If the first-level official cannot render a decision within this time, the employee shall be notified in writing of the reasons for the delay and the approximate date a decision will be rendered.

7. Send to the Chief, PLERB, OCHCO, (through the RPO, as appropriate) a copy of all correspondence between the grieving employee and the first-level official.

D. Decision of First-Level Official

1. The decision of the first-level official shall be in writing, shall be concurred on for procedural correctness (through the RPO, as appropriate) by the Chief, PLERB, OCHCO, and shall include the following:
 - (a) If appropriate, a statement concerning the rejection of the grievance or parts of the grievance and the reasons for the rejection, and a notification of the employee's right to have the rejection reviewed in accordance with Section VII of this handbook;
 - (b) If the grievance is not wholly rejected, a decision on the merits of the grievance;
 - (c) A decision on each of the personal remedies requested;
 - (d) The reasons upon which the decisions were based, including an assessment of the arguments raised by the grievant during the personal presentation, if one was held;
 - (e) The specific action(s) to be taken, if any, and the proposed effective date(s); and
 - (f) Unless the grievance was rejected in accordance with Section VII of this handbook, a notification of the employee's right to request a review of the decision by the second-level official, the prescribed procedures and time limits for requesting such review, and the name of the second-level official.
2. A copy of the decision shall be furnished (through the RPO, as appropriate) to the Chief, PLERB, OCHCO, and to any agency official with a "need-to-know" to implement a granted remedy.

E. Rejection of the Grievance by First-Level Official

1. Rejection of a grievance in accordance with the procedures in Section VII of this handbook shall terminate the grievance.
2. With the prior concurrence (transmitted through the RPO, as appropriate) of the Chief, PLERB, OCHCO, the first-level official may reject the grievance for any of the following reasons:
 - (a) Failure to comply with time limits,
 - (b) Filing of a formal complaint of discrimination on the same matter(s),
 - (c) Non-grievability of the matter,
 - (d) Failure to furnish sufficient detail to clearly identify the matter being grieved, or

- (e) Failure to specify the personal relief desired, specifying a relief that does not meet the definition of “personal relief,” or a conclusion by the first-level official that personal relief requested (or the full personal relief authorized by law) has been provided. (For definition of terms, see Section XII of this handbook.)
3. Any such rejection, the reasons for it, and the right to review in accordance with Section I of this handbook, shall be communicated in writing to the grievant, with copies (through the RPO, as appropriate) to the Chief, PLERB, OCHCO, and to any management official(s) previously formally involved in the grievance.

F. Resubmitting a Grievance

1. If the grievance is rejected for reasons stated in Sections VII.E.2(c)-(e) of this handbook, the grievant shall be granted 7 days from the date of receipt of the notice of rejection to restate and resubmit the grievance to the first-level official.
2. A restated grievance is subject to rejection as above (Section VII.E of this handbook), if appropriate.

G. Review of Rejection

1. If the grievant does not believe that the grievance was rejected on a proper basis, he or she may request in writing within 14 days following receipt of the notice of rejection that the Chief, PLERB, OCHCO (through the RPO, as appropriate), review the rejection.
2. This request for review must state the basis that the rejection was improper.
3. The decision of the Chief, PLERB, OCHCO, in the matter shall be final.

VIII. SECOND-LEVEL GRIEVANCE

A. Grounds for Filing

1. An employee whose accepted grievance has not been resolved to his or her satisfaction by the decision of the first-level official may request that the grievance and the first-level official’s decision be reviewed by the second-level official.
2. An employee who has received a disciplinary action in which there has been a proposed action, an opportunity to respond, and a decision on the proposed matter may request that the disciplinary action be reviewed by the second-level official.

B. Time Limit

The employee’s request to the second-level official shall be submitted in writing within 14 days following receipt of the first-level official’s written decision or receipt of a disciplinary action decision, unless the period is extended for good cause by the second-level official.

C. Substance of Grievance

The scope and issues of the grievance as presented to the first-level official may not be amended, unless the second-level official agrees to the amendment. The second-level grievance is limited to those issues still in contention after issuance of the first-level grievance, that is, issues not resolved and remedies not granted by the first-level official.

D. Submission of Request for Review

1. The request shall be in writing and include the following:
 - (a) A copy of the grievance and of the personal relief requested that was submitted to the first-level official.
 - (b) A copy of the first-level official's decision.
 - (c) The specific reasons why the employee is dissatisfied with the first-level official's decision.
 - (d) If the grievance concerns a disciplinary action, a copy of the proposal and decision notices.
 - (e) The identity of the grievant's personal representative, if any.
 - (f) Any other information the grievant believes to be pertinent to his or her grievance.
2. The employee may also request, and has a right to, a presentation to the second-level official or a hearing with a grievance reviewing examiner, but not both. The request for a presentation to the second-level official or a hearing with a grievance reviewing examiner must be included in the written request for review.
3. The employee shall furnish to the first-level official and to the Chief, PLERB, OCHCO (through the RPO, as appropriate) copies of the request for review at the time it is submitted to the second-level official.

E. Action by Second-Level Official

Upon receiving the written request for review, the second-level official shall do the following:

1. Examine the facts and circumstances relevant to the employee's request, the grievance, and the first-level official's decision.
2. When requested, give the employee an opportunity to make a presentation to discuss the grievance. (If the grievant and the official are in different commuting areas, the presentation will normally be by telephone.) Witnesses cannot be examined as a part of this presentation.
3. Appoint a grievance reviewing examiner if a hearing is requested by the grievant.

4. Render a decision to the employee within 10 workdays from receipt of the grievance if practicable. If the second-level official cannot render a decision within this time, the employee shall be notified in writing of the reasons for the delay and the approximate date a decision will be rendered.
5. Send to the Chief, PLERB, OCHCO, (through the RPO, as appropriate) a copy of all correspondence between the grievant and the second-level official.

F. Appointment of Grievance Review Examiner

1. When the grievant requests a hearing, the grievance reviewing examiner shall be selected by the second-level official from a list furnished (through the RPO, as appropriate) by the Chief, PLERB, OCHCO.
2. No grievance reviewing examiner shall be directly involved in the issue(s) giving rise to the grievance nor shall any hearing examiner be employed in the same office as the grievant.
3. Grievance reviewing examiners may be employees of NRC, other Federal agencies, or of the private sector.
4. The second-level official shall notify the employee in writing of the name of the grievance reviewing examiner.

G. Responsibilities of Grievance Reviewing Examiner

The grievance review examiner shall be responsible for the following:

1. Examining the facts and documents entered into evidence at the hearing—
 - (a) Examining all relevant facts of the grievance;
 - (i) Taking testimony from the grievant and all witnesses with relevant testimony;
 - (ii) Presiding over examination and cross-examination of witnesses by the grievant (or grievant's representative) and attorney for management;
 - (iii) Overseeing preparation of the transcribed record during the hearing;
 - (b) Making written findings of fact and conclusions of law; and
 - (c) Furnishing a recommended decision, in writing, to the second-level official within 30 days after the date of acceptance of the grievance review examiner. Upon request to the second-level official, the grievance review examiner may be granted an additional 30 days to furnish a recommended decision.

2. Report

The grievance review examiner's written report of proposed findings of fact, conclusions of law, and recommended decision to the second-level official shall contain the following:

- (a) Statement of purpose of the examination,
- (b) Issues considered,
- (c) Analysis of evidence,
- (d) Proposed findings of fact,
- (e) Conclusions of law, and
- (f) Recommended decision on the grievance.

3. Copies of the Report

The grievance review examiner shall furnish a copy of the report to the following:

- (a) The grievant;
- (b) The grievant's representative, if any;
- (c) The second-level official;
- (d) The Chief, PLERB, OCHCO (through the RPO, as appropriate); and
- (e) Legal counsel for management.

H. Review of the Record by Second-Level Official

1. The second-level official shall review the entire record.
2. If a hearing was conducted, the record will include the grievance review examiner's report and all documents and testimony relied upon therein.

I. Decision of Second-Level Official

1. The second-level official shall make a decision within 30 days, if practicable, of the employee's presentation or the receipt of the grievance reviewing examiner's report, if applicable. If a hearing was conducted, the second-level official may accept or reject any part of the grievance review examiner's report. The second-level official is not bound by the grievance review examiner's report.
2. The decision of the second-level official shall be in writing, shall be concurred on for procedural correctness (through the RPO, as appropriate) by the Chief, PLERB, OCHCO, and shall include the following:
 - (a) A decision on the merits of the grievance and each of the personal remedies requested;

- (b) The reasons upon which the decision was based; and
 - (c) The specific action(s) to be taken, if any, and the proposed effective date(s) thereof.
3. The second-level official shall provide a copy of the decision to the grievant; the grievant's representative; if any, to the first-level official; (through the RPO, as appropriate) the Chief, PLERB, OCHCO; and to counsel for management. In addition, a copy of the decision by the second-level official shall be given to any agency official with a "need-to-know" to implement a granted remedy.
 4. The decision of the second-level official will be final with no further right of appeal.

IX. ALTERNATIVE DISPUTE RESOLUTION

- A.** A grievant may elect to participate in Alternative Dispute Resolution (ADR) during either the first or second step of the grievance.
- B.** The grievant must notify the first- or second-level official of his or her desire to use ADR. Since ADR is a voluntary process, the first- or second-level official must also agree that mediation would be appropriate and useful in reaching a resolution to the grievance.
- C.** The ADR process supplements, rather than replaces, the grievance process. While the mediation process is pending, the grievance process is placed on hold.
- D.** When ADR is requested, mediation will be used as the means of resolving the dispute.
- E.** If the first- or second-level official agrees to move forward with mediation, he or she will then contact the Chief, PLERB, OCHCO, who will schedule the mediation as soon as possible.
- F.** The mediator will assist the parties in identifying issues, fostering joint problem solving, and exploring settlement opportunities.
- G.** If a mutually acceptable resolution is reached, the terms of the agreement will be put in writing in accordance with applicable Federal statutes and regulations and agency policies. The grievance will be considered resolved and no further action on the grievance will be necessary.
- H.** If the grievance is not resolved during mediation, the grievance will proceed.

X. CANCELATION OF A GRIEVANCE

A grievance shall be canceled by the Chief, PLERB, OCHCO, and not subject to further processing or consideration under this MD, as follows:

- A. At the written request of the grievant. Such request should be submitted to the Chief, PLERB, OCHCO (through the RPO, as appropriate).
- B. Upon termination of the grievant's employment with the NRC, including retirement.
- C. Upon the death of the grievant.
- D. For failure to act, including the failure of the grievant to meet deadlines if an extension has not been approved, failure to furnish required information, or other failure to cooperate in the proceeding of the grievance.
- E. Upon management offering to the grievant full relief that is available to the grievant under existing law.
- F. If the only relief sought by the grievant is relief that cannot lawfully be provided by the agency.

XI. GRIEVANCE FILE**A. Establishment of File**

- 1. The Chief, PLERB, OCHCO, (through the RPO as appropriate) is responsible for establishing a grievance file whenever an employee presents a grievance.
- 2. These files are part of the NRC Privacy Act System of Records NRC-8, "Employee Appeals, Grievances and Complaint Records-OHR," and are available for inspection and copying in accordance with the Privacy Act. The grievance file is available to the grievant and his or her representative and will not contain any document that is not available to the grievant and his or her representative.

B. Contents of the Grievance File

At a minimum, the grievance file shall contain the following:

- 1. The written grievance and any documents submitted by the grievant or his or her representative.
- 2. A summary of the presentation(s) to the first- and/or second-level official, as appropriate.
- 3. The written decisions of the first-level official, and, as appropriate, of the second-level official.

4. Where the matter involves a disciplinary action, a copy of the proposed notice and final decision or letter of reprimand, whichever is applicable.
5. The grievance review examiner's proposed findings and recommendations, if appropriate.
6. Documentary evidence considered in resolving the grievance.
7. Any exceptions or deviations from the provisions of this MD as granted by the EDO.

C. Retention

The grievance file shall be retained for a period of 7 years from the date of the resolution of the grievance.

XII. GLOSSARY

Bargaining Unit Employee

An employee included in a bargaining unit for which a labor organization holds exclusive recognition under Title 5, *United States Code* (U.S.C.) Chapter 71, as certified by the Federal Labor Relations Authority.

Day

As used in this directive, a calendar day. Time limits expire at the close of business on the day specified. If a time limit expires on a Federal holiday or weekend, the time limit is extended to the close of business on the next workday.

Employee

As defined in 5 U.S.C. 2105. However, the term does not include a former NRC employee.

First-Level Official

1. The official who acts on an employee grievance at the first stage.
2. The first-level official is the decisionmaker of the matter grieved; or if no agency decision is at issue, the line manager at the lowest organizational level who possesses the authority to resolve the grievance; normally, this is the employee's immediate supervisor. (In questionable cases, the advice of the Chief, Labor and Employee Relations Branch (PLERB), Office of the Chief Human Capital Office (OCHCO), should be sought.)
3. First-level official responsibility may be redelegated in writing (with copies to the grievant and the Chief, PLERB, OCHCO) to an appropriate official who shall be empowered to act for the first-level official.

Grievance

A request by an employee, or group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction relating to their NRC employment and which is subject to the control of NRC management. (See Section I of this handbook for grievable and nongrievable matters.)

Grievance File

An official file that contains all of the documents pertinent to the understanding of the grievance issues and documents any resolution/decisions including, but not limited to, a copy of the grievance and any amendments filed, copies of any statements executed by the grievant(s), any settlement agreement, and the decision(s) on the grievance.

Grievance Review Examiner

A person designated by a second-level official, with concurrence from the Chief, PLERB, OCHCO, when appropriate, to hold a hearing and to make a written report of proposed findings and a decision on the grievance to the second-level official.

Personal Relief

A specific remedy directly benefiting the grievant(s) regarding the matter(s) giving rise to the grievance, which NRC management has the authority to grant, and which complies with controlling laws, rules, and regulations. Personal relief may not include a request for disciplinary action to be taken against another employee, nor may it include a request for other action affecting another employee if such action would not directly benefit the grievant or is beyond the authority of the agency to provide. Additionally, it may not include a request to pay costs, attorney's fees, monies for pain and suffering, or other non-pecuniary damages.

Second-Level Official

1. Normally, the official who is the line manager above the first-level official and who reviews that official's decision.
2. In the case of a disciplinary matter where there has been a proposed action, an opportunity to respond, and a decision on the proposed action, the second-level official will be appointed by the Chief, PLERB, OCHCO, and must be someone who was not involved in the disciplinary action.
3. When the appropriate first-level official is an office director or regional administrator, the second-level official is the line manager above that office director or regional administrator.
4. The Chairman or the Chairman's designee is the line manager above directors of boards, panels, Commission-level offices, or committees who report to the Chairman

or to the Commission. A Commissioner is the only and final step official for those on his or her immediate staff.

5. Second-level official responsibility may be redelegated in writing (with copies to the grievant and the Chief, PLERB, OCHCO) to an appropriate official at the same or higher level than that of the first-level official (or office director or regional administrator, as appropriate) who shall be empowered to act for the second-level official.

Workday

For the purposes of this management directive, workday is defined as a day within Monday through Friday, not including any holidays or any other day that NRC Headquarters is closed.