

## Department of Health and Human Services Management Proposal

The Department of Health and Human Services makes these management proposals independent of any requirement in any Executive Order.

### 1. Management proposes the elimination of the following Articles:

- Article 5- Employee Rights and Responsibilities
- Article 7- Union Rights
- Article 25 – Alternative Work Schedule/Hours of Work
- Article 26 – Flexible Workplace Program
- Article 27- Awards
- Article 30- Performance Management Appraisal Program
- Article 31- Actions Based on Unacceptable Performance
- Article 35- Reassignments
- Article 36- Merit Promotions
- Article 43- Adverse Actions
- Article 44- Disciplinary Actions
- Article 53: Public Transportation Subsidies
- Article 59: Peer Review

### 2. Management proposes changes to the following articles as provided:

- Article 2- Contract Duration and Termination
- Article 3- Mid Term Bargaining
- Article 8- Dues Withholding
- Article 9- Union Access to Employer Services
- Article 10-Union Representation/Official Time
- Article 45- Grievance Procedures
- Article 46- Arbitration

### 3. New articles proposed:

- Employee Space and Facilities
- Interpretation

## ARTICLE 2 - CONTRACT DURATION AND TERMINATION

### SECTION 1

A. The Employer and the Union agree that for the full term of the Agreement (as set forth in Section 2 and, as may be applicable, in Section 3 of this Article) the provisions of this Agreement shall remain in full force and effect and unchanged except as mutually agreed, or as may be required by applicable law.

B. This Agreement supersedes and replaces any and all previous agreements, understandings (whether written or oral) and supplements between the Parties made under the auspice of a previous collective bargaining agreement (CBA) to include midterm bargaining, memoranda of understanding/agreement based on such bargaining, etc.

1. All other items previously administered under the October 1, 2010 revised March 6, 2014 Agreement will be administered in accordance with the applicable laws, Executive Orders, agency policies, and the Code of Federal Regulations (CFR), negating the need for bargaining under 5 USC 7106(a) and 7106(b), if there are future changes in conditions of employment of the bargaining unit related to these items during the term of the Agreement.

2. All past practices which concern mandatory subjects of bargaining are considered superseded with implementation of this Agreement.

C. Provisions of this Agreement that are or become inconsistent with the law, government wide rule, executive order/memoranda, regulation, etc., will be severed and compliance with the law, rule, order, or regulation will take effect upon notification to the Union.

D. Any existing past practices, oral understanding, or provisions of written memoranda of understanding (MOU) or agreement (MOA) existing at the time this Agreement comes into effect, not otherwise identified and merged into this Agreement, or inconsistent with this Agreement, law, or government wide rule, executive order/memoranda, or regulation, are superseded by this Agreement.

1. Where such MOUs/MOAs have a specific term or duration extending beyond the effective/expiration date of this Agreement, and where such MOUs/MOAs are not inconsistent with this Agreement, or inconsistent with law, government wide rule, executive order/memoranda, or regulation, they shall continue in effect until the MOU/MOA expiration date.

2. If no term or duration is specified in the MOU/MOA, the MOU/MOA expires upon completion of the event or no later than 12 months after the MOU/MOA was executed.

E. MOUs/MOAs negotiated under the terms of this Agreement shall be considered to be part of this Agreement and shall have duration concurrent with the Agreement, unless otherwise specified in the MOU/MOA.

1. Agreements negotiated under the terms of this Agreement must undergo Agency Head Review (AHR) requirements of 5 U.S.C. 7114(c).

a. MOUs/MOAs must be provided to the AHR authority within five (5) calendar days of signature, otherwise the AHR review timeframe will commence once a signed copy is received by the AHR authority.

## **SECTION 2**

This Agreement shall remain in effect for seven (7) years from the effective date shown on the first page of the Agreement.

## **SECTION 3**

A. This Agreement shall be automatically renewed from year to year thereafter unless one Party gives the other written notice of its intention to renegotiate this Agreement no less than sixty (60) or more than ninety (90) calendar days prior to its expiration date. If notice to renegotiate is given, the Agreement shall be extended for one (1) year or until a new agreement becomes effective, whichever is earlier.

B. Before the Agreement is extended, it must be reviewed by the Agency to ensure it conforms to the law, Government-wide rules, executive order/memoranda, or regulations.

## **SECTION 4**

In the event that one of the Parties decides to renegotiate this Agreement as provided for in Section 3 of this Article, the following procedures will apply:

A. The Parties will meet within thirty (30) calendar days after notice to renegotiate is given to begin ground rules negotiations. If the Parties agree, ground rules negotiations may be bypassed and the Parties may move directly into substantive negotiations. In the event the Parties elect to enter into ground rules negotiations, the parties will exchange ground rules proposals which must include a reasonable substantive negotiation schedule, no later than ten (10) workdays prior to the date negotiations are scheduled to begin. Two weeks of ground rules negotiations will be scheduled to occur during a four week period (that is, two one week bargaining sessions, each with one week break in between), beginning at 9:00AM and concluding at 5:30PM, with a one half hour lunch break. If agreement is not reached by the end of the four weeks of bargaining, the parties will jointly request mediation within three (3) workdays of the conclusion of the last bargaining session.

B. Ground rules negotiation shall be held at the Employer's Headquarters in Washington, D.C. Each party shall be represented by up to four (4) persons, including the Chief Negotiator who will have collective bargaining authority. Each party will be responsible for its own travel and per diem.

C. The Employer will make a room available for negotiations and caucuses.

**SECTION 5**

All discussions between the Union and the Employer regarding the subject matter contemplated in this Agreement must occur in person at the Department headquarters in Washington, D.C. Teleconference, other electronic means of communicating, is not a substitute for in person meetings.

**SECTION 6**

In the event of any inconsistency or conflict between this Article 2 and any other Article contained in this Agreement, the terms, conditions and provisions of this Article shall govern and control.

6.11.18 HHS Proposals

## **ARTICLE 3 - MID-TERM BARGAINING**

### **SECTION 1**

This Article governs the mid-term bargaining relationship of the Parties over matters which are not covered by this Agreement. The Parties agree that the purpose of this Article is to establish a complete and orderly process to improve efficiency and expedite mid-term negotiations in the interest of the Department, its employees and its stakeholders.

### **SECTION 2**

A.

1. The Union and the Employer agree to be bound by the terms of this Agreement without regard to geographical location or operating division or staff division. Meaning, the exclusive representative, NTEU, is responsible for mid-term negotiations on behalf of all NTEU bargaining unit employees (BUEs) located throughout the Department, without regard to the BUE's geographical location or operating division or staff division. All negotiations shall be carried out at the level of exclusive recognition (i.e., at the NTEU and Department level).

2. The union will timely designate a spokesperson of its choosing from its list of officers, stewards and representatives, for negotiations and will immediately provide the spokesperson's contact information to the Department.

B. The Parties agree, as expressed in Article 2 (Contract Duration and Termination), that the terms of this Agreement shall remain unchanged during its entire term except as provided by Article 2, or as may be required by law.

1. The Parties recognize that operational need, or other situations (i.e. exigencies) permitted by law, may mandate that a change be implemented before bargaining concerning the matter is concluded where an obligation to notify the Union and bargain upon request, exists. Where basic management rights are involved, and an operational need or other situation permitted by law requires the Agency to act without undue delay, the Agency may implement the proposed change and any required impact negotiations will occur or continue on a post-implementation basis.

C. Mid-term agreements negotiated under the terms of this Agreement, must undergo Agency Head Review (AHR) requirements of 5 U.S.C. 7114(c). Mid-Term agreements reached under this Article, must be provided to the AHR authority within five (5) calendar days of signature for AHR.

### **SECTION 3**

A. The Agency will notify the Union of changes that are more than de minimis in conditions of employment that affect the bargaining unit and provide an opportunity for the union to comment. The Agency will consider the Union's input prior to implementing the changes(s). This will completely satisfy the Union's right to bargain over any substantive matter(s) and the Union's bargaining rights under 5 U.S.C. 7106(b)(2) and (3) concerning procedures and appropriate arrangements for employees adversely affected by the exercise of a management right during the term of this Agreement.

B. The Parties agree that no other mid-term bargaining rights exist.

**SECTION 4**

In the event of any inconsistency or conflict between this Article 3 and any other Article contained in this Agreement, the terms, conditions and provisions of this Article shall govern and control.

6.11.18 HHS Proposals

## **ARTICLE 8- DUES WITHHOLDING**

### **SECTION 1**

To make a voluntary allotment for the payment of Union dues, an employee must:

- A. Be an employee in the unit covered by this Agreement;
- B. Be a member in good standing of the Union;
- C. Have a regular net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues;
- D. Have no other current allotment for the payment of dues to a labor organization; and,
- E. Submit a written request to the Employer's designated official (EDO), authorizing the deduction on SF-1187 ("Request and Authorization for Voluntary Allotment of Compensation for Payment of Labor Organization Dues").

### **SECTION 2**

The Employer shall deduct dues only for those pay periods where the employee's net salary, after other legal and required deductions, is sufficient to cover the amount of the authorized allotment for dues.

### **SECTION 3**

An employee may authorize an allotment of only those dues which are the regular and periodic dues required by the Union for that employee. Initiation fees, special assessments, back dues, fines, and similar items are not considered dues and shall not be deducted.

### **SECTION 4**

- A. The Employer shall withhold dues on a biweekly basis conforming to the regular pay period. Upon receipt of a properly completed SF-1187, the Employer will initiate processing within ten (10) workdays. The Employer shall thereupon begin to deduct dues as of the next complete biweekly pay period after processing is complete. The EDO shall document the receipt of the SF-1187 in writing.
- B. If a Union votes to increase/decrease dues, NTEU will submit an SF-1187 for all affected members reflecting the increase/decrease, to ensure proper recording. The Employer shall thereupon begin to deduct dues as of the next complete biweekly pay period. The EDO shall document the receipt of the SF-1187 in writing.
  1. In this increase/decrease dues scenario, the original SF-1187 anniversary date will be the one utilized to establish proper revocation dates.

### **SECTION 5**

- A. An allotment shall be effective for one (1) year after the first deduction, and cannot be revoked during that time except as specified in 5 U.S.C. 7115(b). At the first pay period after the anniversary of the first deduction, the allotment shall expire.
- B. To renew an allotment past the one (1) year, the employee may submit an SF-1187 at any time during the thirty (30) calendar-day period beginning before the anniversary date of the first deduction, to the EDO. If the employee does not submit the SF-1187 prior to the thirty (30) calendar-day period of his/her anniversary date of the first deduction, the allotment will expire. An SF-1187 that is not received in a timely fashion will be treated as a new request under Section 4.

## **SECTION 6**

If exclusive recognition should cease to exist for the covered unit, all allotments shall be terminated. In addition, the Employer shall terminate an individual employee's allotment when:

- A. The employee ceases to be a member in good standing of the Union;
- B. The employee is reassigned, transferred, or otherwise excluded from the bargaining unit; or
- C. The employee is separated from the Department.

Termination of allotments as required in (A) and (B) shall be effective on the first full pay period following receipt and necessary processing of the appropriate notice by the EDO. Terminations as required by (C) shall be effective as of the date of separation. However, when separation occurs during a pay period, the Employer shall withhold the allotment from the employee's salary for that pay period.

## **SECTION 7**

It is the responsibility of the Union to:

- A. Provide SF-1187;
- B. Certify on the SF-1187 the amount of dues to be withheld each biweekly pay period;
- C. Certify to the EDO when there is a change in the amount of the Union dues (changes can be made only once every twelve (12) months and are not implemented until the first complete pay period after 30 calendar days from receipt);
- D. Promptly notify the EDO when an employee with an allotment ceases to be a member in good standing with the Union;
- E. Ensure its members understand the conditions, procedures, and time limits which they must meet in order to voluntarily renew allotments, to include providing the employee with their deduction anniversary date;



- F. Promptly refund an erroneous remittance to the Employer; and timely notify the EDO when any changes occur; and,
- G. The NTEU President, or designee, shall make the necessary certifications required by this Section for the Union.

**SECTION 8**

- A. It is the responsibility of the Employer to:
  - 1. Ensure payment of net dues in accordance with established accounts;
  - 2. Promptly send to the Union the balance due if it erroneously underpays a payment of net dues;
  - 3. Upon request, provide the Union or employee with their deduction anniversary date; and,
  - 4. Inform the Union of the EDO responsible for the reports and updates of Union dues deduction annually and upon change of EDO.

**SECTION 9**

The Employer shall provide biweekly Union dues deduction reports to the NTEU President, or designee. The reports shall show, by operating division or staff division office:

- A. Names of members for whom deductions are made, and amounts;
- B. Total number of members for whom dues are withheld;
- C. Total amount withheld; and,
- D. Net amount remitted.

**SECTION 10**

If the Parties are negotiating a new Agreement at the time this Agreement would otherwise terminate, the dues withholding provisions contained in this Article shall be extended until a new Agreement is reached.

## ARTICLE 9 – UNION ACCESS TO EMPLOYER SERVICES

### SECTION 1

- A. As a responsible steward of the American Taxpayer, the Parties recognize the need to utilize space in a manner consistent with space saving initiatives aligned with Department and other Federal initiatives to reduce office footprints and fiscal impacts.
- B. As such, the Employer agrees to provide the Union dedicated private office space for the designated recognized entity, NTEU, for the conduct of official business. This space shall be provided in the vicinity of the NTEU President's locality and will not be the regularly assigned office for any individual. One additional office shall be provided in the Washington, DC headquarters region for use as designated by the NTEU President, if desired. Under no circumstances will Union office space be required to exceed 200 square feet. Use of this space will be subject to paragraph C below.
- C. The Union agrees to pay the Standard Level User Charge (SLUC) for the use of space in paragraph B above as determined by the Agency. The rental amount will be calculated to include a reasonable estimate of the cost of furnishings and other Agency resources provided for use by the Union pursuant to this Article. The Agency will provide to the Union the cost of any space permitted for Union use for the upcoming fiscal year prior to the beginning of the fiscal year, or any portion thereof where a full fiscal year is not available. The Union agrees to remit to the Agency the cost of such space at least 30 calendar days prior to the beginning of the new fiscal year or when otherwise due, if it desires to rent or continue renting the space for the upcoming fiscal year. The Union agrees to pay such rent when due or immediately cede access to the space. Charges will be assessed and paid before the union occupies any dedicated private space. Use of space only intermittently will not impact the rental cost of any space by the Union.
- D. The Employer agrees to provide access to conference room space reservations for the conduct of official business for appointed NTEU representatives for the conduct of official business. These space reservations are to be used for Union meetings with employees, to include during employees' non-duty status. Union Representatives will be responsible for scheduling and cancelling space as needed and failure to adhere to cancellation protocols could result in denial of future reservations.
- E. All union office space is subject to audit requirements and other internal security requirements as any other Department space is, and when needed, Agency officials will not be denied entry to the space.
- F. The Employer agrees that, where available, the Union may have access to the use of Video Teleconferencing and Computer Training Rooms for Union Sponsored Training, as approved by the Employer. The Union will have the same access as other groups.

## SECTION 2

The Union shall be responsible for furnishing its own equipment (laptops, mobile devices, printers, etc.) as to relieve any burden of audit accountability and internal security requirements by the Department. The Union will be provided Wi-Fi access by the Department, where available.

## SECTION 3

- A. Union representatives shall be permitted reasonable use of public hard line telephones provided by the Employer along with the Department's internal mail system when necessary for conducting labor-management activities not inclusive of internal union business. Consistent with postal and Departmental regulations, the Union shall have use of Employer metered mail limited to labor relations representational matters but not including matters relating to internal Union business. This, however, does not permit the Union representative to use other types of mailing such as express, overnight, registered, certified mail, etc.
1. Official publications of the Union, which may include newsletters, fliers, or other notices, may be distributed on Employer property by Union representatives during non-duty time.
  2. Where available, Union representatives will use centralized employee mail slots/drops to distribute Union publications. Distribution shall be accomplished so as not to disrupt operations. All such materials shall be properly identified as official Union issuances.
- B. The Employer agrees to provide public area access to copying machines for representational business. Use of copiers shall be reasonable and shall not substantially interfere with conduct of official business. The Union will use private sector sources when twenty (20) or more copies of a single document are required. The Union will assume responsibility for arranging those services and related costs.
- C. The Employer agrees to provide public access to "FAX" machines for the transmission of documents from the Union to the Employer at different locations. Use of such machines shall be reasonable and shall not substantially interfere with the conduct of official Employer business.
- D. The Employer will provide the Union with access to a NTEU email address, and a single email address for each of its regional stewards who are Agency employees. The provision of additional email addresses for union use will occur at the expense of the Union. The Union is subject to the same standards that apply to all users as established by Departmental policy, to include cybersecurity training requirements, machine audits for units using Department systems, etc. Non-Agency employees will not receive internal Agency email addresses.

- E. Where available, the Employer agrees to provide the Union physical space for official Union materials on public bulletin boards. Prior to posting, all such union materials must be approved by the ASA, or designee and will be limited to the designated space and shall be properly identified as official Union issuances.
- 1. The Union is responsible for the content of all Union materials posted or distributed.
    - a. Union postings will be maintained in an orderly condition.
    - b. Posted material shall be pertinent to the conduct of workplace business and not related to partisan political matters.
    - c. Posted and distributed Union materials shall not malign or negatively refer to specific managers or individuals.

#### **SECTION 4**

- A. Regardless of jurisdictional laws, absent written consent from all Parties (with the exception of court reporting transcripts in the conduct of official business), the recording (audio, visual, or any other form) while conducting Union business in the capacity of an exclusive representative (on or off premises) is prohibited.
- B. Access to Employer policies, documents, correspondence and so forth, to include items related to an individual employee, are for official business use only and will not be distributed, posted, or shared in any way outside the strict scope of the business capacity in which they are used by the exclusive representative.
  - 1. All laws, (i.e. the Privacy Act and others) will be observed by all Parties in the handling of Agency documents and records.

#### **SECTION 5**

In the event of any inconsistency or conflict between this Article 9 and any other Article contained in this Agreement, the terms, conditions and provisions of this Article shall govern and control.

## **ARTICLE 10 – UNION REPRESENTATIVES/OFFICIAL TIME**

### **SECTION 1**

A. This Article provides an equitable process for the allocation and approval of official time for representational activities as negotiated pursuant to the Federal Service Labor-Management Relations Statute (FSMLRS or Statute), and shall be administered in accordance with said Statute and this Agreement.

B. "Union representatives" as used in this Article, means any employee representing the exclusive representative (in this case as a duly designated NTEU Union representative).

C. This Article respects the Statute's goals of promoting collective bargaining while honoring the Statute's requirement that its provisions be interpreted to promote an effective and efficient government. The Agency and the Union share the responsibility to ensure that any official time used for representational activities:

1. Is authorized prior to use;
2. Is used appropriately, in accordance with the Statute and this Article; and,
3. That appropriate recordkeeping mechanisms are utilized for tracking and recording all time by all union representatives for performing representational activities during the term of the Agreement as described in this Article.

D. In the interest of effective and efficient government as stewards of the American tax payer, abuse of any official time used for union representational matters, to include failure to timely and accurately report the time used, will not be tolerated and may result in administrative action against the union officer or representative at the Employer's discretion and will be procedurally addressed as follows:

1. First offense = The NTEU President is notified and the Union representative receives a warning;
2. Second offense = The NTEU President is notified and the Union representative is prohibited from using official time for representational activities for thirty (30) calendar days; and
3. Third offense= The NTEU President is notified and the Union representative is prohibited from using official time for representational activities for the remainder of the duration of the Agreement.

E. Taking an administrative action as defined above does not prohibit the agency from affecting discipline or adverse action as appropriate.

### **SECTION 2**

In accordance with 5 U.S.C. Section 7131 of the FSLMRS, Union Officers and Representatives (not to exceed the number of individuals designated as representing the Employer for such purposes) will receive reasonable amounts of official time within the scope of the FSLMRS for:

- A. Negotiations of collective bargaining agreements and attendance at impasse proceedings (excluding travel and preparation time) under 5 U.S.C. Section 7131 (a) of the FSLMRS.
- B. Participation in any phase of a Federal Labor Relations Authority (FLRA) proceeding, for which official time is ordered by the FLRA under Section 7131 (c) of the FSLMRS.

### **SECTION 3**

Union representatives and bargaining unit employees shall not perform any activity relating to internal Union business on official time, including the solicitation of membership, elections of labor organization officials, and collection of dues. These activities must only be performed while in a non-duty status, i.e., leave without pay (LWOP) or annual leave.

### **SECTION 4**

- A. The NTEU President will provide the ASA, or designee, written notification of the name, union position, designated representational time (official time), duty station, telephone number, organizational unit, and immediate supervisor of each Union representative within ten (10) workdays of the effective date of this Agreement so that appropriate discussions can be held with these supervisors and managers.
- B. The NTEU President shall provide the ASA, or designee, the same information in writing of any change in the list of Union representatives no later than ten (10) workdays before the effective date of the change. Temporary changes, e.g., to cover another representative's absence, shall not be utilized to increase the number of representatives entitled to use official time, provided by this Article. The NTEU President will indicate the duration of any temporary appointment.

### **SECTION 5**

The Parties agree that beyond the reasonable official time required under 5 U.S.C. 7131(a) and (c), no additional official time is reasonable, necessary, and in the public interest; therefore the Parties agree that no official time shall be granted under 5 U.S.C. 7131(d).

### **SECTION 6**

- A. Union representatives are required to stagger their use of authorized and approved official time over the course of the fiscal year. Union representatives will work out official time usage for official representational purposes consistent with this Agreement with their supervisors to accommodate both union representational activities and Agency assigned duties.

B. The NTEU President will maintain close oversight over the use of official time to ensure that official time is kept to a minimum.

## SECTION 7

A. Union representatives will be permitted to leave their assigned work area on official time, as appropriate, as authorized under and subject to this Agreement, including the limitations on pay and official time, after:

1. Providing written or verbal notification to their immediate supervisor or appropriate Management Official;
2. Providing a good-faith estimate of the amount of time for which release is requested;
3. Indicating the destination; if any.
4. Specifying the appropriate representational category.

B. If there is more than one (1) Union representative reporting to the same supervisor, the parties agree to work closely and constructively to reduce the impact of multiple representatives on performance of the work of the unit. Management may initiate a reassignment if management determines that the impact on the work unit is not satisfactorily resolved.

C. A Union representative shall, to the extent possible, schedule his/her absences so as not to compromise important work assignments, impede work, or interfere with the effective, efficient, and timely accomplishment of the Agency's mission. The supervisor shall, to the extent possible, schedule assignments, and inform Union representatives of assignments, in advance in order to reduce the likelihood of conflicting demands. The time spent in carrying out the representational duties described in this Article may require some adjustment of a representative's workload if, in the judgment of the Employer, an adjustment is necessary and practicable.

Supervisors and Union representatives are encouraged to meet, periodically, to forecast official time use and to assess potential impact of official time on office workload.

D. Union representatives will be permitted to leave their assigned work area on official time as authorized under this agreement only after reporting to their immediate supervisor or appropriate management official and identifying the purpose of their activity. The representative will be released unless a union representative's presence is necessary to meet customer service, the work of the office requirements, or the effective, efficient, and timely accomplishment of the office's mission. If the representative cannot be released at the time of the request and the amount of time the parties agree to, is reasonable, the representative and the supervisor will arrive at a mutually agreeable time for departure. The Union

representative will be given a brief amount of time to inform any bargaining unit employees involved in the delay.

E. If management is unable to approve a request for official time, management will, within one workday, identify an alternate time for use of the requested official time.

F. Upon entering any work area to meet with an employee, the representative will advise the immediate supervisor of his or her presence, the employee to be contacted, and the estimated duration of the meeting.

G. On occasion, discussions between the Union representative and the employee may take longer than originally anticipated. In these cases, both will contact their supervisors telephonically or by e-mail to notify them of the need to extend the anticipated return time and the amount of additional time needed. The supervisor (of the employee and union representative) will determine if the time can be extended for each individual or if rescheduling is necessary due to work requirements.

H. When the Union representative needs to leave the work site and his or her supervisor is temporarily absent from the site, the representative will request release from another supervisor or manager in the chain of command prior to leaving the work site.

## **SECTION 8**

A. Each Union representative shall timely submit to his/her supervisor a biweekly written report of the amount of official time that he/she has spent on Union activities covered by this Article through the Employer's time and attendance system, and shall provide an amended report if official time is used after submission of their time and attendance through the Employer's system.

B. Union representatives will use the following categories in completing their time and attendance report-

Term Negotiations (LRT): This category is for reporting official time hours used by union representatives to negotiate a basic collective bargaining agreement or its successor, as provided in 5 U.S.C. 7131.

## **SECTION 9**

In the event of any inconsistency or conflict between this Article 10 and any other Article contained in this Agreement, the terms, conditions and provisions of this Article shall govern and control. This includes but is not limited to the use of official time contained in Article 13: New Employee Orientation.



## **ARTICLE 45 – GRIEVANCE PROCEDURES**

### **SECTION 1**

The purpose of this Article is to provide a fair, simple, mutually satisfactory and expeditious method for the settlement of grievances of the Parties.

### **SECTION 2**

A. A grievance is defined as any complaint:

1. By any bargaining unit employee concerning any matter related to the employment of the employee;
2. By the Union concerning any matter related to the employment of any bargaining unit employee; or,
3. By any employee, the Union, or the Employer concerning:
  - a. The effect or interpretation, or a claim of breach, of this Collective Bargaining Agreement; or,
  - b. Any claimed violation, misinterpretation, or misapplication of any law, rule or regulation, affecting conditions of employment.

B. The term grievant in this Article refers to the aggrieved Party, which is the bargaining unit employee, the Union, or the Employer.

### **SECTION 3**

A. Grievances on the following matters are excluded by Statute:

1. Any claimed violations relating to prohibited political activities;
2. Retirement, life insurance, or health insurance;
3. Suspension or removal for national security reasons;
4. Any examination, certification, or appointment; or,
5. The classification of any position which does not result in the reduction in grade or pay of an employee.

B. Grievances on the following matters are excluded by this Agreement:

1. Written notice of proposed action;
2. Letters of Counseling/Warning/Instruction or other informal discipline;

3. Performance progress reviews;
4. Opportunity to Demonstrate Acceptable Performance or Performance Improvement Plan;
5. Non-selection for promotion from a group of properly ranked and certified candidates;
6. Removal of a probationary employee during his or her probationary period;
7. Non-adoption of a suggestion, disapproval of an honorary or discretionary award not directly related to job performance;
8. The content of published Department of Health and Human Services-wide policy, except where it conflicts with this Agreement, law, or government-wide regulations;
9. Adverse personnel action (as enumerated in Section 7512 of Chapter 75 of Title 5, United States Code) taken against probationary, temporary, or excepted service employees;
10. Adjudication of claims the jurisdiction over which is reserved by Statue and/or regulation to another Department, such as, but not limited to, Department of Labor determinations on workers compensation;
11. Claims alleging violations of the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 et. seq.;
12. Actions taken by the Employer required by lawful court orders (i.e., garnishment of wages for indebtedness or child support);
13. RIF actions are excluded from the negotiated grievance process;
14. Decisions regarding performance awards, on the spot awards or any other types of awards;
15. Decisions regarding incentive pay;
16. Disputes regarding the grant or denial of official time related to union representational activities;
17. Disputes related to grants of authority under the management rights Section 7106 of the FSLMRS;
18. Expiration or other termination of an allotment of union dues under the terms of this Agreement;
19. Determinations of an employee's performance rating;
20. Performance based actions;
21. Disciplinary or adverse actions;

22. Disputes regarding a failure of the employer to notify employees of the right to furnish notices to unions under Article 12;
23. Disputes regarding leave and any employer required notices associated with leave, including but not limited to annual leave, sick leave, and leave without pay (LWOP);
24. Disputes regarding the employer's failure to excuse tardiness;
25. Disputes regarding overtime work, holiday work, and compensation time;
26. Disputes regarding overpayment actions;
27. Disputes regarding within grade increases or career ladder promotions;
28. Disputes regarding the termination of temporary or term employees, including but not limited to the failure to provide two (2) weeks advance notice;
29. Disputes regarding converting a full time employee to a part time employee;
30. Disputes regarding training opportunities for employees;
31. Disputes regarding travel, including but not limited to the reimbursement for travel related expenses;
32. Disputes arising out Equal Employment Opportunity or affirmative action complaints;
33. Disputes regarding a safe and healthy working environment, including but not limited to requirements under Article 50 of this Agreement;
34. Disputes regarding the employer's denial of request to withdraw a resignation or retirement application;
35. Disputes regarding the employer's decision on security issues and failure to provide the Union notice;
36. Disputes regarding Labor-Management Relations Committees;
37. Disputes regarding alternative workplace program, alternatively known as telework;
38. Disputes regarding alternative work schedules (AWS);
39. Disputes regarding New Employee Orientation;
40. Disputes regarding public transportation subsidies; and/or
41. Disputes regarding whether these exclusions apply to a particular grievance.

#### **SECTION 4**

Any aggrieved employee affected by discrimination, a removal, or other adverse action, or actions based on unsatisfactory performance, may, at his or her option or through his/her exclusive representative, raise the matter under a statutory appeal procedure or under this negotiated grievance procedure, but not both. This choice of remedy venue shall not exist for issues excluded from this negotiated grievance procedure under Section 3 of this Article as they are excluded from the negotiated grievance process altogether. Pursuant to 5 USC 7121 (d), an employee shall be deemed to have exercised his or her option under either a statutory procedure or a negotiated procedure at such time the employee or Union timely initiates an action under the applicable statutory procedure or timely files a negotiated grievance in writing according to this Article, whichever occurs first. Similarly, an employee affected by a prohibited personnel practice under 5 U.S.C.2302 (b) (I) of the Civil Service Reform Act, which lists types of discriminatory personnel practices, may raise the matter under a statutory procedure or the negotiated procedure, but not both. This choice of remedy venue shall not exist for issues excluded from this negotiated grievance procedure under Section 3 of this Article as they are excluded from the negotiated grievance process altogether.

## **SECTION 5**

Negotiated grievances may be initiated by bargaining unit employee(s) covered by this Agreement, the Union, by the Union on behalf of a bargaining unit employee(s), or by the Agency. Representation of bargaining unit employees shall be the sole and exclusive province of the Union. Except as provided by law this is the exclusive procedure available to bargaining unit employees, the Union, or the Agency, for the resolution of negotiated grievances within this Agreement's scope.

## **SECTION 6**

A. Level of Recognition: All grievances, including Union and Agency grievances, will be filed at the National level of recognition by the Union President or designee or the ASA, or designee.

B. Union Representation: When electing to be represented, a bargaining unit employee may only be represented in the negotiated grievance procedure by a union representative who has been properly designated as a NTEU Representative under Article 10 Section 4, unless the employee chooses to self-represent. This representative must be designated by the NTEU President or designee, and must be identified on the grievance form located in the Appendix to this Article.

C. Informal Resolution: Informal methods of resolution (i.e. discussions between the grievant and the deciding official) are available to the Parties where mutually desired and in the best interest of the Parties, however these informal discussions are not mandatory on either Party and will not toll grievance timelines as indicated in the relevant grievance section, unless otherwise mutually agreed to by the Parties. The use of Alternative Dispute Resolution (ADR) is also an option available to the Parties. Timelines will be tolled once ADR is triggered by a Party, but failure to timely trigger ADR will not in itself serve as an untimeliness excuse.

1. In order to trigger ADR, the requesting Party must notify in writing ADR and the other Party within five (5) workdays after the date of the grievance being filed or the date the Party

became aware of the grievable matter, of the desire to conduct ADR. In situations where ADR was triggered within five (5) workdays of the Party becoming aware of the grievable matter and a grievance was not filed; if the Party desires to pursue a grievance, they must file the grievance within five (5) workdays after completion of the ADR process as provided in Section 6(C)(2) of this Article, or they lose the opportunity to file a grievance.

a. The employee is entitled to Union representation during the ADR process. The Union representative shall not use official time for such representation.

b. The Deciding official, or designee, is entitled to Labor Management Relations representation during the ADR process.

2. Once ADR is invoked, a period of twenty (20) workdays shall be reserved for resolution under the ADR process.

a. If resolution of the matter has not been accomplished within the designated twenty (20) workday ADR timeframe, the Parties must continue processing the grievance within five (5) work days. Absent a mutually agreed to extension, the grievance decision will be due within a total of ten (10) workdays after completing ADR.

(i) The ADR Counselor's Report, if available, shall be included as part of the grievance file.

b. If a settlement is reached, it shall be forwarded to ASA, or designee, for review/approval prior to the Parties signature. Settlements must be approved for compliance with Departmental policy, law, rule, regulation and the CBA and must be signed within five (5) calendar days after approval by the ASA, or designee. No settlement may be effected that is not in conformance with applicable law, rule, regulation, departmental policies where applicable, and the CBA.

D. Grievance Form/Delivery: Any grievance filed shall be submitted on the form attached as Exhibit A to this Agreement. Grievants shall complete all sections of the form; otherwise the grievance form may be returned as rejected. A grievance may be presented in person, by mail, or email. If presented in person, signature should be obtained to establish the date delivered. If filed electronically, the delivery receipt or system delivery confirmation will serve as the certificate of service and prove the date received for purposes of the timeline for a response. Copies will be distributed to the Parties and other officials according to the instructions on the form. Forms may be transmitted electronically as PDF files once signed.

E. Grievance Composition. All grievances shall:

1. Identify the type of grievance being filed;
2. Identify a Representative if any;
3. Establish Procedural timelines;

4. Clearly state the factual basis of the grievance, providing sufficient information for the deciding official to understand the basis for the grievance and make an informed decision (Parties shall disclose all issues, concerns and information which is releasable and which it reasonably believes to be relevant to the matter. Failure to disclose an issue or other information during the grievance process will preclude that issue(s) and/or other information from being submitted to an arbitrator);
5. Cite the specific Article(s) and Section(s) of this Agreement, regulation, or law alleged to have been violated or misapplied and any act giving rise to the grievance; and explain how the referenced Section(s) and Article(s) in the Agreement, regulation or law were violated or misapplied;
6. Clearly specify the remedy sought;
7. Identify if a grievance conference is being requested;
8. Be signed by the grievant(s) or the Union representative filing the grievance on behalf of the employee or on its own behalf; and
9. Include the grievance form (when filed by a BUE or the Union) and include all other relevant documentary evidence and written responses that are being offered, or will be introduced to support the grievance.

F. Rejection of Grievance- Allowance for Correction. Grievances may be rejected for:

1. Not clearly stating the factual basis of the grievance or providing sufficient information for the deciding official to understand the basis for the grievance in order to make an informed decision;
2. Not citing the specific Article(s) and Section(s) of this Agreement, regulation, or law alleged to have been violated or misapplied and any act giving rise to the grievance; and explain how the referenced Section(s) and Article(s) in the Agreement, regulation or law were violated or misapplied;
3. Not clearly specifying the remedy sought; and/or
4. Otherwise incomplete grievance submission.

In the case of a grievance rejection, the Deciding official will identify why the grievance is being rejected, stating the alleged defect, and provide the grieving Party three (3) work days to provide the required conforming information. Failure of the grieving Party to timely submit the conforming information will result in denial of the grievance.

G. Denial of Grievance. Grievances will be denied without recourse, if:

1. Filed untimely;

2. Improperly filed by someone other than the Union President or designee, when a Union Grievance or an employee grievance citing union representation;
3. Filed below the level of recognition, when a Union Grievance or an employee grievance citing union representation;
4. Drafted to include issues that are excluded from this negotiated grievance procedure under Section 3 of this Article; and or
5. Not properly filed with the ASA, or designee.

H. Grievance Decisions. All grievance decisions will:

1. Be in writing and state the issue being grieved;
2. Provide a summary of the findings, and the rationale for the decision.
  - a. Issues of arbitrability will be raised in the decision if reasonably known at the time.

3. When the grievant is represented by the Union, the decision shall be presented to the designated Union representative. The decision may be presented in person or by email. When the grievant has elected self-representation, the deciding official or Labor Management Relations Specialist will present the decision to the grievant, and will provide a copy to the Union. If delivered in person, the Union representative, or grievant, to whom the decision is presented, shall sign for receipt and indicate the date received. If served by email, the delivery receipt or system delivery confirmation will constitute both the delivery and receipt date.

4. A supervisor or Union official to whom a grievance is presented for a decision under this procedure is responsible for issuing a timely decision or timely arranging for an extension of the time limit. If a grievance decision is not issued within the established or extended timeframes the grievance and the relief shall be considered denied. The Union or Agency may then advance the grievance to arbitration within the allotted timeframe. The timeframe will start with the next workday after the date the decision was due.

I. Grievance Files: ASA will maintain all official grievance files, including grievances, grievance decisions, relevant documentation, ADR history (if applicable), written clarifications, etc.

J. Extension of Time Limits: The time limits provided in this Article may be extended for good cause. The party requesting the additional time is responsible for formally requesting in writing the extension of time through the appropriate Union or Management Official. Any such request shall specify the reason(s) an extension is needed and specify the additional time requested. The request and response shall be made part of the official grievance file.

## **SECTION 7**

A. Timeframe: A bargaining unit employee grievance shall be filed by the aggrieved employee within ten (10) work days after the incident giving rise to the grievance or when the grievant could reasonably be expected to have become aware of the circumstances giving rise to the grievance.

B. Deciding Official: The grievance shall be presented by the aggrieved employee with the immediate supervisor or designee involved in the incident giving rise to the grievance. The Employee must also provide a copy of their grievance to the NTEU President and ASA, or designee, and clearly identify whether they are electing Union representation. If the employee elects union representation, the Union President or designee must designate who the union representative is.

1. The only exceptions are grievances involving a proposal and deciding official (i.e. a suspension of any kind or an adverse action) or a performance appraisal, which will be filed at the administrative action deciding official level or appraisal reviewing official level. Designees at similar managerial levels may be appointed as designees, if necessary.

C. Employee Election to Representation: On the Grievance Form in the Appendix at the end of this Article, the employee must designate whether they are electing to be represented by the Union or whether they choose to represent themselves. If a bargaining unit employee elects to represent him/herself, they must forward a copy of their grievance to the NTEU President and ASA, or designee. Election to self-representation will not preclude the Union from being privy to and/or attending grievance conferences or other formal meetings related to the employee grievance. The Union may also present its views related to an employee grievance in writing in lieu of sending a representative. Any written Union position shall be made a part of the official grievance file and be considered by the deciding official.

D. Grievance Conference: If properly requested in the written grievance, the deciding official will schedule the grievance conference to occur within five (5) workdays of receipt of the request for the conference or as otherwise mutually agreed.

1. The deciding official will take into consideration any facts brought forth during the grievance conference.
2. If the Employee elected self-representation, the deciding official will notify the Union and the ASA, or designee, of the meeting as soon as practicable but no later than within 24 hours of the date of the meeting. The meeting may be held in person or by phone.
3. Grievance conferences will not last more one than hour, unless mutually agreed.

E. Grievance Decision: The deciding official will issue a written decision within ten (10) workdays after the date of the meeting if a meeting was held or within ten (10) workdays after receipt of the grievance if no meeting was held. The decision shall meet the requirements of Section 6(H) of this Article.

F. Group Grievances: When two (2) or more employees initiate separate grievances involving the same facts or events arising out of the same incident, the grievances shall be consolidated and processed



through the grievance procedure as a single grievance. When processing such a consolidated grievance, no more than two (2) employees covered by the grievance will be permitted to attend any meeting concerning the grievance. This is at the sole discretion of the Employer.

G. If the decision is not acceptable, the Union may invoke Arbitration in accordance with the Arbitration Article in this Agreement.

#### **SECTION 8**

A. Timeframe/Form: Union and Management grievances shall be filed in writing in accordance to the requirements of Section 6 of this Article within ten (10) workdays after the event being grieved or from the date of awareness of the issue of dissatisfaction. The Union shall use the Grievance Form attached in the Appendix to this Article and shall provide all relevant attachments and pertinent material. Failure to properly complete the grievance form will result in the grievance being rejected.

B. Representative: The grievance form will identify the Union representative or management official handling the grievance.

C. Grievance Conference: If properly requested in the written grievance, a grievance conference will be scheduled to occur within ten (10) workdays of receipt of the request for the conference or as otherwise mutually agreed.

1. The deciding official will take into consideration any facts brought forth during the grievance conference.

D. Grievance Decision: The deciding official will issue a written decision within fifteen (15) workdays after the date of the grievance conference if a meeting was held or within twenty (20) workdays after receipt of the grievance if no meeting was held. The decision shall meet the requirements of Section 6(H) of this Article.

#### **SECTION 9**

A. Only the Union or the Employer can refer a grievance to arbitration.

B. Invocations to arbitration will be made within twenty (20) workdays from the date on which the disputed grievance decision is or should have been issued. All invocations will be made at the National level of recognition.

#### **SECTION 10**

In the event of any inconsistency or conflict between this Article 45 and any other Article contained in this Agreement, the terms, conditions and provisions of this Article shall govern and control.

**Article 45 - Appendix A- GRIEVANCE FORM**

Department of Health and Human Services and NTEU

1. Name of Grievant: \_\_\_\_\_

2. Type of Grievance: (circle one)

- a. Employee
- b. Union
- c. Management

3. Point of Contact for the grievance: \_\_\_\_\_

4. Designated Representative/contact info: \_\_\_\_\_

5. Is a grievance conference being requested: (circle one)

- a. Yes
- b. No

6. Date of Alleged Violation (Procedural Timelines for Grievance): \_\_\_\_\_

7. Alleged Violation:

a. Contractual:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Specific description of how each contract article, section and/or subsection was violated:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. Statutory or regulatory violations:

\_\_\_\_\_  
\_\_\_\_\_

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d. Specific description of how each statute or regulation was violated:

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8. Underlying facts of the grievance:

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9. Remedy Requested:

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Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Relevant Attachments/Supporting Evidence:

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All Grievances must be distributed to:

1. NTEU President
2. Agency, ASA, or designee
3. For Employee Grievances only: The immediate supervisor or designee involved in the incident giving rise to the grievance, except when a grievance involves a proposal and deciding official (i.e. a suspension of any kind or an adverse action) or a performance appraisal. In which case, the Grievance will be distributed to the administrative action deciding official or appraisal reviewing official, or designee.

Note:

1. May attach additional sheets of paper as necessary. Each additional sheet should be appropriately labeled.
2. Issues and/or allegations not raised during the grievance process will not be addressed by an arbitrator (See Article 46 of this agreement).

## **ARTICLE 46- ARBITRATION**

### **SECTION 1**

This Article shall be administered in accordance with the Federal Service Labor-Management Relations Statute (FSLMRS), Title 5, U.S. Code Chapter 71, and this Agreement. This Article establishes the procedures for the Arbitration of disputes between the Union and the Agency, which are not satisfactorily resolved by the negotiated grievance procedure found in Article 45 of this Agreement.

A referral to Arbitration can be made only by the Union President or ASA, or designee. The Parties agree their interests and those of the employees are served by providing economical and expeditious Arbitration procedures to resolve promptly and finally disputes which other good-faith means have failed to resolve.

### **SECTION 2**

A. The Parties agree to the following procedures to designate arbitrators to be used for all disputes properly referred by either Party for disposition under the provisions of this Article.

B. The party invoking arbitration (moving party) shall request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service (FMCS) by submitting an appropriate request to the FMCS including payment of any panel fee within five (5) workdays after the date arbitration is invoked. The Party requesting the panel list shall specify that the arbitrators be members of the American Arbitration Association (AAA) and that the panel contain arbitrators within reasonable proximity to the site of the dispute. In addition, for grievances involving allegations of equal employment opportunity (EEO) discrimination, only arbitrators with experience in EEO or civil rights case law will be requested. The moving party will request that the FMCS serve a copy of the panel list on both Parties (NTEU President and ASA, or designee).

C. The hearing will be held within the commuting area of the site of the dispute. The site of the dispute is defined as the location of the grievant's official duty station. For employees whose official duty station is their home due to telework arrangements, the site of the dispute will be the official duty station the employee would otherwise be assigned to, but for the telework arrangement. The site of the dispute for grievances designated as National (not an employee grievance invoked by the Union) is Washington D.C. The Agency will secure a location for the hearing within the Agency's facilities. Each party will be responsible for any travel-related expenses and per diem associated with travel to the location of the hearing for its advocates and witnesses.

D. Within ten (10) work days after receiving the list of arbitrators from the FMCS, the parties shall select an arbitrator. The parties shall each strike one (1) name from the list alternately and then repeat the procedure until only one (1) name remains. The person whose name remains shall be selected as the arbitrator. The moving party will arrange the logistics for a coin toss to determine the order for striking, i.e., whether management or the union strikes first. The logistics will include provision of the coin and securing a mutually agreeable time, date, and location for the coin toss. The

non-moving party will flip the coin. If the coin lands "heads up," the union strikes first; if the coin lands "tails up," the Agency strikes first.

E. In the event the Parties fail to agree to an arbitrator under Section 2(D) of this Article, the Agency may designate an arbitrator. FMCS will also be notified in the event of a direct designation in accordance with FMCS procedures.

F. The arbitrator selected must be contacted by the party invoking arbitration within five (5) workdays after the date of selection to pursue a hearing date, and/or no later than five (5) workdays after the arbitrator contacts the parties for availability. This provision will also apply when a selection is made unilaterally in accordance with Section 2(E) of this Article. Failure of the moving party to notify the arbitrator and pursue an arbitration hearing date within the above timeframes will be considered a withdrawal of the grievance from arbitration with prejudice.

G. The cost of obtaining a list of arbitrators from the FMCS shall be initially borne by the party invoking arbitration. However, the party whose principal contention is rejected by the arbitrator shall bear the ultimate cost for the arbitration referral fee, which shall be included in the allocation of fees determined by the arbitrator. If a grievance is scheduled for arbitration and subsequently settled prior to the date of the hearing, the chosen arbitrator may be utilized to hear the next arbitration on the docket for the same site of dispute if the parties mutually agree.

H. The moving Party will obtain a new list should a chosen arbitrator recuse himself or herself for any reason (to include self-disqualification) or if the chosen arbitrator is unable to schedule the case for hearing within ninety (90) calendar days of the date of selection. The arbitrator may be used for the next case scheduled for the same site of dispute if the parties agree. A new arbitration panel will be requested within ten (10) workdays of notification and the parties will select another arbitrator for the former case using the procedures in Section 2(D) of this Article when a new list is obtained.

### **SECTION 3**

In the interest of cost reduction, efficiency and quicker resolution, the parties will give serious consideration to (1) combining hearings when the site of dispute is the same and there is a similarity of facts, law, or witnesses or (2) seeking third party mediation from FMCS or FLRA's Collaboration and Alternative Dispute Resolution Office (CADRO) to pursue settlement while hearing dates are pending.

### **SECTION 4**

A. The arbitrator shall have the jurisdiction and authority to hear and decide the arbitration assigned to him/her except:

1. The arbitrator will have no authority to add to, subtract from, alter, amend, or modify any provision of this Agreement.
2. The arbitrator will have no authority to address any matters excluded from the grievance procedure regardless of the specific allegation(s) or issue(s) raised.

3. The arbitrator will have no authority to consider new issues, allegations, arguments and defenses raised by the grievant that he/she had not specifically and previously raised, in writing, in the formal grievance. Mere references to an alleged violation of a contract article or to issues, allegations or defenses, without reference to the underlying facts and circumstances supporting the assertion, shall not be arbitrable.

B. The grievant (i.e., moving party), has the burden of proof regarding the merits of the grievance by a preponderance of the evidence.

C. In making awards, the designated arbitrators shall be bound to apply, as necessary, the provisions of all relevant statutes, regulations, and executive orders.

D. Any disputes regarding arbitrability will be resolved in accordance with Section 5 of this Article.

E. The arbitrator's decisions will be final and binding, except as altered on appeal or provided by law.

F. The arbitrator may retain jurisdiction over a case when necessary to clarify the award.

#### **SECTION 5**

A. The arbitrator designated to hear the case on the merits shall have the authority to make all determinations regarding grievability and arbitrability. If the Agency and/or the Union considers a grievance to be nongrievable or nonarbitrable, that issue shall be raised and determined as follows-

1. A party challenging the arbitrability of a grievance based on an alleged failure to timely file a grievance, invoke a grievance to arbitration or failure to follow the arbitration procedures, may require that the hearing be bifurcated to provide for a separate hearing and decision to decide the arbitrability issue. A hearing on the merits shall not be scheduled to commence prior to receipt of the arbitrator's decision.

2. The arbitrator shall have the authority to make all determinations regarding grievability and arbitrability in accordance with this Agreement. If the Agency or the Union considers a grievance nongrievable or nonarbitrable, it should communicate such determination to the other party at the earliest possible time after the determination is made.

#### **SECTION 6**

A. As set forth in this Agreement, a grievance may be referred to arbitration by either party upon an unfavorable grievance decision, or if no grievance decision is received by the grievant or representative, no later than within twenty (20) workdays after the date the grievance response was due. The right to invoke Arbitration is limited to the Union and the Agency at the level of recognition; an employee may not independently invoke any of the provisions of this Article.

B. The party invoking arbitration shall notify the other party of its intention to invoke the provisions of this Article. Such notification shall be in writing and will include a copy of the grievance being arbitrated, and the decision, if any. The notice shall also designate the name of the representative of

the moving Party and be signed and dated by the Union President or designee, or ASA, or designee, as appropriate.

Notification by either party of its invocation of arbitration will be served by email with delivery receipt, or hand delivery. If the notification is served by email, the date of service is established by the Delivery Receipt date or verified system delivery date. Failure to timely serve an invocation will result in the invocation being untimely and will render the grievance not arbitrable.

C. Submission Agreement:

1. The moving party shall schedule a meeting with the other party, in person no later than ten (10) work days after the invocation of Arbitration is served on the receiving party. At this meeting the parties shall consider possible settlement and attempt to agree on a submission agreement which shall include a statement of the issue(s) to be referred, proposed joint exhibits and stipulations, and, as appropriate, the procedures and the manner of presentation to be followed. The moving party will ensure the other party has the basic documents at hand in preparation for the meeting, (i.e., the grievance, any grievance decisions issued at the applicable steps, and a copy of the invocation). If the other Party is missing any documents, the moving Party will provide them at least two (2) workdays in advance of the meeting. Each Party is responsible for its travel costs and/or per diem for the meeting.

2. Absent settlement, the parties shall prepare a joint letter submitting the matter in dispute to the arbitrator. The letter shall present in question form the issue on which arbitration is sought, including questions of arbitrability. In the event the parties cannot agree on the issue submitted or the procedures, each shall formulate its own version of the issue(s) and submit it to the arbitrator. Thereafter, the Parties may request to meet jointly with the designated arbitrator to attempt to resolve procedural differences and, where possible, execute a submission agreement reflecting any such understanding(s) reached. In the event the Parties cannot decide, the arbitrator may decide these issues.

3. A joint exhibit list, witness lists and any stipulations agreed to shall be signed by the parties and attached to the submission agreement, which upon completion shall be delivered by the moving party to the arbitrator no later than ten (10) workdays prior to the hearing.

D. The scope of the arbitration must be set forth in the grievance form and in the Agency's responses. Copies of any documents filed with the arbitrator at any stage of the arbitration proceeding shall be simultaneously served on the other party.

E. There will be no communication with the arbitrator on the merits of the matter, unless both Parties are participating in the communication.

F. Each Party shall be responsible for securing its respective witnesses.

1. The grievant, grievant's representative, and Union witnesses who are Department employees shall be granted a reasonable amount of duty time for purposes of preparation for, and testifying at the hearing, if in a duty status.

2. A written list of each Party's prospective witnesses shall be exchanged at least ten (10) work days prior to the hearing date, briefly identifying the relevance of the testimony expected from each witness. Only material and relevant witnesses shall be called. Either party may object to the other party's witnesses on the grounds that the witness' proffered testimony is not relevant, probative or competent. The arbitrator will be requested to resolve the disputes over the other party's witnesses by a conference call with the parties at least five (5) calendar days prior to the hearing.

3. The Agency shall make all reasonable efforts to ensure approved witnesses who are employed by the Agency are released on duty time for the hearing if otherwise in a duty status. However, the Union is responsible for notifying the employee-witness's supervisor of the date and time of the hearing and the approximate time the employee will be needed to testify. The Agency advocate will be copied on all communications. Testimony may be in-person or by videoconference or by telephone.

G. The arbitration hearing shall be conducted between the hours of 9:00 AM to 5:00PM at the location of the hearing Monday through Friday, unless the parties agree otherwise. The parties may agree to continue the hearing beyond 5:00PM but will not be compelled to do so.

H. The arbitrator will be requested to issue his/her award promptly and normally no later than thirty (30) calendar days after the conclusion of the hearing or after the final date for the filing of post-hearing briefs, if any. The arbitrator will issue a full written opinion, identifying all significant issues and issues of first impression.

I. The appropriate Party will take the actions upon receipt of the final award within thirty (30) calendar days, unless the Party files an exception or appeal within the appropriate time limits.

J. If no exception or other appropriate legal action is filed within the time limit established by Statute and/or FLRA regulation, the award is final and binding.

K. The failure of the moving Party to adhere to the time requirements of this Article, and/or, failure to take reasonable and definitive steps to expeditiously pursue the arbitration procedures by having a hearing scheduled to be held within six (6) months of the case being invoked, will result in automatic dismissal of the grievance from arbitration and foreclose further processing. In any event, any case not scheduled for a hearing within six (6) months of invocation will be considered withdrawn by the moving party.

L. In computing periods of time for the purposes of this Article, the first day of counting will be the day following the date of the act or event (e.g., the day after the employee received a final decision to take discipline or the day after the deadline for submitting a response to a grievance). If the last day in the count is a Saturday, Sunday, or a legal holiday, that day shall not be counted, and the last day will



be the next regular work day. This recognizes that days the employer's office may be closed due to weather or other emergency, but employees are authorized to telework, such days will be considered regular workdays for purposes of the count.

## **SECTION 7**

A. The party requesting transcription will ensure that each party (and the arbitrator) is furnished a copy of the transcript in electronic or hard-copy form. The party whose principal contention is rejected by the arbitrator shall bear the ultimate cost for the transcription services and will reimburse the prevailing party, if applicable, for payment of the transcription fees in the same proportion as the arbitrator's fees. The arbitrator will determine final responsibility for payment of the transcription in all other cases. All expenses are allocated by the arbitrator.

B. Costs of regular fees, including reasonable travel expenses of the arbitrator selected to hear the case, will be borne by the losing Party. The arbitrator will have authority to determine the costs when the award is a split decision.

C. Travel costs of each party (and witnesses thereof) to travel to the hearing site will be the responsibility of the losing Party.

D. In the event the parties mutually agree to postpone, delay and/or cancel an arbitration proceeding, the parties shall share equally any fees charged by the arbitrator for such cancellation. In the event there is no mutual agreement, the Party who postpones, delays, or cancels the hearing shall pay all fees charged.

## **SECTION 8**

Where the arbitrator's award is binding on the parties thereto, the Agency and the Union retain their rights to file exceptions to an award with the FLRA, EEOC, or MSPB pursuant to their respective regulations, or with the Federal Courts as provided by law.

## **Article xxx, Employee Space and Facilities**

This Article applies to all HHS-occupied buildings, lease acquisitions, new construction, renovations, and improvement projects.

### **SECTION 1**

The parties recognize that space and facilities are major resources available to HHS to facilitate the accomplishment of its missions. The parties established this Article to maximize space and to optimize Employee performance, productivity, and morale while conserving HHS funds by ensuring the efficient utilization of HHS occupied space. This Article establishes the procedures for employee moves (e.g., construction projects, restructuring of office space, realignment of an organization, and swing space) and alternate workstation solutions (e.g. desk sharing, workspace sharing, hoteling, and hot desking).

### **SECTION 2 - Definitions**

**Desk Sharing:** An alternate workstation solution in which two or more employees regularly share the use of a single workstation where each employee has a designated day or time for use of the workstation. Employees participating in desk sharing are expected to share permanent office equipment.

**Hoteling:** An alternate workstation solution where workstations are available for use on an as needed basis (e.g., through reservation or first-come first-serve procedures).

**Hot Desking:** An alternate workspace solution where management assigns an employee to an available workstation on as needed basis. The employer may utilize any available workstation of an employee who is out of the office for any reason.

**Workspace:** The actual space where an employee's workstation is located, such as a cubicle, office, or laboratory.

**Workspace Sharing:** An alternate workstation solution where two or more employees share a workspace. Each employee has a workstation within the same workspace and may utilize the workspace at the same time.

**Workstation:** The physical equipment an employee relies upon to perform his/her job duties which may include, a computer, phone or scientific equipment.

### **SECTION 3**

A. The Parties agree that decisions regarding employee use of physical space, workspace, and workstation (e.g., construction projects, restructuring of office space, realignment of an organization, and swing space) and alternate workspace and workstation solutions (e.g. desk sharing, workspace sharing, hoteling, and hot desking) are at the sole discretion of the Employer.

B. Desk, office, and/or workstation assignment is at the sole discretion of the Employer.

C. The Employer will provide notice, in its discretion, to impacted employees.

## DRAFT

### **Article xxx, Interpretation**

Nothing in this Agreement is to be interpreted as providing any benefit to the Union greater than that provided by law or government-wide regulation.