

12/3/99

Memorandum Of Understanding Between FDA and NTEU

Article 59 is in effect. However, there are several implementation issues that have not been resolved at this time. Both NTEU and FDA agree that it is not in the best interest of either party to delay use of the provisions of the article that are not in question. Therefore, until further notice, the following should be observed:

1. Peer Review committees will meet and review applications as they have done in the past.
2. As indicated in the article, employees may nominate individuals to participate as part of the peer review committee, however, no travel expenses will be paid.
3. A record of the proceedings will be maintained as provided for in the article.
4. Employees may self-nominate, however, these nominations will not be addressed until agreement on implementation of this provision is reached.
5. Until the issue of length of an employee presentation before the committee is resolved, no presentations will be made.

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**NTEU DRAFT**

**MEMORANDUM OF UNDERSTANDING ON PEER REVIEW PROCESS**

In order to more clearly and expeditiously effectuate the provisions of Article 61 (Peer Review) of the NTEU/FDA Collective Bargaining Agreement [add more language], the parties agree to the following:

- 1) **Status of Employee's Nominee to the Peer Review Committee:** For committees with a "standing" membership, the employee's nominee will serve on the committee only while the employee's work is being considered by the committee. For committees where the membership (other than the Chair/Vice-Chair/Position Classification Specialist) changes from meeting to meeting, nominated members may, at the discretion of the Chair, serve on the committee for the entire duration of the meeting.

Each employee's nominees, if from within the Federal Government, must be at or above the grade-level for which the candidate's work is being considered. Those nominees from outside the Federal Government must be at a scientific level comparable to the grade for which the employee's work is being considered. This determination will be made by the committee chair.

An employee's nominees are expected to be objective and impartial in relation to the employee. For example, a nominee having a "personal interest" in the employee's career progression will be excluded for "just cause" (e.g., family members, co-authors of scientific projects/publications within the past three years, financial partners, etc).

- 2) **Records of Proceedings:** The records kept will include the factors enumerated in Article 59 of the collective bargaining agreement. They may include a statement that documents findings in relation to grade level criteria applicable to the work being evaluated. This statement may also provide an explanation of why the employee's work product did or did not meet the criteria for the grade level being considered.

The records will be maintained in a confidential manner in accordance with the provisions of the Privacy Act. An employee, or their union representative if authorized by the employee in writing, will be granted access to all of the records in a reasonable amount of time after requesting such access.

- 3) **Requirements for Self-Nomination:** While all properly qualified employees have the right to self-nominate for peer review, the starting point for any self-nomination requires that the employee contact his/her supervisor and request that management nominate them for peer review. If a supervisor decides not to nominate the employee, they must provide to the employee in writing the reason or reasons as to why the employee is not being

chosen for nomination. The employee then has the option of initiating the self-nomination process by themselves. To do so, they must submit an application for peer review to the joint labor-management peer review committee established by this MOU (see below). The employee must include a copy of the supervisor's written explanation along with their self-nomination package.

- 4) **Establishment of Joint Labor-Management Filtering Committee:** The Parties will establish a high-level joint labor-management pre-review committee that will be responsible for initially reviewing all applications for peer review, including self-nominees. This joint committee will be composed of six individuals, three appointed by the FDA and three appointed by the National President of NTEU.

The purpose of the committee is to act as a first-line filter in order to control the number of peer review applications that are initiated each year. This committee will meet quarterly and review all applications for peer review on an agency-wide basis in order to make a preliminary determination regarding whether or not the application meets the substantive and procedural requirements, as well as the timeliness provisions, of this MOU.

To that end, the committee will look at factors including, but not limited to, the following: whether the employee has the minimum qualifications necessary for promotion to the next grade; the date an individual applicant was last peer reviewed; the completeness of an individual's application; if a self-nominee, the reasons why the individual was not nominated by their immediate supervisor; [other]. All management nominees as well as self-nominees will be reviewed by the committee prior to proceeding to actual peer review.

The committee will establish its own procedures for collating, reviewing and deciding upon nomination applications. While the committee will have the authority to investigate any specific circumstances related to an individual's application (by, for instance, asking questions of both supervisors and applicants alike), the committee will always make the decision regarding the viability of an application in an expeditious and timely manner.

The committee will be responsible for communicating with the individual applicants as to whether their review is to proceed or not. Once the committee has made their decision, they will forward approved peer review applicants to the appropriate peer review committees which will then be responsible for the actual peer review.

Decisions of the committee are final and non-grievable. Applicants rejected by the committee must wait two full calendar years prior to resubmitting their own names or having their names resubmitted for peer review.

- 5) **Submission of Materials to the Peer Review Committee:** While an employee may submit any materials within reason to the file that is placed before the peer review

committee, the documentation that a committee will consider will be that pertaining to an employee's most recent work. Materials relating to work performed more than three years prior to the submission will generally not be considered as grade level determining, but will be viewed as "background" information.

A self-nominee is responsible for providing the same type of scientific information submitted on behalf of a management-nominee and the accuracy of that information will be verified as part of the peer review process. Failure to provide such documentation may, at the discretion of the committee chair, constitute grounds for rejection of the self-nominee. Should such a rejection occur, the self-nominee will be presented with the reason or reasons for the rejection in writing.

- 6) **Right to Appear Before the Peer Review Committee:** Each employee will be granted up to 15 minutes to appear, either in person or via telephone, before a committee in order to make a statement. Any questions raised by committee members as well as time spent answering such questions will be in addition to the 15 minutes. The committee will inform the employee of possible times that the employee may appear before the committee. Based upon this information, the committee and the employee will reach agreement as to when the appearance is to occur. If the employee is unable to either make an appearance or make a statement via telephone at the agreed date and time, the proceedings will continue as scheduled and the employee forfeits their right to appear.

For those employees that must travel from more than 50 miles to make such an appearance, the FDA will pay ½ the costs of their travel and per diem.

- 7) **Completion of the Peer Review Process:** For purposes of Article 59 of the collective bargaining agreement, completion of the peer review process means that the peer review committee has *[discuss]*.

[When effective]

[for how long]

[other binding language]

[signatures]