
BY THE U.S. GENERAL ACCOUNTING OFFICE

Report To The Chairwoman,
Subcommittee On Civil Service, Committee
On Post Office And Civil Service
House Of Representatives

Survey Of Appeal And Grievance Systems Available To Federal Employees

This report summarizes observations made by GAO during its survey of appeal and grievance systems available to federal employees. The survey, conducted at the request of the Chairwoman, Subcommittee on Civil Service, House Committee on Post Office and Civil Service, addressed her three areas of concern:

--Whether all the systems are needed and whether consolidation of some of them would save time and money.

--Whether some systems work better than others.

Whether employees perceive the systems differently and whether some are more sympathetic to employees than others.

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT
DIVISION

B-205457

The Honorable Patricia Schroeder
Chairwoman, Subcommittee on Civil
Service
Committee on Post Office and Civil
Service
House of Representatives

Dear Madam Chairwoman:

In an August 31, 1982, letter, you asked us to study the various appeal and grievance systems available to federal employees. Your major concerns related to (1) whether all the existing systems are needed and whether consolidation of some of them would save time and money; (2) whether some systems work better than others; and (3) how employees perceive their rights under the different existing mechanisms for redress and whether some of these mechanisms are more sympathetic to employees than others.

We did not find strong evidence that consolidating existing appeal and grievance systems would result in significant savings of time or money. Moreover, these systems were established to serve specific needs, and we found nothing to suggest that these needs no longer exist.

To be sure, the systems are not problem-free, but in our view problems are systemic and operational rather than structural. Since the passage of the Civil Service Reform Act of 1978, we have reviewed most of the appeals and grievance systems and identified operational problems and deficiencies. In addition, agency and union officials with whom we spoke cited problems with the current systems. These problems include (1) appeals and grievances are not processed in a timely manner; (2) potential for multiple appeals from a single personnel action; (3) the same appeals procedures apply to all actions appealable to the Merit Systems Protection Board, regardless of whether the action concerns, for example, a within-grade increase or a removal; and (4) appeal and grievance procedures are legalistic. In our judgment, however, problems such as these might best be addressed within the individual systems rather than by consolidation or by transferring procedures from one system to another.

A computerized literature search did not identify data that would allow us to determine how employees perceive the extent of their protection against employment wrongs, nor were data available to determine how employees view the comparative merits of the various existing grievance mechanisms. As we discussed with your office, a broad-based survey of federal employees is unlikely to provide data on employee perceptions of the comparative merits of different systems because, unless the employees had used each of the systems, they would not be able to make informed comparisons. Finally, while we believe that deciding whether some mechanisms are more sympathetic to employees than others involves subjective judgment, we did ask agencies for annual statistics on how many cases were resolved in favor of employees and how many in favor of departments or agencies. These statistics, however, were not generally available.

Drafts of the appendixes were reviewed by officials of the departments, agencies, and employee unions included in our survey. All except the Department of Health and Human Services generally agreed with our survey observations. That Department expressed the view that overlap exists among current systems and that the question of consolidation merits further study. After considering these comments together with information provided to us by officials of the other organizations included in our survey as well as information obtained from our records review, we concluded that such further study is not warranted at this time.

Your office concurred with our decision to terminate the survey and asked that we prepare a summary of its results. The appendixes to this letter will provide you with details of the results of our work, including a discussion of our objectives, scope, and methodology and agency and union comments on our survey observations (app. I); selected caseload statistics of the central personnel management agencies (app. II); a bibliography of our prior work involving this subject (app. III); and Department of Health and Human Services' comments we received on a draft of the appendixes (app. IV).

During our discussion with your office, we were asked to provide you with a description of the kinds of appeal and grievance workload data available in the agencies' information systems. Since we did not obtain this information during our survey, we have requested it from the agencies and will forward it promptly as we receive it.

We hope the information contained in this letter and in the appendixes will be helpful to your Subcommittee. As arranged with your office, we are sending copies to the departments, agencies, and employee unions we visited during the survey and to other interested parties.

Sincerely yours,

W. J. Anderson

William J. Anderson
Director

SUMMARY OF SURVEY OF

NCJRB

APPEAL AND GRIEVANCE SYSTEMS

MAR 21 1989

OBJECTIVES, SCOPE, AND METHODOLOGY

The Subcommittee Chairwoman asked us to study the variety of appeal and grievance systems available to federal employees. Her request specifically noted the following remedial systems:

ACQUISITIONS

- Adverse action appeals to the Merit Systems Protection Board (MSPB).
- Grievance systems within agencies.
- Arbitration under collective bargaining agreements.
- Prohibited personnel practice complaints to the Office of the Special Counsel (OSC).
- Discrimination complaints to the Equal Employment Opportunity Commission (EEOC).
- Unfair labor practice complaints to the General Counsel of the Federal Labor Relations Authority (FLRA).
- Classification appeals to the Office of Personnel Management (OPM).

As requested by the Chairwoman, we directed our efforts at answering three sets of questions.

1. Is there a need for so many, so diverse appeal and complaint handling mechanisms? Can some be consolidated? Will consolidation save money or reduce time lag?
2. Which complaint or appeals procedures work well? What is it about the procedures which work well which can be transferred to those which work poorly? Are changes in law needed to make procedures work better?
3. Do employees perceive that they have strong rights to vindicate employment wrongs which they may suffer? Do they believe that some mechanisms are better than others? Are some mechanisms more sympathetic to workers than others?

In conducting our work, we reviewed the laws and regulations relating to the seven cited appeals and grievance systems and other relevant documents containing nonregulatory guidance

and explanatory information on the operations and purposes of the systems. We also analyzed the legislative history of the Civil Service Reform Act of 1978 and the President's Reorganization Plans Nos. 1 and 2 of 1978. Further, we monitored general oversight hearings conducted by the Subcommittee on Civil Service, House Post Office and Civil Service Committee, in March 1983 on the civil service system and the personnel management agencies (OPM, MSPB, OSC, FLRA, and EEOC.)

We reviewed past General Accounting Office (GAO) studies of the operation of specific appeal and grievance systems. We also made literature searches to identify (1) articles and reports dealing with the organizations responsible for administering the systems and (2) articles or studies dealing with employee perceptions about whether they believe they have strong appeal and grievance rights.

Further, we interviewed officials of the five personnel management agencies and two departments with large numbers of civilian employees--the Department of the Army and the Department of Health and Human Services--on the issues raised in the Chairwoman's letter. We conducted similar interviews with officials of two major employee unions: The American Federation of Government Employees and the National Association of Government Employees.

Our survey, conducted from February through July 1983, was performed in accordance with generally accepted government audit standards.

BACKGROUND

The existing complaint handling mechanisms for federal employees were each established to satisfy particular needs--i.e., address specific issues and/or accomplish different purposes. The following sections describe the purposes and functions of the major complaint handling systems.

Appeals to MSPB

MSPB was established effective January 1, 1979, by Reorganization Plan No. 2 of 1978 which abolished the Civil Service Commission and separated the Commission's personnel management functions from its adjudicatory, appellate, and merit system enforcement responsibilities. A major reason for the reorganization was to eliminate the Commission's conflicting roles of rulemaker and adjudicator. The Commission had functioned as central personnel office and management agent and also as final administrative review authority in employee appeals. Because of this, the Commission's appeals processes were often viewed and criticized as lacking independence and objectivity.

The appellate functions and responsibilities transferred to MSPB under the Reorganization Plan were subsequently expanded by the Civil Service Reform Act of 1978. In this respect, the act states that it is congressional policy that:

"Federal employees should receive appropriate protection through increasing the authority and powers of the Merit Systems Protection Board in processing hearings and appeals affecting Federal employees."

Prohibited Personnel Practice Complaints to OSC

One of the policies adopted by the Congress in enacting the Civil Service Reform Act of 1978 was that "Federal personnel management should be implemented consistent with merit system principles and free from prohibited personnel practices." The primary means by which the Congress sought to implement this policy was by expanding the authority and power of OSC, which had been established as an independent office within MSPB by Reorganization Plan No. 2 of 1978. Under the provisions of the act, the Special Counsel is empowered to investigate allegations of prohibited personnel practices, proceed against those persons who commit them, and seek corrective action. As noted by the Special Counsel and others, OSC is not, in the strictest sense, a remedial system for individual employees. Rather, its major function is to ensure the enforcement of federal personnel laws and regulations. To the extent that an employee benefits from such enforcement, OSC can be considered a remedial system.

Grievance Systems Within Agencies

Agency grievance systems, which are required under regulations prescribed by OPM, are intended to provide a means for nonbargaining unit employees to resolve work-related complaints for which there is no other avenue of appeal or redress. The systems cover any matter of employee concern or dissatisfaction which is subject to the control of agency management. Although OPM sets minimum requirements for the systems, agencies are allowed flexibility in establishing procedures to suit their particular conditions and characteristics.

Arbitration Under Collective Bargaining Agreements

As provided under the Civil Service Reform Act of 1978, any collective bargaining agreement between a labor organization and agency management must provide procedures for settling grievances. Negotiated grievance procedures may exist only where a

labor organization has been recognized as the exclusive representative of an agency's qualified employees. The procedures are available only to employees in an exclusive bargaining unit but they need not be union members. With certain statutory exceptions,¹ the negotiated procedure is the exclusive process for resolving grievances which fall within its coverage as negotiated by a labor organization and agency management. Negotiated procedures must also meet certain requirements established under the Civil Service Reform Act of 1978. The major requirement is that they provide that any grievance not satisfactorily settled under the procedures shall be subject to binding arbitration which may be invoked by either the labor organization or the agency. Arbitration provides the opportunity for impartial, third-party settlement of disputes which are not resolvable between the agency and the union.

Discrimination Complaints to EEOC

The general policy of the government is to provide equal opportunity in employment for all persons and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age. As one means of ensuring adherence to this policy, federal agencies are required to administer a complaint system to provide for prompt, fair, and impartial consideration and disposition of complaints involving issues of discrimination. Pursuant to Reorganization Plan No. 1 of 1978, EEOC's Office of Review and Appeals serves as the appellate body for employee appeals of final agency decisions on complaints which are not resolved at the agency level.

Unfair Labor Practice Complaints to FLRA

The Civil Service Reform Act of 1978 established, for the first time, a statutory labor-management relations program in the federal sector. In part, the act listed the rights of management, employees, and unions in a collective bargaining relationship and established procedures to resolve unfair labor practices. Unfair labor practice procedures were included to provide an enforcement mechanism for protecting the rights given to management, employees, and unions by the act. FLRA's General Counsel is responsible for investigating alleged unfair labor practices and for filing and prosecuting unfair labor practice complaints before FLRA.

¹The statutory exceptions are discussed in 5 U.S.C. 7121.

Classification Appeals to OPM

The classification appeals system operated by OPM provides employees the opportunity to request that a decision, by an agency or OPM itself, to reclassify a position at a lower grade or pay rate be reconsidered or that a determination be made as to whether a position should be included or excluded from the General Schedule. OPM reviews, narrow and technical in nature, deal with the classification issue only.

OBSERVATIONS

This section identifies the Subcommittee Chairwoman's questions about the existing appeal and grievance systems and contains a summary of the information we developed.

1. Is there a need for so many, so diverse appeal and complaint handling mechanisms? Can some be consolidated? Will consolidation save money or reduce time lag?

We did not find any significant problem associated with the existing number or type of complaint handling mechanisms. We noted--and officials of several agencies we visited also called this to our attention--that each system was established to satisfy particular needs, i.e., address specific issues and/or perform different functions. We found no evidence that these needs have changed. While many persons we spoke with cited systemic problems with individual systems, they did not object to the present appeal and grievance system structure.

Likewise, there was no strong support for consolidating any part of or all the existing systems nor was there evidence that consolidation would result in significant savings of money and time. Moreover, previous GAO reports,² while pointing out deficiencies in systems' operations, did not identify any need for consolidation.

2. Which complaint or appeals procedures work well? What is it about the procedures which work well which can be transferred to those which work poorly? Are changes in law needed to make procedures work better?

Since enactment of the Civil Service Reform Act of 1978, GAO has reviewed most of the appeal and grievance systems (see app. III for a list of pertinent GAO reports). Each report identifies systemic and other problems which have adversely affected the operation of the complaint handling processes.

²Appendix III lists previous GAO reports containing information on appeal and grievance systems for federal employees.

That is, we found that the systems were not working as intended and/or not achieving established goals or objectives. For example, a major objective of agency grievance systems is to provide fast and fair consideration of employee complaints. However, in our December 1982 report³ on these systems in selected departments and agencies, we stated that the effectiveness of the grievance processes was hampered by operational shortcomings, most notably that the departments and agencies were not processing and resolving grievances in a timely manner.

Numerous problems associated with individual systems and employee protections in general were also cited by people with whom we spoke. These problems include:

- The length of time it takes to process appeals and grievances.
- The potential for multiple appeals from a single personnel action, i.e., a personnel action could involve many appealable issues such as discrimination, an unfair labor practice, and a prohibited personnel practice.
- The extension of the full range of appellate procedures to all actions appealable to MSPB. Under the law, all actions are treated the same, regardless of their severity. For example, an appeal of a denial of a within-grade increase is accorded the same appeal procedures as an appeal of an adverse action/removal.
- The legalistic nature of appeal and grievance processes.

In our view, these problems are systemic in nature and would not be resolved by consolidating systems or transferring procedures used by one system to others.

3. Do employees perceive that they have strong rights to vindicate employment wrongs which they may suffer? Do they believe that some mechanisms are better than others? Are some mechanisms more sympathetic to workers than others?

We conducted a computerized literature search designed to identify articles dealing with employee perceptions about whether they believe they have strong appeal and grievance rights. The search did not identify any relevant articles or information on the subject. Also, we believe, and the Chairwoman's office agreed, that a broad-based survey of federal

³Agency Administrative Systems Need Attention (GAO/FPCD 83-15, Dec. 22, 1982).

employees' perceptions on appeal and grievance rights would not be productive because, unless the employees have used each of the systems--and this would be highly unlikely--they would have no basis for comparing systems or providing insights into the operation of the systems.

Deciding whether "some mechanisms are more sympathetic to workers than others," which was a question raised by the Chairwoman, involves, in our opinion, subjective determinations. We nevertheless asked the agencies for annual statistics showing case outcomes--i.e., findings for employees versus findings for departments and agencies. We wanted to use these data to make certain comparative analyses of how appeals and grievances were being resolved by the systems. This was not possible, however, because the statistics we needed were not generally available. For example, according to officials at the Department of the Army and the Department of Health and Human Services, their departmental grievance systems and negotiated grievance activities are operated decentrally, and statistics on the outcome of these grievances are not centrally maintained. Also, EEOC's Chairman informed us that his agency's information system does not, at present, have the capability to produce data such as decision outcomes. He said the agency is now designing a project to reprogram its system to produce such data.

COMMENTS OF DEPARTMENT, AGENCY, AND UNION OFFICIALS

Drafts of this appendix and appendices II and III were provided to officials of the nine departments, agencies, and employee unions included in our survey. Officials of all these organizations, except the Department of Health and Human Services (DHHS), were in general agreement with the information discussed in this appendix.

DHHS did not agree (see app. IV). The Department said that it was an incomplete reflection of its views to say it does not object to the present structure of appeal and grievance systems and that there is no strong support for consolidating the existing procedures. The Department expressed the view that there is considerable overlap among the current systems and that further study is needed to see if the systems can be consolidated and streamlined.

After considering the DHHS comments, together with the information provided to us by officials of the other organizations we visited and the information obtained from our records review, we have concluded that further study of this subject is not warranted at this time.

Selected Caseload Statistics Of The
Central Personnel Management Agencies

<u>Merit Systems Protection Board</u>	<u>Fiscal Years</u>		
	<u>1980</u>	<u>1981</u>	<u>1982</u>
<u>Regional Office Appeals</u>			
Received	6,466	17,477 ^a	9,130
Adjudicated	4,967	6,740	6,254
<u>Petitions for Board Review of</u> <u>Regional Initial Decisions</u>			
Received	1,923	2,159	2,034
Adjudicated	1,250	2,087	1,891
<u>Office of the Special Counsel</u> <u>Prohibited Personnel Practice</u> <u>Complaints</u>			
Received	<u>Calendar Years</u>		
	<u>1980</u>	<u>1981</u>	<u>1982</u>
Closed	1,982	2,404	1,404
	1,547	3,009	599
<u>Federal Labor Relations Authority</u> <u>Unfair Labor Practice Complaints</u>			
Received	<u>Fiscal Years</u>		
	<u>1979</u>	<u>1980</u>	<u>1981</u>
Disposed	2,348	4,955	6,448
	1,064	5,426	6,023
<u>Equal Employment Opportunity</u> <u>Commission - Appeals to the</u> <u>Office of Review and Appeals</u>			
Received	<u>Fiscal Years</u>		
	<u>1981</u>	<u>1982</u>	
Cases Written	3,175	3,216	
	2,611	3,488	

^aThe large increase of appeals received in 1981 is attributed to appeals by air traffic controllers following their removal because of their strike activities.

Office of Personnel Management
Classification AppealsFiscal Years
1981 1982Nationwide classification appeals

Received	1,150	820
Decided	825	666

Appeals for headquarters'
reconsideration of field
classification decisions

Received	103	160
Decided	38	99

General Accounting Office Reports Including
Information On Appeal And Grievance Systems
For Federal Employees

Grievance Systems Should Provide All Federal Employees an Equal Opportunity for Redress. FPCD-77-67, June 13, 1978.

Merit Systems and Employee Protection. FPCD-80-15, October 22, 1979.

The Federal Labor Relations Authority: Its First Year in Operation. FPCD-80-40, April 2, 1980.

Civil Service Reform--Where It Stands Today. FPCD-80-38, May 13, 1980.

First-Year Activities of the Merit Systems Protection Board and the Office of the Special Counsel. FPCD-80-46, June 9, 1980.

The Office of the Special Counsel Can Improve Its Management of Whistleblower Cases. FPCD-81-10, December 30, 1980.

Federal Grievance Arbitration Practices Need More Management Attention. FPCD-81-23, May 5, 1981.

Civil Service Reform After Two Years: Some Initial Problems Resolved But Serious Concerns Remain. FPCD-82-1, November 10, 1981.

Observations on the Office of the Special Counsel's Operations. FPCD-82-10, December 2, 1981.

Steps Can Be Taken to Improve Federal Labor Management Relations and Reduce the Number and Costs of Unfair Labor Practice Charges. FPCD-83-5, November 5, 1982.

Agency Administrative Systems Need Attention. GAO/FPCD-83-15, December 22, 1982.

Effect of Fiscal Year 1982 Budget Reductions on the Federal Labor Relations Authority. GAO/FPCD-83-18, March 11, 1983.

Problems Persist in the EEO Complaint Processing System. GAO/FPCD-83-21, April 7, 1983.

Effect of Fiscal Year 1982 Budget Reductions on the Merit Systems Protection Board and Its Office of the Special Counsel. GAO/FPCD-83-20, April 8, 1983.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

SEP 7, 1983

Ms. Rosslyn Kleeman
Associate Director
General Government Division
General Accounting Office
Washington, D. C. 20548

Dear Ms. ^{RK}Kleeman:

As requested by Jack Strauss of your staff, we have reviewed the draft report on the survey of appeal and grievance systems available to Federal employees. The survey was done in response to a request from Chairwoman Patricia Schroeder, House Subcommittee on Civil Service, and we believe that the Chairwoman raised some questions and serious issues that are not adequately addressed in the draft report.

Page 5 of the report says that we do not object to the present structure of appeal and grievance systems and that there is no strong support for consolidating the existing systems. This is an incomplete reflection of our views. We believe that there is considerable overlap among the current systems and that further study is needed to see if the systems can be consolidated and streamlined. (See GAO Note.)

In the study, several points should not be overlooked. One is the growth of broad-scope negotiated grievance procedures, under which a number of the appeal and grievance systems have already been effectively consolidated for bargaining unit employees. Perhaps a similar consolidation (but without outside arbitration) could be accomplished for those employees not covered by such negotiated grievance procedures. Another point to consider is whether the amount of due process provided to Federal employees is in balance with the effects of the various actions on the employees. For example, we question whether employees should have the same appeal rights for the denial of a within-grade increase as they do for a removal.

We have also indicated on the enclosed copy of the draft report some suggested wording changes to clarify certain portions of the report.

If you have any questions, please give me a call on 475-0081.


Donna D. Beecher

Enclosure

GAO Note: Page reference has been changed to agree with the final report.

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