

ARTICLE 52 ARBITRATION

Section 52.01 - General. If a grievance remains unresolved despite efforts to resolve the matter under the negotiated grievance procedure, arbitration may be invoked by the Union or Management. In accordance with applicable provisions of this Agreement, a suspension of 14 days or less, adverse action or unacceptable performance action may be referred directly to arbitration.

Nothing in this article shall be construed to discourage the settlement of the issue prior to the opening of the arbitration hearing or during the arbitration hearing.

The Union may serve as Representative and/or Co-Representative for a grievant in an arbitration.

Section 52.02 - Notice. Either the Union or Management shall notify the other party of its submission of a matter to arbitration by giving written notice within twenty-five (25) days of a final rejection at the last step of the grievance procedure, or Management's final notice of decision in a suspension of 14 days or less, adverse action or unacceptable performance based action. Such notice shall identify the specific grievance, suspension of 14 days or less, adverse action or unacceptable performance action involved and the designated representative(s) who shall handle the case. The party(s) invoking arbitration shall submit the request for arbitrators to FMCS or another mutually agreed upon source of arbitrators with the Notice of Invocation of Arbitration. The hearing will be scheduled within 120 days; however, if the parties are engaged in settlement discussions, the timeframe may be extended by mutual agreement.

Section 52.03 - Selection. Any arbitrator selected must have a Dun and Bradstreet number and either be enrolled in the contractor database utilized by HUD or agree to enroll in the contractor database prior to the completion of the hearing.

The Department and the National Council of HUD Locals 222 and any AFGE HUD local may select an arbitrator from a FMCS listing or may create a panel of arbitrators, and use this panel from which to choose arbitrators. When an established panel is used as the source of arbitrators, the parties shall meet to select an arbitrator within seven (7) days from service of the notice of arbitration.

When an established panel is not utilized, the party requesting arbitration shall request a list of at least seven (7) or other odd number of impartial arbitrators from the FMCS. The source of arbitrators shall be the FMCS unless the parties mutually agree to use a comparable alternate source, which will provide a detailed resume and fee schedule for each arbitrator. Within fifteen (15) days of receipt of the list, the parties will meet and select an arbitrator. If the parties cannot mutually agree upon one (1) of the listed arbitrators, Management and the Union shall each strike one (1) arbitrator's name from the list, and then repeat this procedure until one (1) person remains who shall be the duly selected arbitrator. The party making the first strike shall be determined by the flip of a coin.

Section 52.04 - Arbitration Fees and Expenses. The losing party shall pay the arbitrator's fees and expenses. The arbitrator shall indicate which party is the losing party. If, in the arbitrator's judgment, neither party is the clear losing party, costs shall be shared equally. If fees are assessed by the

arbitrator due to cancellation or postponement, the party responsible for the postponement or cancellation shall pay all attendant costs, unless settlement or other mutual arrangements are made.

The invoking and responding party shall be responsible for their own expenses prior to the decision or settlement, except that the Department will pay the travel and per diem costs, if necessary, for up to three (3) union witnesses duty stationed within the same region as the hearing is held or for national arbitrations. Such witnesses shall not serve as representatives at the hearing. The parties shall endeavor to have off-site witnesses testify via teleconference, videoconference, or other means acceptable to the Arbitrator.

If arbitration is cancelled by mutual agreement, any fees associated with the arbitration shall be split by the parties. If arbitration is cancelled by settlement or other mutual arrangements, any arbitration expenses shall be paid according to the terms of the agreement.

The party or parties responsible for the payment of any associated fees or other expenses shall promptly pay the costs.

The Department will make arrangements for a court reporting service for the hearing or deposition at it's or the Union's request, and the parties shall split the costs. A copy shall be provided to the arbitrator and both parties. Transcripts will be requested at the most reasonable rate available. If either party purchases transcripts it will provide the other party a free copy of the transcripts.

Section 52.05 - Arrangements. Upon selection of an arbitrator in a particular case, the respective representatives shall communicate with the arbitrator and each other in order to finalize arrangements. No ex parte communications with the arbitrator shall be permitted on the merits of the case, but both parties may discuss procedural arrangements as necessary. Any disputes on procedures shall be settled by the arbitrator consistent with this Agreement.

Section 52.06 - Direct Designation. Upon request of the grieving party (i.e., Management or the Union), the Federal Mediation Conciliation Service (FMCS) or other service shall be empowered to make a direct designation of an arbitrator to hear the case in the event:

- (1) Either party refuses to participate in the selection of an arbitrator; or
- (2) Upon inaction or undue delay on the part of either party.

Section 52.07 - Location. Normally, the arbitration hearings shall be held at Management's premises at the grievant's duty station; however, an alternate, mutually acceptable site may be used. National level hearings shall normally be held in Washington, D.C. Management shall pay reasonable travel and per diem for one (1) Union representative and one (1) technical representative for National level hearings. The space for arbitration shall be sufficient to meet the needs of the hearing, sequestration of witnesses, consultation between parties and their representatives, and any other needs.

Section 52.08 - Prehearing Submissions and Conferences. The parties will attempt to develop stipulations and a joint statement of the issue or issues to submit to the arbitrator prior to the

hearing. If the parties fail to agree on a joint submission of the issue for arbitration, each shall submit separate statements and the arbitrator shall determine the issue(s) to be heard and factual matters deemed to be stipulated.

The parties shall exchange and discuss stipulations, proposed exhibits, and proposed settlement no later than seven (7) days prior to the hearing.

At the request of either party, a pre-hearing conference may be held no later than seven (7) days prior to the hearing. The pre-hearing conference shall be held among the parties and/or their attorneys or other representatives and the arbitrator to discuss administrative matters which may include availability of witnesses. Unless the parties agree otherwise, the pre-hearing conference shall be conducted by telephone conference call.

Section 52.09 - Witnesses.

- (1) The parties shall exchange witness lists and also provide them, to the Arbitrator no less than seven (7) days in advance of the hearing, and shall include a brief summary statement of the expected testimony of each witness. Disputes as to the relevancy of a witness or redundant testimony will be resolved by the Arbitrator. These requirements do not pertain to rebuttal witnesses. Parties shall not intimidate or coerce the testimony of witnesses subject to penalty. An opposing party will not contact the other party's witnesses without first providing a minimum two (2) day notice to the opposing party.
- (2) The parties shall exchange witness lists, if known, no less than seven (7) days in advance of the hearing, which includes a summary statement of the expected testimony of each witness. Witnesses not identified in the witness list seven (7) days in advance, shall be permitted to testify or participate in the arbitration, unless excluded by order of the Arbitrator.
- (3) All employees who are called as witnesses are considered to be on duty time to participate in the arbitration process and hearing.
- (4) At the request of either party the arbitrator may order the sequestration of any witness or witnesses during the testimony of other witnesses.
- (5) Witnesses that are part of either party's representational team shall not be sequestered; however, they must provide testimony before any other witnesses are called.

Section 52.10 - Authority of the Arbitrator.

- (1) The parties agree that the jurisdiction and authority of the arbitrator shall be confined to the issue(s) presented in the grievance.
- (2) The arbitrator shall not have authority to add to, subtract from, or modify any of the terms of this Agreement, or any supplement thereto. In the case of a back-pay award the arbitrator may authorize reasonable attorney's fees in accordance with any legal remedy allowed by law, including in

accordance with standards contained in the Back Pay Act as amended by the Civil Service Reform Act of 1978.

- (3) Except for decisions to discipline, an arbitrator shall lack authority to determine the appropriateness of a Management decision to exercise any of the rights set forth in Article 4, Section 4.06, which do not amount to a violation of applicable law, regulation, or this Agreement.
- (4) An arbitrator shall lack authority to determine the legality or regulatory correctness of any Management decision not impacting personnel policies, practices or matters affecting general conditions of employment.
- (5) The arbitrator shall resolve any arbitration disputes consistent with this Agreement.
- (6) The arbitrator's award shall be binding on the parties. An award must be consistent with current law and regulation.
- (7) Payments to the arbitrator shall be immediately paid regardless of whether any exception(s) are filed. Exceptions may include requests for reimbursement of arbitrators' fees.

Section 52.11 - Exceptions. Where exception is taken to an arbitration award and the Federal Labor Relations Authority (FLRA) sets aside all or a portion of the award, the arbitrator shall modify the original award consistent with the requirements of the FLRA decision.

Section 52.12 - Refusal to Participate. Should either party refuse to participate in an arbitration, the arbitrator shall continue to hear the case and base their decision solely on the record. Once arbitration has begun, the non-participating party shall be limited to evidence in the record that it put forward prior to the arbitration hearing.

Section 52.13 - Merit. Where a grievance is taken to arbitration and is found to be patently without merit and/or frivolous, and without any reasonable basis, the arbitrator, notwithstanding any other provision of this Agreement, shall charge all arbitrator's fees and representation fees to the losing party. In all other cases, fees shall be assessed in accordance with Section 52.04.

Section 52.14 - Ninety (90) Day Requirement. Where, due to circumstances beyond the control of the arbitrator and the parties, an arbitrator cannot hear a case within 90 days, the parties may mutually agree to select another arbitrator.

Section 52.15 - Expedited Arbitration Procedures. The parties may mutually agree that certain arbitrations are properly handled more expeditiously. Procedures contained in this Section supplement the arbitration procedures covered elsewhere in this Agreement, and, when in conflict with other procedures, supersede them:

- (1) The Arbitrator selected for an expedited arbitration will be requested to convene a hearing within thirty (30) days after selection, or as soon after that as possible. In any case, the arbitration should be completed within 90 days.
- (2) If the parties mutually conclude at the hearing that the issues are of such complexity or significance as to warrant further consideration, the hearing may be conducted in accordance with regular arbitration procedures. However, the parties may mutually agree to have the same arbitrator hear the grievance and continue the hearing by use of regular procedures.
- (3) Unless requested by the Arbitrator, there shall be no post-hearing briefs. It is understood that the parties may make closing arguments at the hearing. All documents to be considered by this arbitrator shall be filed at the hearing.
- (4) There will be no court reporter or transcripts.
- (5) The parties will endeavor to complete the hearing in one day. Each party shall be allocated a fair amount of time to present their case at the hearing. The arbitrator shall have full authority to limit the parties in the presentation of evidence or witnesses given the time limitation on the hearing.
- (6) The arbitrator will make every effort to render their decision orally (a bench decision) at the hearing. Alternatively, the arbitrator will endeavor to render a written decision within ten (10) days after the date of the hearing.
- (7) The Arbitrator's decision shall be final and binding, unless it is timely appealed to a Federal court or an exception is filed with the Federal Labor Relations Authority under 5 USC Section 7122, whichever is appropriate.

Arbitration costs shall be apportioned as otherwise provided in this Article.

Section 52.16 - Implementation of Decision or Settlement.

Implementation of an arbitration decision or settlement that involve back pay, promotions, reassignments, or other personnel actions shall begin within two (2) pay periods, and should be completed in no later than four (4) pay periods, unless exceptions are filed. Implementation of other arbitration decisions or settlements that do not involve back pay, promotions, reassignments, or other personnel actions shall begin within two (2) pay periods, and will be completed in a reasonable timeframe agreed to by the parties, unless exceptions are filed.

Section 52.17 - Appeal. Arbitration decision reversals should be discussed with the affected parties and their representative(s) prior to implementation. Implementation of appealed decisions or settlements shall be processed in accordance with Section 52.16.

Section 52.18 - Extension of Time Limits. Time limits in this Article may be modified by mutual written consent of the parties.