State of West Virginia
OFFICE OF THE ADJUTANT GENERAL
1703 COONSKIN DRIVE
CHARLESTON, WEST VIRGINIA 25311-1085

James A. Hoyer
Major General, WVARNG
The Adjutant General

(304) 561-6317
DSN: 623-6317
FAX (304) 561-6327

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NGWV-TAG

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Joint Policy Memorandum NGWV-TAG #14-003, West Virginia Army and Air National Guard Administrative Grievance Policy (supersedes WV Technician Personnel Regulation Number 771-1, dated 12 March 1984)

1. The proponent for this policy is NGWV-HRO.

2. This policy is effective immediately, and remains effective until rescinded or superseded.

3. **References:** 32 USC § 709(e)(1-4)
   5 USC Chapter 71
   5 USC Part 430
   5 USC Chapter 43
   5 USC 4505(a)
   32 USC 709(f)(1)(A)

4. **Purpose:** This policy establishes the procedures and policies to be used in the presentation, acceptance, and processing of grievances from non-bargaining Federal Technicians that may arise. The procedures herein do not apply to a grievance system established through a negotiated agreement between The Adjutant General and a labor organization, to which exclusive recognition has been granted. Technicians have the right to present grievances with or without representation, and must be free to use these procedures without restraint, interference, coercion, discrimination, or reprisal. There is no administrative review of grievances beyond The Adjutant General.

5. **Responsibilities:**

   a. Human Resource Officer: Ensure efficient management of the Administrative Grievance Procedures in the West Virginia National Guard.

   b. Organizational Commanders and Directors: Ensure the administrative grievance system is maintained, and the directives set by this policy are followed in subordinate units.

6. Applicability:

a. West Virginia National Guard (NG) Non-Bargaining Federal Technicians

7. Policies:

a. It is the policy of The Adjutant General of West Virginia all Federal Technicians in the West Virginia National Guard are entitled to present disputes under a system consistent with Department of Defense (DoD) policy and procedure. Furthermore, this system allows the dispute to be considered expeditiously, fairly, impartially, and facilitates resolution as quickly as possible. The Administrative Grievance Policy will provide a forum for review of actions taken under authority of Title 32 U.S.C. 709 (e)(1-4).

b. All persons involved in the dispute resolution process shall be free from restraint, interference, coercion, discrimination, or reprisal.

8. Grievance Coverage:

a. Matters covered:

(1) Matter(s) of personal concern or dissatisfaction relating to the employment of a Technician if the matter is subject to the control of The Adjutant General of West Virginia. This includes any matter on which a Technician alleges coercion, reprisal, or retaliation has been practiced against him or her, except for the following matters:

b. Matters not covered:

(1) Grievances by Active Guard Reserve (AGR) Members.

(2) Matters subject to final administrative review outside the State of West Virginia under law, the regulations of the Office of Personnel Management (OPM), or the NGB, i.e., compatibility requirements, manning structure, etc.

(3) Content of published agency regulations and policy.

(4) Non-selection of promotion from a group of properly certified candidates.

(5) Grievance over the interpretation or application of an agreement negotiated under 5 USC Chapter 71 as amended.

(6) A preliminary warning or notice of an action which, if effected, would be covered under appeals system or excluded from coverage under sub-paragraph (1) above.

(7) An action which terminates a temporary promotion, regardless of length or basis for the action.

(8) The substance of the critical elements and performance standards of a Technician's position, which have been established in accordance with the requirements of 5 USC Part 430 and 5 USC Chapter 43

(9) The granting of or failure to grant a Technician performance award, adoption, or failure to adopt a Technician suggestion or invention, or failure to receive a performance award under 5 USC 4505(a).

(10) Any action which has an appeal procedure established by law or regulation.

(11) Non-adoption of a suggestion or disapproval of a quality step increase, performance award, or other type of honorary or discretionary award.

(12) A merit pay determination or a merit pay increase or the lack of a pay increase.

(13) The termination of a probationer for unsatisfactory performance.

(14) Any action taken pursuant to 32 USC 709 (e) (1-4).

(15) The content of a published Adjutant General's Policy.

(16) Separation from Technician status due to failure to maintain a military assignment with the West Virginia National Guard, or due to a failure to hold a military rank commensurate with the Technician position IAW 32 USC 709(f)(1)(A).

(17) The results of a classification appeal.

(18) The results of a performance review or appraisal.

(19) Separation due to failure to meet military security standards.

(20) Separation for cause.

(21) Reduction in force, removal, suspension, furlough without pay, discharge from Technician Employment, or reduction in rank or compensation.

9. Definitions:

a. Grievance: A request by a Technician, or by a group of Technicians acting as individuals, for personal relief in a matter of concern or dissatisfaction relating to

employment which is subject to the control of Management.

b. Days: Duty (work) days.

c. Non-Bargaining Federal Technician: Person who is not eligible to be a member of a bargaining unit.

d. Technician(s): Includes former Technician(s) for whom a remedy can be provided.

10. Rights of the Grievant:

a. Freedom from restraint, interference, coercion, discrimination, or reprisal in presenting a grievance.

b. The right to be accompanied, represented, and advised by a representative of his or her own choosing; except the agency may challenge or attempt to disqualify the choice of an individual as a representative which would result in a conflict of interest or position, or which would conflict with the priority needs of the agency, or which would give rise to unreasonable costs to the Government.

c. The State shall provide for a reasonable amount of official time, if the Technician is otherwise in duty status, for preparation of the case.

d. The right to communicate with the servicing personnel office or a counselor of the Agency.

11. Rights of the Representative:

a. Freedom from restraint, interference, coercion, discrimination, or reprisal.

b. The State may consider providing for a reasonable amount of official time, if the representative is a Technician who is otherwise in a duty status, for preparation of the case.

12. Procedures:

a. Informal Grievance Procedure

(1) The informal grievance procedure is initiated by the employee presenting the grievance to his/her immediate supervisor within 15 days of the particular act or occurrence giving rise to the dispute. Those grievances concerning a continuing practice or condition must be presented within 15 days of the employee becoming

aware of it. The grievance may be presented either orally or in writing. The immediate supervisor must then conduct an informal inquiry into the matter and attempt to resolve it, and provide a response to the employee within 15 days of the date the informal grievance was presented. This time limit may be extended if additional time is needed and the employee is notified.

(2) A supervisor receiving an informal grievance should consult with, and seek advice from, his/her higher level supervisors or his/her support staff offices, to achieve a prompt and fair resolution.

(3) Even if an informal grievance is not within the authority of the immediate supervisor to decide, it is the supervisor's responsibility to confer with the person(s) with or possessing authority and attempt a resolution. If the supervisor believes the grievance process does not cover the matter, the supervisor will inform the employee and advise the employee of the appropriate process, if any, for resolving the problem.

(4) The time limits identified above for resolving the problem may be extended by mutual agreement to accommodate resolution of the dispute.

(5) If the informal grievance is resolved to the satisfaction of the employee, the corrective action will be initiated, the employee informed, and the grievance file closed.

(6) If the grievance cannot be resolved to the satisfaction of the employee, the employee will be provided a decision in writing, to include the basis for the decision, by the immediate supervisor. The supervisor will also advise the employee in writing of his/her right to file a formal grievance within 15 days of receipt of the decision.

b. Formal Grievance Procedure.

(1) An employee may file a formal, written grievance with The Adjutant General as the deciding official when a problem is not resolved during the informal problem-solving process. The employee must submit his/her formal, written grievance to the Human Resource Office (Labor relations Specialist) no later than 15 days from the conclusion of the informal process.

(2) An employee's formal grievance must be signed, dated, and contain a sufficiently detailed statement of the specific issue(s) and the specific, personal remedy sought. The grievance must be submitted with copies of any documents in the employee's possession related to the grievance, and include the name, address, and telephone number of the employee's representative, if any, to his/her immediate supervisor. The remedy sought must be personal to the employee, and may not include a request for disciplinary or other action affecting another employee. An employee may not grieve

the same matter raised in any other grievance, appeal, complaint, or other dispute resolution process.

(3) Prior to transmitting the grievance to the deciding official, the LRS will determine if the grievance is timely, is covered by the grievance policy, and contains complete information regarding any informal resolution attempts concerning the dispute. When a formal written grievance is made, a grievance file will be established and made available to the deciding official. This file will contain all pertinent documents from the informal as well as the formal grievance.

(4) The Adjutant General may cancel or temporarily suspend a grievance, or the appropriate portion of a grievance, if:

(a) The employee requests such action;

(b) The employee fails to comply with applicable time limits or procedural requirements, or requests actions be taken against another employee; or

(c) The employee raises the same matter under another formal dispute resolution process.

(5) The Adjutant General will conduct an inquiry into the basis of the grievance and the supervisor's reasons for not granting the relief. The Adjutant General may also designate an impartial individual to investigate the grievance and make recommendations concerning its disposition. The Adjutant General shall fully and fairly consider the grievance. The Adjutant General will provide the employee a written decision with supporting rationale no later than 60 days from the filing of the grievance, unless the time frame is extended due to special circumstances (e.g. when those involved are geographically dispersed, when a fact-finder is used in the process, etc.). In any case, a decision will be rendered within 90 days from the filing of the grievance, unless there is a mutual agreement with the employee to extend the time to accommodate resolution of the dispute.

(6) The decisions of The Adjutant General on the merits of the grievance are final and not subject to further review or arbitration.

13. Cancellation of Grievances:

a. The agency retains the right to cancel or suspend the processing of a grievance or a portion of a grievance when:

(1) The employee, or his/her representative, requests cancellation;

(2) The employee's duty status is terminated, unless the personal relief sought may be granted after termination of employment;

(3) The employee or grievance is excluded from coverage under this policy;

(4) The employee fails to provide sufficient detail to identify clearly the matter being grieved, or specify the personal relief requested;

(5) The employee has previously filed or later files a formal appeal, complaint, or other challenge on the same matter under another formal dispute resolution process recognized by the agency;

(6) The employee fails to comply with the time frames provided, procedural requirements, or the employee fails or refuses to provide required information;

(7) The employee requests disciplinary or other detrimental action be taken against another employee (the improper portion of the grievance will be cancelled).

(8) Upon the death of the Technician, or upon his/her separation for reasons not connected with the grievance, provided there is no question of pay involved or other relief that could be granted to the Technician.

b. If the grievance is cancelled or rejected, the LRS will return the grievance submission to the employee, along with a notice in writing providing the basis and rationale for rejecting the submission. An employee may request a review of the LRS's decision to cancel the grievance by the HRO.

14. Grievance Decision:

a. The Adjutant General will:

(1) Provide a final decision at the earliest practical date after the completion of the grievance review and investigation.

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The point of contact for any questions regarding this policy is the Labor Relations Specialist, at (304) 561-6422.

JAMES A. HOYER
Major General, WVARNG
The Adjutant General

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