

Professional Aviation Safety Specialists, AFL-CIO
Contract Representative Training



► Complaint Processes

About Me

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- ▶ Worked at UFCW and NEA
- ▶ At PASS, mainly involved in settling / arbitrating grievances



Complaint Avenues

- ▶ Grievance
- ▶ Unfair Labor Practice
- ▶ Equal Employment Opportunity Commission (EEOC)
- ▶ Merit Systems Protection Board (MSPB)



Grievance Process



Article 5: Grievance Procedure

The grievance procedure is found under Article 5 of your CBA.

A grievance is defined as any complaint by an employee concerning any matter relating to conditions of employment, CBA interpretation, violation of law or rule or regulation.

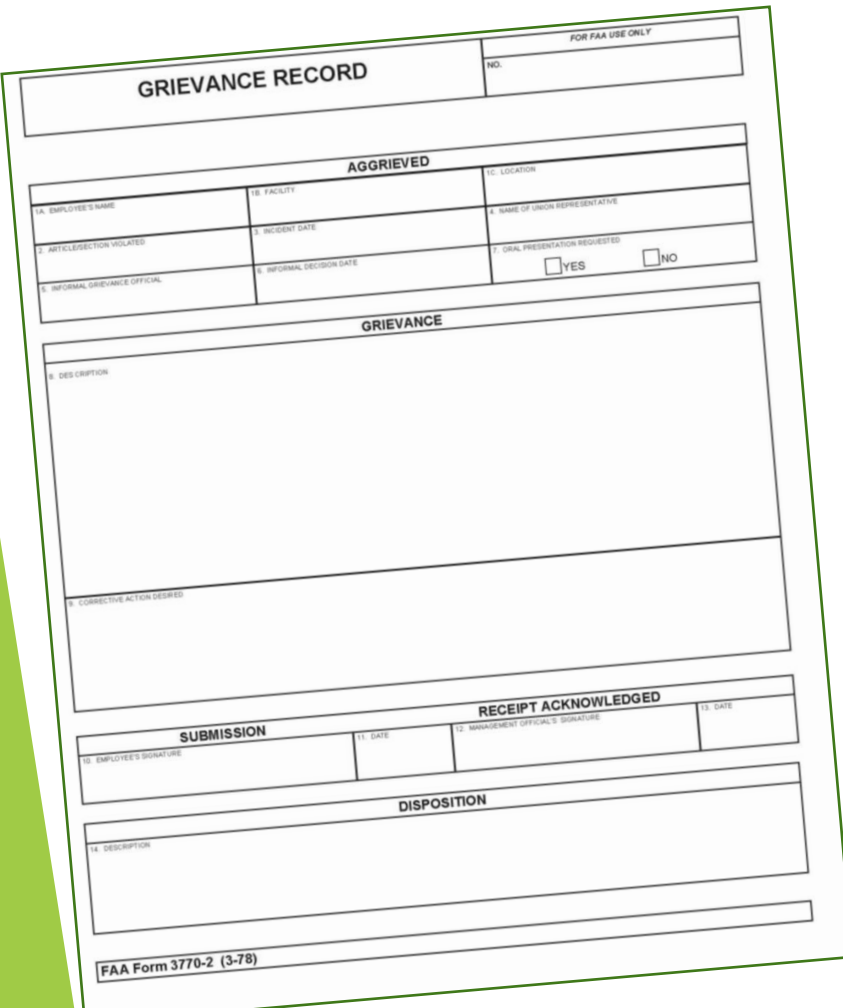


Article 5: Grievance Procedure

Grievances must be filed on FAA Form 3770-2 or an electronic equivalent.

A grievance may be filed by a bargaining unit employee or the union.

A grievance must be filed within 20 days of a violation or reasonable knowledge of the violation.



The image shows a sample of FAA Form 3770-2 (3-78), titled "GRIEVANCE RECORD". The form is divided into several sections:

- GRIEVANCE RECORD**: Includes a box for "FOR FAA USE ONLY" with a "NO." field.
- AGGRIEVED**: Contains fields for:
 - 1A. EMPLOYEE'S NAME
 - 1B. FACILITY
 - 1C. LOCATION
 - 2. ARTICLE/SECTION VIOLATED
 - 3. INCIDENT DATE
 - 4. NAME OF UNION REPRESENTATIVE
 - 5. INFORMAL GRIEVANCE OFFICIAL
 - 6. INFORMAL DECISION DATE
 - 7. ORAL PRESENTATION REQUESTED (YES/NO checkboxes)
- GRIEVANCE**: A large section for:
 - 8. DESCRIPTION
 - 9. CORRECTIVE ACTION DESIRED
- SUBMISSION**: Includes fields for:
 - 10. EMPLOYEE'S SIGNATURE
 - 11. DATE
 - 12. MANAGEMENT OFFICIAL'S SIGNATURE
 - 13. DATE
- DISPOSITION**: A section for:
 - 14. DESCRIPTION

At the bottom left, it is labeled "FAA Form 3770-2 (3-78)".



Article 5: Grievance Procedure

Much broader in scope than a ULP (Article 5, Section 1 or 2).

What's excluded from grievance process? (Article 5, Section 3 or 4).

A grievance and a ULP are not permitted to be filed on the same matter.



Elevating Grievances: Article 5, Section 7 or 8

The Process:

- ▶ Grievances are to be filed in writing with the front-line manager (second level if discipline). (See Appendix II in CBA for Grievance Procedure Officials)
- ▶ Management is required to respond to a grievance within 20 days (at Steps 1 and 2). If the agency fails to respond, elevate the grievance to the next level.
- ▶ The grievance must be elevated within 20 days from the agency's response or when the agency should have responded.
- ▶ Timelines are sacred to us; not so for the agency. The agency's failure to respond is treated as a denial and begins the timeline for elevating to the next step. (Article 5, section 11 or 12)



Elevating Grievances: Article 5, Section 7 or 8

- ▶ When there are grievances pending at Step 3, the parties will convene a Step 3 Grievance Resolution Meeting. This is the “quarterly meeting.”
- ▶ Not clear that timelines are automatically held in abeyance simply because of the Grievance Resolution Meeting. Best practice is for the union to request the grievance be held in abeyance pending the parties (Quarterly) Step 3 Grievance Resolution meeting.
- ▶ Step 4: The Union requests Arbitration. Lawyers take it from here (Article 5, Section 9 or 10.)



Researching Grievances

- ▶ Who, What, When, Where....
- ▶ Do a thorough investigation of the event. Identify contractual or agency policy violations (if any).
- ▶ Be sure to interview employees and any witnesses to the alleged violation of the CBA or grievance, as soon as possible. Fresh memories are the best.
- ▶ Take good notes and gather all records.
- ▶ You only have 20 days to file. If you need more time, ensure that the agency agrees to an extension in writing. You can always withdraw the grievance.



Expectations of Grievances

- ▶ Educate on possible and expected outcomes of the grievance.
- ▶ Employees file grievances for various reasons; they do not always end up with their desired remedy.
- ▶ Never promise a BUE or union member an outcome that you cannot deliver.
- ▶ Do not steal defeat from the jaws of victory! Celebrate success!



What's the Remedy?

- ▶ Remedies vary based on the violation. Think about what makes sense.
- ▶ Some remedies are provided in the CBA, such as the allowance to receive back pay in Article 5.
- ▶ Some remedies are provided by law, such as double damages for Fair Labor Standards Act violations and overtime pay when employees are skipped on an overtime list.
- ▶ If you grieve an issue that you could have filed a ULP over, you may request any remedy which the FLRA could provide.



Corrective Action

Always include broad language to allow for an expansion of the requested remedy, such as “make the grievant whole in every way possible.”



Exercise time!

GRIEVANCE RECORD		FOR FAA USE ONLY	
		NO.	

AGGRIEVED		
1A. EMPLOYEE'S NAME	1B. FACILITY	1C. LOCATION
2. ARTICLE/SECTION VIOLATED	3. INCIDENT DATE	4. NAME OF UNION REPRESENTATIVE
5. INFORMAL GRIEVANCE OFFICIAL	6. INFORMAL DECISION DATE	7. ORAL PRESENTATION REQUESTED <input type="checkbox"/> YES <input type="checkbox"/> NO

GRIEVANCE
8. DESCRIPTION
9. CORRECTIVE ACTION DESIRED

SUBMISSION		RECEIPT ACKNOWLEDGED	
10. EMPLOYEE'S SIGNATURE	11. DATE	12. MANAGEMENT OFFICIAL'S SIGNATURE	13. DATE

DISPOSITION
14. DESCRIPTION

FAA Form 3770-2 (3-78)



Unfair Labor Practices



What is a ULP?

An Unfair Labor Practice is an action (or lack of action) by an Agency or Union that violates the Federal Service Labor Management Relations Statute (Chapter 71) as spelled out in 5 USC 7116

A ULP charge is a form filed with the FLRA to initiate an investigation by one of the FLRA's Regional Offices into allegations that a ULP has been committed

FLRA Form 22 is used to file a ULP against the agency





United States of America
Federal Labor Relations Authority
CHARGE AGAINST AN AGENCY

For FLRA Use Only

Case No.

Date Filed

Complete instructions on the back of this form.

1. Charged Activity or Agency

Name: Federal Aviation Administration
Address:

Tel. #

Fax #

2. Charging Party (Labor Organization or Individual)

Name:
Address:

Tel. #

Fax # None

3. Charge Activity or Agency Contact Information

Name:
Title:
Address:

Tel. #:

Ext.

Fax #:

4. Charging Party Contact Information

Name:
Title:
Address:

Tel. #

Fax #:

5. Which subsection(s) of 5 U.S.C. 7116(a) have been violated (see reverse)

6. Tell exactly What the activity (or agency) did. Start with the Date and Location, State who was involved, Include titles.

7. Have you or anyone else raised this matter in any other proceeding? ☒ No ☐ Yes If yes, where? (see reverse)

8. I DECLARE THAT I HAVE READ THIS CHARGE AND THAT THE STATEMENTS IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT MAKING WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT, 18 U.S.C. 1001. THIS CHARGE WAS SERVED ON THE IDENTIFIED PERSON IN BOX #3 (check "x" box) ☐ Fax ☐ 1st Class Mail ☒ In Person
☐ Commercial Delivery ☐ Certified Mail

Type or Print your name

Your signature

Date

Form Exempt under 44 U.S.C. 3512

FLRA Form 22 (Rev. 7/89)



What Violations Constitute an ULP?

-5 USC 7116(a) sets forth 8 types of conduct by an Agency that constitutes a ULP:

(a)(1) Interfering, restraining or coercing any employee in the exercise by the employee of any right under this chapter

This is always alleged as part of a ULP, but it can also stand on its own for any violations where management acts with behavior that coerces or threatens employees for their union-related activity (example: discipline of union representative)



What violations constitute a ULP Ctd.

(a)(2) encourage or discourage membership in any labor organization through hiring, tenure, promotion, or other conditions of employment

Management commits a ULP if its discriminates against employees because they have joined the union

(a)(3) sponsor, control, or assist a Union

This protects against “company unions” and forbids the Agency from favoring one union over another



ULP Violations ctd.

(a)(4) discipline or discriminate because employee filed a complaint, affidavit or gave information pursuant to Chapter 71

Employees who are involved in giving evidence as part of a ULP investigation and other FLRA processes are protected against retaliation



ULP Violations

(a)(5) refuse to consult in good faith with a labor organization as required by Chapter 71

This is one of the most cited violations. Applies to situations where the Agency does not provide notice or a full opportunity to bargain before making a change that impacts employees and is not a topic covered by the CBA. Also applies if Agency blatantly stalls negotiations or refuses to meet with the Union.



ULP Violations cont.

(a)(6) fail or refuse to cooperate in impasse procedures as required under chapter 71

This applies to matters pending before FMCS or FSIP.

(a)(7) enforce any rule or regulation which is in conflict with CBA if the agreement was in effect before regulation

Agency can't enforce new regulation until new CBA has been negotiated



ULP Violations cont.

(a)(8) otherwise fail or refuse to comply with any provision in Chapter 71

This is the catch-all ULP. Often cited when Agency fails to (1) answer information requests; (2) allow for union representation during investigatory meeting; (3) give notice to Union before Formal discussions occur



Tips For Drafting a ULP Charge

- ▶ Make sure you have the correct contact information for the Agency
- ▶ Make your statement of facts clear and concise
- ▶ Make sure facts are connected to the ULP you are alleging
- ▶ Put down sections that were violated; however FLRA can help you with this if your facts are clear
- ▶ Violation should be connected to statute not the CBA
- ▶ The FLRA has excellent guidance on its website for filing a ULP.
 - ▶ <https://www.flra.gov/cases/unfair-labor-practice>



Sample ULP

Tell exactly WHAT the agency did. Start with the DATE and LOCATION. State WHO was involved and their titles.

For example:

On May 28, 2016, Ed Williams, the Eastern Regional Manager of the Generic Government Agency met with 10 employees of the eastern region to tell them about their reassignment to the western region. The Union was not notified of the meeting. On June 10, 2016, the employees were reassigned. The Union was not provided notice or an opportunity to bargain. On June 20, 2016 the Union asked to bargain but the request was rejected by Williams.



Filing ULPs

- ▶ Make sure you comply with timelines. ULPs must be filed within 6 months of the violation or learning of the violation
- ▶ You can mail, fax, or E-File the ULP to the regional office. File it in the region where the violation occurred. (For regions, see <https://www.flra.gov/components-offices/components/office-general-counsel-ogc/office-general-counsel-ogc-regional-offices>)
- ▶ Serve a copy on the Agency representative
- ▶ Call the FLRA regional office if you have questions
- ▶ Use the FLRA website as a resource
 - ▶ They have a youtube too! <https://www.youtube.com/watch?v=J8kZ-PL9IUU> (8 min)



FLRA's Investigation

After filing the ULP, the FLRA will investigate the allegations. An investigator from the Regional Office will send a letter asking for witnesses.

The FLRA will interview the witnesses and ask them to sign an affidavit. This is the evidence the investigator will consider when deciding whether to issue a Complaint.

Youtube video on investigations:

<https://www.youtube.com/watch?v=XPf2UV2HJm4> (3 min)



Available Remedies

- ▶ Postings- Postings are the most common remedy. A paper is posted acknowledging that the Agency violated Chapter 71. It is posted in facilities where the violation occurred.
- ▶ *Status quo ante* - This means going back to how things were prior to the violation.
- ▶ Back pay - Back pay is available where employees lost money because of the violation



ULPs Against a Union

- ▶ Most common issue:
 - ▶ “[a]n exclusive representative is responsible for representing ... all employees in the unit it represents without discrimination and without regard to labor organization membership.” 5 U.S.C. § 7114(a)(1).
 - ▶ This creates the duty of fair representation (DFR).
 - ▶ It does not apply to the union’s internal business, such as deciding what to negotiate.
 - ▶ These are rare. Vast majority of ULPs are filed against an agency.



ULPs vs Grievances

- ▶ Everything you could file as a ULP, you could file as a grievance instead (remember, you can only pick one)
- ▶ You (and the union) have more control over how things go during the grievance process.
- ▶ When you file a ULP, you're handing most of the decision making power over to an FLRA agent
- ▶ Timeline issues may be the reason you decide to go with a ULP

EEOC and MSPB



Equal Employment Opportunity Commission

- ▶ The EEOC is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of:
 - ▶ race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information.
- ▶ The laws apply to all types of work situations, including hiring, firing, promotions, training, wages, benefits, reasonable accommodations, harassment, and retaliation.
- ▶ The EEOC oversees federal agencies in complying with the law, but each federal agency has its own EEO Office for handling complaints



Overview Of EEO Complaint Process

- ▶ Contact an EEO Counselor at the FAA's Office of Civil Rights (via email, phone, or the online complaint form)
- ▶ Contact must be within 45 days of the act of discrimination or harassment (or the effective date of a personnel action)
- ▶ This will commence the EEO Complaint Process
 - ▶ Generally, they will start with mediation or counseling, then an opportunity to file a formal complaint, which is then investigated and decided, and if you disagree with the FAA's decision you can appeal it to the EEOC and then to a federal court
 - ▶ See EEOC's "Overview Of Federal Sector EEO Complaint Process"
<https://www.eeoc.gov/federal-sector/overview-federal-sector-eeo-complaint-process>
 - ▶ See FAA's "Office of Civil Rights (ACR)"
https://www.faa.gov/about/office_org/headquarters_offices/acr



Merit Systems Protection Board

- ▶ Federal employees can appeal an agency's adverse personnel action to the MSPB
- ▶ Most common MSPB cases involve removals, suspensions of more than 14 days, or reductions in pay
- ▶ Prohibited Personnel Practices reviewed by MSPB also include discrimination or retaliation for whistleblowing
 - ▶ See for examples, Prohibited Personnel Practices (5 USC § 2302(b))
<https://www.mspb.gov/ppp/ppp.htm>
- ▶ You must file an appeal to the MSPB within 30 days of the effective date of the personnel action
- ▶ Appeals can be filed online on MSPB's website: [mspb.gov](https://www.mspb.gov)
- ▶ Typically, the employee should have received information about MSPB appeals when the Agency notified them of the personnel action
- ▶ MSPB decisions can then be appealed to the federal courts

