



*Labor Relations/ Employee Conduct  
National Guard Technician Personnel*



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## *Agenda*

- *Union*
- *Non-Disciplinary and Voluntary Actions*
- *Discipline and Adverse Actions*
- *Executive Orders*



## *Objectives*

- *Enhance efficiency of HING operations and the well being of HING federal employees. Supervisors will be able to differentiate between the regulations and actions required that fall under management of conduct – Discipline, Adverse Actions, Non-Disciplinary Actions, and Voluntary Action*
- *Determine appropriate actions to take, considering the requirements and results and the roles of other programs and agents such as , the Employee Assistance Program (EAP), the union, top management, etc*



## *References*

- *PL 90-486 National Guard Technician's Act of 1968*
- *PL 95-454 Title VII Civil Service Reform Act 1978*
- *TPR 752 – Conduct Management*
- *CNGBI 1400.25, Volume 431 – National Guard Technician Performance Appraisal Program*
- *TPR 715 – Non-Disciplinary Action*
- *CNGBI 1400.25, Volume 630 – National Guard Technician Absence and Leave Program*
- *Collective Bargaining Agreement (AFGE 1213, NATCA)*



## *Bargaining Unit*



- *A group of employees approved by the Federal Labor Relations Authority (FLRA) for union representation*
- *Must demonstrate:*
  - *Clear and identifiable community of interest*
  - *Promote effective labor-management relationships*
  - *Promote efficiency of agency operations*



## *Bargaining Unit Exclusions*



- *Supervisors and management officials*
- *AGR's*
- *Confidential employees*
- *HRO*
- *Employees engaged in national security (intelligence, secret service, etc.)*
- *Professionals (doctors, scientists, etc.)*



## *Exclusive Recognition (The Union)*

- *Elected by majority of the bargaining unit and certified by the FLRA*
- *Exclusive representative in the unit it represents*
- *Entitled to act for and negotiate contracts for the bargaining unit*
- *Equal status with management*
- *Obligated to represent entire bargaining unit (to include non-dues paying)*





## *American Federation of Government Employees (AFGE) Local 1213*

- *Recognized as exclusive representative of Army Guard and Air Guard Bargaining Units by FLRA (2018 – Joint Petition to include Title 5)*
- *NG5026/AFGE (Army) – 239 members*
- *NG5027/NAGE (Air) – 9 members*
- *NG5028/AFGE (Air) – 604 members*
- *NG5029/NATCA (Air) – 7 member (T32)*
- *Presently in trusteeship, Interim President – Ms. Nicole Ferree/Local Steward – Mr. Robert Rabacal*
  - *DSN (315)448-7742, Comm: (808)448-7742, Cell: (808)462-8838*
  - *Email: robert.Rabacal.1@us.af.mil*





## *National Air Traffic Controllers Association (NATCA)*



- *Recognized as exclusive representative of 297<sup>th</sup> ATSC Title 32 Dual Status Bargaining Unit by FLRA (2000)*
- *NG5027 (AirT32) – 7 members*
- *Steward – Mr. Nathaniel Dixon*
- *Comm: (808)448-8181, (808)448-8495 #4446060, #4443222*



## *Union Rights and Duties*



- *Act for and negotiate collective bargaining agreement (contract)*
- *Represented at Formal Discussions*
- *Weingarten Rights*
- *Negotiate in “good faith”*
- *Official Time*
- *Impact and Implementation*



## *Collective Bargaining Agreement*

- *A negotiated contract by representatives of an agency and union*
- *Not “the union contract”*
- *The language is binding*
- *Established past practices can be equally as binding*
  - *Required elements: Legal, In effect for a certain period of time, Known and sanctioned by management*
- *Status of CBAs:*
  - *AFGE Air Guard: 1979, 1 year automatic rollover*
  - *AFGE Army Guard: 1977, no automatic rollover*
  - *NATCA (T32): 2003, 1 year automatic rollover*



## *Formal Discussion*



- *Union has the legal right to be represented during formal discussions between employees and management representatives when:*
  - *One or more management representatives*
  - *One or more bargaining unit employees*
  - *Discussion of change or working conditions or grievance*
- *Management requirements:*
  - *Give union reasonable advance notification*
  - *Union has right to attend*
  - *If union has been properly notified and does not appear, it has waived the right to be present*

*Failure of management to comply is a ULP*



## *Investigative Interviews (Weingarten Rights)*

- *Bargaining unit employee has a statutory right to union representation in:*
  - *Interview/questioning by management representative; and*
  - *Employee reasonably believes that interview will result in discipline; and*
  - *Employee requests representation*

*Failure of management to comply is a ULP*



## ***BU Employees Have No Right To Union Representation***

- ***During performance discussions***
- ***Receiving work direction and guidance***
- ***During informal complaints***
- ***Concerning established policy information***
- ***Job assignments***
- ***In general, employees are not entitled to union representation during a counseling for either conduct or performance***



## *5 USC 7106, Management Rights*

- *To determine the mission, budget, organization, number of employees, and internal security practices*
- *To hire, assign, direct, layoff, suspend, remove, reduce in grade or pay, or take other disciplinary action*
- *To assign work*
- *To make contracting out decisions*
- *To determine personnel for operations*
- *To select personnel from properly ranked and certified candidates – or any other appropriate source*
- *To take whatever actions necessary to carry out mission during emergencies*





## *Exception to Management Rights Negotiability*

- *Procedures management will exercise in applying a right*
- *Impact & Implementation (I & I) bargaining – generally not full scope of “bargaining”*
- *Appropriate arrangements for employees adversely affected by exercising a right*



## *Negotiated Grievance Procedure (AFGE)*

- *Step 1: Discussion must be held within 15 calendar days after employee/union became aware of the action or event with supervisor. Supervisor provides decision within 3 working days.*
- *Step 2: Written grievance identifying specific nature and remedy desired submitted to next supervisory level within 7 calendar days of decision in step 1. Second level supervisor will meet with grievant/representative within 3 working days. Written decision will be provided to grievant/union with 3 working days after the meeting. If grievant/union is not satisfied with decision, grievance will be submitted through channels to the Adjutant General within 15 calendar days after receipt of decision.*
- *Step 3 (Air): Written grievance to TAG must state nature of grievance and why step 2 decision is not acceptable, and remedy action desired. A state that the grievant desires a decision by the TAG, or accompanied by a letter from the Union that it is invoking arbitration*



## *Negotiated Grievance Procedure (AFGE)*

- *Step 3 (Air):*

- *Grievance must contain; nature of grievance, why decision is not acceptable; what remedy is desired*
- *If arbitration is invoked, it will be referred to advisory or binding arbitration unless TAG decides to adjudicate in favor of the grievant (Article XXIV)*
- *TAG will render decision after receipt of arbitrator's award. Modifying or rejecting award decision may be done with NGB guidance*
- *If arbitration is not invoked, the TAG will render decision in accordance with the policies of the Employer*



## *Negotiated Grievance Procedure (AFGE)*

- *Step 3 (Army):*

- *Submission of union initiated grievances and employees to refer their grievances to arbitration*
- *Union letter must contain; statement of the nature of grievance; why decision was not acceptable; what remedial action is sought*
- *If TAG decides to adjudicate the issue in favor of grievant, or modifies decision, will not be referred to arbitration*



# Agency Grievance Procedure

- ***Step 1: Immediate Supervisor.*** Discussion with immediate supervisor must be held within 15 calendar days after the technician became aware of the action or event which led to the grievance. Immediate supervisor renders decision within 10 calendar days. If grievant is dissatisfied with decision, proceed to step 2.
- ***Step 2: Secondary Supervisor.*** Technician must submit grievance in writing to next level supervisor within 10 calendar days following receipt of immediate supervisor decision. Memorandum must state: (1) Nature of grievance, (2) why step 1 decision is not acceptable, (3) the corrective action desired. Meeting with secondary supervisor will within 10 calendar days of receipt of memorandum. Written decision within 5 calendar days of meeting. Copy of decision will be forwarded to HRO. If grievant is dissatisfied with decision, he/she may submit the grievance to step 3 within 5 calendar days after receipt of decision.



# Agency Grievance Procedure



- ***Step 3: Division Commander/Deputy Adjutant General.*** Grievance may now be submitted in writing through command channels to the Deciding Official. HING Commanders, or appointed representatives, are designated as Deciding Officials for all National Guard Technicians under their jurisdiction. The Deputy Adjutant General, or his appointed representative, is designated the Deciding Official for all other technicians (e.g., USPFO, HRO, Special Staff). Decision to grievant within 10 calendar days or, at the option of the Deciding Official, appoint an examiner to perform an inquiry or investigation. If grievant is not satisfied with final decision, he/she must submit grievance to step 4 within 5 calendar days of receipt.
- ***Step 4: Adjutant General.*** The final step in this process is an appeal to the Adjutant General (TAG). No other administrative review or appeal will be considered beyond the TAG.





# *Technician Personnel Regulations 715*

## *Non-Disciplinary Actions and Voluntary Actions*





## *Non-Disciplinary Actions and Voluntary Actions*

*Non-Disciplinary Actions – are management initiated; NOT for cause:*

- *Loss of military membership/loss of technician status*
- *Removal due to failure to meet requirements of the position*
- *Management-directed reassignment*
- *\*Enforced leave*
- *Furlough of 30-days or less*
- *Transfer of function*



## *Non-Disciplinary Actions – Not For Cause*

*Loss of Military Membership – Established by Technician Act of 1968 and P.L. 104-106 dates Feb '96*

- *Must be promptly separated from technician service*
- *Separation must occur as close to date of military separation as possible*
- *Should follow 30-day notice period, unless technician is probationary or temporary*



## *Non-Disciplinary Actions – Not For Cause*

### *Failure to Meet a Condition of Employment*

- *Compatible Military Assignment*
- *Failure to maintain military appointment requirement for position*
- *Failure to meet military rank required for position*
- *Failure to maintain flying status*
- *Failure to maintain a state driver's license*
- *Failure to maintain current qualifications as an aircrew member*
- *Failure to meet the physical standards required for an aircrew member*
- *Revocation of authorization to carry a firearm*
- *Failure to maintain security clearance*
- *Failure to remain qualified in the Personnel Reliability Program*
- *Failure to complete military training*
- *Physical inability to perform technician duties efficiently and/or safely*
- *Failure to maintain a compatible military assignment*
- *Failure to restore to technician status after 5 years of uniformed service*



## *Non-Disciplinary Actions – Not For Cause*

### *Management Directed Reassignment*

- *Management needs the technician's expertise/talents elsewhere*
- *Action is required to prevent an incompatible assignment or a grade inversion situation*
- *Action is required to eliminate or avoid disruption and conflict where personal disagreements are affecting work relationships*
- *Same grade/pay plan, reasonable notice, qualified for new position*



## *Non-Disciplinary Actions – Not For Cause*

*Enforced Leave – management must have technician leave the work site when*

- *Not ready, willing and able to perform assigned duties*
- *Continued presence is highly undesirable or threatening*
- **Emergency situation** – *remove from work site and place in appropriate leave status. When emergency is resolved, discontinue enforced leave and offer choice of approved types of leave or LWOP*



## *Non-Disciplinary Actions – Not For Cause*

### *Furlough for 30 Days or Less (22 Workdays)*

- *Lack of work, funds, or unforeseeable circumstances such as breakdown in equipment, natural disasters, sabotage, or sudden emergencies requiring immediate curtailment of activities*
- *Collective bargaining obligations must be honored*
- *HRO is responsible for preparing and issuing written furlough notices*



## *Non-Disciplinary Actions – Not For Cause*

### *Transfer of Function*

- *TPR 351(reduction-in-force) establishes procedures*
- *HRO notification:*
  - *Explains why transfer of function is occurring*
  - *Provides effective date*
  - *Gives reasonable amount of time (10 calendar days) to accept or reject*
  - *Explain if offer rejected, constitutes a 30 day notice of termination*
  - *Provide benefit information if termination occurs*





## *Non-Disciplinary Actions – Not For Cause*

*IAW TPR 715, Voluntary Actions – are those that are initiated by the technician concerned*

- *Resignation*
- *Voluntary change to lower grade*
- *Optional retirement*
- *Abandonment of position*



## *Non-Disciplinary Actions – Not For Cause*

### *Resignations (Voluntary Actions)*

- *Technician makes decisions pertaining to notice, effective date, and time*
- *Not required to be written*
- *Supervisor completes SF 52*
- *Technician can withdraw resignation prior to effective time and date*
- *Management must honor withdrawal, unless position is to be abolished or is obligated*



## *Non-Disciplinary Actions – Not For Cause*

### *Voluntary Change to a Lower Grade (Voluntary Action)*

- *A voluntary, written request to be placed in a lower graded position without retained grade or pay*
- *Not in response to competitive advertisement*
- *Must meet qualifications for lower graded position*
- *Withdrawal requirements and conditions are the same as for Resignations*



## *Non-Disciplinary Actions – Not For Cause*

### *Optional Retirement (Voluntary Action)*

- *Encompasses same conditions and requirements as for resignations*
- *One exception is the request for optional retirement and/or its withdrawal must in writing*



## *Non-Disciplinary Actions – Not For Cause*

### *Abandonment of Position (Voluntary Action)*

- *Involves failure of a technician to report for work for a reasonable period of time, with supervisor unable to ascertain the technician's intention of returning*
- *Reasonable period of time has been defined by TPR as “usually 10 calendar days”, but that is not firm*



# *Technician Personnel Regulation 752*

## *Discipline and Adverse Actions*



## ***EMPLOYEE CONDUCT MANAGEMENT***

- *Guidance for dealing with poor workplace behavior*
- *Includes appendices with samples*
- *Assists in identifying specific issue in the Table of Penalties*
- *Helps to determine appropriate levels of action*
- *LRS must be consulted*





## ***EMPLOYEE CONDUCT MANAGEMENT***

***Discipline – Typically taken when a conduct-related incident occurs that warrants action by the supervisor; but less serious than adverse actions situations; non-career following (temporary)***

***Adverse Action – Typically taken by the supervisor for more serious conduct-related incidents; resulting in more severe action(s), such as downgrade or removal; career following (permanent)***



## *Supervisor's Role*

- *Ensure workers know expected behavior*
- *Ensure workers know consequences of unacceptable behavior*
- *Respond to all cases immediately*
- *Unbiased – focus on problem not person*
- *Initiate all actions (disciplinary and adverse)*



## *Types of Actions*

- *Counseling*
  - *Private exchange*
  - *Observation and improvement desired*
- *Warning*
  - *Private exchange*
  - *Observation and improvement desired*
  - *Warning of possible future consequences*

***\*\* Neither considered disciplinary action\*\****



## *Types of Adverse Action*

- *Suspension*
- *Involuntary change to lower grade*
- *Removal*



## *More on Adverse Actions*

- *HRO/LRS involvement early*
- *Verifiable reason (cause), support charges (evidence)*
- *How does proposed action “promote the efficiency of the service”?*
- *What action is appropriate (HRO assistance)*
- *Prepare notice of proposed action*



## *Adverse Action Process*

- *Step 1 – Notice of proposed Action*
- *Step 2 – Technician Reply (10 calendar days)*
- *Step 3 – Decision letter (investigation/review)*
- *Step 4 – Administrative Hearing (20 calendar days)*
- *Step 5 – TAG Appeal Review (20 calendar days)*
- *Step 6 – Merit System Protection Board (MSPB)*  
*Only for matters under MSPB Jurisdiction*



## *Common Errors*

- *Allowing the problem to continue too long before taking action*
- *Failing to communicate rules and regulations to the employee*
- *Basing discipline on personal anger*
- *Procedural errors*
- *Failing to fully investigate facts before taking action*
- *Reassigning rather than correcting behavior*





## *Douglas Factors*

- *Douglas factors are based on a case from 1981 involving a Supply clerk dispatcher(GS-04) with the Veterans Administration who appealed a removal decision for being absent without leave for 30 minutes and for being away from his assigned duty without permission*
- *Douglas claimed the agency handed down a penalty that was overly harsh*



## *Douglas Factors*

- *Nature and seriousness of the offense*
- *Level of the Employee's Job*
- *Past Disciplinary Record*
- *Past Work Record*
- *Impact on the Supervisor's Confidence*
- *Consistency with Other Discipline*
- *Consistency with Table of Penalties*
- *Notoriety of Offense and Reputation of the Agency*
- *Clarity of Notice to Employ*
- *Potential for Rehabilitation*
- *Presence of Mitigating Circumstances*
- *Availability of Alternate Sanctions*



## *Performance vs. Conduct Management*

- *Performance Management (TPR 430)*
  - *Involves can't*
  - *Often resolved by training*
  
- *Conduct Management (TPR 752)*
  - *Involves won't*
  - *Often requires discipline or adverse actions*



## *Executive Orders*

- *President Trump signed 3 Executive Orders (EOs) on 25 May 2018 impacting labor and employee relations:*
  - *E.O. 13836 – Developing Efficient, Effective and Cost Reducing Approaches to Federal Sector Collective Bargaining*
  - *E.O. 13837 – Ensuring Transparency, Accountability and Efficiency in Taxpayer-Funded Union Time Use*
  - *E.O. 13839 – Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles*

*Effective 9 July 2018*



# *Questions*