

ARTICLE 45

GRIEVANCE PROCEDURES

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 [the filing party](#), grievances that involve the same issue and arise from the same or similar facts and actions, initiated by one or more than one employee, may be

joined and processed as one.

- C. Grievances may be filed by the Union on its behalf, or on behalf of one or more covered bargaining unit employees.

SECTION 3

A. The negotiated grievance procedures contained in this Article do not cover the following:

1. Complaints concerning individual rights related to a reduction-in-force;
2. Any complaint concerning retirement, life insurance, or health insurance;
3. Any suspension or removal for national security reasons;
4. Any examination, certification, or appointment;
5. The classification of any position that does not result in the reduction in grade or pay of an employee;
6. ~~Complaints concerning veteran's preference;~~
7. Separation or termination of an employee serving a probationary or trial period; return of an employee serving a supervisory or managerial probation to a non-supervisory or non-managerial 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;
8. 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;
9. 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;
10. ~~Ratings on individual performance elements and performance measures. However,~~

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~~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);~~

- ~~11. Progress reviews, a counseling session or the issuance of a performance improvement plan (PIP)~~
12. All other matters made non-grievable by any provision of this Agreement;
13. Any claimed violation of Subchapter III of Chapter 73 of Title 5 (relating to prohibited political activities);
14. ~~Order to divest;~~
15. Non-selection from among a group of properly ranked and certified candidates;
16. ~~Any specific matter raised in an on-going unfair labor practice charge; or~~
17. An action terminating a temporary promotion.

SECTION 4

A. A complaint concerning actions deemed 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

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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. [The Union may amend the grievance and file at the next step to include the Agency's procedural violation under this article.](#) 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.

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- 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, and the grievance will be handled in accordance with Section 5G.
- 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- Procedure

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

- ~~Date submitted;~~
- ~~Identification of the employee(s) covered by the grievance, and the union representative if any;~~
- ~~Work organization and location of the employee(s) covered by the grievance;~~
- [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;](#)
- ~~The date, if known, when the issue or incident out of which the grievance arose occurred;~~

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- ~~The date when the grievant(s) became aware of the matter, issue or incident giving rise to the grievance occurred;~~
- ~~The management official(s) if known, responsible for the issue or action; and~~
- ~~The specific personal relief sought by the employee(s) and the Union, or by the Employer.~~

~~Grievances that do not include the information required by this section shall be treated in accordance with Section 5H of this Article.~~

~~If the Union is filing a grievance on behalf of an employee by e-mail, the Union's e-mail message must clearly state that the Union is filing the grievance on behalf of the employee or employees concerned.~~

- B. ~~Grievances may be filed via email, facsimile, hand delivery, USPS mail, or by any other commercial delivery. A grievance is deemed to have been filed upon email or fax transmittal, hand delivery, or date of postmark, if mailed, to the appropriate party. (Matches Art. 46)~~
If the grievance is first transmitted via email, the effective date of the filing shall be the date the Union transmitted the electronic copy. If the grievance is transmitted via facsimile (fax), the effective date of the filing shall be the fax date. If the grievance is filed via mail, the effective date of the filing will be the postmark date.
- C. ~~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.~~
- D. It is agreed that grievances should normally be resolved at the lowest level possible. However, the Union may initiate a grievance at the second or third step of the grievance procedure, where appropriate. For example, initiating a grievance at the second or third step would be appropriate when the lower level supervisor clearly has no authority to resolve the issue, or was directly involved in the grievance matter, or when the Union grieves an action of a management official at a higher level than the Step 1 supervisor.
- E. The Union is entitled to have an equal number of representatives as the Agency at all steps of the grievance procedure. If there is to be more than one Agency official involved in the grievance meeting at any step, the Union will be so notified in advance.
- F. ~~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. Substantive issues not raised in the initial filing 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 2.~~
- G. In an effort to resolve grievances at the lowest level possible, the parties will work

together during the grievance meeting and throughout the grievance process.

SECTION 7

H. 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 of the date the aggrieved became aware of the matter, issue or incident giving rise to the grievance, or anytime if the act or occurrence is of a continuing nature. Either party may request, within ten (10) workdays of the submission of the grievance, that a grievance meeting be held. If requested, a The supervisor will make every effort to resolve the grievance immediately and will hold a grievance meeting with the aggrieved and representative within ten (10) workdays of the date the Step 1 grievance is filed. The supervisor will provide a written response within ten (10) workdays of the grievance meeting. If the grievance is denied at Step 1, the written response will provide the name of the Step 2 Deciding Official with whom the Step 2 grievance should be filed. The timeframes for filing at Step 2 will be tolled until ten (10) workdays after the information is received. . meeting, or, if no meeting was requested, within ten (10) workdays of the filing of the grievance.

The timeframes for holding a grievance meeting and providing a response may be mutually extended by the parties. However, if the Agency fails to schedule a grievance meeting within ten (10) workdays of the date the Step 1 grievance is filed, absent mutual agreement for an extension, the grievance may be amended at the next Step to include the procedural violation. If no meeting is held, the grievance response will be due ten (10) workdays after the date the Step 1 grievance is filed.

I. Step 2 of the Grievance Process:

Within ten (10) workdays of receiving the Step 1 decision, the aggrieved may appeal the decision to the Step 2 Deciding Official. The Step 2 Deciding official must have authority to resolve the issues set forth in the grievance. If the Step 1 response did not include the name of the Step 2 Deciding Official, the timeframes for filing at Step 2 will be tolled until ten (10) workdays after the information is received. The Step 2 official will make every effort to resolve the grievance immediately and will hold a grievance meeting with the aggrieved and representative within ten (10) workdays of the date the Step 2 grievance is filed. The supervisor will provide a written response within ten (10) workdays of the grievance meeting. If the grievance is denied at Step 2, the written response will provide the name of the Step 3 Deciding Official with whom the Step 3 grievance should be filed. The timeframes for filing at Step 3 will be tolled until ten (10) workdays after the information is received. The Step 2 Deciding Official will provide a written response within ten (10) workdays of the meeting; or, if no meeting was requested, within ten (10) workdays of the appeal to Step 2.

The timeframes for holding a grievance meeting and providing a response may be mutually extended by the parties. However, if the Agency fails to schedule a grievance meeting within ten (10) workdays of the date the Step 2 grievance is filed, absent mutual agreement for an extension, the grievance may be amended at the next Step to include the procedural violation. If no meeting is held, the grievance response will be due ten (10) workdays after the date the Step 2 grievance is filed.

J. Step 3 of the Grievance Process:

If the grievant is dissatisfied with the decision of the Step 2 Deciding Official, the grievant may appeal to the Step 3 Deciding Official as designated in the Step 2 response within ten (10) workdays of receipt of the Step 2 decision. The Step 3 Deciding official must have authority to resolve the issues set forth in the grievance. If the Step 2 response did not include the name of the Step 3 Deciding Official, the timeframes for filing at Step 3 will be tolled until ten (10) workdays after the information is received. The Step 3 official will make every effort to resolve the grievance immediately and will hold a grievance meeting with the aggrieved and representative within ten (10) workdays of the date the Step 3 grievance is filed. The Step 3 Deciding Official will provide a written response within twenty (20) workdays of the meeting.

The timeframes for holding a grievance meeting and providing a response may be mutually extended by the parties. However, if the Agency fails to schedule a grievance meeting within ten (10) workdays of the date the Step 3 grievance is filed, absent mutual agreement for an extension, the grievance may be amended at arbitration to include the procedural violation. If no meeting is held, the grievance response will be due twenty (20) workdays after the date the Step 3 grievance is filed.

Step 3 will be the final grievance decision, subject to arbitration at the election of the Union. Arbitration must be invoked by the designated NTEU representative within sixty (60) calendar days after the receipt of the final decision in the grievance procedure. If a final decision is not issued with the required time limits, the Union may treat this as a denial of the grievance and invoke arbitration no later than sixty (60) days from the date the decision should have been issued.

SECTION 8

A. Employer Grievances

Grievances filed by the Employer against the Union will be filed with the National President of NTEU within thirty (30) calendar days after the matter, issue or incident out of which the grievance arose, or within thirty (30) calendar 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. Either party may request within ten (10) workdays of the submission of the grievance, that a grievance meeting be held. If requested, a meeting will be held within ten (10) workdays of the request. 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 with a written decision within twenty (20) workdays of the meeting, or if no meeting was requested, within twenty (20) workdays of the submission of the grievance. 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) calendar days of receipt of the Union's decision. Failure on the part of the Union to issue a decision within twenty (20) workdays will be deemed a denial of the grievance, and the Employer may invoke no later than forty five (45) calendar 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 with the [HHS Director of Workforce Relations, or designee](#), within thirty (30) calendar days of the time the Union became aware, or should have become aware, of the matter grieved. The [Director of Workforce Relations, or designee](#), will submit the grievance to the proper [agency representative](#) with authority to resolve the grievance, who shall not be the official responsible for the matter grieved and provide the union with his/her name. [Within fourteen \(14\) workdays of the submission of the grievance, the agency will hold a grievance meeting with the Union](#) at the local office of the Employer. [Upon mutual agreement, the parties may attend the meeting telephonically or via video conference](#). The Union may have the same number of representatives from the bargaining unit present on official time as management representatives. The Employer will provide a written decision within twenty (20) workdays of the meeting, or, if no meeting was requested, within twenty (20) workdays of the submission of the grievance. This will be a final grievance decision, subject to arbitration at the election of the Union.

[The parties may mutually agree to extend the timeframes for meeting and response. However, if the Agency fails to schedule a grievance meeting within fourteen \(14\) workdays of the date the institutional grievance is filed, absent mutual agreement for an extension, the grievance may be amended at arbitration to include the procedural violation. If no meeting is held, the grievance response will be due twenty \(20\) workdays after the date the grievance is filed.](#)

[Arbitration must be invoked by the designated NTEU representative within thirty \(30\) calendar days after receipt of the final decision. If a final decision is not issued with the required time limits, the Union may treat this as a denial of the grievance and invoke arbitration no later than sixty \(60\) days from the date the decision should have been issued.](#)

D. National Grievances

The Union may file a national grievance over issues affecting bargaining unit employees covered by this Agreement from more than one chapter by filing the grievance with the Director of Workforce Relations, or designee, within thirty (30) calendar days of the time the Union became aware, or should have become aware, of the matter grieved. The Director of Workforce Relations, or designee, will submit the grievance to the proper agency representative with authority to resolve the grievance, who shall not be the official responsible for the matter grieved, and provide the Union with the name of that official. Within fourteen (14) workdays of the submission of the grievance, the agency will hold a grievance meeting with the Union at the Agency's headquarters offices, or other location by mutual agreement of the parties. Upon mutual agreement, the parties may attend the meeting telephonically or via video conference. 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) workdays of the meeting, or, if no meeting was held, within twenty (20) workdays of the submission of the grievance. This will be a final grievance decision, subject to arbitration at the election of the Union.

The parties may mutually agree to extend the timeframes for meeting and response. However, if the Agency fails to schedule a grievance meeting within fourteen (14) workdays of the date the national grievance is filed, absent mutual agreement for an extension, the grievance may be amended at arbitration to include the procedural violation. If no meeting is held, the grievance response will be due twenty (20) workdays after the date the grievance is filed.

Arbitration must be invoked by the designated NTEU representative within thirty (30) calendar days after the receipt of the final decision. If a final decision is not issued with the required time limits, the Union may treat this as a denial of the grievance and invoke arbitration no later than sixty (60) days from the date the decision should have been issued.

SECTION 9

- A. In accordance with 5 U.S.C. § 7114(b)(4), 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.~~ The Agency will timely respond to the request.
- B. Pursuant to 5 U.S.C. § 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, the issue may either be joined to the grievance as a statutory violation 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.

[Use of the ADR process will toll all timeframes set forth in the grievance procedure set forth above in Section 8.](#)

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. Neither party, nor its agents or representatives, shall interfere with, intimidate, or retaliate against any employee who appears as a witness at a grievance or arbitration hearing.

SECTION 12- Prohibited Personnel Practices

[A. The parties mutually recognize that, consistent with 5 USC § 2301, personnel management should be implemented consistent with the following merit system principles:](#)

1. Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society. Selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills after fair and open competition which assures that all receive equal opportunity.

2. All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

3. Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector. Appropriate incentives and recognition should be provided for excellence in performance.

4. All employees should maintain high standards of integrity, conduct and concern for the public interest.

5. The Federal work force should be used efficiently and effectively.

6. Employees should be retained on the basis of the adequacy of their performance. Inadequate performance should be corrected. Employees should be separated who cannot or will not improve their performance to meet required standards.

7. Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

8. Employees should be:

(a) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes; and

(b) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

9. Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences:

(a) a violation of any law, rule, or regulation; or

(b) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

B. For the purpose of this article, prohibited personnel practice means any action described in Section 2 below. **This Article is intended to be applied consistent with 5 USC § 2302.**

C. For the purpose of this article, "personnel action" means:

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1. an appointment;

2. a promotion;

3. an action under chapter 75 of the Civil Service Reform Act of 1978 or other disciplinary or corrective action;

4. a detail, transfer, or reassignment;

5. a reinstatement;

6. a restoration;

7. a reemployment;

8. a performance evaluation under chapter 43 of the Civil Service Reform Act of 1978;

9. a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subsection;

10. a decision to order psychiatric testing or examination; and

11. the implementation or enforcement of any nondisclosure policy, form, or agreement; and

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12. ~~44.~~ any other significant change in duties, responsibilities or working conditions.

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D. The Employer shall not:

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1. Discriminate for or against any employee or applicant for employment:

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a. on the basis of race, color, religion, sex, or national origin, as prohibited under Section 717 of the Civil Rights Act of 1964;

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b. on the basis of age, as prohibited under Sections 12 and 15 of the Age Discrimination in Employment Act of 1967;

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c. on the basis of sex, as prohibited under Section 6(d) of the Fair Labor Standards Act of 1938;

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d. on the basis of handicapping condition, as prohibited under Section 501 of the Rehabilitation Act of 1973;

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e. on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation.

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2. Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of:

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a. an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

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b. an evaluation of the character, loyalty, or suitability of such individual.

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3. Coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as reprisal for the refusal of any person to engage in such political activity.

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4. Deceive or willfully obstruct any person with respect to such person's right to compete for employment.

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E. Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment.

5. Grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

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6. Appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position, any individual who is a relative (as defined in Title 5 of the United States Code) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in Title 5 of the United States Code) or over which such employee exercises jurisdiction or control as such an official.

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7. Take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment as a reprisal for:

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a. a disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences:

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(i) a violation of any law, rule, or regulation; or

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(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

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b. a disclosure to the Special Counsel or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences:

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(i) a violation of any law, rule, or regulation; or

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(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

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8. Take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment as a reprisal for:

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a. the exercise of any appeal, complaint or grievance right granted by any law, rule, or regulation;

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b. testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subsection 11 above;

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c. cooperating with or disclosing information to the Inspector General of an agency, or Special Counsel, in accordance with applicable provisions of law; or

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d. refusing to obey an order that would require the individual to violate a law.

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9. Discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this subsection shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States.

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10. a. knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or

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b. knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement.

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11. Take or fail to take any other personnel action if the taking of, or failure to take, such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in the Civil Service Reform Act of 1978.

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12. Implement or enforce any nondisclosure policy, form, or agreement, if such policy, form or agreement does not contain the following statement:

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“These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or

safety, or (4) any other whistleblower protection. The definitions, requirement, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.”

Section 13

An employee aggrieved under Section 12 above may raise the matter under a statutory procedure or under the employee grievance procedure outlined in this Agreement, but not both.

Section 14

In reviewing grievances on the provisions of this article, arbitrators will apply the same standards of evidence and burden of proof as those applied by the Merit Systems Protection Board.

Section 15

1. Where the Union believes that a personnel action involves an alleged prohibited personnel practice as defined by 5 U.S.C. § 2302, the Union will raise that matter in the grievance, reply, or arbitration invocation as appropriate. Where there is a proposed personnel action that the Union believes involves an alleged prohibited personnel practice, the Union shall file a written statement with the deciding official for the proposed action, which shall contain the same information as a grievance. Once raised, the Union may petition an arbitrator for a stay of the action.

2. The parties will create two (2) arbitrators panels. There will be at least three (3) arbitrators on each panel. One (1) panel will be for cases arising from offices west of the Mississippi, the other panel will be for cases arising from offices east of the Mississippi. These arbitrators will hear all stay cases in their geographic areas for the duration of this Contract.

B. The petition for a stay must contain the following:

1. a chronology of the facts including a description of the alleged prohibited personnel practices involved and the personnel action or actions that the Agency has taken or intends to take which form the basis for the petition;
2. evidence and/or argument showing that the action taken or threatened is a personnel action, that the action taken or threatened was based on a prohibited personnel practice, and that there is a substantial likelihood that the grievant will prevail on the merits of the appeal;
3. documentary evidence that supports the stay request; and
4. a specific request for remedies.

C. The petition for a stay must be filed with the selected arbitrator and the agency representative, which will be identified in the deciding official’s response. Filings may be made by personal

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delivery, FAX, mail or by commercial overnight delivery, or e-mail with voice mail or telephonic confirmation.

D. The arbitrator will have jurisdiction over the case forty-eight (48) hours after the Union has served the Employer with its petition for a stay. After forty-eight (48) hours, the arbitrator has the authority to issue an interim stay, pending a final decision on the stay. Any interim stay ordered must be consistent with the burdens of proof and standards established by the Merit Systems Protection Board cases concerning stays. If the arbitrator does not issue an interim stay, the Employer's response must be filed within ten (10) days of the expiration of the forty-eight (48) hour period consistent with subsection below. If the arbitrator does issue an interim stay, any request for an extension of time to file the Employer's response will be granted by the arbitrator. The arbitrator will not issue an interim stay ex parte, but will discuss and accept any argument or comment via telephone relevant to an interim stay request.

E. The Employer's response must be filed with the arbitrator and grievant's representative within ten (10) days of the expiration of the forty-eight (48) hour period. The Employer's response must contain the following:

1. evidence and/or argument addressing whether there is a substantial likelihood that the grievant will prevail on the merits of the appeal;
2. evidence and or argument addressing whether the grant of a stay would result in extreme hardship; and
3. any documentation relevant to the Agency's position on these issues.

F. 1. Once under his or her jurisdiction, the arbitrator may seek a mutually agreed resolution of the matter, or clarify the issues via telephone prior to issuing a decision on the stay. The arbitrator must issue a written ruling on the stay petition within ten (10) days of the receipt of the Employer's response. The arbitrator may only grant a stay consistent with the burdens of proof and standards established by the Merit Systems Protection Board in cases concerning 5 U.S.C. § 1221(c). A stay must not be granted for any other reason. Any and all decisions on a petition for a stay are final and binding on the parties.

2. A hearing on a petition for a stay may be held by mutual agreement of the parties or by order of the arbitrator. Any hearing must be scheduled and held within thirty (30) days of the date of the petition requesting a stay. The arbitrator must issue a written ruling consistent with subsection .

3. The arbitrator will be responsible for assessing any and all costs associated with the petition for a stay consistent with this article.

G. Absent mutual agreement, the arbitrator who ruled on the request for a stay will hear the ultimate arbitration related to that action, if any. When such arbitration decisions result in the reversal of the Agency's action, based upon a specific finding of a prohibited personnel practice, the arbitrator has the authority to issue all legal remedies.

NTEU Initial Proposals Submitted Under Protest 6/11/18

