

ARKANSAS AGRICULTURE DEPARTMENT
ARKANSAS FORESTRY COMMISSION
DISPUTE RESOLUTION POLICY & PROCEDURE STATEMENT
§ 30

I. PURPOSE

The purpose of these rules and procedures is to establish a dispute resolution process pursuant to Arkansas Code Annotated §§ 21-1-701 through 704 for the prompt review, impartial consideration, and equitable disposition of Arkansas Forestry Commission (“AFC”) employee grievances.

These rules and procedures also encourage alternative means of discussion and resolution between supervisor and employee.

II. DEFINITIONS

Administrative Record – The case file specific to each grievance assembled according to the Office of Personnel Management (“OPM”) Administrative Record Rules (OPM is developing these rules).

Administrative Review Hearing – An internal fact-finding hearing before a Hearing Officer.

Adverse action – To discharge, threaten, or otherwise discriminate or retaliate against a public employee in any manner that affects the employee’s employment, including compensation, job location, rights, immunities, promotions, or privileges.

Appeal – A written request by a party to OPM for a review by the State Employee Grievance Appeal Panel of a final decision from the State Forester.

Disciplinary action – Termination, suspension, involuntary demotion, written reprimands, and non-new-hire probation.

Dispute resolution – A procedure that allows parties to constructively manage conflicts through grievances or mediation.

Employee – A person regularly appointed or employed in a position of state service by the AFC on a full-time basis or on a pro rata basis for whom a class title and pay grade are established in the appropriation act for the AFC in accordance with the Uniform Classification and Compensation Act. An employee on initial new-hire probationary status is not an employee for purposes of these rules and procedures. An employee does not include a supervisory employee. Executive and administrative employees are exempt from the Dispute Resolution Procedures. See section III, Policy.

Grievance - A complaint by an employee based on employment including but not limited to, harassment, compensatory leave, dismissal, suspension, non-selection promotion, demotion, disciplinary actions, written warnings, discrimination or any other work-related problem. Compensation and conditions that are beyond the control of the AFC or are mandated by law are not eligible for grievances.

- Complaints concerning performance evaluation or reduction-in-force unless discrimination is the basis of the complaint is not a grievable matter. For complaints concerning performance evaluation see AFC policy §125.

Discrimination - race, color, sex, age, national origin, religion, or disability

Grievance Officer – The person designated by the AFC as having the responsibility for acting as the liaison between the employee and the AFC. Contact the AFC Human Resources Office for a list of trained Grievance Officers.

Hearing Officer – The Deputy State Forester is designated as the Hearing Officer for the AFC and will review the facts of the grievance and make a recommendation for resolution to the State Forester.

Mediation – A collaborative problem-solving and joint decision-making process between the employee and supervisory employee, through utilization of a third-party neutral (mediator).

Mediator - OPM shall maintain a roster of certified Mediators and shall be responsible for assigning a mediator. The Mediator shall not be employed by the AFC. A mediator is not required to be an attorney but shall be certified by the Arkansas Alternative Dispute Resolution Commission.

Party – The employee filing the grievance or the supervisory employee against whom the grievance has been filed.

State Employee Grievance Appeal Panel (“SEGAP”) – An impartial appeal panel established to review the facts of the grievance and issue a binding decision.

Supervisory employee – An individual having authority in the interest of the AFC to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees of the state agency; or if his or her exercise of authority requires the use of independent judgment and is not of a merely routine or clerical nature, the responsibility to direct other employees of the AFC by which he or she is employed.

III. POLICY

Employees shall be given the opportunity to resolve complaints or grievances they believe adversely affect their employment or working conditions through the

established dispute resolution process of the AFC to ensure fair resolution of their complaint or grievance within a reasonable period of time.

The AFC and the employee shall take all reasonable efforts to settle a complaint or grievance as quickly as possible. Informal discussion between a supervisory employee and employee is encouraged.

Participation in the dispute resolution process is voluntary. The dispute resolution process may be terminated by the employee at any stage if an agreement between the parties is reached.

A party may be represented at each step of the dispute resolution process except during informal discussions between the employee and supervisory employee held prior to the filing of a grievance. Attorney's fees shall not be awarded.

These procedures established herein recognize the employment-at-will doctrine and its exceptions as defined by the Arkansas Supreme Court and do not confer a property right in employment, either expressed or implied.

Access to any of these procedures does not prohibit an employee from utilizing remedies outside these procedures. An employee reserves the right to file a complaint with a federal entity or pursue the matter in court.

Executive and administrative employees are exempt from the Grievance Policy. They are encouraged to discuss any problems or complaints with the appropriate level of management, through normal supervisory channels.

The manager hearing the complaint will make a written report of any meetings and results to all parties involved, including the Human Resources Administrator.

Executive and Administrative employees are:

- Deputy State Forester
- Assistant State Forester
- Fiscal Division Manager
- District Forester
- Program/Field Auditor Supervisor
- RFP Administrator
- Reforestation Manager
- Communications System Manager
- Nursery Supervisor
- Fire Management Officer
- Forest Stewardship Coordinator
- RFP Coordinator
- Aviation Manager
- Dispatch Supervisor
- State Forest Manager
- FIA Coordinator

IV. PROCEDURE

If the complaint is not resolved by informal discussion with the supervisory employee, the employee will contact the AFC Human Resources Office for a list of trained Grievance Officers. The Grievance Officer will assist the employee in initiating the formal dispute resolution process.

The employee has five (5) business days from the date of the disputed action to submit the Dispute Resolution Form (A30.100) to the Grievance Officer. An employee shall complete the Dispute Resolution Form completely and provide sufficient information detailing the nature of the disputed action. Incomplete forms will not be accepted.

An employee shall not be subject to adverse action for utilizing the dispute resolution process.

All complaints or grievances shall be processed through the AFC's Human Resources Administrator and shall be handled as follows:

1. The employee has the option to choose mediation or proceed to the Administrative Review Hearing and shall clearly indicate on the Dispute Resolution Form which option is selected as the first step.
2. Determination
 - a. The Grievance Officer shall determine whether the complaint is grievable or eligible for mediation.
 - b. If the Grievance Officer and employee are unable to agree on whether a complaint is grievable or eligible for mediation, then the complaint shall be sent within three (3) business days to the Grievance Coordinator at OPM for a review by SEGAP.
 - c. The final determination on whether a complaint is grievable or eligible for mediation shall be determined by SEGAP within seven (7) business days of the Grievance Coordinator's receipt of the complaint.
 - d. If the decision states that the complaint is grievable or eligible for mediation, then the employee may proceed to mediation or with an Administrative Review Hearing within three (3) business days.
 - e. If the decision states that the complaint is not grievable or eligible for mediation, the grievance procedure is terminated.
3. If the supervisory employee does not consent to mediation, the first step shall be the Administrative Review Hearing.
4. The Grievance Officer shall be responsible for assembling the Administrative Record pursuant to OPM's Administrative Record Rules.

a. Mediation

An employee may request mediation if the complaint concerns an allegation that the employee has been:

- i. Terminated;

- ii. Demoted;
- iii. Suspended for fourteen (14) or more days; or
- iv. Subject to adverse action by his or her state agency for
 - 1. Communicating in good faith to an appropriate authority:
 - a. The existence of waste of public funds, property, or manpower, including federal funds, property, or manpower administered or controlled by a public employer; or
 - b. A violation or suspended violation of a law, rule, or regulation adopted under the laws of this state or a political subdivision of the state;
 - 2. Participating or giving information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review; or
 - 3. Objecting or refusing to carry out a directive that the employee reasonably believes violates a law, rule, or regulation adopted under the authority of the laws of the state or a political subdivision of the state.

The mediation shall be held within ten (10) business days of both parties agreeing to mediate.

A party may be represented by an attorney or other representative at the mediation.

The mediation shall be confidential; however, the Settlement or Non-settlement Agreement is subject to the Freedom of Information Act.

The Settlement or Non-settlement Agreement shall be signed by the parties and become a part of the Administrative Record.

Within one (1) business day of the conclusion of the mediation, the mediator shall provide a copy of the Settlement or Non-settlement Agreement to the State Forester.

Settlement Agreement - If the parties reach a settlement during mediation, the dispute resolution process is considered resolved and the settlement is binding on the parties.

Non-settlement Agreement - If the parties reach a Non-settlement Agreement during mediation, the employee may request within three (3) business days of the Non-settlement Agreement an internal Administrative Review Hearing before the Hearing Officer.

b. Administrative Review Hearing

The Grievance Officer shall coordinate and schedule the hearing to be held within ten (10) business days of receipt of the employee's request.

The Grievance Officer shall be responsible for assembling the Administrative Record and providing copies to the parties and the Hearing Officer.

The hearing shall be recorded and may be transcribed at the discretion of the Hearing Officer and become a part of the Administrative Record.

A party may have any persons having knowledge of matters relevant to the grievance present at the hearing to provide testimony. The Grievance Officer is responsible for notifying any AFC witnesses. The employee is responsible for notifying any witnesses that are not an employee of the AFC. The Hearing Officer may request to hear testimony from any persons having knowledge of matters relevant to the grievance that are not already requested to be present.

A party or the Hearing Officer may “Invoke the Rule”, excluding all non-party witnesses from the hearing room.

A party may present additional evidence. If accepted by the Hearing Officer the evidence shall become a part of the Administrative Record as an exhibit.

Within three (3) business days of the conclusion of the hearing, the Hearing Officer shall issue a typewritten recommendation summarizing the hearing and explaining in detail the basis for his or her decision. The Hearing Officer shall provide a copy to the State Forester, the parties and the Grievance Officer. The recommendation shall become a part of the Administrative Record.

The State Forester shall review the recommendation and issue a final decision within five (5) business days.

c. Appeal to OPM

If an employee is not satisfied with the decision reached by the State Forester, he or she may appeal, using a form provided by OPM, and request nonbinding mediation or an appeal hearing before SEGAP.

If an employee chooses nonbinding mediation as the first appeal step, he or she does not waive his or her right to later request an appeal hearing before SEGAP; however, written reprimands, allegations of discrimination or harassment, and the denial of compensatory time are not eligible for nonbinding mediation.

A request for nonbinding mediation shall be filed with the AFC’s Grievance Officer no later than fifteen (15) business days of receipt of the State Forester’s decision. The AFC Grievance Officer will send the request to OPM. OPM will assign a mediator. If the complainant and the AFC cannot come to an agreement, the matter is assigned to SEGAP. SEGAP ruling is final.

A request for an appeal hearing before SEGAP shall be filed with the AFC’s Grievance Officer no later than ten (10) business days of receipt of the State Forester’s decision or ten (10) business days of the unsuccessful mediation. The AFC Grievance Officer will send the request to OPM. The matter is assigned to SEGAP. SEGAP ruling is final.