



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

DEC 16 1979

MEMORANDUM TO: Norman Haller
Office of Management and Program Analysis

FROM: Winnie Bengelsdorf
Division of Organization and Personnel

SUBJECT: DIFFERING PROFESSIONAL OPINIONS

This responds to Chairman Hendrie's request for employee comment to you on the subject paper. I offer some general and specific comments.

GENERAL COMMENTS:

The draft appears to assume that all differing opinions will occur in positions below Office Directors since the procedures seem workable only if the employee reports to an Office Director. NRC procedures generally accommodate all organizational layers by specifically designating escalating chain of command review and decision authority to the EDO and Commission, when appropriate. Therefore, I suggest you provide procedures for: (1) processing possible cases of differing professional opinion expressed by Office Directors, and (2) second-level review responsibilities by the EDO or Commission for employees who report directly to the Office Directors. In any case, the appeal rights (page 7) state the employee "may appeal to the next higher level of supervision an immediate supervisor's decision . . ." This appeal would not be applicable to positions reporting to the Commission. The language should be qualified to read "except for employees who report directly to the Commission".

The proposed procedure might raise questions of the appearance of conflict of interest which might serve to jeopardize faith in the entire process. Specifically, the Office Director may be both unresponsive (warranting a differing opinion in the employee's view) and responsive (referring issue for resolution, deciding if the differing opinion is resolved, and reporting to the employee). Perhaps the Office Director supervising the dissenting employee should not have such a pivotal role in the differing opinion procedure.

This policy and procedure should be published initially as an NRC Chapter, in accordance with Commission adoption of the NRC directive system as the official agency vehicle for publishing agency policy. (As I recall, several commentators on the initial draft made a similar point). A section on "Responsibilities" and a flow chart indicating steps in the procedure would be useful.

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SPECIFIC COMMENTS:

- page 7, line 2 Suggest deadline be stated as 5 working days, rather than one calendar week, to conform with all other deadlines which are consistently stated in working days.
- page 7, number 8
line 7 Clarify whether you are requiring permanent preservation of documentation or if not, the duration of retention of records.
- page 8, item b,
lines 2 & 3 Clarify that supervisor forwards documentation through chain of command, if that is intended, as inferred by next sentence.
- page 8, item b
line 15 Clarify that "inform the boards" refers to the Atomic Safety and Licensing Board Panel and the Atomic Safety and Licensing Appeal Panel.
- page 10, item a Consider deleting "undesired" in "retaliation consists of undesired or injurious actions". A supervisor, under many circumstances, may take action which may not be desired by the employee but which may not be retaliatory. "Injurious" with the illustrative examples should be sufficient definition.
- page 10, item 11 Consider adding as another example of intentional misuse of the procedure attempting to change or elevate a personnel-grievance-type action to a differing professional opinion issue.
- page 10, item 12 Consider including some stated criteria which will apply to those individuals who will be appointed to the Special Review Panel.
- page 11, item 12 Consider assigning to the Special Review Panel the additional responsibility of either prior review of individual office procedures issued, to assure consistency with agency policy on differing professional opinions or post-audit review. Experience indicates that when individual offices draft their own implementing procedures, these issuances should be reviewed for consistency with agency policy. Hopefully, the agency policy will be clear and explicit enough so that individual offices will not need to draft additional directives. You may want to consider eliminating language allowing individual offices issuances.
- pages 2 & 11 Suggest reconsideration of granting awards for successful differing professional opinions. I believe we should not retaliate or reward dissent and that existing award procedures should be adequate for awards when deserved.

SPECIFIC COMMENTS:

pages 6,7,8 & 9

Continue previous editorial style of "he/she" or "the employee" instead of changing to "he" only.

Winnie Bengelsdorf
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cc: Paul E. Bird