

New Article 16

Arbitration

Alternative Dispute Resolution

The invocation of a grievance to arbitration does not preclude the parties from mutually agreeing to achieve resolution through the use of ADR. Both parties recognize that ADR achieves the Department's goals and objectives for resolving workplace disputes at the lowest possible level and promotes the mission of the Department. Therefore, prior to a case being heard at arbitration, the parties will identify and schedule those cases which should be resolved through mediation, settlement, or other means of alternative dispute resolution. If a party opts not to use the ADR process then it must notify the other party of this decision in writing.

If the parties agree to use ADR prior to having a scheduled arbitration hearing date, all time frames in the Agreement will be suspended until the completion of the ADR process. Once an arbitration hearing has been scheduled it may be delayed for ADR only by mutual agreement. If the matter is not resolved by ADR, the case will be placed on the calendar for hearing.

Section 1 – Selection of Arbitrators

- A. When the NCFLL invokes arbitration, it will request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven (7) arbitrators with copies to each of the parties. The Department will be responsible for the direct

payment of all fees associated with getting lists of arbitrators from FMCS.

B. Within seven (7) workdays from receipt of the list from FMCS, the parties shall choose an arbitrator. If the parties cannot mutually agree on one name from the list, they will alternately strike one name from the list until only one name remains. The FMCS case numbers will be used to determine which party strikes first. The NCFLL will strike first if the last digit of this number is an even number. The Department will strike first when the last digit of this number is an odd number. The remaining name on the list shall be the duly selected arbitrator. The NCFLL shall immediately notify the FMCS of this selection.

C. The FMCS shall be empowered to make a direct designation of an arbitrator to hear the case in the event that:

1. Either party refuses to participate in the selection of an arbitrator, and/or
2. There is inaction or a delay of more than 45 calendar days on the part of either party.

Prior to requesting a direct designation, the requesting party must notify the other party five (5) work days in advance.

Section 2 – Cost of Arbitrator; Fees and Travel Expenses

The parties agree to share equally the arbitrator's expenses and fees, including reasonable travel expenses. The parties may wish to consult on the "reasonableness" of the arbitrator's charges.

Section 3 – Scheduling, Date and Site of Arbitration Hearing

- A. Within seven (7) working days of the selection of the arbitrator, the representatives for the parties will jointly communicate with the arbitrator and each other in order to select a mutually agreeable date for the arbitration hearing.
- B. The parties will schedule arbitration cases on the following priorities within an OASAM region or the National Office: (1) adverse actions and disciplinary actions, (2) institutional grievances, and (3) other grievances, including union-filed employee grievances. Arbitration hearings will not be rescheduled to achieve compliance with the priority list.
- 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. Once an arbitration hearing has been scheduled in accordance with the provisions of this Article, either party may postpone based on emergencies or other instances where there are extenuating circumstances. The postponing party will pay any postponement fee.

Section 4 – Official Time and Expenses

- A. The parties agree that an effective and efficient arbitration process is a mutual interest and may result in containing costs associated with arbitration hearings. The parties may use videoconference and/or teleconference for witness testimony during arbitration hearings by mutual agreement.

- B. The grievant, his/her NCFLL representative, a technical assistant 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 and an NCFLL representative, if employed by the Department of Labor, 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.
- C. The travel expenses of the technical assistant will be the responsibility of the Department, if located within the OASAM Region of where the arbitration hearing is being held. If the technical assistant is located outside that OASAM Region travel expenses will be paid by the NCFLL. If the arbitration hearing is held in the Washington, DC metropolitan area, travel expenses of the technical assistant will be paid by the Department.
- D. The Department will issue travel accounting codes, and enter those codes in the Department's electronic travel management system as soon as possible (but no later than 10 working days prior to the hearing) after the list of witnesses has been submitted and approved consistent with the terms of Article 16, Section 5.
- E. Transcripts

1. Representatives of both parties will consult no later than 30 days before the beginning of the hearing regarding the desirability of transcripts.
2. Either party may request verbatim transcripts of the arbitration hearing. The requesting party will pay the cost of the transcripts for itself and the arbitrator. The other party may order a copy of the transcript at their own expense. Where there is mutual agreement to request transcripts, the parties will split the costs equally.

Section 5 – Witnesses

- A. At least twenty workdays before the opening of the arbitration hearing, the parties shall exchange lists of witnesses whom they expect to testify. The parties shall provide the 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, the arbitrator shall determine who may testify. Upon request of either party, the arbitrator may be asked to make a ruling prior to the hearing via teleconference and /or video 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.

Section 6 - Authority of the Arbitrator

- A. Management and the NCFLL 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, Departmental regulations and government-wide 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 and government-wide 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. The arbitrator should render and serve the written award on both parties within thirty (30) calendar days of the close of the record.
- F. The arbitrator will have no authority to consider new issues, allegations and defenses raised by the grievant or

management that had not previously been raised at or before the Step 2 grievance meeting.

Section 7 - Grievability/Arbitrability Decisions

The Arbitrator shall have the authority to make all determinations regarding grievability and arbitrability. If the Department considers a grievance non-grievable or non-arbitrable, it shall notify the NCFLL as soon as possible, but no later than the issuance of the Step 2 decision or Department's final decision on such things as institutional grievances. Either party raising a threshold issue of grievability and/or arbitrability may do so in a separate teleconference and/or video conference with the arbitrator.

Section 8 – Time Limits

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

Section 9 – Stipulations of Fact

The parties shall endeavor, wherever possible, to stipulate the facts involved in a case prior to the opening of the arbitration hearing.

The parties may, by mutual agreement, stipulate the facts of the arbitration case and argue their respective positions in briefs without a hearing.

Section 10 – Hearing Process

- A. Either party may submit a written opening and/or closing statement.
- B. Parties are encouraged to submit joint exhibits prior to commencement of the hearing.
- C. Either party may file a brief in adverse and disciplinary action arbitrations. The parties and the arbitrator, at the conclusion of the hearing, will determine when such briefs will be due.
- D. At the conclusion of non-adverse and non-disciplinary action arbitrations, the parties and the arbitrator will determine whether briefs will be submitted. The arbitrator will have final say on whether briefs should be submitted and when such briefs will be due.
- E. The parties may have observers at the hearing for training purposes only. The number of union observers on official time will not exceed the number of management observers. The NCFLL is responsible for travel expenses for the union designated observers.
- F. OASAM Labor Relations Officers shall be responsible for communicating with the arbitrator about her/his assignment and the scheduling of the assigned cases.

Section 11 – Review of Outstanding Arbitration Cases


At the beginning of each fiscal year, but not later than October 30, the NCFLL Arbitration Committee will meet with Departmental management to address outstanding cases. These cases will be

scheduled for hearing, scheduled for mediation, settled, or withdrawn. Any arbitration invoked 30 calendar days prior to the end of the fiscal year that are not scheduled for hearing are not subject to this provision.

Section 12 – Implementation

The effective date will be three (3) work days after the article is signed. This article will apply to all invocations of arbitration thereafter. The article will be made available to the NCFLL electronically, in a properly formatted, unsecured, portable document format within three (3) work days after the agreement takes effect and will be made available on the RegionNet. At the same time the Department will notify, by e-mail, all NCFLL bargaining unit employees of the link to this agreement being posted on RegionNet.

For the Department

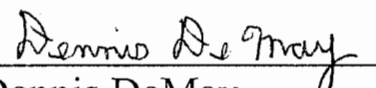


Doug Betten
Regional Administrator

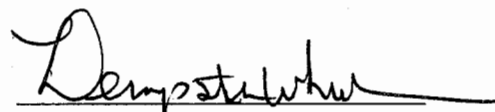
Galen Yoder
OELMR

New Article 16
July 15, 2009
Page 9 of 10

For the NCFLL

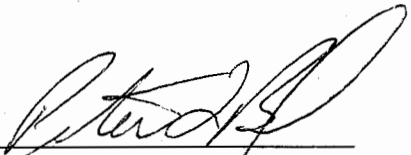


Dennis DeMay
President



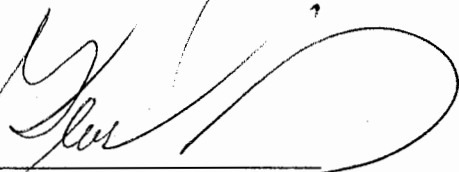
Dempster Wheeler
Treasurer

Courtesy of the
National Council of Field Labor Locals
and AFGE Local 2519
www.NCFLL.org
www.2519.org

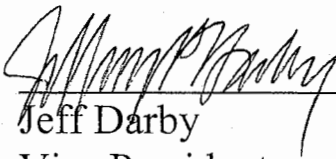


Peter Beil
Regional LRO

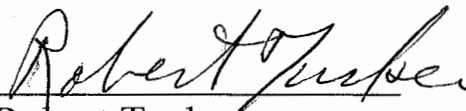
Paul Tracy
Vice President



Gerald Davis
Regional LRO



Jeff Darby
Vice President



Robert Tucker
Vice President

July 15, 2009