

ARTICLE 51
ARBITRATION

Section 51.01. Procedure for Invoking Arbitration

- (1) Either Party may invoke arbitration. Arbitration requests must be made in writing (email) and sent no later than thirty (30) calendar days of receipt of the third step grievance decision, or when the decision should have been rendered, under the provisions of this Agreement. The Union will send a courtesy copy of any arbitration invocation to the Agency's labor representative.
- (2) The arbitration procedures shall be supported by seven geographic panels and a National Panel of arbitrators as determined by the parties at the national level. Arbitrators' names will be placed alphabetically on each list. Each party may strike up to one (1) arbitrator from the National Panel and one (1) arbitrator from the geographic panel every two (2) years during the term of this Agreement by giving notice to the other party.
 - (a) Upon receipt of notice by the other party regarding an arbitrator struck from the national or geographic panel, no further cases will be assigned to that arbitrator, but the arbitrator will hear and decide any cases already assigned. The arbitrator will be notified only after all cases already assigned to him or her have been decided or otherwise resolved.
 - (b) In replacing arbitrators or otherwise filling vacancies, the parties will request three (3) names, within the region, from the Federal Mediation and Conciliation Service (FMCS) for each vacancy. Each party may add two (2) names to the list for each vacancy. This will be done through the FMCS so that the names each party submits are not known to the other party. The parties will then alternately strike names from each list until the requisite number of names remains to fill the vacancies.
 - (c) The parties will alternate who makes the first strike for each panel vacancy. In the absence of agreement between the representatives of the parties, the Union will strike first when filling a vacancy after the implementation date of this Agreement and the Employer will strike first when the next vacancy is filled, and so forth.
 - (d) Cases will be assigned to arbitrators on each panel by invocation date. Case assignments will be made by telephone contact between the designated case assignment representatives of the parties. Hearing dates will then be scheduled by telephone contact between the designated hearing representatives of the parties. Within sixty (60) days after arbitration has been invoked by either party, the party invoking arbitration shall contact the arbitrator for the purpose of scheduling mutually agreeable hearing dates. If, within fourteen (14) calendar days of the date the arbitrator is first contacted, the parties do not mutually agree on the date(s) for hearing, the arbitrator shall, upon request by either party, set a hearing date to occur within sixty (60) calendar days from the date the request is made. However, if the arbitrator is no available within sixty (60) calendar days from the date the request is made, he or she shall select the first date(s) he or she is available to convene the arbitration.

- (e) The parties will meet within thirty (30) days following the effective date of the Agreement to create the arbitration panels.
- (3) At least five (5) work days prior to the hearing, the Parties will hold a pre-hearing conference, in person or telephonically, to discuss possible settlement and means of expediting the hearing. During this conference, the Parties will discuss the issue(s) and reduce them to writing, exchange witness lists, determine whether any facts can be stipulated, and determine whether any documents or exhibits can be authenticated. This discussion will not prejudice which witnesses are called to testify.
- (4) The Parties shall strive for a joint submission of the issue(s) for arbitration. If this fails, each shall provide a separate submission and the arbitrator will determine the issue or issues to be heard.
- (5) In any arbitration concerning the merits of the matter, the non-prevailing party shall pay seventy-five percent (75%) of the cost of the arbitrator and the prevailing party shall pay twenty-five percent (25%). In the event that there is no substantially prevailing party, the costs of the arbitrator shall be borne equally.
- (6) The arbitrator's fees for travel and per diem allowances shall be limited by applicable laws, rules and regulations.
- (7) The arbitrator shall have authority to award reasonable attorney fees in accordance with applicable laws, rules and regulations.

Section 51.02. Arbitration Hearing

- (1) Unless mutually agreed by the Parties, the arbitration hearing will be held on the Agency's premises at the most cost-effective location, as determined by the Agency, during the regular day shift hours of the basic workweek. The grievant(s), his/her Union representative, and witnesses with personal knowledge of the facts at issue shall be granted official time and travel and per diem expenses for the proceedings when otherwise in duty status. If such witnesses are not available, the arbitrator shall have authority to delay the proceedings for a reasonable period of time.
- (2) If either party timely requests a determination on the grievability or arbitrability of the grievance presented for arbitration, the requesting party will notify the opposing party and the arbitrator at least ten days in advance of the scheduled hearing on the merits of the underlying grievance. Any dispute in which arbitration was invoked prior to February 26, 2016 shall be governed by the then-existing language regarding bifurcation in this Article.
- (3) There will be no formal rules of evidence at the hearing. No pre- or post-hearing briefs will be required in connection with the hearing, except at the request of the arbitrator or upon mutual agreement of the parties.
- (4) A transcript of the hearing shall be made by a court reporter for all arbitrations. The arbitrator and each of the parties will be provided with a copy. All costs of the transcript will be paid by the Employer. All testimony shall be made by oath or affirmation.

- (5) Bargaining history testimony may be introduced in arbitration, as appropriate, if notice is given to the other party no later than the pre-hearing conference.
- (6) The arbitrator may exclude any testimony or evidence, which he/she determines to be irrelevant or unduly repetitious.
- (7) In cases of disciplinary actions, the Parties agree that the jurisdiction and authority of the arbitrator will be confined to affirming, reversing, or mitigating the Agency's decision which may include, where appropriate, awarding back pay, or the issuance of an expungement order. The arbitrator's award shall be limited strictly to those issues presented at arbitration.
- (8) Witnesses will normally be present at the hearing only while testifying and should be permitted to testify only while in the presence of the aggrieved employee or his/her representative and the Agency's representative.
- (9) The grievant's representative and all employees of the Agency who are called as witnesses, and who are on official duty status, shall be excused from duty. The amount of time spent in testifying will be charged to excused absence for employees and official time for union representatives.
- (10) Upon submission of reasonable proof to the arbitrator that a witness, who has personal knowledge of the facts involved cannot be physically present, the arbitrator may accept a sworn affidavit or testimony via teleconference. The arbitrator will accord such weight to this type of evidence as the circumstances warrant. Copies of the affidavits shall be made available to all Parties concerned.
- (11) Once the date for arbitration has been established, any party that unilaterally requests that an arbitration hearing be postponed, delayed, canceled, and/or withdrawn for whatever reason, which results in any fees being charged by the arbitrator, shall pay all such fees.
- (12) The arbitrator shall be bound by the provisions of this Agreement and applicable laws, rules and regulations.
- (13) The Parties have the right to issue opening and closing statements; to present and cross-examine witnesses, and to submit actual copies of applicable case law such as relevant arbitration and court decisions.
- (14) The arbitrator shall have no authority to add to, subtract from, or modify any terms of this Agreement.
- (15) The arbitrator may issue a bench decision at the hearing, but in any event, the arbitrator will be requested, at the hearing, to render a decision as quickly as possible but, not later than twenty (20) workdays after the conclusion of the hearing, unless the Parties mutually agree to extend the time limit.

Section 51.03. Arbitration Award. Filing Exceptions to Arbitration Award

- (1) The arbitrator's award shall be binding on the Parties. Any dispute over the application of the award shall be returned to the same arbitrator for clarification. The arbitrator shall possess the authority to make an aggrieved employee whole to the extent that such remedy is not limited by law, including the authority to award back pay, reinstatement, attorney fees, where

appropriate, and to issue an order to expunge the record of all references to a disciplinary, adverse or unacceptable performance action, if appropriate.

- (2) Either party to arbitration under this Article may file with the Federal Labor Relations Authority, an exception to an arbitrator's award under regulations prescribed by the Authority, as provided for by applicable laws, rules and regulations.

Section 51.04. Expedited Arbitration - General

The Parties agree that grievances on the following issues may be arbitrated using an expedited procedure, unless both Parties agree to refer the matter to the regular arbitration procedure. The parties agree that the purpose of the expedited arbitration procedure is to remedy immediate harm to the employees. Further, the Parties may agree to include any subject not listed below.

- (a) Suspensions of seven (7) calendar days or less;
- (b) Denials of annual, sick or administrative leave or leave without pay;
- (c) Parking;
- (d) Performance appraisals;
- (e) Overtime;
- (f) Dues withholding;
- (g) Denials of any reasonable time Union representatives may be entitled to under this contract;
- (h) Involuntary reassignments that involve a change in duty station;
- (i) AWS disputes;
- (j) Denials of outside employment requests; and
- (k) Denials or termination of Telework Agreements.

Section 51.05. Process for Requesting Expedited Arbitration

- (1) Either Party may request expedited arbitration regarding a subject as detailed above. Requests must be made in writing (email) no later than twenty-five (25) calendar days from receipt of the third step decision. Failure to request expedited arbitration in this time frame will cause a case to default to normal arbitration process.
- (2) Unless either Party asks for a delay, the arbitrator will conduct the hearing within fifteen (15) calendar days after being notified of his/her selection. Each Party may request and receive one delay in the hearing date.
- (3) Procedurally, in all matters except the timeframes specified in this section, expedited arbitration will proceed in the same fashion and observing the same procedures as arbitration.

For NTEU:

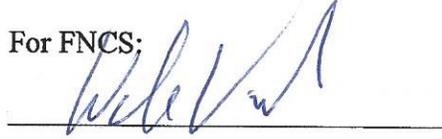


Matthew Allinson
National Negotiator
NTEU

4/4/2016

Date

For FNCS:



Walter Vick
Labor Relations Officer
USDA-FNS

4/6/2016

Date