

## 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

In accordance with AFI 51-1201, paragraph 21.2.4, disciplinary actions are generally not appropriate for ADR at the *proposal* stage. Therefore, mediations of disciplinary actions will most likely occur after action by the deciding official, and after a grievance or appeal of the disciplinary action has been filed. If the action is one that may be appealed to the Merit Systems Protection Board (e.g., removals, suspensions greater than 14 days), MSPB rules allow an additional 30 days for the employee to file the appeal if the parties attempt ADR. 5 C.F.R. 1201(b)(1).

#### 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*. It promotes the underlying premise of discipline, which is rehabilitation.

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

This means to reduce the severity of the penalty, such as reducing a 14-day suspension 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. “Last Chance” agreements can also bring about the desired behavior modification and provide for the retention of an employee who would otherwise be removed. The installation labor attorney has more information on the requirements of engaging in last chance arrangements.

#### 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 after a decision has been made.

### **Performance-Based Actions**

Mediations of performance-based actions will most likely be at the stage between placement on a performance improvement plan and action by the deciding official. Therefore, the mediator must be mindful as to whether the parties are attempting to settle the *underlying reasons for the performance improvement plan*, or the *actual decision reached*.

#### ***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.

### ***7. High Visibility Project***

Placing an employee on a project with more visibility offers an opportunity for the employee to shine and show their ability to rise to greater performance levels.

## 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. **[Note: Be certain of the intentions of the parties. Use of the term Priority Consideration in an EEO settlement means selection for that position unless unusual qualifications are required. If the parties mean Priority Referral, make sure the agreement states it that way.]**

### *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. **[Note: See # 1 above for additional guidance regarding non-competitive actions.]**

### *7. High Visibility Project*

Placing an employee on a project with more visibility offers an opportunity for the employee to shine and show their ability to rise to greater performance levels.

## **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 a modification of an employee's environment or duties to allow performance of the essential functions of the job. Some examples of accommodation are employer purchased equipment and/or services such as voice-activated computers or interpreters and readers, office relocation or modification, 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.