

Article 45
Grievance Procedure

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SECTION 1

- A. The purpose of this Article is to provide a mutually acceptable and orderly method for the prompt and equitable resolution of grievances filed by employees or the Parties. The procedures outlined herein constitute the exclusive administrative procedure.
- B. The Employer and the Union agree that every effort will be made to resolve grievances at the lowest possible level. The filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, performance, loyalty or desirability to the organization. Employees dissatisfied with the orders properly grounded in supervisory authority must follow the order first and then grieve the matter if they believe relief should be granted. However, the employee has a right to decline to perform his/her assigned tasks due to a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to effectively seek corrective action through normal hazard reporting and abatement procedures.

SECTION 2

- A. A grievance is defined as any complaint:
1. By any employee in the bargaining unit concerning any matter relating to the employment of the employee;
 2. By the Union concerning any matter relating to the employment of any employee in the bargaining unit;
 3. By an employee in the bargaining unit, the Union, or the Employer concerning
 - a. The effect or interpretation, or a claim of breach, of the Agreement; or
 - b. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.
- B. At the election of either party, grievances that involve the same issue and arise from the same or similar facts and actions, initiated by more than one employee, may be joined and processed as one.

SECTION 3

- A. The negotiated grievance procedures contained in this Article do not cover the following:
- Complaints concerning individual rights related to a reduction-in-force;
- B. Any complaint concerning retirement, life insurance, or health insurance;

- C. Any suspension or removal for national security reasons;
- D. Any examination, certification, or appointment;
- E. The classification of any position that does not result in the reduction in grade or pay of an employee;
- F. Complaints concerning veteran's preference;
- G. Separation or termination of an employee serving a probationary or trial period; return of an employee serving a supervisory or managerial probation to a nonsupervisory or nonmanagerial position; termination of an employee during a trial period; the termination of an employee (including staff fellows or visiting scientists) serving on a temporary or time limited appointment; the termination of an employee in the Student Educational Employment Program, including STEP and SCEP; or temporary employees and/or employees serving a probationary or trial period. However, if any of the actions mentioned in this paragraph are alleged to have been taken for discriminatory reasons prohibited by statute, those issues may be grieved pursuant to Section 4B of this Article.;
- H. A notice of proposed action or warning. However, disputes regarding a proposal may be merged into a grievance concerning the final decision of the Employer after that final decision is issued;
- I. The substance of performance standards and elements/measures, and/or the determination as to whether an element/measure is critical or non-critical. However, if such substance is alleged to have been created for discriminatory reasons prohibited by statute, that issue may be grieved pursuant to Section 4B of this Article;
- J. Ratings on individual performance elements and performance measures. However, ratings on individual performance elements and/or performance measures are subject to review through the grievance procedure when an employee grieves a final rating of record pursuant to Article 30 (Performance Assessment).
- K. Progress reviews, a counseling session or the issuance of a performance improvement plan (PIP).
- L. All other matters made nongrievable by any provision of this Agreement;
- M. Any claimed violation of Subchapter III of Chapter 73 of Title 5 (relating to prohibited political activities);
- N. Order to divest;

- O. Nonselection from among a group of properly ranked and certified candidates;
- P. Any specific matter raised in an on-going unfair labor practice charge.
- Q. An action terminating a temporary promotion;

Section 4

- A. A complaint concerning actions defined in 5 USC 4303 (removal or reduction in grade based upon unacceptable performance) and 7512 (removal, suspension for more than fourteen (14) days, reduction in grade or pay, or furlough for thirty (30) days or less for such cause as will promote the efficiency of the service) may be raised under-only one of the following procedures:
 - 1. By invoking the arbitration procedure provided in this Agreement, with the concurrence of the Union; or
 - 2. By filing a timely appeal with the Federal Merit Systems Protection Board (MSPB) under the applicable regulatory procedure; or
 - 3. By filing a formal complaint of discrimination under the applicable EEO process.

An employee's election of one of these procedures is irrevocable and precludes the employee from subsequently electing either of the other procedures.

- B. A complaint concerning discrimination on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation may be raised under this negotiated procedure or the appropriate statutory procedure enunciated at 29 CFR, but not both. An employee shall be deemed to have exercised his/her option to raise the matter under either the regulatory procedure or this procedure at such time as the employee timely files a formal complaint or timely files a grievance, in writing, under this procedure, (or the Union invokes arbitration, if applicable, as the initiating step), whichever occurs first.
- C. An employee alleging a prohibited personnel practice other than those that may be presented through the EEO complaint process, may raise the matter through one of the following procedures:
 - 1. by filing a timely appeal to the Merit Systems Protection Board, if the underlying issue falls within its jurisdiction;
 - 2. by filing a complaint seeking corrective action with the Office of Special Counsel; or
 - 3. by filing a timely grievance under this Agreement.

An employee's election of one of these procedures is irrevocable and precludes the employee from subsequently electing either of the other procedures.

SECTION 5

- A. Employees must use the grievance procedures set forth in this Article for filing and processing grievances concerning issues relating to this Agreement.
- B. During any of the steps indicated in this Article, the Parties may by mutual agreement hold a meeting to resolve the grievance. Such meetings will occur during the regularly scheduled workday of the Parties involved. In unusual circumstances and by mutual agreement, a meeting may take place outside of the regularly scheduled workday of the grievant.
- C. Failure on the part of the Employer to observe the time limits for any step in the grievance procedure will have the effect of the grievance being denied at that step, at which point the grievant may appeal to the next step. Failure on the part of the grievant or the Union to observe time limits for any step will have the effect of the grievance being nullified and not capable of being processed further. By mutual written consent of the Parties, the time limits in this Article may be extended and/or any step of the grievance procedure may be waived.
- D. It is understood that an employee processing a grievance under this Article is limited to Union representation or self-representation. If an employee presents a grievance without Union representation, the Union will be given the opportunity to be present to present its institutional concerns during grievance discussions and/or discussions of resolution of the grievance.
- E. The Parties agree that any resolution must be consistent with the terms and conditions of this Agreement. The parties agree to respect and maintain the confidentiality of all information involving performance or conduct of individuals.
- F. Grievances may be initiated by an employee, by the Union for itself, or on behalf of an employee, or by the Employer.
- G. If the Employer alleges that a grievance is not grievable and/or not arbitrable, the Employer shall notify the grievant in writing stating the reason(s) for such determination(s). If a question of grievability is raised, the grievance will continue to be processed. The issue of timeliness will be joined to the grievance through the grievance procedure and decided at arbitration if not resolved prior to that time.
- H. When the Employer notifies the grievant or the Union that a grievance is not valid, the grievant or the Union may, within five (5) workdays, revise the grievance to attempt to cure the problem. Upon revision, the grievance will be resubmitted at the level at which the issue was raised and proceed as a normal grievance. The grievant will be allowed only one (1) revision attempt. The

Employer reserves the right to challenge grievability, arbitrability, or the validity of the revised grievance.

I. Management agrees to provide:

A copy of all written decisions rendered on a grievance filed under this Article to both the grievant and the Union representative.

SECTION 6

A grievance shall be submitted in writing (electronic transmission is sufficient) shall include the following:

- Date submitted;
- Name and signature of grievant, and his/her representative, if any;
- Work organization and location of the grievant;
- Sufficient detail to identify the basis of the grievance, including reference to the Article(s) and Section(s) of the Agreement, and general reference to any practice, law, rule or regulation alleged to be violated, misinterpreted or misapplied;
- all known and alleged facts; and
- The specific personal relief sought by the employee and the Union, or by the Employer.

When the Union is filing a grievance on behalf of an employee by e-mail, the employee's signature is not required. However, in such circumstances, the Union's e-mail message must clearly state that the Union is filing the grievance on behalf of the employee or employees concerned.

If the grievance is transmitted via email, the Union shall provide a hardcopy to the Employer (via facsimile is acceptable). If the grievance is first transmitted via email, the effective date of the filing shall be the date the Union transmitted the electronic copy.

Before it will release information protected by the Privacy Act concerning employee(s) on whose behalf the Union is grieving, the Employer must be provided with a written statement, signed by the employee(s) in question, authorizing release of such information.

SECTION 7

1. Step 1 of the Grievance Process:

A grievance must be submitted in writing to the immediate supervisor within thirty (30) calendar days after the matter, issue or incident out of which the grievance arose, or thirty (30) calendar days after the date the aggrieved became aware or should have become aware of the matter, issue or incident giving rise to the grievance. At the request of either party, a meeting will be held within five (5) workdays of submission of the grievance. The Employer will provide a written response within five (5) workdays of the meeting, or, if the request for a meeting was denied, within five (5) workdays of the denial.

Any grievance not submitted in writing within the time period will not be considered timely unless the Parties mutually agree in writing to waive the time limits. Issues not raised at Step 1 of the grievance may not be raised by either party at any subsequent stage or in arbitration unless mutually agreed in writing by the parties, unless the issues were not known at the time of Step 1.

2. Within ten (10) workdays of receiving the decision, the aggrieved may appeal the decision to the Step 2 Deciding Official, who must be at least one level of management higher than the Step 1 Official. Upon request, the parties will hold a meeting within ten (10) workdays of the Step 1 appeal. The Step 2 Deciding Official will provide a written decision within ten (10) workdays.

3. If the grievant is dissatisfied with the decision of the Step 2 Deciding Official, the grievant may appeal to the Step 3 Deciding Official designated by the Employer within ten (10) workdays of receipt of the Step 2 decision. If no Step 2 decision has been received, the Step 3 grievance must be filed within ten (10) workdays of the Step 2 decision due date. The Step 3 deciding Official must be at least one level of management higher than the Step 2 Deciding Official.

SECTION 8

A. Employer Grievances

Grievances filed by the Employer against the Union will be filed the National President of NTEU within thirty (30) days after the matter, issue or incident out of which the grievance arose, or within thirty (30) days after the date the Employer became aware or should have become aware of the matter, issue or incident giving rise to the grievance, if later. If either party requests, a meeting will be held within ten (10) days after filing. The Union may have the same number of representatives from the bargaining unit present on official time as management representatives.

B. The Union will provide the Employer a written decision within twenty (20) days of the meeting. This will be a final grievance decision, subject to arbitration at the election of the Employer. The Employer must invoke arbitration within twenty-one (21) days of receipt of the Union's decision. Failure of the Union to issue a decision within twenty (20) days will be deemed a denial of the grievance, and the Employer may invoke no later than twenty-one (21) days from the date on which the Union's decision was due.

C. Institutional Grievances

Grievances against the Employer concerning the Union's institutional rights, not presented by or on behalf of an employee or group of employees, will be filed within thirty (30) calendar days with the designated management official, who will submit each such grievance to the proper official and provide the Union with her/his name. If either party requests, a meeting will be held within fourteen (14) calendar days at the local office of the Employer. The Union may have the same

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number of representatives from the bargaining unit present on official time as management representatives. The Employer will provide a written decision within twenty (20) days of the meeting. This will be a final grievance decision, subject to arbitration at the election of the Union.

D. National Grievances

The Union may file a national grievance over issues bargaining unit employees covered by this Agreement from more than one chapter by filing the grievance with the designated management official within thirty (30) calendar days of the time the Union became aware, or should have become aware, of the matter grieved. The management official will submit it to the proper official and provide the Union with the name of that official. If either party requests, a meeting will be held within fourteen (14) calendar days at headquarters offices of the Employer. The Union shall have the right to have two (2) bargaining unit employees participate and attend any such meeting on official time. The Employer will provide a written decision within twenty (20) calendar days of the meeting. This will be a final grievance decision, subject to arbitration at the election of the Union. The Union must invoke arbitration within thirty (30) calendar days of receipt of the Employer's decision. Failure of the Employer to issue a decision within twenty (20) calendar days shall have the effect of a denial of the grievance and the Union may invoke arbitration not later than thirty (30) calendar days from the date on which the Employer's decision was due.

SECTION 9

- A. The Union may request in writing that the Employer provide such written information as is relevant to the subject matter of the grievance and necessary to its resolution. The Union will make a concerted effort to ensure that initial information requests are submitted within ten (10) days from the filing of the grievance.
- B. Pursuant to 5 USC 7114(b)(4), the requesting party shall include the reasons that the information is necessary.
- C. If the Employer has not provided the information before the scheduled grievance meeting and the Employer has not otherwise denied the request, the Union has the option of postponing the meeting until the information is provided, or until the Employer denies the request, without waiving any timeframes, or proceeding despite failure to provide the information.
- D. If a dispute arises over access to information in connection with the grievance, it may either be joined to the grievance or addressed through the filing of a ULP with the FLRA, but not both.

SECTION 10

Either before or after a grievance is filed, the following Alternative Dispute Resolution

(ADR) process may be followed, by mutual agreement:

- A. One or more meeting(s) may be arranged by the Union representative and the management official, at mutually agreeable time(s), to attempt to resolve the matter;
- B. A mediator will attend each meeting. The Parties may mutually agree to other participants such as Union and management representatives or subject matter experts;
- C. If the matter is resolved, the settlement agreement will be reduced to a formal written agreement and will be signed by the grievant, the Union's representative and the Employer's representative. One provision in the settlement agreement must be that the grievance will be withdrawn;
- D. If the matter is not resolved through ADR, the grievance will continue through the grievance process. The grievant may resume the normal grievance process at any time during ADR, upon written notice to the participants; and
- E. Offers to settle and aspects of settlement discussions will not be used as evidence or referred to if the grievance is not resolved by this process.

SECTION 11

Evidence and witnesses that are relevant to the resolution of a grievance may be introduced at any stage of the grievance or arbitration process. The Employer and its agents or representatives will not interfere with, intimidate, or retaliate against any employee who appears as a witness at a grievance or arbitration hearing.