

New Article 46

Old Article 51

Grievance Procedures

51.14 Purpose of Grievance Procedure

The purpose of the grievance procedure is to provide an orderly means for resolving legitimate disputes at the lowest administrative level in a way that is fair and satisfactory to the grievant, the Union, and NRC. The grievance procedure may not be used to address matters which are being pursued with no reasonable expectation of success or for the purpose of delay or harassment. The parties recognize that in the interest of resolving grievances in a timely manner it is important to hold meetings to discuss disputed issues and render decisions as quickly as possible.

51.21 Definitions

~~51.21.1 For the purpose of this Article, “informal resolution phase” describes a process to resolve workplace issues without invoking the formal grievance process.~~

51.21.12 For the purpose of this Article, “grievance” means any complaint:

aA. by any employee concerning any matter relating to the employment of the employee;

bB. by the NTEU concerning any matter relating to the employment of any employee;
or

cC. by the NTEU or the agency concerning

(i) the effect or interpretation, or a claim of breach of this Collective Bargaining Agreement; or

(ii) any claimed violation, misinterpretation, or misapplication of any law, rule or regulations affecting conditions of employment as such term is defined in 51.32 below.

51.2.3 As used in this Agreement, the term grievant refers to the aggrieved party whether a bargaining unit employee, the Union, or the NRC. The term respondent refers to the party against whom the grievance is filed.

51.21.43 Employees may file a grievance under this Article if they believe the agency has taken, or failed to take, an action that violates executive orders which specifically prohibit discrimination and harassment, although no right of action is created under any EEO or civil rights laws.

These executive orders, which amended Executive Order 11478, include but are not limited to

Executive Order 13087, which prohibits discrimination based on sexual orientation,

Executive Order 13152, which prohibits discrimination based on status as a parent, and

Executive Order 13145, which prohibits discrimination based on genetic information.

51.32 Conditions of Employment

For the purpose of this Article, the term “conditions of employment” means personnel policies, practices and matters, whether established by rule, regulation, or otherwise affecting working conditions, except that such term does not include policies, practices and matters:

51.32.1 relating to political activities prohibited by law;

51.32.2 relating to the classification of any position, or

51.32.3 to the extent such matters are specifically provided for by Federal statute

~~51.3—Informal Resolution Phase~~

~~Prior to the filing of a formal grievance, an employee may pursue an informal discussion, which will be directed to the Chief, Organization and Labor Relations, or designee. The employee should contact that official within 15 workdays of the occurrence of the matter of concern or within 15 workdays after the date the employee should reasonably have been aware of the occurrence of the matter of concern. The employee should identify the matter of concern and indicate that the employee desires a meeting under the provisions of this Section. Management will determine the appropriate management official for the informal phase. Matters relating to or alleging a violation of equal employment opportunity (EEO) laws cannot be raised or addressed under this Informal Resolution Phase Section. Such matters should be raised with an Agency EEO Counselor or a member of the Office of Small Business and Civil Rights. An employee may designate the union as his/her personal representative during EEO Counseling.~~

~~The informal meeting will be held as soon as practicable after management notification (generally within 10 workdays), and will be attended by a representative of NTEU and a representative of the Labor Relations staff. The parties will engage in a discussion of the matter of concern, and will make a concerted effort to resolve such matters. This informal discussion is not part of the formal grievance process, is considered off the record, and the discussion will not be used as evidence in any subsequent grievance. Also, this process does not require written documentation. If, after discussion of the employee’s concern, no resolution can be reached, the management official shall, within 10 workdays, provide written notice to the employee that the issue(s) remains unresolved.~~

~~The notice should read as follows:~~

~~We have been unable to resolve the matter(s) of concern identified by you on or about (date) through the informal resolution process.~~

~~You have ten workdays from receipt of this notice to file a Step A Grievance under the formal grievance procedure in Article 51 of the Collective Bargaining Agreement.~~

~~The employee will then have 10 workdays following the date of receipt of the notification to file a formal grievance (Step A). If the informal phase does not result in a resolution, the management official issuing the written notice associated with the informal phase will not be the Step A Official.~~

~~51.4 Purpose of Grievance Procedure [Moved to 51.1]~~

~~The purpose of the grievance procedure is to provide an orderly means for resolving legitimate disputes at the lowest administrative level in a way that is fair and satisfactory to the grievant, the Union, and NRC. The grievance procedure may not be used to address matters which are being pursued with no reasonable expectation of success or for the purpose of delay or harassment.~~

~~51.45 Exclusions~~

The following matters are specifically excluded from the coverage of this Article:

~~51.45.1 any claimed violation of Subchapter III of Title 5 U.S.C., (relating to prohibited political activities);~~

~~51.45.2 retirement, life insurance, or health insurance;~~

~~51.45.3 a suspension or removal under Section 7532 of Title 5 U.S.C. (in the interests of national security);~~

~~51.45.4 any examination, certification, or appointment;~~

~~51.45.5 the classification of any position which does not result in the reduction in grade or pay of an employee;~~

~~51.4.6 a binding decision made by an authority outside the NRC;~~

~~51.4.7 the filling of a position outside the bargaining unit;~~

~~51.4.8 the determination of the basic qualifications required for a position;~~

51.4.9 non-selection from a list of properly ranked and certified candidates, except if the non-selection is alleged to be based on discrimination or other reason prohibited by statute;

51.4.10 the scheduled termination of a temporary appointment;

51.4.11 the separation of an employee during a trial period;

51.4.12 the placement of an employee on a Performance Improvement Requirements Memo (PIRM);

51.4.13 a proposed disciplinary action; or

51.4.14 any other exclusions specifically provided for by the terms of the Agreement.

51.6 Exclusivity Applicability

The grievance procedure applies to and, except as provided in 5 U.S.C. Section 7121(d) and (e), shall be the exclusive administrative procedure for resolving employee, Union and Agency and institutional grievances which fall within its coverage. No other process may be established to address employee concerns which fall within the scope of the grievance procedure, except by mutual consent of the Parties. Any matter that falls within the scope of the EEO complaint process may be raised in an EEO complaint or through the negotiated grievance procedure, but not both. As used in this Agreement, the term grievant refers to the aggrieved party whether a bargaining unit employee, the Union, or the NRC. The term respondent refers to the party against whom the grievance is filed.

51.7 Joint Filing

Grievances under the terms of this Article may be initiated by bargaining unit employees either singly or jointly or by the Union on behalf of an employee or by the Union or the NRC on their own behalf. When two or more employees file individual grievances involving the same facts, events or the same issues, the grievances may be joined and processed through the grievance and arbitration procedure together by mutual agreement. A maximum of 3 grievants will attend any grievance meeting or arbitration hearing concerning any joint grievance.

51.8 Representation (Employee)

An employee filing a grievance under this Article is entitled to representation by the Union or self-representation. If an employee presents a grievance without Union representation, the Union will be given the opportunity to be present at all meetings between the NRC and the employee regarding the grievance. For such meetings the Union shall be given reasonable advance notice. In all grievance meetings where the

Union serves as the representative of the grievant, the time of the meeting shall be mutually arranged. A maximum of 1 Union representative will be allowed to utilize official time to attend the initial Step (Step A) meeting unless the parties mutually agree otherwise. Two representatives shall be authorized official time to attend the final step (Step B) meeting of any grievance unless the parties mutually agree otherwise. One additional steward will be permitted to attend grievance meetings, as an observer, as part of steward training. More than one additional steward, under these circumstances, may be permitted on an exception basis.

51.9 Representation (Institutional)

If a grievance is initiated by the Union on its own behalf or by NRC, the Union may have a maximum of 2 representatives attend each Step meeting.

51.10 Duty Time

Grievants will be given reasonable duty time consistent with Section 8.7 of this Agreement to prepare and present their grievances. Requests for reasonable duty time may be denied only if the employee's absence would cause a work interruption or an emergency exists. Employee will provide management with reasonable advance notice of the need for time in excess of 30 minutes so that the time may be scheduled to minimize its impact on the office workload.

51.11 Filing

The parties agree that all grievances under this agreement shall have two formal steps, Step A and Step B. A grievance must be filed with the employee's first-line supervisor, with a copy to the Chief, Organization and Employee/Labor Relations and Work Life Branch or designee within 15 workdays after the occurrence of the matter out of which the grievance arose, or within 15 workdays after the date the aggrieved should reasonably have been aware of the occurrence of the matter out of which the grievance arose. The date of the occurrence, or date when the aggrieved party should reasonably have become aware of the occurrence, shall not be counted in computing timeliness. ~~Any employee who desires to file a grievance alleging a violation of Federal equal opportunity laws, must first, in a timely manner, seek the counseling provided for by EEOC and NRC regulations. Such a grievance must be filed within 15 workdays of the receipt of written notice from the EEO Counselor of the right to file an EEO complaint.~~ Any grievance not filed within the applicable period will not be capable of presentation, or consideration at a later date, unless the parties mutually agree to waive the time limits. For grievances in the regions, a copy must also be filed with the Regional Personnel Officer or Director, Division of Resource Management and Administration, as applicable. Time frames for meetings, etc., will begin with receipt ~~and date stamp~~ of the grievance by the first-line supervisor, Chief, Organization and Labor Relations or designee. If the Union believes that the first-line supervisor (Step A) or designated Step B official is not an appropriate official to hear the grievance, then the The NTEU Union representative may choose to meet with suggest alternative step official(s) to the HR representative. ~~to suggest and~~

~~discuss the designation of Step Officials prior to management's determination of who will serve as the Step Officials.~~

51.12 Timeliness

The issue of timeliness may be raised by the respondent at the initial step (Step A) with respect to matters relating to the initial filing and at the final step (Step B) with respect to matters occurring since the initial step meeting.

51.13 Content

The grievance must be in writing (or e-mail) and must:

51.13.1 present an account of the incident giving rise to the grievance, and the date the incident or action occurred or when the grievant became aware of it;

51.13.2 reference the law, rule, regulation, or provision or section of the Agreement, policy or procedure alleged to have been violated, misinterpreted, or misapplied.,

51.13.3 provide an explanation of how/why these were violated, misinterpreted, or misapplied, and

51.13.4 provide a detailed statement of the specific remedy sought.

The grievant or his/her representative may amend the grievance to include new issues if, during any step, information is uncovered which indicates the appropriateness of revising the focus of the grievance and this information was not known to the grievant/representative earlier at the time the initial grievance was filed. Such amendment must be in writing (or e-mail) and must be submitted to the appropriate step official Chief, Organization and Labor Relations or designee. After the final step of the grievance process, the scope and issues may not be amended absent mutual agreement. The final step (Step B) Official reserves the right to remand the grievance back to the initial step (Step A) official when the grievance is amended.

51.14 Union and NRC Institutional Grievances

Step officials for institutional grievances filed by the Union or by NRC shall be:

51.14.1 The Step A official of the Union shall be the Chapter 208 President; the Step A official of the NRC shall be the Director, Office of Human Resources, or designee.

51.14.2 The Step B official of the Union shall be the President of the NTEU, or designee, the Step B official of the NRC shall be the Executive Director for Operations, or designee.

51.14.3 Each party shall have the right to legal counsel at the Step A and Step B meetings.

51.15 Step A Guidelines

51.15.1 The Step A official will meet with the grievant and the grievant's representative(s), if any, ~~and the Chief, Organization and Labor Relations or designee~~ within 10 workdays after the receipt of the grievance, for the purpose of discussing the grievance, ~~unless the grievant has waived his or her right to a meeting~~. The meeting will provide an opportunity for the grievant to answer any questions which are prompted by the written grievance, to discuss when the matter occurred which gave rise to the grievance and whether the grievance was timely filed, to seek agreement, if possible, on the provision or section of this Agreement or the regulations, policy or procedure which may have been violated, to discuss the substance of the grievance, ~~remedies requested~~ and alternative remedies, if any, and to attempt to resolve the matter to the satisfaction of the grievant and the ~~step official respondent~~.

Recording devices, affidavits, the testimony of corroborating or expert witnesses, the introduction of evidence, rulings on evidence and similar features of an arbitration hearing will not be used at any step meeting.

51.15.2 The Step A official will render a written decision within 20 workdays after the date of the meeting or the date on which the meeting is waived. If the grievant is not satisfied with the Step A decision, the decision may be appealed to the Step B official within 10 workdays after the date of receipt of the written decision. The Step B official will be ~~designated by the NRC identified~~ in the Step A written decision ~~and will normally be the grievant's second level supervisor~~. The appeal from Step A must clearly specify the reasons on which the appeal is based and the issues in dispute ~~(if different than as set forth in the original grievance)~~.

As an alternative to Step B, ~~in non-EEO Grievances only~~, the ~~employee grievant~~ may request mediation. If the ~~employee grievant~~ wishes to attempt mediation, and the NRC and NTEU agree, the services of the Federal Mediation and Conciliation Service, or any other mutually agreed upon dispute resolution service, will be requested. Mediation will not exceed two sessions. The costs of the mediation services will be shared equally by NTEU and NRC. ~~This mediation service option will be implemented on a pilot basis for a period of two years.~~

This mediation phase is similar to settlement discussions. Issues raised during the mediation phase will not be used as evidence or in any other manner in any arbitration hearing.

If no settlement is reached during the mediation sessions, the NTEU may invoke arbitration on behalf of the grievant, in accordance with the Collective Bargaining Agreement. If arbitration is not timely invoked, the grievance is terminated. The

timeframe for invoking arbitration will begin on the first workday after the final mediation session took place.

51.16 Step B Guidelines

51.16.1 The Step B official, the grievant, and the grievant's representative(s), if any, and the Chief, ~~Organization and Employee/Labor Relations~~ and Work Life Branch, or designee shall meet within 10 workdays after the date of receipt of the written appeal to discuss the appeal. The meeting will provide an opportunity to discuss the decision of the Step A official, including any claimed inaccuracies, any failures to meet or resolve any issues, any issues which remain unresolved, and any respects in which any remedy or proposed resolution of the matter is considered inappropriate by the grievant, and other relevant matters.

51.16.2 Step B officials shall render a written decision within 20 workdays after the date of the meeting or after the date on which the meeting is waived.

51.17 ~~Final Step~~ Appeal to Arbitration

If after reaching the last step in the grievance chain available to a particular grievant the grievant is not satisfied with the final decision, then NTEU may, at its option, appeal the matter to arbitration. NTEU may also appeal an Agency determination to terminate a grievance at any step directly to arbitration. Should NTEU elect to exercise this option it must invoke arbitration within 20 workdays of receipt of the final step official's decision (or from the date of the last mediation session under 51.15.2) or termination notice.

51.18 Time Limits Extension

51.18.1 The parties agree that by mutual consent the time limits in this Article may be extended; and/or any step of this grievance may be waived.

51.18.2 Failure on the part of a Step A official to observe the time limits for issuing the Step A decision will constitute a denial of the grievance and permit the aggrieved employee or the Union to appeal to the next step. any step shall have the effect of a grievance being denied at that step, at which point the grievance may be appealed to the next step. The time period for the Union to appeal to Step B will begin on the day after the decision was due by the NRC (20 workdays after the date of the Step A meeting or the date the meeting was waived). If the Union does not appeal to Step B within 10 workdays of the due date for the Step A decision, the grievance may be terminated by the NRC, but only upon providing written notice to the person who filed the grievance (the employee or his/her representative).

51.18.3 Failure on the part of the grievant to otherwise observe time limits for any step shall have the effect of terminating the grievance.

51.18.4 The terms of 51.18.2 and 51.18.3 do not apply to the time limits for scheduling meetings under Step A and Step B of this grievance procedure.

51.19 ~~Copy~~ Distribution of Decisions

The NRC agrees to provide to the Union 1 copy of all written step decisions rendered on employee grievances filed under this Article. The Union will send to the Chief, ~~Organization and Employee/Labor Relations and Work Life Branch~~, or designee, one copy of each appeal from a step official's decision. Time frames for meetings, etc., begin with receipt (~~date stamp~~) by the Step Official-Labor Relations staff.

51.20 Grievance Meeting Attendance

No bargaining unit employee other than the grievant and his/her representative(s) will attend a grievance meeting, unless the Union and the NRC agree otherwise, in which event the employee other than the grievant and his/her representative(s) will be allowed official time to attend the meeting.

51.21 Process Participation

Employees, designated representatives, and employee witnesses at arbitration hearings will be assured freedom from restraint, interference, coercion, discrimination, intimidation, or reprisal arising out of their initiation or participation in the resolution of a grievance.

51.22 Document Requests

The grievant or his/her representative may request documents relevant and necessary to the grievance pursuant to Article 45. Whenever the Union requests documents for the purpose of representing a grievant(s), the time frame for Union response/action on the grievance shall be extended day for day, from the time the request is received until the NRC either denies the request or provides the documents, whichever is appropriate.

51.23 Non-grievability and Non-arbitrability

If the NRC alleges that a grievance is non-grievable or non-arbitrable for reasons other than timeliness, then the NRC shall notify the Union ~~, within or prior to~~ no later than the Step A decision letter, of the reasons for such a determination. The issue of timeliness may be raised by the respondent at the initial step (Step A) with respect to matters relating to the initial filing and at the final step (Step B) with respect to matters occurring since the initial step meeting. Upon its request, NTEU will be provided this information in writing. When the NRC alleges an issue is non-grievable or nonarbitrable for reasons other than timeliness, the Union will have 5 workdays to amend and refile the grievance if it wishes. The grievance will be resubmitted and proceed through the grievance procedure. Questions of non-grievability and/or non-arbitrability when raised shall be

joined to the grievance. ~~Unresolved issues of nongrievability and/or nonarbitrability shall be resolved by the arbitrator as part of the full case.~~