

RESOLUTION OF THE GOVERNING BODY OF THE
THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION

- WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and
- WHEREAS, The Constitution and Bylaws of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in ~~such~~ activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and
- WHEREAS, Article 6, section 5(1) of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to adopt resolutions regulating the procedures of the Tribal Business Council and other Tribal agencies; and
- WHEREAS, Section X of the Personnel Policies and Procedures manual is in need of immediate revisions to allow for a more effective process in dealing with employee grievances; and

NOW, THEREFORE BE IT RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes hereby adopts the proposed amendments to the Grievance Procedure, Section X, of the Personnel Policies and Procedures Manual, copies of which are attached.

C E R T I F I C A T I O N

I, the undersigned as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 5 were present at a regular Meeting, thereof duly called, noticed, convened, and held on the 12 day of June, 1987; that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 3 members, 1 members opposed, 0 members abstaining, 1 not voting, and that the said Resolution has not been rescinded or amended in any way.

CHAIRMAN (VOTING)

(NOT VOTING)

Dated this 12th day of June, 1987.

Acting : Edwin Crow Bread
Tribal Secretary
Tribal Business Council

ATTEST:

Edmund White Bear
Tribal Vice-Chairman
Tribal Business Council
Three Affiliated Tribes

THREE AFFILIATED TRIBES • FORT BERTHOLD RESERVATION

Mandan, Hidatsa and Arikara Tribes

TRIBAL EMPLOYMENT DEPARTMENT

Tribal Administration Building • New Town, North Dakota 58763

AMY HENRY
Administrator
627-3611

LEO CUMMINGS
JTPA Director
627-4756


TERRY THORTON
TERO Director
627-3634

MARY E. FOX
Personnel Clerk

MELVA DRIVER
JTPA Training Officer

DIANE HALL
JTPA Clerk

TO: Hugh Baker, Tribal Treasurer

FROM: Amy Henry, Personnel Director 

RE: Grievance Procedure Revisions

DATE: June 12, 1987

Attached is a copy of the revisions you requested on the proposed Grievance Procedure. If you desire further correction, additions or deletions, please let me know.

Three Affiliated Tribes
Personnel Policies and Procedures
Proposed Amendment
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X. GRIEVANCE PROCEDURE

A. DEFINITIONS

1. "Grievance" shall generally mean an employee's expressed feeling of dissatisfaction with physical or psychological conditions of employment or with treatment by supervisors, department administrators, co-workers, other employees, committees or other decision making bodies affecting any aspect of employment, and shall include, but not be limited to, the following specific actions:

(a) application or implementation of Tribal policies, practices, procedures, rules, or regulations deemed to be detrimental to the employee;

(b) treatment deemed by the employee to be unfair, inequitable, unjustifiable, or unreasonable, such as intimidation, harrassment, coercion, or reprisal;

(c) action deemed by the employee to be discriminatory on the basis of color, race, national origin, sex, age, religion, marital status, or any other non-merit factor; and

(d) improper or unfair administration of employee benefits or other aspects of employment, such as salary, fringe benefits, leave, performance evaluation, transfer, or promotion.

2. "Employee" shall mean and include only those persons who (a) have entered into a work agreement or employment contract with the Three Affiliated Tribes, (b) are employed on a full-time permanent or part-time permanent basis, (c) have successfully completed the requisite probationary period as provided in these Personnel Policies and Procedures, and (d) receive their paychecks and other compensation from the Finance Office of the Three Affiliated Tribes. The term "employee" shall not mean or include those persons who (a) are employees of the Three Affiliated Tribes who have not successfully completed the probationary period as provided in these Policies and Procedures, (b) who are retained by the Three Affiliated Tribes in the capacity of consultant, who have entered into formal consultant agreements with the Three Affiliated Tribes, or (c) are employees of nonprofit or business entities chartered by the Tribal Business Council of the Three Affiliated Tribes, such as the Tribal Newspaper, Tribal FM Radio Station, the Fort Berthold Community College, the Fort Berthold Housing Authority, or the Four Bears Motor Lodge.

3. "Business day" shall mean and include each regularly scheduled work day of the Three Affiliated Tribes, except those days on which administrative leave is granted to all Tribal employees.

B. ADMINISTRATIVE PROCEDURE

Each employee, who has a grievance which he or she desires to resolve, shall comply with the following procedure (except as provided in Subsections D 8 and 9 herein):

1. Presentation to Supervisor (or Program Director)*

(a) The aggrieved employee shall present his or her grievance, in writing, to his or her supervisor within a period of five (5) business days from the date of the occurrence upon which the grievance is based. The written grievance shall set forth the nature of the grievance and the relief sought by the aggrieved employee. The supervisor shall acknowledge receipt thereof by signature and shall note the date of receipt in writing.

(b) Within a period of three (3) business days from the date of receipt of the written grievance, the supervisor shall meet with the aggrieved employee and any other person directly involved in the grievance as identified by the aggrieved employee, for the purpose of being apprised of the facts and circumstances surrounding the grievance and of attempting to resolve the matter to the satisfaction of all parties involved.

(c) On the business day next succeeding the date on which said meeting was held, the supervisor shall direct to the aggrieved employee, by hand or certified mail delivery, his or her written decision relative to the grievance.

(d) In the event that the aggrieved employee is dissatisfied with the decision rendered by the supervisor or the supervisor has failed to take the requisite action within the time period prescribed hereinabove, the aggrieved employee may pursue the next succeeding step within the procedure herein.

(*NOTE: In those departments within which are maintained program director positions, in addition to the department administrator and supervisor positions, the aggrieved employee shall present his or her grievance to the program director in lieu of his or her immediate supervisor, and such program director shall assume the responsibilities inherent in processing the grievance pursuant to this subsection.

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2. Presentation to Department Administrator

(a) The aggrieved employee shall present his or her grievance, in writing, to his or her Department Administrator within a period of two days from the date of receipt of the written decision of the supervisor or from the applicable respective date by which the supervisor was required to have taken the actions prescribed hereinabove, in the event that the supervisor failed to take either of such prescribed actions. The Department Administrator shall acknowledge receipt thereof by signature and shall note the date of receipt in writing.

(b) In the event that the supervisor did take the actions prescribed hereinabove, he or she, at the request of the Department Administrator, shall transmit to the Department Administrator a letter which sets forth the the nature of the grievance at issue, the facts and circumstances surrounding the grievance, the decision rendered by the supervisor, and the grounds upon which said decision was based.

(c) Within a period of three (3) business days from the date of receipt of the written grievance, the Department Administrator shall meet with the aggrieved employee, the supervisor, and any other person(s) directly involved in the grievance as identified by the aggrieved employee, for the purpose of being apprised of the facts and circumstances surrounding the grievance and of attempting to resolve the matter to the satisfaction of all parties involved.

(d) On the business day next succeeding the date on which said meeting was held, the Department Administrator shall direct to the aggrieved employee, by hand or certified mail delivery, his or her written decision relative to the grievance.

(e) In the event that the aggrieved employee is dissatisfied with the decision rendered by the Department Administrator or the Department Administrator has failed to take the requisite action within the time period prescribed hereinabove, the aggrieved employee may pursue the next succeeding step within the procedure herein.

3. Presentation to the Personnel Director

(a) The aggrieved employee shall present his or her grievance, in writing, to the Personnel Director within a period of two (2) business days from the date of receipt of the written decision of the Department Administrator or from the applicable.

respective date by which the Department Administrator was required to have taken the actions prescribed hereinabove, in the event that the Department Administrator failed to take either of such prescribed actions. The Personnel Director shall acknowledge the receipt by signature and shall note the date of receipt in writing.

(b) In the event that the Department Administrator did take the actions prescribed hereinabove, he or she, at the request of the Personnel Director, shall transmit to the Personnel Director a letter which sets forth the nature of the grievance at issue, the facts and circumstances surrounding the grievance, the decision rendered by the Department Administrator, and the grounds upon which said decision was based.

(c) Within a period of three (3) business days from the date of receipt of the written grievance, the Personnel Director shall meet with the aggrieved employee, the supervisor, the Department Administrator and any other person(s) directly involved in the grievance as identified by the aggrieved employee, for the purpose of being apprised of the facts and circumstances surrounding the grievance and of attempting to resolve the matter of the satisfaction of all parties involved.

(d) On the business day next succeeding the date on which said meeting was held, the Personnel Director shall direct to the aggrieved employee, by hand or certified mail delivery, his or her written decision relative to the grievance.

(e) In the event that any party to the grievance is dissatisfied with the decision rendered by the Personnel Director or the Personnel Director has failed to take the requisite action within the time period prescribed hereinabove, the party aggrieved thereby may pursue the next succeeding step within the procedure herein.

4. Hearing before the Grievance Committee

(a) Any party to the grievance, who is aggrieved by the decision rendered by or the inaction of the Personnel Director and who desires to further pursue the grievance, shall file with the Personnel Director a written request for a hearing before the Grievance Committee. Said request shall set forth the nature of the grievance and the relief sought by the aggrieved employee and shall be filed with the Personnel Director within a period of two (2) business days from the date of receipt of the written decision of the Personnel Director or from the applicable respective date by which the Personnel Director was required to have taken the action prescribed hereinabove, in the event that the Personnel Director failed to take either of such prescribed actions. The Personnel Director shall acknowledge receipt by signature and shall note the date of receipt in writing.

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(b) Upon receipt of said request for hearing, the Personnel Director shall set a date for the hearing before the Grievance Committee, said date to be set no sooner than five (5) business days and no later than ten (10) business days from the date of receipt of the written request for hearing.

(c) No later than three (3) business days prior to the date of the hearing, the Personnel Director shall direct to each party to the grievance, by hand or certified mail delivery, a written notice setting forth the time, date, and location of the hearing before the Grievance Committee, together with an identification of the rights and obligations of each parties to the grievance.

(d) Upon receipt of the notice of hearing, each party to the grievance shall be obliged to identify and contact any and all witnesses he or she intends to have participate in and present testimony at the hearing and to submit to the Personnel Director, no later than twenty-four (24) hours prior to the commencement of the hearing, (1) a written list setting forth the names of any and all such witnesses, together with a brief description of the substance of the intended testimony of each such witness, and (2) copies of any and all documentary evidence which the party intends to introduce at the hearing.

(e) In the event that a party to the grievance determines that he or she will be unable to attend the hearing on the date for which it has been set or will not be fully prepared to present his or her case at the hearing, such party may submit to the Personnel Director an oral or written request for a continuance of the hearing. Said request shall be so submitted no later than twenty-four (24) hours prior to the commencement of the hearing as originally scheduled and shall set forth, with specificity, the grounds upon which the request is based. If the Grievance Committee Chairman is satisfied that the party has demonstrated good cause for the requested continuance, the Chairman shall grant the continuance and set a date for a continued hearing on the earliest practicable date. The Grievance Committee shall grant only one (1) continuance of the hearing for each party to the grievance.

5. Establishment and Constitution of Grievance Committee

The Grievance Committee shall be comprised of the three (3) official members of the Tribal Business Council Committee that oversees the department in which the grievance arose.

In the event it is determined that any such committee member is a "close relative" of either party to the grievance, a random selection of Tribal Business Council members shall be made until such time that the alternate member selected is not a close relatives of either party to the grievance. The term "close relative" shall and include husband, wife, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, aunt, uncle, niece, nephew, grandfather, grandmother, grandchild, and first cousin.

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(a) After consulting with the Grievance Committee Chairman for scheduling purposes, the Personnel Director shall give written notice to the members of the Grievance Committee identifying the date, time and location of the hearing.

(b) Each member of the Grievance Committee shall receive copies of all documentation relating to each grievance no sooner than one hour and no later than one half hour prior to the commencement of the hearing. All documentation shall be presented to the members of the Grievance Committee at the location of the hearing. No documentation will be removed from the hearing location until the proceeding has concluded and at that time, all documentation shall be retrieved by the Personnel Director and returned to the Tribal Personnel Office.

6. Grievance Committee Hearing Procedure

(a) The Chairman of the the respective Tribal Business Council Committee shall be the official who presides over the hearing and ensures that the hearing is conducted and proceeds in an orderly manner.

(b) At the commencement of the hearing, the Personnel Director shall briefly apprise the Grievance Committee of the nature of the grievance at issue and shall inform the Committee as to whether the aggrieved employee and the adverse party fully complied with the applicable procedures prescribed hereinabove. The Personnel Director shall continue to be present throughout the hearing and shall participate herein in an advisory capacity.

(c) Each party of the grievance shall have the following rights:

(1) the right to be represented by legal counsel at his or her own expense;

(2) the right to present relevant and material evidence, oral and documentary, himself or herself, and through witnesses;

(3) the right to confront and cross-examine the adverse party and his or her witnesses;

(4) the right to secure the list of witnesses who intend to testify on behalf of the adverse party, prior to the commencement of the hearing, at any time after said list has been submitted by the adverse party to the Personnel Director; and

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(5) the right to secure from the Personnel Director photostatic copies of any and all non privileged documentation relating to the grievance as maintained on file in the Personnel Office twenty four hours prior to the hearing.

(d) The party to the grievance who requested the hearing before the Grievance Committee shall proceed first in the presentation of his or her evidence and at the conclusion of such presentation, the other party shall have the opportunity to present his or her evidence.

(e) At the conclusion of each presentation, each member of the Grievance Committee shall have the right and opportunity to pose questions to each of the parties to the grievance and to any of their respective witnesses throughout the remainder of the hearing.

(f) The commonly accepted rules of evidence shall not be strictly adhered to in the conduct of the hearing; provided, however, that the Grievance Committee, within its discretion, shall determine the evidentiary weight to be granted to any hearsay evidence presented by the parties throughout the course of the hearing.

(g) The hearing, throughout its entirety, shall be electronically recorded and the recorded transcript shall be securely maintained with the original grievance documents by the Personnel Director pending the potential timely filing of any appeal from the final decision rendered by the Committee.

(h) At the conclusion of the hearing, the Grievance Committee shall immediately commence and complete its deliberations without interruption and, upon the completion of deliberations and the rendering of its decision, shall verbally inform the parties of its decision. The Personnel Director shall furnish each party to the grievance, the written decision of the committee within two business day following the rendering of the Committee's decision.

(i) The Grievance Committee shall be vested with the ultimate authority to order any party to the grievance proceeding to take certain reasonable action(s) and/or refrain from engaging in certain conduct consistent with its decision and to order such other and further relief as it may, within its discretion, deem reasonable and appropriate and the decision rendered by the Grievance Committee shall be final and binding.

D. GENERAL PROVISIONS

(1) Each employee, who maintains a good faith belief that he or she has a valid and justifiable grievance, should be encouraged to initiate and pursue the procedure prescribed herein and shall, in no manner nor to any extent, be subjected to any form of reprisal in response to his or her pursuit of a resolution to such grievance.

(2) Both parties to the grievance must be present at and participate in every meeting as prescribed by the procedure herein and shall not have the right to cause another person to be present thereat and participate therein on their behalf. Failure on the part of the aggrieved employee to appear at any such meeting or hearing without good cause shall result in the automatic dismissal of the grievance. Failure on the part of the adverse party to appear at any such meeting or hearing without good cause shall result in granting reasonable and appropriate relief sought by the aggrieved employee.

(3) Every aggrieved employee shall have the absolute right to a hearing before the Grievance Committee, provided that he or she has fully complied with the applicable procedures as prescribed herein.

(4) Each employee, who has initiated a grievance pursuant to the procedure herein, shall strictly comply with all applicable prescribed procedural obligations, and the failure to so comply shall result in the automatic dismissal of the grievance, unless he or she is able to demonstrate to the satisfaction of the Grievance Committee good cause for such failure.

(5) Either party to the grievance, who should attempt to circumvent the specific procedures prescribed herein by means of directly approaching the Tribal Business Council or any Tribal Business Council Committee in pursuit of an alternative resolution of the grievance, shall receive a letter or warning from their supervisor at the direction of the Council or the respective Council Committee.

(6) No party to hearing before the Grievance Committee shall, at any time prior to the commencement of the hearing, (1) personally, through any mode of communication, approach a member of the Grievance Committee for the purpose and with the intent of attempting to influence such member as to the disposition of the grievance at issue, or, (2) permit any member of his or her family to engage in such conduct. Any such party found to have violated this proscription shall be suspended without pay from his or her employment for a period of (2) weeks. Written notice of such suspension shall be given to such party by the Personnel Director at the direction of the Grievance Committee.

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(7) Neither the Tribal Business Council nor any Tribal Business Council Committee other than the Grievance Committee shall have any involvement, formal or informal, at any stage in the grievance procedure prescribed herein. Nor shall any individual member of the Tribal Business Council or of any Tribal Business Council Committee intercede in or interfere with the conduct of any pending grievance.

(8) In certain instances, one individual may maintain two (2) supervisory/administrative positions (e.g., a department administrator may also be the sole supervisor within the department, and the Personnel Director may be the sole supervisor within the Personnel Office). In any such instance, with the intent of avoiding any redundant and ill-spent effort, the aggrieved employee shall be required to present his or her grievance only one (1) time to the appropriate supervisory/administrative individual who maintains two (2) positions identified in the procedure hereinabove.

(9) In those instances exclusively in which an employee has been laid off, suspended, or terminated from his or her employment, the aggrieved employee shall have the right to file directly with the Personnel Director a written request for a hearing before the Grievance Committee, without having to comply with the procedures prescribed in Subsections B 1, 2, and 3, due to the relative severity of these respective actions. Such hearing requested shall set forth the specific grounds for the grievance and the relief sought by the aggrieved employee. In any such instance, the aggrieved employee shall so file such request within a period of twenty four (24) hours from the time of receipt by the aggrieved employee of the letter of layoff, suspension, or termination. Upon filing of the request, a hearing before the Grievance Committee shall be set for the earliest practicable date pursuant to the procedure prescribed hereinabove and with the concurrence of each party to the grievance and the hearing as originally scheduled shall, under no circumstances, be continued to a subsequent date

(10) Each member of the Grievance Committee shall hear, consider, deliberate, and rule on the grievance at issue in an objective, impartial, and unprepossessed manner and shall, in no manner nor to any extent, permit subjective or personal consideration to enter into his or her consideration of the grievance.

(11) The first stage in the procedure prescribed hereinabove at which the aggrieved employee shall be entitled to be represented by legal counsel shall be at the hearing before the Grievance Committee

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(12) Any and all information and documentation, relating to a grievance initiated pursuant to the procedure prescribed hereinabove and submitted at any stage thereof, shall be received and maintained by the respective supervisory and administrative personnel in strict confidence. Supervisors, program directors, department administrators, and the Personnel Director shall not discuss the facts and circumstances surrounding a pending grievance with any individual other than the parties to the grievance and other supervisory or administrative personnel involved therein.

(13) The decisions on each grievance at each stage of the procedure prescribed hereinabove shall be made on a case by case basis, grounded on the particular facts and circumstances peculiar to the respective grievance, and no final decision made on a particular grievance shall serve as precedent upon which the decision on a subsequent similar grievance shall be based, unless the final decision on the previous grievance has been formally adopted via resolution by the Tribal Business Council as Tribal personnel policy and has been incorporated within the Three Affiliated Tribes Personnel Policies and Procedures.

(14) In the event that any of the supervisory personnel involved in the administrative procedure prescribed in Subsections B 1, 2, and 3, (i.e., the respective supervisor, Program Director, Department Administrator, or Personnel Director) is absent from his or her place of employment during the applicable stage of such procedure, that individual, employed in the program or department within which the grievance has been filed, who has been appointed or designated by the absent supervisory person to act on his or her behalf during such absence, shall act on his or her behalf with regard to assuming the responsibilities inherent in the administrative procedure.