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## **Section 1 - Selection of Arbitrators and/or Regional Panels**

### National Office Arbitrations and Regional Arbitrations (Other than Disciplinary and Adverse Actions)

- A. When arbitration is invoked by the NCFLL under any of the appropriate provisions of this Agreement, OELMR or Regional Labor Relations Officer, as appropriate, shall, within five workdays from receipt of the request for arbitration, request the Federal Mediation and Conciliation Service (FMCS) to provide a list of five arbitrators with copies to each of the parties. If the request to FMCS is not initiated within five workdays, the NCFLL, after notifying the Department, may request the list of five arbitrators from the FMCS.
- B. Within three workdays from receipt of the list from FMCS, the parties shall confer as appropriate to choose an arbitrator. If they cannot mutually agree on one name from the list, the parties will alternately strike one name from the list until only one name remains. The remaining name on the list shall be the duly selected arbitrator. The Federal Mediation and Conciliation Service shall be immediately notified of this selection.
- C. The Federal Mediation and Conciliation Service shall be empowered to make a direct designation of an arbitrator to hear the case in the event:
  1. Either party refused to participate in the selection of an arbitrator; and/or
  2. Upon inaction or unreasonable delay on the part of either party.

### Regional Arbitrations (Disciplinary and Adverse Actions)

The parties shall maintain a panel of four (4) arbitrators within each DOL Region. The panel shall be used for arbitrations only where the matter to be arbitrated is disciplinary and adverse actions. The numbers of arbitrators on the panel may be increased or decreased by mutual agreement of the parties.

Arbitrators to fill vacancies on the panel will be mutually agreed to by the parties or selected from a list of seven (7) names supplied by the Federal Mediation and Conciliation Service. If the parties cannot agree upon a name, they will alternately strike from the list until one (1) name remains.

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The arbitrator designated to hear a particular case shall be assigned on a random basis from the list maintained by the servicing labor relations officer. After an arbitrator is selected, his/her name shall not be placed back into the selection pool until all other arbitrators have been selected. The process will then begin again. This process will be followed regardless of whether the arbitration is an expedited or regular arbitration.

Any arbitrator may be removed from the panel unilaterally by either party on the anniversary of the effective date of this Agreement. The party wishing to exercise this right must give notice to the other party only during the thirty (30) calendar day period prior to the anniversary of the effective date of the Agreement. After such notice of an arbitrator's removal, no further case shall be heard by or assigned to that arbitrator. Once an arbitrator is removed, all arbitrations assigned to but not heard by the arbitrator shall be returned to the arbitrator assignment pool for random assignment.

Within thirty (30) calendar days after written notice of an arbitrator's removal, the parties shall meet and mutually agree upon another arbitrator to replace the removed arbitrator, using the selection method set forth in Subsection b above.

OASAM Labor Relations Officers shall be responsible for communicating with the arbitrators about their inclusion on or removal from the panel, their assignments, and the scheduling of their assigned cases, subject to oversight by the Union.

An arbitrator who agrees to serve on the Panel will not charge the Parties if the hearing is postponed in excess of three(3) days of the scheduled hearing date. If the postponement occurs within three (3) or fewer days of the arbitration, arbitrators will be paid a fee of no more than \$350.00.

## **Section 2 - Cost of Arbitrator; Fees and Travel Expenses**

The parties agree to share equally the cost of regular fees, including reasonable travel expenses and reasonable research expenses of an arbitrator selected and assigned to a case. The parties may wish to consult on the "reasonableness" of the arbitrator's charges.

## **Section 3 - Date and Site of Arbitration Hearing**

- A. Upon selection of the arbitrator, the respective representatives for the parties will jointly communicate with the arbitrator and each

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other in order to select a mutually agreeable date for the arbitration hearing.

- B. The parties will schedule the hearing within 45 calendar days after the arbitrator is selected. If the arbitrator is unable to schedule the hearing within the time specified, the parties, in conjunction with the selected arbitrator, shall jointly agree to another date.
- C. Arbitration hearings will normally be held on the Department's premises at a location where minimal travel expenses will be incurred by the parties.
- D. Parties are encouraged to submit joint exhibits prior to the commencement of the hearing.
- E. Once an arbitration hearing has been scheduled in accordance with the provisions of this Article, there shall be no recess, postponement, or rescheduling of the hearing except by the express written mutual agreement of the parties to this Agreement.

#### **Section 4 -Proceedings; Transcripts; Official Time and Expenses; Stipulations of Fact; Arbitrator's Award**

- A. Arbitration of Conduct Based Adverse Actions:
  - 1. The parties agree to have a verbatim transcript of the arbitration hearing and share the cost equally.
  - 2. Either party may file a brief. The parties and the arbitrator, at the conclusion of the hearing, will determine when such briefs will be due.
- B. Arbitration of Non-Adverse Actions:
  - 1. Representatives of both parties will consult no later than 30 days before the beginning of the hearing regarding the desirability of transcripts.
  - 2. The parties may, by mutual agreement, stipulate the facts of the case and argue their respective positions in briefs without a hearing.
  - 3. Either party may request verbatim transcripts of the arbitration hearing. The requesting party will pay the cost of the transcripts for both parties and the arbitrator.
  - 4. Parties are encouraged to discuss the submission of briefs at or before the exchange of witness lists. Unless mutually

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- agreed to by the parties, briefs will not be filed. If the parties agree to file briefs, when such briefs will be due will be determined by the parties and the arbitrator at the conclusion of the hearing.
- C. The grievant, his/her representative, and all employees who are called as witnesses, in accordance with Section 5 of this Article, will be excused from duty to the extent necessary to participate in the arbitration proceedings without loss of pay or charge to annual leave. Travel expenses of the grievant or appellant, an NCFLL Representative if employed by the Department, and witnesses approved in accordance with Section 5 of this Article will be reimbursed in accordance with the provisions of Article 8 of this Agreement.
  - D. The Union will have one primary advocate and one technical assistant on official time at hearing. The travel expenses of the technical assistant will be the responsibility of the Union.
  - E. The parties shall endeavor, wherever possible, to stipulate the facts involved in a case prior to the opening of the arbitration hearing.
  - F. The arbitrator shall render and serve his written award on the parties to this Agreement within 30 calendar days of the close of the hearing.

## **Section 5 – Witnesses**

- A. At least ten workdays before the opening of the arbitration hearing, the parties shall exchange lists of witnesses whom they expect to have testify. The parties shall provide the selected arbitrator with a copy of the list at the same time they exchange lists. The lists shall contain a summary statement concerning the proposed testimony of each proposed witness.
- B. If the parties cannot agree, it shall be the sole discretion of the arbitrator to determine who may testify. Upon request of either party, the arbitrator may be asked to make a ruling prior to the hearing, via a pre-hearing telephone conference, on disputes involving witnesses.
- C. Except in unusual situations, the arbitrator will not have the authority to keep the record open in order to hear testimony of additional witnesses.

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## **Section 6 - Authority of Arbitrator**

- A. Management and the NCFL agree that the jurisdiction and authority of the chosen arbitrator and his/her opinions as expressed will be confined exclusively to the interpretation and application of the provision(s) of this Agreement and/or Departmental regulations. However, regulations and decisions of higher authorities may be introduced as evidence regarding the interpretation and application of the provision(s) of this Agreement and/or Departmental regulations.
- B. The arbitrator will have no authority to add to, subtract from, alter, amend, or modify any provision of this Agreement.
- C. The arbitrator will have the authority to make an aggrieved employee whole to the extent such remedy is not prohibited by statute, higher level regulations, or decisions of appropriate higher authority, or this Agreement.
- D. The arbitrator's decision will be final and binding. However, the parties reserve the right to take exceptions to any award to the Federal Labor Relations Authority in accordance with its rules and regulations or the U.S. Federal Circuit Court, as appropriate.
- E. In expedited arbitration cases, the Arbitrator's decision should be rendered within five (5) calendar days of the date of the hearing. While it may be brief, the decision shall be in writing and must contain the rationale utilized by the arbitrator for either granting or denying the grievance.
- F. In regular (non-expedited) arbitration cases, the arbitrator should render and serve the written award on both parties within thirty (30) calendar days of the close of the record.
- G. The arbitrator will have no authority to consider new issues, allegations and defenses raised by the grievant that he/she had not previously raised, in writing, at or before the Step 2 grievance meeting. In addition, mere references to an alleged violation of a contract article or to issues, allegations or defenses, without reference to the underlying facts and circumstances supporting the assertion, shall not be arbitrable.

## **Section 7 - Grievability/Arbitrability Decisions**

The arbitrator shall have the authority to make all determinations regarding grievability and arbitrability. If the Department or the union

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considers a grievance non-grievable or non-arbitrable, it should communicate such determination to the other party at the earliest possible time. A party raising the issue of arbitrability of a grievance may require that a separate hearing (meeting or teleconference) be held to decide the arbitrability issue.

The arbitrator will render a decision no later than three (3) days following the meeting or teleconference and prior to any hearing on the merits of the grievance. If the moving party for threshold issue does not prevail, they will pay the cost related to the threshold hearing. If the moving party's motion is upheld, the parties will mutually share the costs for the hearing.

### **Section 8 - Extension of Time Limits**

Time limits in this Article may be extended by mutual written consent of the parties.

### **Section 9 - Expedited Arbitration Process**

- A. The parties shall use the expedited arbitration procedure for all grievances except:
  - 1. Institutional grievances (that is, where the Union or the Department are the grievant);
  - 2. For individual employee grievances involving suspensions of fifteen (15) days or more, up to and including removal as set forth in 5 U.S.C. § 7511; and
- B. Nothing in this Section prohibits the parties from mutually agreeing to utilize either the regular arbitration or expedited arbitration procedures forum to hear any specific grievance.
- C. Time Parameters and Conduct of Hearing
  - 1. An expedited arbitration hearing will be conducted in one (1) day. Each party will have up to three (3) hours to present its case, including rebuttal, to cross-examine the other party's witness(es), and to present opening and/or closing arguments.
  - 2. The expedited arbitration hearing shall not be transcribed; however, the arbitrator may record the hearing.
  - 3. No briefs shall be filed unless mutually agreed to by the parties.
  - 4. Either party has the right to submit copies of applicable case law up to the close of the hearing.

