

New Article 47

Old Article 52

## Arbitration Procedures

### 52.1 Invocation

An unresolved grievance processed through the last step of Article 51 “Grievance Procedures” may be appealed by the Union or the NRC to binding arbitration. The provisions of 5 U.S.C., Section 7121(b)(3)(C) establish that the Union or the NRC has the authority to invoke arbitration as an appeal of a grievance. Therefore, when an employee has an election to proceed through a statutory appeal process or through the grievance/arbitration process, the employee must be mindful that the power to invoke arbitration rests solely with the Union. Thus, the employee must recognize that should he/she decide to appeal through the grievance/arbitration process and the Union decides not to invoke arbitration, then the employee will have no further recourse through a statutory appeal process, unless the aggrieved employee alleges having been affected by a prohibited personnel practice under Section 2302(b)(1) of 5 U.S.C.

### 52.2 Appeal to Arbitration

Appeals to arbitration must be in writing and either be hand delivered or sent by certified or registered mail to the Chief, Organization and Labor Relations, or to the NTEU National President with a copy to the President, NTEU Chapter 208.

52.2.1 If an appeal is to be hand delivered to the Chief, Organization and Labor Relations, the person making delivery of the written appeal must obtain the signature of the Chief or his/her designee on the original copy of the appeal and date and time the appeal was received in Labor Relations. A photocopy of the original with the date and signature of receipt should be made for the Union to retain for its records.

52.2.2 If hand delivered, or delivered by fax or e-mail, an appeal must be received in Labor Relations no later than 5:00 p.m. on the 20th workday after the date of receipt of the final step decision in the negotiated grievance procedure or after the date of receipt of the notice of decision of an adverse action. If sent by certified or registered mail, the appeal must be postmarked by the Postal Service with a date no later than the 20th workday after the date of receipt of the final step decision, or after the date of receipt of the notice of decision of an adverse action. (See Article 39, Section 39.9 regarding direct appeal of adverse actions to arbitration.) If the Agency fails to issue a final step grievance decision in accordance with the time limits set forth in this Agreement, the Union may, at its option, appeal the matter to arbitration at any time after the decision was due. However, if a decision is issued prior to the Union requesting arbitration, the twenty-day time limit will begin to run.

### 52.3 Procedures

52.3.1 The procedures for the selection of arbitrators for grievances arising in Headquarters and the Regional offices are set forth below. A grievance is defined as arising in Headquarters if the grievant's duty station is in the Washington, D.C., metropolitan area or if the grievance is filed solely in the name of the Union or by the NRC.

52.3.2 When arbitration is invoked by either the NRC or the Union for grievances arising in NRC Headquarters or the Regional Offices, the moving party will, within 10 workdays after invocation, contact the other party to seek agreement on selection of an arbitrator. If no agreement is reached, the moving party will request a list of 7 arbitrators with federal sector experience from the Federal Mediation and Conciliation Service. If the moving party fails to do so within 15 ~~10~~ workdays, the other party may request such list. These arbitrators will be from the Washington, D.C., metropolitan area for Headquarters grievances and from the metropolitan area encompassing the Regional Office for grievances arising in the Regions.

52.3.3 The NRC and Union will meet within 5 workdays after both parties have received the list to seek agreement on an arbitrator.

52.3.4 If the parties cannot agree on an arbitrator, the NRC and the Union will strike 1 name from the list alternately until 1 name remains. The remaining person shall be the duly selected arbitrator. The toss of a coin shall determine whether the NRC or the Union strikes the first name.

52.3.5 An arbitrator will be assigned within 15 days of the time the parties meet pursuant to Section 52.3.3.

52.3.6 Upon assignment, the arbitrator will be forwarded a case file by NRC consisting of the grievance, step appeals, responses, and any other relevant documents. A copy of the case file will be forwarded simultaneously to the Union.

52.3.7 Normally, hearings will commence within 60 days after the date arbitration is invoked unless the arbitrator's schedule does not permit or by mutual agreement of the parties.

52.3.8 No later than 15 workdays before a scheduled hearing, the parties shall explore possible resolution of the case, clarify and stipulate the issue or issues, exchange witness lists, and agree on joint exhibits and joint stipulations of fact. If the parties cannot agree on a joint stipulation of the issues, the parties shall exchange separate written statements of the issues at this meeting or no later than 5 workdays before the scheduled hearing.

52.3.9 In any case where the Parties mutually agree to postpone, delay, or cancel an arbitration proceeding, the Parties will share equally the cost of any fees being charged by the arbitrator or the court reporter which are associated with the requested change. If there is no mutual agreement, then the party requesting the postponement, delay or cancellation will pay any resulting fees.

52.3.10 Each Party has the responsibility and obligation to produce its witnesses on the day of the hearing, and each Party will bear its own witnesses' expenses, including travel. The grievant and all employees who are called as witnesses will be excused from duty to the extent necessary to participate in the arbitration hearing, without loss of pay or charge to annual leave.

#### 52.4 Expedited Arbitration Procedures

52.4.1 At the Union's option, any grievance over the following matters may be appealed to arbitration under an expedited process (except for those matters which include a claim of discrimination):

1. Disciplinary actions;
2. Details or Reassignments;
3. Performance Appraisals;
4. Denial of leave requests, work schedule requests, telework requests or requests for official time;
5. Overtime or compensatory time;
6. The Union's use of Agency services or facilities under Articles 9 and 10; or
7. Travel.

52.4.2 Expedited arbitration cases will follow the procedures set forth in 52.3, above, except that:

1. No briefs may be filed. No transcript is necessary, but if either party requests a transcript, that party shall pay the cost. Such transcript will not be provided to the arbitrator unless otherwise requested;
2. At the close of the hearing, the Parties may submit memoranda outlining legal points and authority, including copies of precedent setting case decisions;
3. The arbitrator will issue a bench decision, if possible, which will be confirmed in writing. If a bench decision is not possible, the arbitrator will issue a brief written decision within 10 workdays of the close of the hearing.

| 52.54 Arbitration Expense and Time

| 52.54.1 The arbitrator's fees and expenses, if any, shall be borne equally by the parties. If possible, the arbitration hearing will be held on the NRC's premises during the regular day-shift hours of the basic workweek.

| 52.54.2 The grievant and grievant's Chapter representative shall be allowed official time to attend the arbitration proceedings. All bargaining unit employees with relevant and necessary information who are called as witnesses, and who are on active duty status, shall receive official time to the extent necessary to testify in the arbitration proceedings without loss of pay. The NRC will grant the employee's request for official time to be excused from duty provided such absence does not cause a severe work interruption.

| 52.54.3 A verbatim transcript of the arbitration proceedings shall be made unless the parties mutually agree that one is not needed. The cost of the ~~court reporter transcript~~ will be shared equally by the ~~parties~~, with each Party bearing the cost of its own copy of the transcript. Copies of transcripts will be sent simultaneously to the Parties and the arbitrator.

| 52.65 Arbitrator Responsibility

| 52.65.1 An arbitrator will ~~strive to~~ issue a decision within ~~15 workdays~~ 30 calendar days after the close of the record.

| 52.65.2 The jurisdiction and authority of the chosen arbitrator will be confined exclusively to the interpretation of the provision or provisions of the Agreement at issue between the parties. The arbitrator will have no authority to add to, subtract from, alter, amend or modify any provision of this Agreement.

| 52.65.3 The arbitrator shall have the authority to:

| 52.65.3.1 administer oaths,

| 52.65.3.2 rule upon offers of proof and receive relevant evidence,

52.5.3.3 limit lines of questioning of testimony which are immaterial, irrelevant or unduly repetitive,

52.5.3.4 regulate the course of the hearing and, if appropriate, exclude from the hearing persons who engage in misconduct or cause disturbance,

52.5.3.5 strike any or all related testimony of witnesses who refuse to answer any questions ruled to be proper,

52.5.3.6 hold conferences to discuss simplification of the issues and possible settlement with the consent of the parties; ~~and~~

52.5.3.7 request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof; and

52.5.3.8 address unresolved issues of grievability and arbitrability. Either party may assert by pre-hearing motion and response that a matter presented for arbitration was not grievable or is not arbitrable on grounds that it was untimely filed or that the matter is excluded by the terms of this Agreement or by law. The arbitrator will have the authority to make a decision based on the motion and response, bifurcate the hearing to decide the issue of grievability or arbitrability prior to proceeding with the hearing on the merits of the case or hear the issue of grievability or arbitrability as part of the full case.

52.5.4 The arbitrator shall not have the authority to:

52.5.4.1 require the attendance or testimony of witnesses not called by either party.

52.5.4.2 require the production of documents not offered in evidence by either party.

52.5.4.3 make an independent investigation of the matter, other than at the hearing.

52.5.4.4 add to, subtract from, alter, amend or modify any provision of this

Agreement;

52.5.4.5 address any matters excluded from the grievance procedure, regardless of the specific allegation(s) or issue(s) raised;

52.5.4.6 consider new violations raised by the grievant that he/she had not previously raised, in writing, at or before the Step B grievance meeting.

However, the arbitrator has the authority to grant a Party's motion that the arbitrator draw an adverse inference when the other Party fails to produce facts, documents or witnesses that the arbitrator deems necessary and relevant.

52.5.5 The arbitrator shall possess the authority to prescribe remedies to the extent provided under pertinent laws, rules, and regulations. An arbitrator has the authority to award reasonable attorney fees in accordance with applicable law.

52.5.6 The decision of the arbitrator will be final and binding. However, either Party may file an exception to the arbitrator's decision with the Federal Labor Relations Authority (FLRA) in accordance with the FLRA's regulations.

#### 52.6- Burden of Proof

The grievant, i.e., moving party, has the burden of proof regarding the merits of the grievance by a preponderance of the evidence with the following two exceptions: NRC has the burden of proof regarding a performance-based action by substantial evidence in accordance with Chapter 43 of the Civil Service Reform Act, and a disciplinary or adverse action by a preponderance of the evidence in accordance with Chapter 75 of the Civil Service Reform Act.