

# Problem-Grievance Resolution for Service Staff (AFSCME Service)

HR



## About This Policy

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Responsible University Office:

University Human Resources

Responsible University Administrator:

Vice President and Chief Financial Officer

Policy Contact:

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## Related Information

\* [Americans with Disabilities Act \(ADA\) Policy](#)\* [Equal Opportunity/Affirmative Action Policy](#)\* [Sexual Misconduct](#)

## Related Forms

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## Scope

This policy applies to all Service Staff employees at Bloomington, IUPUI, and South Bend.

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## Policy Statement

1. In working together day-to-day, it is normal for employees to have occasional problems or complaints affecting their work-related activities. It is important to resolve these problems as quickly as possible. It is the university's view that most problems can be resolved through informal discussions between the employee and supervisor. However, in some instances this may not be possible, and it is appropriate to turn to the formal grievance resolution process contained in this policy.

2. The following establishes a procedure for the fair, orderly, and timely resolution of such problems or complaints using a review process having up to four steps: **Stage 1** is to the immediate supervisor, **Stage 2** is to the dean or director of the unit, **Stage 3** is to the campus Human Resource office, and **Stage 4** is an advisory arbitration hearing for eligible issues.
3. Staff shall not be discriminated or retaliated against for exercising rights under this problem-grievance resolution policy. All Staff have the right to use the procedure contained in this policy and the right to obtain representation, if desired, as outlined in this policy.
4. Employees are encouraged to use the procedure described in the paragraphs below for settlement of grievances concerning any dispute over the interpretation or application of university personnel policies.
5. It is the philosophy of the parties that issues that arise in the employment setting should be discussed as early as possible. The Union is encouraged to come forward with ideas and discussion in an effort to effectuate resolution of problems prior to filing a formal grievance and even before corrective action is taken, where possible. In situations where an employee may be subject to potential termination of employment, if the Union engages the University in a dialogue prior to filing a grievance, and preferably before a final decision is made to discharge an employee, and where the circumstances are appropriate, the University will consider alternatives to termination of employment (such as resignation in lieu of discharge, last chance agreement, etc.). Neither party is required to meet and confer as described above, but it is highly encouraged.

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## Procedure

### 1. Eligibility

- a. During the **New Employee Evaluation Period**, including any extensions, no matter concerning corrective action, layoff, or separation of such employee shall be subject to the grievance procedure.
- b. Employees who are still in their **Promotion or Transfer Trial Period** have access to all steps of the grievance procedure.

### 2. Covered and excluded issues

- a. Complaints that are subject to the grievance procedure are those in which an employee
  - i. That his or her employment has been or is being adversely affected by an improper application or interpretation of an employment related rule, regulation, policy, or procedure other than those listed below.
  - ii. That corrective action he or she has received is not warranted.
- b. Excluded from the grievance procedure are:
  - i. Complaints involving judgments such as salary increases, salary range, classification assignment, work standards, performance appraisals, performance improvement plans, organizational structures, work assignments, and staffing levels.
  - ii. Complaints that attempt to change the language of a policy or procedure.
  - iii. Complaints that are subject to other university procedures, such as, equal opportunity and affirmative action policies, research misconduct policies, intellectual property determinations, environmental health and safety concerns, parking violations, or workers compensation claims.
  - iv. Such complaints should be handled through procedures established for the specific topic. These are not exhaustive lists.
- c. At Bloomington and South Bend, grievances that may be appealed to **Stage 4**, arbitration, are limited to complaints alleging a violation of an employment related rule, regulation, or policy; or a grievance alleging that an employee has been suspended without pay or separated without just cause. Grievances over corrective actions below the level of suspension without pay are excluded from appeal to **Stage 4**.
- d. At IUPUI, grievances that may be appealed to **Stage 4**, arbitration, are limited to complaints alleging a violation of an employment related rule, regulation, or policy; or a grievance alleging that an employee has been separated without just cause. Grievances over corrective actions below the level of separation are excluded from appeal to **Stage 4**.

### 3. Complaints involving affirmative action policies

- a. Complaints involving a violation of the university's affirmative action policies (**Americans with Disabilities Act**, **Equal Opportunity/Affirmative Action**, and **Sexual Misconduct**) must be reported to the campus Affirmative Action

Office or at IUPUI, the Office of Equal Opportunity for processing through that office's procedures. Before, during, or following any stage described in this policy, a staff member, supervisor, dean, or director may consult the affirmative action officer.

- b. If an employee initiates a complaint of alleged violation of these policies within his or her department or with the campus Human Resource office, the department head or campus Human Resource office must report the complaint to the campus Affirmative Action Office or at IUPUI, the Office of Equal Opportunity.
- c. A complaint alleging violation of both human resource and affirmative action policies must be filed with both the campus Human Resource office and the campus Affirmative Action office or at IUPUI the Office of Equal Opportunity. The two offices will coordinate their efforts to address and attempt to resolve the issues. Possible steps include placing the efforts of one office on hold while the other investigates its issues; proceeding forward with both cases simultaneously; or any other arrangement which is determined best for the particular case.
- d. Parties accused of violating the affirmative action policies must take special caution to avoid the appearance of retaliation against an individual who files a complaint.

#### 4. The presentation of grievances

- a. At all stages, matters must be presented in one of the following ways:
  - i. Solely by the employee. If the grievance is on behalf of two or more employees, no more than two employees can be designated as the spokesperson or group representatives to present the grievance.
  - ii. Solely by a representative of AFSCME or a representative of the employee's choice.
  - iii. By the employee in the company of a representative of AFSCME or a representative of the employee's choice.
- b. The AFSCME representative shall be the union's designated steward from within the employee's department or area. If the designated steward is not available or if the employee does not want the designated steward, the president or vice president of the campus local will be contacted and asked to assign the chief steward or another union official familiar with the department in which the problem-grievance arose to handle the grievance.
- c. Employees and stewards shall be allowed reasonable opportunity for discussion of complaints or grievances subject to approval of the supervisor of each as to the earliest practical time when they both can be spared from the job.
- d. The university's problem-grievance procedure is an administrative procedure; therefore, the employee's representative or witness cannot be an attorney prior to **Stage 4**.

#### 5. Waiver of Union Representation

- a. The grievant has the right at any stage of the grievance to represent him/herself. However, the grievant must notify the University that Union representation is being waived at the time the written grievance is filed at **Stage 3**. This waiver is irreversible.
- b. If the grievant waives the right to Union representation, the grievant is responsible for the grievant's share of all mediation and arbitration costs.
- c. The Union retains the right to attend all arbitration meetings and to receive copies of all responses and other documents related to the substance of the grievance.
- d. In no event may the grievant be represented by another employee union or organization, either directly or indirectly by someone affiliated with another employee union or organization that is not the exclusive representative.

#### 6. Time limits

- a. In this Problem-Grievance Resolution procedure, the beginning of all time limits, day one, is the start of the day after the event or knowledge of the event. This applies wherever there is a time limit within this procedure.
- b. Regardless of which stage the grievance is initiated, an employee must file a grievance within 10 working days of the incident or problem or knowledge of it.
- c. In the case of a reduction in force (RIF), the 10 work day period begins when the employee is notified of the RIF or when the employee first becomes aware of or should have become aware of the violation of the RIF procedure.
- d. If an employee fails to observe the time limits established for any stage, the grievance will be considered resolved. If the university fails to observe the time limits established for any stage, the employee may submit the grievance to the next stage within the designated time limits for appeal.

- e. Time limits identified in the four stages may be extended if the employee, the department and the campus Human Resource office agree. In addition, the campus Human Resource office has the authority to extend the time limits at its discretion and inform the parties. All extensions should be in writing.
- f. Work days mean days that the campus administrative offices are open and available to conduct business. Excluded days include weekends and holidays recognized by the University.

#### 7. Determination of appropriate stage for filing a grievance

- a. It is the intent of this policy that grievances be resolved at the earliest step of the grievance procedure as possible. Grievances are to be filed at **Stage 1** except as provided below.
- b. When the problem involves a termination, the notice of termination is regarded as a final decision of **Stage 1**. If the employee initiates a grievance, he or she must do so within ten working days of receipt of the notice of termination. The grievance goes directly to **Stage 2**.
- c. The campus Human Resource office may elevate the initial filing of any grievance to **Stage 2** or **Stage 3** if it deems it appropriate to do so.

#### 8. Procedure for filling and processing formal grievances

##### a. Stage 1

- i. Employees are to submit the grievance in writing to their immediate supervisor or department designee with a copy to the campus Human Resource office. The university **grievance form** must be used. (In the event of a transfer or promotion, the grievance is submitted to the supervisor where the opening exists.)
- ii. The grievance must contain 1) the specific University policy or procedure allegedly violated; 2) a clear and concise description of the nature of the grievance and how the action allegedly violated policy; 3) the date of the incident or knowledge of it, and 4) the specific remedy requested for resolution.
- iii. The supervisor or department designee has ten working days to reply in writing to the employee. During this period, the supervisor or department designee and employee may meet, discuss the problem, and attempt to resolve the matter. The supervisor or department designee is encouraged to consult with the campus Human Resource office prior to issuing his or her response.
- iv. The supervisor or department designee must forward a copy of his or her written Stage 1 response to the campus Human Resource office and the union representative at the time that it is given to the employee.

##### b. Stage 2

- i. If the employee regards the outcome of Stage 1 as unsatisfactory, or if the supervisor fails to respond within ten working days, the employee is entitled to appeal to Stage 2.
- ii. The employee must appeal in writing within ten working days of receipt of the Stage 1 response—or its due date—to the supervisor's dean or director or designee with a copy submitted to the campus Human Resource office.
- iii. The grievant or union representative may request a meeting and the department will, whenever possible, accommodate such a request to discuss the grievance. Such meeting will be scheduled within five workdays of receipt of the grievance.
- iv. The dean or director or designee has ten working days of the conclusion of the grievance meeting or receipt of the Stage 2 grievance if no meeting is held, to respond in writing.
- v. The dean or director or designee is encouraged to consult with the campus Human Resource office prior to issuing the Stage 2 response. A copy of the written Stage 2 response must be forwarded to the campus Human Resource office and the union representative at the time it is given to the employee.

##### c. Stage 3

- i. If the employee regards the outcome of Stage 2 as unsatisfactory, or the dean or director fails to respond within ten working days, the employee is entitled to appeal to Stage 3.
- ii. The employee must appeal in writing to the campus Human Resource office within ten working days of receipt of the Stage 2 response or its due date.

- iii. The campus Human Resource office has ten working days from receipt of the Stage 3 grievance to provide the university's response in writing and during this period will meet with the grievant to discuss and attempt to resolve the grievance.
- iv. If the employee regards the outcome of Stage 3 as unsatisfactory, the campus Human Resource office, in consultation with AFSCME, will inform the employee if the grievance is eligible for Stage 4.
- v. At South Bend, within five (5) work days of the receipt of the appeal to Stage 3, the campus Human Resource office will promptly schedule a joint conference to further discuss and attempt to resolve the grievance. Such joint conferences shall be attended by not more than three (3) representatives for each of the parties in addition to the grievant.
  - a. The University will provide the grievant and the authorized Union representatives with a written summary of the University's position within five (5) work days after the date of the joint conference unless the parties jointly agreed to extend the time limits to conduct further investigation.
  - b. The University will provide the Union Staff Representative for AFSCME, Local 1477-01, a list of prospective witnesses.

**d. Stage 3 ½ and Mediation Options**

- i. It is the intent of the parties to allow the option of using either Stage 3 ½ or mediation, with the agreement and understanding of both parties. Therefore, with the mutual agreement of both parties, a grievance may proceed to either Stage 3 ½ or mediation.

**e. Stage 3 ½**

- i. If the employee regards the outcome of Stage 3 as unsatisfactory, and the grievance is eligible for Stage 4 as covered above in this policy, the employee may request a Stage 3 ½ committee hearing.
- ii. Stage 3 ½ hearing procedures:
  - a. The employee must submit a written request for a committee hearing to the campus Human Resource office within ten working days of receipt of the Stage 3 response or its due date. The grievance review committee will convene within 30 calendar days after the receipt of the request.
  - b. The grievance review committee will be composed of three management representatives and three union representatives.
    - a. Management will assign the appropriate representatives, but will not include direct supervisors involved in the grievance.
    - b. The union representatives will include two AFSCME staff members (not the steward(s) presenting the case or the representative of the grievant) and the President of the campus local.
    - c. At least one representative of each team must have the authority to settle the grievance.
  - c. The grievance review committee will conduct a hearing, reach a consensus, and issue an oral decision. A written decision is to be prepared and issued to both parties within two weeks following the hearing.
  - d. Both parties must abide by the committee's decision.
  - e. If the committee is unable to reach a decision, the grievant may request a Stage 4 hearing.

**f. Mediation**

- i. In conjunction with the grievance procedure, if the grievance has not been settled at the conclusion of Stage 3, then either the University or Union, or the grievant if Union representation has been waived, may request mediation. This is intended to be an optional step in the grievance procedure that requires the mutual agreement of both parties. The time limits for appealing the grievance to the next stage are held in abeyance until the mediation process is completed. The mediation will be conducted in accordance with the following guidelines. These guidelines shall be provided to mediators selected by the parties. Nothing in the agreement shall be interpreted or construed to modify any other provisions of the grievance procedure.
- ii. Notification and Time Limits
  - a. The University or the Union may request mediation of a pending grievance by notifying the other party in writing within ten (10) work days of the Stage 3 response.

- b. If both sides are agreeable to take the matter to mediation, as soon as possible after the written request for mediation, the parties shall jointly select a mediator and schedule a mediation meeting at the earliest possible date.
- c. If no settlement is reached as a result of the mediation meeting, the grievance may proceed to arbitration, provided that the grievance issue is not excluded from arbitration by any other policy provision. The time limit for requesting arbitration shall apply effective from the date of the grievance mediation session

iii. Jurisdiction and Exclusions

- a. Any grievance under the parties' grievance procedure that has been discussed at Stage 3 and that is eligible for arbitration may be mediated with the exception of cases involving an employee termination.
- b. By agreeing to schedule or participate in the mediation meeting, the University does not acknowledge that the case is properly subject to arbitration and reserves the right to raise this issue.

iv. Mediation Hearing Procedures, Rules, and Outcome

- a. The proceedings before the mediator will be informal, and the rules of evidence do not apply. No record, stenographic or tape recording of the mediation meeting will be made. The mediator's notes are confidential, and the content shall not be revealed.
- b. All written material that is presented to the mediator or the other party shall be returned to the party presenting the material at the end of the mediation meeting.
- c. The issue mediated will be the same as the issues the parties have failed to resolve through the grievance procedure.
- d. The mediator shall conduct the mediation meeting by utilizing any of the customary techniques associated with mediation, including the use of separate caucuses.
- e. Attendance at the mediation meeting shall be limited to the Local Union President, or designee; AFSCME Representative; Director of Human Resources; the grievant; and other individuals chosen by the Union or the University that are directly involved in the grievance and whose presence is required. Neither party will be represented by an attorney at the mediation meeting.
- f. The mediator has no authority to compel resolution of the grievance. The mediator may be requested by either party to issue an advisory recommendation or decision that shall be provided to both parties. The University and AFSCME may accept the resolution proposed by the mediator, and the settlement or any settlement resulting from the mediation meeting shall not be precedent setting unless there is a written understanding that it will be a precedent.
- g. Neither at the arbitration hearing concerning the grievance that was mediated nor at any other arbitration hearing, may either party refer to the presentations made at any mediation meeting by the other party, the fact that a mediation meeting was held concerning the grievance, or any statement by a mediator at any mediation meeting.
- h. The mediator's fees and expenses shall be shared equally by the University and AFSCME. All other expenses shall be the responsibility of the party incurring the expense.
- i. The parties shall meet and develop a panel of mutually agreeable mediators and agree upon a method of selecting mediators for specific cases.

g. **Stage 4 Advisory Arbitration**

- i. If the employee regards the outcome of Stage 3 as unsatisfactory, or, if used, Stage 3 ½ or mediation did not result in a resolution, and the grievance is eligible for Stage 4 as provided above in this policy, the employee may request a Stage 4 hearing which will be conducted by an outside arbitrator using the procedures described below.
- ii. The employee and the university will pay in equal shares all fees and expenses of the arbitrator and the American Arbitration Association if their services are used.
- iii. Stage 4 hearing procedures

- a. The employee must submit a written request for a Stage 4 hearing to the campus Human Resource office within 15 working days of receipt of the Stage 3 response or its due date or conclusion of 3 ½ or mediation if either was used.
- b. An arbitrator shall be selected by the parties as follows:
  - a. The employee and the university may agree upon a local arbitrator.
  - b. If the parties cannot agree upon a local arbitrator within ten working days of the request for a Stage 4 hearing, the employee may either accept the Stage 3 response or Stage 3 ½ or mediation results as the final resolution of the grievance or may choose to have the hearing conducted by a single arbitrator selected through the American Arbitration Association (AAA).
  - c. If the employee requests an AAA arbitrator, the campus Human Resource office shall submit a written request to the AAA to provide the parties with a list of five arbitrators. The parties shall alternately strike names from the list, with the employee (or the employee's representative) going first, until one arbitrator's name remains.
- c. The arbitrator will conduct a hearing, write a report of the findings, and make a recommendation to the president, chancellor, provost, or vice president to which the unit reports. A copy of the written report of findings and recommendation will be provided to the employee.
- d. The president, chancellor, provost, or vice president will accept, modify, or reject the arbitrator's recommendation and will communicate in writing the final decision to the parties. This concludes the problem-grievance procedure, and there are no further internal reviews or procedures.

#### **h. Pre-Arbitration Hearing Conference**

- i. After the selection of the arbitrator and the scheduling of the hearing date, the Union International Representative or Union Counsel, or grievant if Union representation has been waived, and the University counsel or the campus Human Resource Director and/or a member of the University Employee Relations staff shall meet and attempt to reduce the issue to writing, stipulate facts, authenticate proposed exhibits, exchange witness lists and reach any other understandings that will expedite the hearing process.

#### **i. Formal Grievance and Hearing Rules**

- i. The following rules and procedures apply to this grievance procedure.
- ii. All arbitration expenses shall be split equally between the parties. Each party is responsible for the expenses of preparing and presenting its own case.
- iii. If either party requests a stenographic record of the proceedings, the cost of the arbitrator's copy of the transcript shall be equally split between the parties. Each party may order a copy for itself at its own expense.
- iv. The Arbitrator shall not rule on any matter that is specifically excluded from the grievance procedure or make any recommendation that conflicts, overturns, or modifies in whole or in part, a policy, practice, or procedure approved by the Board of Trustees of Indiana University or with any Indiana state law or federal law or any administrative regulation issued under the law by the appropriate statutory authority.
- v. By mutual agreement of the campus Human Resource office and the Union, or the grievant if union representation has been waived, a grievance may be submitted to Expedited Arbitration, in accordance with the rules and procedures established by the American Arbitration Association. If Expedited Arbitration is utilized, legal counsel will represent neither party.

#### **j. Additional items relative to problem-grievance procedure**

- i. Eligibility for pay is extended to the following persons for regularly scheduled time away from the job in order to attend fourth-stage grievance hearings for SM employees: The local's President or designated replacement; the union steward who handled the grievance at the previous stages; the grievant providing there are no more than two (if more than two, then one or two representatives may be selected by the group); witnesses for the time they testify and a reasonable waiting period (15-20 minutes normally is sufficient time to come from any part of campus to a hearing).
- ii. In the event of a grievance involving a pay differential filed against the university, unless the parties otherwise agree or unless the Arbitrator otherwise directs, if the grievant prevails he or she shall be entitled to the differential

for the period of time that the higher rate should have been received until he or she is actually placed on the higher rated job.

- iii. The union president and the union steward most immediately involved in a grievance shall be allowed to attend Stage III grievance meetings.
- iv. Apprenticeship employees who have completed the New Employee Evaluation period are allowed to file grievances and the grievances may be processed through this problem-grievance procedure.
- v. To encourage the use of local arbitrators, for grievances reaching the fourth stage, it is agreed that an attempt will be made to select a mutually agreeable local arbitrator before requesting AAA arbitration. It is further agreed that the Administrator and the exclusive representative will attempt to agree upon a list of such arbitrators to expedite the selection process.
- vi. In a promotion or transfer grievance, if the grievant prevails, the unit seniority date will reflect the date upon which the grievant should have been placed in the position.

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## Sanctions

Managers, supervisors, and employees who violate this policy are subject to corrective action, up to and including separation.

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## History

In the Spring of 2012, Indiana University administration and AFSCME Council 62 leadership worked to merge the personnel policies covering Service (SM) Staff at Bloomington, IUPUI, and South Bend into one set of policies. This is one of the 27 policies that is the product of their work. Effective July 1, 2012, it brought together the provisions that were the same on all three campuses; eliminated differences when agreement could be reached; and identified those provisions in which differences remained.