

POTENTIAL SOLUTIONS TO IMPASSE

This appendix is meant as a tool to jumpstart settlement negotiations which have reached impasse. It should not be used by the mediator to start discussion.

Disciplinary Actions

Mediations of disciplinary actions will most likely be at the stage between proposal of disciplinary action, and action by the deciding official. Therefore, the mediator must be mindful as to whether the parties are attempting to settle the *proposal to the deciding official*, or the *actual discipline imposed*.

1. Holding the penalty in abeyance

Holding the penalty in abeyance for a period of time (generally not more than three years) on the condition the Complainant either admits to the misconduct and/or agrees not to engage in misconduct (specificity as to *what type of misconduct* as defined by the parties) during the abeyance period as evidence of rehabilitation. This is not an escape from *discipline*, but rather a conditional reprieve from the *punishment*.

2. Reducing Severity of the Penalty (either proposed or imposed)

This means to reduce the severity of the penalty (either proposed or imposed), such as taking a 14-day penalty reducing it to a 10- or 5- day suspension, either as a result of mitigating or extenuating factors or in exchange for the employee admitting to the misconduct and/or agreeing not to engage in misconduct in the future.

3. Change Removal/Termination to Voluntary Resignation

Changing a removal/termination to a voluntary resignation means to replace the annotation on the SF-50 (Notification of Personnel Action) under the block marked 'reason for action' from removal to resignation.

4. Recommendations to future employers

A letter either recommending an employee for future employment or providing a neutral recommendation may be issued when the employee has been separated from employment. Conversely, the parties may also agree that the complainant will not seek a recommendation.

5. Rescind the action

Rescinding the action is to terminate the process and expunge the record. This can be done at the proposal or deciding stage.

Performance-Based Actions

Mediations of performance-based actions will most likely be at the stage between proposal of disciplinary action and action by the deciding official. Therefore, the mediator must be mindful as to whether the parties are attempting to settle the *proposal to the deciding official*, or the *actual discipline imposed*.

1. Reassignment

The permanent movement of an employee from one position to another position without promotion or demotion, at the same pay plan and grade, but not necessarily the same occupational series.

2. Voluntary Change to Lower Grade

An employee-requested action to be reduced in grade.

3. Voluntary Resignation

A voluntary resignation is when an employee voluntarily agrees to quit.

4. Extend Performance Improvement Period

An extension of the employee's performance improvement period (opportunity period).

5. Training

Management provides the complainant with additional instruction to help performance reach an acceptable level.

6. Retroactive Step Increase

This provides the employee the within-grade increase otherwise denied due to less than acceptable performance.

Evaluations/Appraisals

1. Change the Overall Appraisal rating, Performance Elements or Appraisal Factors

Change an appraisal rating, PE, and/or appraisal factors i.e. replace the current rating with an amended overall rating, an amended PE rating and/or changed appraisal factors.

2. Grant Award

Grant the requested cash and/or time-off award in exchange for rescinding the complaint.

3. Out-of-Cycle Replacement Rating

An employee's performance is re-evaluated after a specified amount of time to record any demonstrated improvement. Performance ratings are normally given only during the annual rating cycle. There are, however, instances when a rating may be given outside the normal rating cycle. The rating from the re-evaluated performance rating then replaces the previous annual rating.

4. Develop a New Performance Plan

Rewrite the performance standards to clarify performance expectations for the employee, thereby permitting the supervisor to accurately evaluate job performance. The newly developed plan should reflect current, relevant requirements of the employee's position.

5. Performance Counseling Schedule

Planned systematic discussion between the rating official and employee during the rating period regarding employee performance. During these sessions the employee is able to discuss the feedback and use it to improve performance, if necessary, to achieve the desired rating.

6. Performance-Related Training

The offer of job-related training to improve performance potentially impacting the next year's appraisal rating. The complainant is authorized attendance at job related training that he believes will enhance performance and potentially impact future performance ratings.

Promotion/Selection

1. Placement in Next Vacancy

Mandatory selection for the next occurring vacancy for which the complainant is qualified or the next like position. This is a non-competitive action.

Note: A number of legal and policy concerns are implicated by this proposed solution. Consultation with the local Air Force Attorney and Civilian Personnel Officer are highly recommended before the parties agree to this course of action.

2. Priority Consideration for Next Vacancy

For the next position vacancy for which the complainant qualifies, the complainant's name will be forward to the selecting official for selection consideration before other names of eligible candidates.

3. Training

An offer of training made to supplement, improve, or add to an employee's skills, knowledge, and abilities in a current or related field of work.

4. Career Counseling

Career counseling is a meeting between an employee and a qualified official to review the employee's experience, education, training and personal development. The counseling typically includes suggestions on self-development, on-the-job training, and job-related, government-sponsored training opportunities for career growth.

5. Desk Audit

An interview for fact-gathering purposes conducted by a person competent in the classification process to verify or gather information about the current duties and responsibilities of a position, and the accuracy of the description of those duties and responsibilities.

6. Grant the Promotion

The complainant is non-competitively promoted into the contested or similar position. An over-hire position may be created for settlement purposes.

Harassment

1. Sensitivity Training

Training designed to facilitate an understanding of human diversity based on culture, gender, and ethnicity. It helps one cope with workplace conflicts and communication differences that may result from workforce diversity.

2. Reassignment

Reassignment is the permanent movement of an employee from one position to another position without promotion or demotion, at the same pay plan and grade, but not necessarily the same occupational series. Note: The EEOC does not look on reassignment for the complainant – *unless the complainant specifically requests it* – favorably.

3. Apology

An expression of one's regret for having injured, insulted or wronged another individual. The injury, insult or wrong may be real or perceived. The apology can be oral or written.

Reasonable Accommodation

1. Provide Accommodation

Accommodation is an effort by the employer to provide some type of job modification which aids the employee in performing the job. Some examples of accommodation are employer purchased equipment and/or services such as voice-activated computers or interpreters, or modified work schedules to include alternative work schedules or flexible leave policies.

2. Reassignment

Reassignment is usually thought of as the permanent movement of an employee from one position to another position without promotion or demotion at the same pay plan and grade, but not necessarily the same occupational series; in other words, a “lateral” move. However, a reassignment does not necessarily have to be in the same series or grade.

3. Voluntary Change to Lower Grade

An employee requested action to be reduced in grade.

