

MEMORANDUM

TO: Malcolm Smith
Matt Mountain

FROM: Harry W. Feinstein

SUBJECT: Grievance Procedure

DATE: August 12, 2003

There appears to be some misunderstanding of the manner in which a grievance process should be maintained in Chile as between a Chilean Hire Complainant and the direct employer, AOSS, and the work Program Unit to which the Complainant is assigned.

AURA had established a “grievance policy” so that employees have an opportunity to exhaust internal remedies for pertinent complaints, and equally, for employers to be better informed about workplace problems. In order to have an effective “grievance policy” the process should be simple to understand and administer, there should be safeguards against retaliation against a complaining employee, and most importantly, it gives supervisors the first opportunity to resolve complaints firmly, fairly and consistently.

The AURA policy appears simple enough to capture the essence of complaint resolution at the appropriate management level with the opportunity to be heard at higher levels of management should the complainant feel that his complaint was not addressed fairly.

The AURA policy also recognizes that its efforts in Chile required special identification and in accordance with the contractual obligations to the NSF, the policy clearly indicates that Chilean Law takes precedence over all AURA policies normally practiced in the U.S.

It should be noted that since the original “AURA Grievance Policy” was implemented, a new organizational structure was put in place changing the working landscape of Chilean employees employed by AURA (AOSS). Essentially, under this new organization, any or all such Chilean employees may be assigned to “users” of the AOSS servicing function. All the parties using the AOSS (such as the Gemini Observatory, SOAR, and CTIO) recognize that the Chilean employees are indeed employees of the AOSS organization, however, when assigned to the user organization, there is a primary responsibility for the supervisory function of the user organization that overrides the direct employment mode. The user organization provides the work, assigns the responsibilities of the work, reviews performance of the worker, and otherwise supervises all aspects to achieve its working goals. The Chilean employees should understand that “primary” responsibility.

Indeed, in order to carry out the concepts of the Chilean Labor Laws, an “Internal Handbook for Good Order, Housekeeping and Safety” was published, is in place, and is being maintained by the AOSS organization. As with the Chilean Labor Law, a grievance process *per se* is not specifically addressed, however, if one examines Article 20 of the “handbook” relating to “Corrective Actions,” it is clear that the intent for remedies for work deficiencies are to be observed with specific prescriptions for corrective actions. [For example: private conversation with the employee, a disciplinary meeting if needed, a written warning, a trial period, etc.] This handbook has been subsequently amended to include a process that could ultimately lead to termination. But clearly, the steps to that ultimate determination begins with private discussions with the worker with the following description:

“The employee’s supervisor shall conduct these discussions at his/her discretion.”

Memorandum
August 12, 2003
Page Two

This provision is in a column marked "Program Unit," meaning thereby either Gemini, SOAR, or CTIO. The rule also indicates "no notification or action required" as to AOSS-HR nor AURA-O/AOSS Senior Management. This implies an intentional recognition that the supervisory approach must be given an opportunity to resolve complaints. It is not until further into the disciplinary process that the AOSS management becomes involved.

Finally, there is a written "Grievance Policy & Procedure" that was taken directly from the AURA Policy with its application solely for "Chilean Hires." This policy reaffirms the intention that the first step in a complaint process is to take it to the "immediate supervisor."

There is nothing to deny a complainant from concurrently notifying the AURA-O management, or AOSS- HR in describing the complaint, however, the initial action is directly with the Program Unit and with the Chilean employee's supervisor within that Program Unit. Resolution of such complaints hopefully can be closed in an appropriate manner. However, if ultimately the remedy appears to require a termination action, the review process reverts to the AURA-O management in accordance with the Article 20 Implementation Plan of 17 February 2003. Accordingly, in any grievance procedure undertaken by the Program Unit, it is necessary to keep AOSS management informed of the progress of such activity.

HWF/b²

c: William Smith