



MONTGOMERY COUNTY, MARYLAND

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M E M O R A N D U M

January 16, 1981

TO: County Council

FROM: Andrew Mansinne, Jr., Director, Office of Legislative Oversight

SUBJECT: Memorandum Report of the Office of Legislative Oversight: An Evaluation of Revised Merit Employee Grievance Procedures

1. Purpose. The purpose of this memorandum is to provide the County Council with an evaluation of the recently revised merit employee grievance procedures as specified in Administrative Procedure (AP) 4-4, Grievance Procedures, effective August 15, 1980 (Exhibit A).

2. Background. When the Council approved Bill 5-80 transferring Employee Relations to the Office of Personnel, it provided for automatic termination of the Bill's provisions "...as of the first day after January 31, 1981, unless the County Council, by resolution, provides for extension of the termination date to either a time certain or unspecified date."

The Bill did not specify what must be accomplished for the Bill's provisions to be extended. However, a review of the worksessions and Council discussions relating to the transfer indicates that, as a minimum, the Council expected the following:

--Initiation of a Quarterly Report to the Council which would set forth the County's goals on Equal Employment/Affirmative Action, assess where it stands at the time of the report, and detail what is being done to meet those goals;

--Information on the activities of the two minority affairs coordinators;

--Information on miscellaneous employee matters, e.g. the feasibility of an employee attitude survey, progress on improving the Employee Performance Evaluation System, publishing names of recipients of outstanding increments and promotions, and other aspects relating to the implementation of the merit system law; and

--A report on the newly revised employee grievance procedure.

On December 3, 1980, the Chief Administrative Officer provided the Council with the first Quarterly Personnel Report for the period July 1, 1980 to September 30, 1980. The Quarterly Report for the period October 1, 1980 to December 31, 1980 is to be published in mid-January 1981.

3. Report objective and methodology. This memorandum report by the Office of Legislative Oversight concentrates on the revised merit employee grievance procedures from the date they became effective, August 15, 1980, until December 31, 1980. The report will present observations directly relating to the grievance procedures and additional observations arising out of this evaluation.

This evaluation included: a) a study of previous grievance procedures as they were administered by the Office of Employee Relations which, prior to passage of Bill 5-80, was in the Office of the Chief Administrative Officer; b) a thorough examination of the revised grievance procedures (AP 4-4) as administered by the Employee Relations Section within the Office of the Personnel Director; and c) a number of personal interviews with employees who had submitted grievances under the revised grievance procedures. Valuable information was obtained in the personal interviews. During the period August 15, 1980, (the date the revised procedures became effective) to December 31, 1980, 45 employees submitted 57 grievances (one employee submitted two grievances, another submitted four grievances and a third employee submitted nine). Personal interviews were conducted with 18 or 40% of 45 employees submitting grievances.

4. General observations and comments. The revised grievance procedure and their administration by the Employee Relations Section of the Office of Personnel is a marked improvement over the previous procedures and administration. Personal interviews overwhelmingly endorse the revised procedures over the old and complement the Employee Relations Section staff. Specific improvements reported include:

--Timely processing and resolution of employee grievances. Interviews revealed overall satisfaction with the timely processing of grievances. All employees commented favorably on the fact that the revised procedures imposed time limits on management and the grievant, whereas previous procedures imposed time limits only on the grievant.

--Professionalism, objectivity and helpfulness of the staff of the Employee Relations Section who are responsible for processing grievances.

--Professionalism, objectivity and thoroughness of the investigators assigned in Step III of Open Door (Track IV) grievances. The investigators are selected from a roster of employees for their maturity and demonstrated performance.

--With a single exception, those whose grievance involved a fact-finder were highly satisfied with the objectivity and fairness with which their case was processed. That simple exception questions the guidelines for the selection of a fact-finder.

5. Observations directly relating to the grievance procedures.

--Recommended changes to AP 4-4 and related documents:

(1) The three-page Complaint/Grievance Form should be modified to add a fourth page to provide for an employee copy. The first page of present form (Exhibit B) is marked "Employee Copy," however, it is the action copy which serves as the original for all levels of the grievance procedure.

(2) Eliminate all references to CETA employees (Track II), from AP 4-4. Grievances by CETA employees are processed in accordance with federal procedures as announced in Sec. 676.81 - Sec. 676.92 of the Federal Register, Vol. 44, #65, April 3, 1980.

(3) AP 4-4 should standardize the time requirement for initially filing the complaint. Currently, the four tracks (I, III, IV and V) specify, respectively, 10 calendar-days, 5 work-days, 10 work-days and 10 calendar-days. Since all other time limits are in work-days, the two time limits specifying calendar days should be changed to work-days. Later in this report is a recommendation to increase the number of work-days for an employee to submit a grievance.

(4) Include in Step III of Tract IV (Open Door) (page 11) a time limit for the Chief Administrative Officer to appoint a special investigator to research the complaint. Also, for the other three tracks which permit the use of a fact-finder, include a time limit for the fact-finder to submit written recommendations to the Chief Administrative Officer. In every other step in the grievance process for all tracks, AP 4-4 provides specific time limits. The above two exceptions weaken what is otherwise an improvement in the revised grievance procedures.

(5) Include as part of AP 4-4 the following documents relating to the grievance procedures which were published separately (Exhibit B, C, D, E):

.Complaint/Grievance Form

.Guidelines for the Special Investigator

.Fact-Finder Review Process

.Fact-Finder Complaint/Grievance Procedures

The inclusion of these four documents will place all regulations, documents and forms in a single package for the employee.

(6) Make those changes to AP 4-4 which are necessitated by the revised Personnel Regulations adopted on December 2, 1980. One example of such a change concerns the right of an employee to appeal to the Merit System Protection Board a decision by the Personnel Director as to what constitutes a grievable issue.

--Extend the time for filing a grievance. As indicated above, the time limit for an employee to initiate a grievance varies from 5 to 10 work/calendar days. In addition to standardizing the number and setting on work-rather than calendar-days, it is suggested that more time be given an employee to initially file. The realities of the situation is that most employees view the filing of a grievance as a very serious step, requiring time for contemplation. In addition, increasing the number of days in which to submit a grievance could enable the employee to try to solve the problem informally at the work site. I have no specific number of days to recommend, but there should be more time for the employee to make a decision concerning this serious action.

--Filing discrimination complaint with the Human Relations Commission. Bill 36-78 authorized a County merit system employee to file a discrimination complaint with the Human Relations Commission (HRC). However, in filing the complaint with the HRC, the employee waives the right to submit a grievance/complaint on the same matter with the County or to have the same matter reviewed by the Merit System Protection Board. There appears to be confusion as to whether an employee filing a discrimination complaint under the revised grievance procedure (AP 4-4) likewise waives the right to subsequently submit the same matter to the HRC. An opinion by the County Attorney has been requested.

--Role of Personnel Director in a discrimination complaint (Track V). The new grievance procedures includes the Personnel Director in the process of resolving three of the complaint categories: Procedural (Track I), Discipline (Track III) and Discrimination (Track V). AP 4-4 provides that, for a grievance from an employee of the Personnel Office or one that is based on a Personnel Office action, the CAO will appoint a special investigator to review the grievance at a level which would otherwise require review by the Personnel Director (paragraph 4.8). I would suggest that to avoid a perception of a conflict of interest that this same procedure be applied to grievances relating to the Affirmative Action and Equal Employment Opportunity plans and programs, both of which are the responsibility of the Personnel Director.

--Follow-through on resolved grievances. The Personnel Office considers a case resolved when a mutually agreed solution is reached anywhere in the grievance process or when the CAO renders a decision. However, the grievant feels the grievance is resolved or settled when the action or actions mutually agreed to have actually been accomplished. As an example, an employee who submits a grievance to obtain the use of a County vehicle for official business or to correct an unpleasant working condition does not feel the grievance is settled when the CAO directs the availability of a County vehicle or the improvement of the unpleasant working condition. The employee feels the grievance is settled when the vehicle is actually made available or the unpleasant working condition is actually corrected. There is apparently no procedure for following through to verify that actions generated in a resolved grievance are, in fact, accomplished.

--Time away from the job to process a grievance. Paragraph 4-6, AP 4-4, states: "An aggrieved employee shall be given reasonable time for the purpose of presenting a grievance. Such time shall be at the approval of the employee's immediate supervisor." While that statement may appear reasonable and proper at first reading, most employees who were interviewed felt it was intimidating and unequally applied. There appears to be a wide variance as to what constitutes "reasonable time." Also, some departments allow the employee to prepare the grievance on official time, using a County typewriter, reproduction equipment and telephone. Other departments apparently do not permit either the use of official time or County equipment. Most employees found it difficult to request permission of their immediate supervisor for time to prepare the grievance when the grievance was questioning the actions or decisions of that same immediate supervisor.

6. Additional observations arising out of this evaluation.

--Employee training. An attempt was made to orient the employees on the new grievance procedures with seven orientation sessions conducted for supervisors and fifteen conducted for employees. Few employees interviewed by this Office indicated that they were even aware that the classes were conducted, and even a fewer number of employees attended any of the classes. The Personnel Director is to be complemented on scheduling orientation sessions for supervisors and employees on the new grievance procedures. However, I found little evidence that once the sessions were scheduled that management encouraged attendance. From this and previous evaluations, I have concluded that attendance at classes on any subject not directly related to the departments' primary mission are not given very high priority, especially by those in the supervisory chain. Training in areas like leadership, employee motivation, effective communication, apparently do not draw an enthusiastic response from middle and top management. It's hard to fault those who put a high priority on the day-to-day job, especially when there is not

a strong commitment by top management in either time or resources to train supervisors at every echelon in communication and management skills. It has been demonstrated that improved employee communication and problem solving relate directly to improved employee motivation and productivity, and hence, program accomplishment.

--What is an "abuse?" Employee interviews again revealed the need for some degree of standardization as to what constitutes an "abuse" of an employee fringe benefit. For example, what constitutes an abuse of sick leave? Or an abuse of the official phone for private calls? Or an abuse of the time an employee is to report on the job? The ambiguity and lack of standardization within County government concerning "abuses" have led to grievances.

--Guidelines for disciplinary action. The County government does not have standard guidelines for disciplinary actions. There may be merit in permitting each department to establish its own guidelines for disciplinary actions which are tailored to the department's mission; however, employee interviews reveal that the severity of disciplinary actions for similar offenses varies significantly between departments. Employees perceive this variation as an inequity which should be corrected.

--Why do employees submit grievances? While it is recognized that legitimate problems and differences of opinion may and will arise between the County as an employer and its employees, why must a solution to those legitimate problems and differences of opinion be solved through a formal grievance process? Although this evaluation commends the County government for developing a more efficient and effective procedure for processing merit employee grievances, there appears to be little or no effort toward improving management-employee relations so as to eliminate the need for a formal grievance procedure or at least to reduce the number of grievances submitted.

While admitting that the procedures for formally processing grievances is presently more efficient and effective, it is certainly not more economical. To process the 57 grievances in the period August 15, 1980 to December 31, 1980 required resources to be expended for, as a minimum, the following:

.Lost productivity for employee to present the grievance and follow it through each step of the process.

.Personnel to staff the Employee Relations Section to process the grievances.

.Lost time by management from the immediate supervisor to the CAO to process the grievance.

.Lost time of employees who serve as investigators for Open Door grievances.

.Fees for the services of fact-finders (currently \$50.00/hour).

From information obtained in previous evaluations and confirmed by this evaluation, the first action by an employee to resolve a legitimate problem or difference with the County is to submit a formal grievance. I suggest that the employee-employer relationship should be such that a formal grievance to resolve a problem or difference should be the course of last resort.

What is lacking is the resolution of legitimate problems and differences through direct, informal communications by the employee and employer; as a minimum, or an attempt to resolve the problem or difference in an informal one-on-one relationship.

In an attempt to answer why an employee submitted a grievance rather than settle the problem or difference informally at the work site, the following was revealed:

.Real or imagined feeling on the part of some employees that their immediate supervisor and others in the chain of command will do little to resolve the problem or complaint until required to do so in response to a formal grievance. As one employee expressed it after numerous attempts to talk informally about his problem with his supervisor, only to meet with repeated delays and postponements, "The formal grievance was like a subpoena from the CAO to my supervisor to do something now about my problem." Another employee referred to management's attitude toward employee problem solving as, "We dare you to raise your problem to the level of a formal grievance."

.Several employees reported that their immediate supervisor recommended submission of a formal grievance because that supervisor could not (or would not) take the problem or complaint to the next level of supervision without the completed Complaint/Grievance form.

.Still other grievants noted that the time limit to initiate a grievance is too brief to permit the employee time to arrange an informal talk with a supervisor who may delay or postpone the process.

7. Summary/Conclusion

--The revised grievance procedures and their administration by the Employee Relations Section of the Office of Personnel is a marked improvement over the previous procedures and administration.

--This evaluation revealed that practically all the employees who submitted a formal grievance felt there was a stigma connected with being a grievant. These employees felt that their supervisors looked upon a grievance as a complaint against the supervisor's personal actions.

--Employees feel that submitting a grievance will adversely impact on future management decisions, e.g. an EPPE, service increment or promotion.

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While some of these feeling of intimidation may be more imagined than real, one employee's experience seems to confirm these fears. In this employee's work area the Complaint/Grievance forms were maintained by the supervisor so the employee had to ask for the form; however, all other forms used by the employees--leave requests, dental, medical, printing--were stored in a cabinet along with general office supplies to which all employees had direct access.

In summary, this evaluation seemed to indicate that an employee with a legitimate problem or complaint must face some hard choices: attempt to informally discuss the problem with the supervisor and maybe get no action; file a formal grievance and suffer the stigma (real or imagined) of such an action; or live with the problem. It appears that the latter two choices are the ones most often selected.

AM:cls

Attachments: Exhibits A-E

cc: Chief Administrative Officer
Director, Office of Personnel (2)
Robert Kendal, Executive Staff
Robert C. McDonell, Council Staff Director
Gerald Moser, Merit System Protection Board



Montgomery County Government

ROCKVILLE, MARYLAND 20850

MEMORANDUM

August 1, 1980

TO: All Administrative Manual Holders

FROM: Robert W. Wilson, Chief Administrative Officer
R. W. Wilson

SUBJECT: Administrative Procedure 4-4, Grievance Procedures

Please find attached the aboved named procedure to be effective August 15, 1980. Any grievance filed on or after the effective date shall be processed under the new procedure.

New grievance forms will be made available to all employees and departments/agencies of the County Government through the Employee Relations Division of the Personnel Office.

As discussed in previous drafts and in a general notice to all employees in March of this year, the objective of this procedure is to incorporate the elements of fairness, timeliness, and impartiality and, thereby, foster mutual respect and trust between the County Government and its employees. Specifically, this is accomplished by improvements in definitions, review levels, fact-finding procedures, and time limits.

Any questions regarding this procedure, please contact Jim Torgesen, 279-1208.

RWW:jey

Attachments

EXHIBIT A

PURPOSE

- 1.0 To provide procedures for processing all merit system and CETA employees' grievances.

POLICY

- 2.0 To resolve grievances in an orderly and expeditious fashion by maintaining an environment of impartiality and mutual respect, the object of which will provide grievance resolution that encourages excellence of work and improved levels of service.

DEFINITIONS

- 3.0 Certified Employee Organization - An organization officially recognized under the procedures of the Employer-Employee Relations Act as the representative of a designated unit of employees.
- 3.1 Department/Agency Head - Individual given appointment authority and/or responsibility for the unit of government for which the aggrieved employee works.
- 3.2 Discipline Grievance - An alleged wrongful demotion, suspension, or dismissal action of a merit employee or CETA employee.
- 3.3 Discrimination Grievance - An alleged arbitrary or discriminatory application of, or a failure to act pursuant, to any written rules, regulations, policies, practices or laws related to the terms and conditions of employment based on race, sex, religion, age, ancestry, color, handicap, marital status, national origin or political affiliation.
- 3.4 Employee - Any individual employed by the Montgomery County Government who is considered a merit system employee, or a CETA funded employee working in a County Government department or agency.
- 3.5 Employee Representative - The agent selected at the option of an employee to act in his/her behalf in processing a grievance at any level of this procedure requiring a written grievance.
- 3.6 Fact-finder. An impartial person mutually selected by the grievant and the County government to make findings of fact and provide recommendations for grievance resolution.

- 3.7 Immediate Supervisor - The individual responsible for the assignment and evaluation of the aggrieved employee's work.
- 3.8 Special Investigator - A senior management employee of the County government selected by the Chief Administrative Officer, who has a working knowledge of administrative procedures, personnel policies and practices, and governmental structure.
- 3.9 Open Door Grievance - A complaint concerning a term or condition of employment that is not appropriate for processing under any of the other grievance/appeal tracks identified in this procedure.
- 3.10 Procedural Violation Grievance - A dispute concerning the interpretation, application or alleged violation of the County's Personnel Regulations, Administrative Procedures or any other written policy affecting conditions of employment for which there does not exist a more appropriate appeal procedure.
- 3.11 Work Day - The normally scheduled work day for an employee or management representative who is responsible for an action at any given level of the grievance procedure.

GENERAL PROVISIONS

- 4.0 Class Action - Multiple grievances filed on the same subject or incident shall be considered and reviewed as one grievance.
- 4.1 Classification Disputes - Disputes regarding classification action are not grievable under this procedure, but may be reviewed in accordance with Administrative Procedure 4-2. Likewise, requests for reclassifications shall be reviewed in accordance with Administrative Procedure 4-2.
- 4-2 Duplicative Discrimination Complaint - A merit system or CETA employee who elects to file a complaint directly with the Montgomery County Human Relations Commission shall not be entitled to a duplicative complaint under this procedure and shall be deemed to have waived the right to have the same matter reviewed by management and the Personnel Board.
- 4.3 Employee Representation - Employee representatives who are agents of a certified employee organization representing the aggrieved employee, shall be granted reasonable time off with pay for the presentation of a grievance. Such time shall be granted with the approval of the supervisor, when the individual is a County employee. All other County employees functioning as employee

representatives shall be required to use annual leave when providing representation.

The County Government shall refrain from using legal counsel in formal hearings when there is an agreement by the grievant to do likewise.

- 4.4 Grievable Issues - Questions concerning grievable issues or the use of the appropriate grievance track shall be submitted to the Director of Personnel for final determination. The Personnel Director shall respond within five (5) work days from the date of the request. Filing or other time requirements shall be placed in suspension during the determination period.
- 4.5 Grievance Form - All formal grievances should be submitted on the approved form designed specifically for this purpose.
- 4.6 Grievance Processing - An aggrieved employee shall be given reasonable time for the purpose of presenting a grievance. Such time shall be at the approval of the employee's immediate supervisor.
- 4.7 Harassment/Retaliation - No employee shall suffer harassment or retaliation by management or co-workers as a result of exercising his/her rights under this procedure. Any alleged instances of this shall be reported immediately to the Personnel Director or designee.
- 4.8 Personnel Department Grievances - The Personnel Director shall be considered a department head when reviewing a grievance submitted by an employee of the Personnel Office or by any other employee who files a grievance based on a Personnel Office action. In such cases, the Chief Administrative Officer shall appoint a special investigator to review the grievance at the level which would otherwise require review by the Personnel Director or designee.
- 4.9 Time Limits - Any grievance not filed or appealed within the time limits specified herein shall be considered settled on the basis of the last disposition.
- In the event a grievance is not answered within established time limits, the employee may appeal to the next higher step within the time frame normally provided for such an appeal. The time limits specified in this procedure may be extended by written mutual agreement of the parties or by the Personnel Director or designee for compelling reasons, e.g., workload requirements.

PROCEDURES

5.0

There are five (5) separate grievance tracks. Each track provides a review procedure consistent with the grievance definition.

[Signature]

TRACK I

PROCEDURE VIOLATION GRIEVANCE

GRIEVANCE

DEFINITION: A dispute concerning the interpretation, application, or alleged violation of the County's Personnel Regulations, Administrative Procedures or any other written policy affecting conditions of employment for which there does not exist a more appropriate appeal procedure.

STEP I: A merit system employee who has a grievance shall first present it orally to the immediate supervisor. If resolution is not achieved, the employee shall submit the grievance in writing on the prescribed form within ten (10) calendar days from the date of the occurrence of the grievance, or knowledge of the same. The immediate supervisor shall then investigate and shall respond in writing to the employee within five (5) work days from the date the grievance is received.

If the employee is not satisfied with the response of the immediate supervisor, he/she may appeal the grievance to Step II.

STEP II: If the employee appeals the grievance to this level, he/she shall submit it to the department head through the immediate supervisor within five (5) work days following the immediate supervisor's response.

The department head, or designated representative, may arrange a meeting between the employee, employee representative, and appropriate supervisory personnel in an attempt to resolve the grievance. In any event, the department head or designee shall respond, in writing, within seven (7) work days from the date the written grievance is received.

If the employee is not satisfied with the department head's response, he/she may appeal the grievance to Step III within five (5) work days of receipt of the department head's response.

STEP III: If the employee appeals the grievance to this level, he/she shall present the grievance form to the Personnel Director's Office within five (5) work days following the receipt of the written decision in Step II above.

TRACK I CONTINUED

The Personnel Director or designee, and the department head or designee, shall meet with the grievant within seven (7) work days of receipt of the grievance in an attempt to resolve the grievance. The employee shall receive, in writing, a decision from the Personnel Director on the grievance within five (5) work days after the meeting. If the employee is not satisfied with the decision, he/she may appeal the grievance to Step IV.

STEP IV:

If the grievance is not resolved in Step III above, the aggrieved employee may submit the grievance for review before a fact-finder. The submission shall be made in writing to the Personnel Director within five (5) work days after the issuance of the Personnel Director's response in Step III. Within five (5) work days, from receipt of the submission request, the County government shall establish a panel of five (5) qualified individuals; the parties shall meet within three (3) work days for the purpose of mutually selecting a fact-finder from the panel. If the parties cannot agree on a fact-finder, they shall alternately strike names from the panel, the remaining name shall be the fact-finder.

The fact-finder shall not have the authority to recommend a change, alteration or modification of the provisions of the Personnel Regulations, Administrative Procedures, or other written policies affecting conditions of employment. The fact-finder shall issue written findings of fact and a recommended disposition to the Chief Administrative Officer which shall be limited to the issues as submitted by the parties. The cost of transcribing the proceedings, when mutually requested, shall be borne equally by the parties.

The Chief Administrative Officer shall render a decision, in writing based on the fact-finder's recommendation within ten (10) work days of the date of receiving the recommendation.

STEP V:

If the employee is not satisfied with the Chief Administrative Officer's decision in Step IV, he/she may appeal it to the County Personnel Board within five (5) work days of receipt of the Chief Administrative Officer's decision.

TRACK II

CETA PROCEDURE VIOLATION GRIEVANCE

GRIEVANCE

DEFINITION: A dispute concerning the interpretation, application, or alleged violation of the County's Personnel Regulations, Administrative Procedures or any other written policy affecting conditions of employment for which there does not exist a more appropriate appeal procedure.

STEP I:

A CETA employee who has a grievance shall first present it orally to the immediate supervisor. If resolution is not achieved, the employee shall submit the grievance, in writing, on the prescribed form within ten (10) calendar days from the date of the occurrence of the grievance, or knowledge of the same. The immediate supervisor shall then investigate and shall respond in writing to the employee within five (5) work days from the date the grievance is received.

If the employee is not satisfied with the response of the immediate supervisor, he/she may appeal the grievance to Step II.

STEP II:

If the employee appeals the grievance to this level, he/she shall submit it to the department head through the immediate supervisor within five (5) work days following the immediate supervisor's response.

The department head, or designated representative may arrange a meeting between the employee, employee representative, and appropriate supervisory personnel in an attempt to resolve the grievance. In any event, the department head or designee shall respond, in writing, within seven (7) work days from the date the written grievance is received.

If the employee is not satisfied with the department head's response, he/she may appeal the grievance to Step III within five (5) work days of the receipt of the department head's response.

STEP III:

If the employee appeals the grievance to this level, he/she shall present the grievance form to the Personnel Director's Office within five (5) work days following the receipt of the written decision in Step II above.

TRACK II CONTINUED

The Personnel Director or designee, and the department head or designee, shall meet with the grievant within seven (7) work days of receipt of the grievance in an attempt to resolve the grievance. The employee shall receive a decision, in writing, from the Personnel Director on the grievance within five (5) work days after the meeting. If the employee is not satisfied with the decision, he/she may appeal the grievance to Step IV.

STEP IV:

If the grievance is not resolved in Step III above, the aggrieved employee may submit the grievance for review before a fact-finder. The submission shall be made in writing to the Personnel Director within five (5) work days after the issuance of the Personnel Director's response in Step III. Within five (5) work days, from receipt of the submission request, the County government shall establish a panel of five (5) qualified individuals; the parties shall meet within three (3) work days for the purpose of mutually selecting a fact-finder from the panel. If the parties cannot agree on a fact-finder, they shall alternately strike names from the panel, the remaining name shall be the fact-finder.

The fact-finder shall not have the authority to recommend a change, alteration or modification of the provisions of the Personnel Regulations, Administrative Procedures, or other written policies affecting conditions of employment. The fact-finder shall issue written findings of fact and a recommended disposition to the Chief Administrative Officer which shall be limited to the issues as submitted by the parties. The cost of the fact-finder will be borne entirely by the CETA program.

The Chief Administrative Officer shall render a decision, in writing, based on the fact-finder's recommendation within ten (10) work days of the date of receiving the recommendation.

STEP V:

If the employee is not satisfied with the Chief Administrative Officer's decision in Step IV, he/she may appeal to the Assistant Regional Director for Employment and Training, U.S. Department of Labor, P.O. Box 8796, Philadelphia, Pa. 19101.

ADMINISTRATIVE PROCEDURE

NO: 4-4

TITLE: GRIEVANCE PROCEDURES

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ISSUE DATE: 8/1/80

EFFECTIVE DATE: 8/15/80

CAO APPROVAL

[Signature]

TRACK III

APPEALS OF DISCIPLINARY ACTIONS

APPEAL:

DEFINITION: An alleged wrongful demotion, suspension or dismissal action of a merit system employee or CETA employee.

A merit employee has the right of direct appeal to the Personnel Board within five (5) days of notification regarding the above named actions, or may choose to follow the procedure as stated below.

Law enforcement officers must use a separate appellate process as provided under the Law Enforcement Bill of Rights.

STEP I:

The employee shall submit the written appeal to the Personnel Director within five (5) work days following receipt of notice of the disciplinary action (demotion, suspension, dismissal).

The Personnel Director or designee and the department head or designee, shall meet with the appellant within seven (7) work days of receipt of the appeal, in an attempt to resolve the matter. The employee shall receive, in writing, a decision from the Personnel Director on the appeal within five (5) work days after the meeting. If the employee is not satisfied with the decision, he/she may appeal according to Step II.

STEP II:

If the matter is not resolved in Step I, the aggrieved employee, may submit the appeal before a fact-finder. The submission shall be made in writing to the Personnel Director within five (5) work days after the issuance of the Personnel Director's response in Step I. Within five (5) work days, from receipt of the submission request, the County government shall establish a panel of five (5) qualified individuals; the parties shall meet within three (3) work days for the purpose of mutually selecting a fact-finder from the panel. If the parties cannot agree on a fact-finder, they shall alternately strike names from the panel, the remaining name shall be the fact-finder.

The fact-finder shall not have the authority to recommend a change, alteration, or modification of the provisions of the Personnel Regulations, Administrative Procedures, or other written policies affecting conditions of employment. The fact-finder shall issue written findings of fact and a recommended disposition to the Chief Administrative Officer which shall be limited to the issues submitted by the parties. In merit system cases, the cost of transcribing the proceedings shall be borne equally when mutually agreed on by the parties.

TRACK III CONTINUED

In the case of CETA employees, fact-finder costs shall be borne by the CETA program.

The Chief Administrative Officer shall render a decision, in writing, on the fact-finder's recommendation within ten (10) work days of the date of receiving the recommendation.

STEP III: MERIT - If the employee is not satisfied with the Chief Administrative Officer's decision in Step II, he/she may appeal to the County Personnel Board within five (5) work days of receipt of the Chief Administrative Officer's decision.

CETA - If the employee is not satisfied with the Chief Administrative Officer's decision in Step II, he/she may appeal to the Assistant Regional Director for Employment and Training, U.S. Department of Labor, P.O. Box 8796, Philadelphia, PA. 19101.

TRACK IV

OPEN DOOR GRIEVANCE

GRIEVANCE

DEFINITION: A complaint concerning a term or condition of employment that is not appropriate for processing under any of the other grievance/appeal tracks identified in this procedure.

STEP I:

The employee may, orally or in writing, present this grievance to anyone in his/her supervisory chain other than the department head, within ten (10) work days from the date of occurrence or knowledge of the same. The manager shall review and respond in writing within five (5) work days. If the response from the management individual is not satisfactory, the employee may present the grievance in writing to the next level of review in accordance with Step II procedures, within five (5) work days from the receipt of the response.

STEP II:

The grievance shall be submitted in writing directly to the department head. The department head or designee shall respond, in writing, within seven (7) work days from the date the written complaint is received. If the employee is not satisfied with the response, he/she may submit the Open Door grievance directly to the Chief Administrative Officer within five (5) work days of receipt of the department's response.

STEP III:

The Chief Administrative Officer shall appoint a special investigator to research the complaint. The investigator shall submit recommendations for resolution to the Chief Administrative Officer within fourteen (14) work days of receipt. The Chief Administrative Officer will review the investigator's report and give a final response, in writing, to the employee within ten (10) work days from receipt of the investigator's report.

STEP IV:

If the employee is not satisfied with the Chief Administrative Officer's response in Step III, he/she may appeal to the Personnel Board within five (5) work days of receipt of the Chief Administrative Officer's decision.

[Signature]

TRACK V

DISCRIMINATION GRIEVANCE

GRIEVANCE

DEFINITION:

An alleged arbitrary or discriminatory application of, or a failure to act pursuant to, any written rules, regulations, policies practices or laws related to the terms and conditions of employment based on race, sex, religion, age, handicap, marital status, national origin or political affiliation.

A merit system or CETA employee who elects to file a complaint directly with the Montgomery County Human Relations Commission shall not be entitled to a duplicative complaint under this procedure and shall be deemed to have waived the right to have the same matter reviewed by management and the Personnel Board.

STEP I:

The employee shall present the written grievance within ten (10) calendar days from the date of the occurrence or knowledge of such occurrence through the immediate supervisor to the department head.

The department head or designee may arrange a meeting with the employee and any representative, and appropriate supervisory personnel in an attempt to resolve the grievance. In any event, the department head or designee shall respond, in writing, within five (5) work days of receipt of the discrimination grievance.

If the employee is not satisfied with the department head's response, he/she may appeal it to the next step within seven (7) work days of receipt of the department head's response.

STEP II:

Upon receipt of the employee's written grievance from Step I, the Personnel Director or designee shall meet within seven (7) work days with the department head or designee and the employee in an attempt to resolve the matter. The employee shall receive a decision, from the Personnel Director, in writing, on the grievance within five (5) work days after the meeting. If the employee is not satisfied with the decision, he/she may appeal the grievance to Step III.

STEP III:

If the grievance is not resolved in Step II above, the aggrieved employee may submit the grievance for review before a fact-finder. The submission shall be made in writing to the Personnel Director within five (5) work days after the issuance of the Personnel Director's response in Step II. Within five (5) work days, from receipt of the submission request, the County government shall establish a panel of five (5) qualified individuals; the parties

TRACK V CONTINUED

shall meet within three (3) work days for the purpose of mutually selecting a fact-finder from the panel. If the parties cannot agree on a fact-finder, they shall alternately strike names from the panel, the remaining name shall be the fact-finder.

The fact-finder shall not have the authority to recommend a change, alteration, or modification of the provisions of the Personnel Regulations, Administrative Procedures, or other written policies affecting conditions of employment. The fact-finder shall issue written findings of fact and a recommended disposition to the Chief Administrative Officer which shall be limited to the issues submitted by the parties. In merit system cases, the cost of transcribing proceedings shall be borne equally when mutually agreed on by the parties. In the case of CETA employees, fact-finding costs shall be borne by the CETA program.

The Chief Administrative Officer shall render a decision, in writing, on the fact-finder's recommendation within ten (10) work days of the date of receiving the recommendation.

STEP IV:

MERIT - If the employee is not satisfied with the Chief Administrative Officer's decision in Step IV, he/she may appeal it to the County Personnel Board within five (5) work days of receipt of the Chief Administrative Officer's decision.

CETA - If the employee is not satisfied with the Chief Administrative Officer's decision in Step IV, he/she may appeal to the Assistant Regional Director for Employment and Training, U.S. Department of Labor, P.A. Box 8796, Philadelphia, PA. 19101.

STEP V:

If the grievant is not satisfied with the response in Step IV, he/she may file a formal charge with any one of a number of outside civil, rights enforcement agencies who have jurisdiction.

COMPLAINT/GRIEVANCE FORM

Employee's Name		Position Title		Date	Office Telephone No.
Grade		Salary	Hire Date	Check One: Merit Employee <input type="checkbox"/> CETA Employee <input type="checkbox"/>	
Home Address				Department/Division/Section	

Check One:
☐ Procedural
Violation
Grievance

☐ Discipline
Grievance

☐ Discrimination
Grievance

☐ Open Door
Grievance
Grievance Definitions:

Procedural Violation — A dispute concerning the interpretation, application or violation of the County's Personnel Regulations, Administrative Procedures or any other written policy affecting conditions of employment for which there does not exist a more appropriate appeal procedure.

Discipline — An alleged wrongful demotion, suspension, or dismissal action affecting an employee.

Discrimination — An alleged arbitrary or discriminatory application of, or a failure to act pursuant to, any written rules, regulations, policies, practices or laws related to the terms and condition of employment based on race, sex, religion, age, handicap, marital status, national origin or political affiliation.

Open Door — A complaint concerning a term or condition of employment that is not appropriate for processing under any of the other grievance/appeal tracks identified in this procedure.

FILING INSTRUCTIONS: *For complete directions, see Administrative Procedure 4-4*

1. You must cite the specific written policy, regulation, or treatment in which you believe a violation or inequity has occurred.
2. Upon filing, send appropriately marked copy to the Personnel Office and your Department.
3. Employee copy shall be used as the original for all levels of the Grievance Procedure.
4. Once resolved, send the original copy to the Personnel Office.

EMPLOYEE GRIEVANCE STATEMENT: *Please attach additional sheets for each copy if more space is needed***Relief Requested:**_____
Employee Signature/Date

EMPLOYEE COPY

DEPARTMENT COPY

PERSONNEL OFFICE COPY

EXHIBIT B

GUIDELINES FOR SPECIAL INVESTIGATOR

ONCE APPOINTED BY THE CAO TO SERVE AS A
SPECIAL INVESTIGATOR, YOU WILL:

- Have 14 work days in which to conduct your investigation;
- Interview the grievant to insure understanding of complaint, obtain names of witnesses, and clarify relief requested;
- Interview witnesses as necessary to obtain facts;
- Review all relevant documentation including written policies, procedures, personnel and departmental files;
- Look for just cause, unequal treatment and past practice;
- Consult grievant prior to submission of written findings to discuss your recommendations and change or alter findings as necessary;
- Submit written findings to Personnel Director's Office.

YOUR WRITTEN FINDINGS WILL BE ORGANIZED
IN THE FOLLOWING FORMAT:

- Summary of Grievance - brief statement of the issue alleged by the grievant and the relief requested for resolution;
- Summary of Investigation - statement of parties interviewed and documents reviewed;
- Facts - list of facts obtained;
- Conclusions - list of conclusions based on the facts as listed;
- Recommended Resolution - statement of how the issue should be resolved; may include alternative resolutions and why they are not recommended.

*If you have any questions regarding this procedure, call
Jim Torgesen or Martha Fish at 279-1208

FACT-FINDING REVIEW PROCESS

This process is intended to provide an impartial review to determine fact, logical conclusions and recommendations for resolution of grievances.

It is not intended that all the formal rules of the administrative hearing process be followed; in order that employees may feel comfortable in presenting their own grievance, if desired. Due-process and impartiality, however, will not be sacrificed for the sake of brevity or lack of structure. Therefore, the following are given as guidelines for conduct of the fact-finding process:

I. DEFINITIONS

- A) Fact-finder - an impartial person selected to review and make recommendations on grievance appeals, in accordance with procedures established by the Montgomery County Administrative Procedure 4-4.
- B) Charging Party - In grievances not involving disciplinary action, the employee shall be considered the charging party. In grievances involving disciplinary action, the department shall be considered the charging party.
- C) Responding Party - Employee or department/agency who is notified to defend or substantiate actions or activities before a fact-finder.
Rebuttal - charging party's response to evidence submitted by responding party.
Surrebuttal - responding party's response to rebuttal evidence.

II. INITIATION OF FACT-FINDING

- A) Upon selection of a fact-finder, the Personnel Office shall submit a copy of the grievance and specific relief requested by the grievant to the fact-finder.
- B) Upon receipt of the notice of selection, the fact-finder shall establish, through the Personnel Director or designee, a time,

EXHIBIT D

place, and date for the fact-finding meeting to be held, not more than 20 days from the date of the fact-finder selection. The Personnel Office shall notify all concerned parties and provide them a copy of the grievance and relief requested as submitted to the fact-finder, and a copy of these guidelines.

- C) All parties shall be notified at least ten days prior to the scheduled meeting date.
- D) The grievant will notify the Personnel Office in connection with the request for fact-finding, if he/she is to be represented by legal counsel. The County will refrain from using legal counsel where there is an agreement by the grievant to do likewise.
- E) Parties may request a continuance of the fact-finding meeting by written request, if made to the fact-finder through the Personnel Director, not less than five days prior to the date of the review.

III. FACT-FINDER REVIEW

- A) The fact-finder shall be responsible for maintaining an official record which shall include written testimony, exhibits, and transcripts, if any, submitted during the review process, for as long as the record remains open.
- B) The fact-finder shall not consider any private communication with any party which may be intended to influence the fact-finders recommendations. This shall not include any legal or technical advice regarding the review process.
- C) Evidence - it is not required that all the formal rules of evidence be followed; however, the fact-finder shall give appropriate weight to evidence which possesses probative value commonly accepted by reasonable and prudent persons.
- D) Every party shall have the right to reasonable cross examination, and right, upon request, to submit rebuttal evidence.
- E) Right of representation - the parties shall have the right to be represented by themselves or by a representative of their choosing.

- F) The fact-finding review process shall not be open to the public, unless otherwise requested by the grievant.

IV. FACT-FINDER AUTHORITY

Under the review process, the fact-finder shall have the authority to:

- A) receive relevant and probative evidence, to exclude incompetent, irrelevant, immaterial or unduly repetitious evidence;
- B) to regulate the course of the fact-finding session;
- C) to hold conferences for simplification of the issues;
- D) to dispose of procedural requests;
- E) to call, examine and cross-examine witnesses;
- F) to schedule, suspend or continue the fact-finding session to a time and date certain, with notice to all parties;
- G) to accept evidence by stipulation of facts which may be introduced at any time.

V. CONDUCT OF THE REVIEW PROCESS

- A) Disposition of outstanding preliminary matters
- B) Opening statement of parties
- C) Presentation of case by charging party; cross-examination
- D) Presentation of case by responding party; cross examination
- E) Rebuttal of evidence
- F) Surrebuttal of evidence
- G) Closing statement by the parties

VI. FACT-FINDER RECOMMENDATIONS

- A) Recommendation to the CAO shall be in writing and shall include:
 - 1) Statement of the grievance
 - 2) Finding of fact
 - 3) Conclusions
 - 4) Recommended disposition

5) All recommendations shall be based upon and supported by the weight of the evidence.

B) All recommendations shall be submitted to the CAO within 20 days from the closing of the record.

**FACT-FINDLR/MONTGOMERY COUNTY
COMPLAINT/GRIEVANCE PROCEDURES**

The recently revised Montgomery County Grievance Procedures provides for the use of an ad hoc fact-finder to make finding of facts, conclusions, and recommendations to the County's Chief Administrative Officer regarding the disposition of employees' grievances.

The fact-finder is mutually selected by the parties to a grievance, from a panel of qualified individuals.

QUALIFICATIONS

- 1) Five - seven years of experience in the practice of law.
- 2) A knowledge of Personnel policies and practices, grievance procedures, and labor law, is desirable but not required.
- 3) Progressively responsible experience that demonstrates the ability to:
 - a) conduct informal hearings;
 - b) interpret and apply policies, rules, regulations and precedent setting decisions.

RESTRICTIONS

An applicant shall not be an employee of the County government or have interest or experience directly/indirectly in representing Montgomery County Government or its employees in matters relating to employer/employee issues.

COMPENSATION

The fact-finder will be paid a non-negotiable rate of \$50.00 per hour by the County government.

APPLICATION

Those qualified persons having an interest in participating as a fact-finder may submit a resume of relevant education and experience to the Personnel Director, Montgomery County Government, 100 Maryland Avenue, Room 237, Rockville, Maryland, 20850.

ADDITIONAL INFORMATION

Additional information detailing the fact-finder specification, fact-finding review process, and the County grievance procedure are available by contacting the County Bar Association Office or the Montgomery County Personnel Office, phone 279-1208.

