

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE

And

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO
COUNCIL 270

Case No. 20 FSIP 068

DECISION AND ORDER

Since 1916, the National Park Service (NPS or Agency) has been entrusted with the care of our national parks. NPS is a bureau of the U.S. Department of the Interior. More than 20,000 employees work in a wide variety of disciplines and organizations, from parks to regions to national programs, throughout the National Park Service. American Federation of Government Employees, AFL-CIO, Council 270 (AFGE or Union) represents 1400 bargaining unit employees, working under a newly consolidated unit from Maine to Virginia; Region 1.

BARGAINING HISTORY & PROCEDURAL HISTORY

Ground Rules between the parties were signed in July 2017. The parties bargained between January 2018 and March 2020; NPS and AFGE engaged in 28 negotiation sessions. The parties reached tentative agreements on 32 articles and remained at impasse on nine (9) articles. In May 2020, NPS filed for the assistance of the Panel. (FSIP Case No. 20053). The parties had not been to mediation. In June 2020, NPS withdrew its request for FSIP's assistance to engage in mediation with Federal Mediation and Conciliation Services (FMCS).

In June and July, 2020, NPS and AFGE participated in virtual mediation sessions with FMCS. The parties were able to reach agreement on two (2) of the nine (9) articles at impasse, leaving seven (7) outstanding articles in the CBA. In July 2020, the Agency submitted this request for Panel assistance.

The Panel ordered the parties to a telephonic Informal Conference with Member Nelsen in September 2020. As the parties were only able to reach agreement on one (1) of the seven (7) articles at impasse at the Informal Conference, Member Nelsen ordered the parties to submit their written statements of positions for the remaining six (6) articles. The parties both timely submitted their briefings.

PROCEDURAL ISSUE

The Union raised a procedural challenge to the Panel's retention of jurisdiction over this matter. Specifically, the Union stated, in its rebuttal statement, that it "agrees and accepts" the Agency's proposals for the six (6) remaining articles of the new CBA and was ready to sign in agreement as soon as practicable. The Union then stated that as a result of this agreement, the parties were no longer at impasse. In support of its position, the Union reasoned that in accordance with 5 C.F.R. § 7119(c)(1), it is unlawful for the Panel to maintain jurisdiction over the matter because the Union has agreed to all of the Agency's proposals. That is, the Union claims that the Panel no longer has jurisdiction because there is no longer an impasse. The Union claimed the Agency was acting in bad-faith¹ by, rather than signing the proposals the Union agreed to, insisting on the Panel maintaining jurisdiction and entering a final order of the Agency's proposals.

The Agency requested the Panel maintain jurisdiction over this matter in order to end negotiations of the new CBA, which started in July 2017. Agreements reached by the parties during the negotiations are tentative because they are subject to Union ratification; the membership of the Union, through a vote, can disagree with the agreement reached, sending the parties back to the bargaining table. Under the Statute², the Panel may take whatever final action is necessary to resolve the dispute, including the issuance of a Decision and Order. The Order is "final and binding" during the term of the parties' collective bargaining agreement unless the parties agree otherwise. The Agency points to the significant amount of taxpayer resources that have been spent during the years-long negotiation process to support its insistence on the Panel maintaining jurisdiction and issuing an order.³ Also, in support of its position, the Agency cites to the Panel's decision to issue a final order in *U.S. Nuclear Regulatory Commission and NTEU*, notwithstanding the union agreeing to the agency's proposals after the Panel had asserted jurisdiction.⁴

The Statute is clear that the Panel has jurisdiction to resolve negotiation impasses properly before it.⁵ If the parties do not arrive at a settlement after the Panel's assistance, the

¹ The Union raises an unfair labor practice (ULP) concern, however, the Union had not filed a ULP complaint with the FLRA or filed a grievance over an alleged violation of the bargaining ground rules; the more appropriate forums for challenging concerns over bargaining behavior in these negotiations.

² 5 U.S.C. § 7119 (c)(5)(C) – the final action of the Panel shall be binding on such parties during the term of the agreement.

³ The Agency estimates that bargaining the parties' new CBA, which began in 2016, cost the Agency between \$450,000 - \$500,000.

⁴ 20 FSIP 035 (July 2020)

⁵ 5 U.S.C. § 7119(a) states: "The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what matter it shall provide services and assistance." 5 C.F.R. § 2470.2(e) defines an impasse as follows: The term "impasse" means that point in the negotiation of conditions of

Panel may, in accordance with 5 U.S.C. § 7119(c)(5)(b)(3), “take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.”⁶ Here, the Panel asserted jurisdiction over the Agency’s request for assistance with the impasse in August 2020, and since then the parties have not entered into a settlement. Furthermore, there is no signed agreement between the parties as evidence that the parties resolved the impasse. While the Union is now agreeable to the Agency’s language, there remains no binding agreement between the parties. Without that signed agreement, the impasse is not resolved and the Panel’s jurisdiction continues.

The Panel properly asserted and maintains jurisdiction over this matter. The parties were not able to reach settlement with the Panel’s assistance. Now the Panel is statutorily tasked with taking the action needed to bring final resolve to the impasse. The parties are in agreement over the language in the Agency’s proposals for the six (6) remaining articles of their new CBA. To resolve the impasse, the Panel orders the parties to adopt the Agency’s proposals, in full, for those articles.

ORDER

Pursuant to the authority vested in the Federal Service Impasses Panel under 5 U.S.C. § 7119, the Panel hereby orders the parties to adopt the provisions as stated above.



Mark A. Carter
FSIP Chairman

December 20, 2020
Washington, D.C.

ATTACHMENT

- Agency’s Proposals

employment at which the parties are unable to reach agreement, notwithstanding their efforts to do so by direct negotiations and by the use of mediation or other voluntary arrangements for settlement.

⁶ The Federal Service Labor-Management Relations Statute commits to the Panel broad authority to make swift decisions in order to end disputes when the negotiation process has failed. *Council of Prison Locals v. Brewer*, 735 F.2d 1497 (D.C. Cir. 1984). As federal employees have no legal right to strike, the Civil Service Reform Act, Title VII authorizes the Panel to complete the bargaining process, ensuring the duty to bargain has a practical effect. *Dep’t of Def., Army-Air Force Exch. Serv. v. Fed. Labor Relations Auth.*, 659 F.2d 1140, 1146 (D.C. Cir. 1981).

Attachment 2 - Agency's Proposals

Agency Last Best Offer, March 13, 2020

Article 34

Incident-Emergency Call-Outs and Wildland Fire Response

Section 1.

The Agency will administer Incident-Emergency Call-Outs and Wildland Fire Response consistent with Agency policy (e.g., DO-18, DO-55, DO-57), applicable laws, and government-wide rules and regulations.

- A. The Parties recognize that the NPS may provide trained, qualified personnel to support special incidents generally involving wildland fires, but which may include incidents such as hurricanes, terrorist activities, and threats to homeland security.
- B. Other than firefighting, incident participation will generally be based on the relationship between an employee's job duties and the requirements of the incident.

Section 2. Wildland Firefighting

- A. Employees involved in firefighting callouts are subject to NPS qualification and training requirements.
- B. Employees may request training. The Agency will evaluate requests based on budgetary constraints and operational needs. Any employee who is denied training will receive written reasoning for being denied, upon request.
- C. When the Agency seeks volunteers, priority is given first to employees who have the requisite skills, experience, qualifications, and training, then employees with the longest service as determined by the Service Computation Date (SCD).

Section 3. Other Callouts

Other Callouts will be administered consistent with Section 2 above.

Section 4. Rest and Recuperation Days

Rest and Recuperation Days will be administered consistent with Agency policy (i.e., National Wildfire Coordinating Group, Standards for Interagency Business Management).

Article 16
Official Time

Section 1. Policy Statement

Each employee's foremost responsibility is the completion of the duties of his/her Agency position of record. However, the Parties recognize that in the furtherance of good labor-management relations as provided for in the Civil Service Reform Act of 1978, Union representatives may use limited amounts of official time under the conditions described in this Article.

Section 2. Designation

- A. The Agency will recognize BUEs designated by AFGE Council 270 (the Council) as eligible to use official time subject to this article.
- B. The Council President will provide the Chief of Labor Employee Relations or designee with electronic list(s) of all designated Union representatives within thirty (30) days of the effective date of this Agreement. Each list will include the name, Agency position title, duty location, email, and telephone number of each designated Union representative. The Council President will provide an updated list to the Chief of Labor Employee Relations or designee when there is a change to a designated Union representative within seven (7) business days. Such notice shall be provided before official time may be authorized. Only those employees identified on the list provided by the Union will be authorized to use official time. Union representatives shall be recognized on a ratio not to exceed one (1) appointed representative for each one hundred (100) BUEs.
- C. While the Union may provide an individual a title, the Agency is only obliged to recognize a BUE for the purposes of official time usage under this Article.
- D. AFGE representatives who are not NPS employees may be authorized to enter Agency facilities subject to approval of a specific advance written request. Access to Agency work sites or employees in a duty status should never be assumed at any time.

Section 3. Exclusions

- A. Absent advance approval from management, official time is not appropriate for use by a Union representative for work performed at home, including under an authorized telework agreement, or outside the time the Union representative would otherwise be in duty status. Approved official time can only be used in an Agency facility or a third party litigation facility absent advance approval from management.
- B. Work schedules will not be altered so that Union officials are in duty status for the sole purpose of using official time. In unforeseen or exceptional circumstances, at the sole discretion of the Agency, work schedules may be altered.

Agency's Last, Best, and Final Offer for Master Agreement, 7-8-2020

- C. Union representatives are not authorized to earn premium or differential pay, overtime or compensatory time (to include travel compensatory time) for their performance of Union representational duties.
- D. In accordance with 5 U.S.C. 7131 (b), the use of official time is prohibited for internal Union business.
- E. Official time is not permissible for Worker's Compensation or EEO Complaint Cases.
- F. Individuals designated as Union Representatives that are placed on a Notice of Opportunity to Demonstrate Acceptable Performance (NODAP) will not be authorized official time during the period of the NODAP.
- G. Union sponsored training is not an appropriate representational activity for which official time may be used. The Agency will not pay for official time or any associated expenses for union sponsored training.
- H. Lobbying or political activities are not appropriate activities for which official time may be used. The Agency will not pay for official time or any associated expenses for any lobbying or political activities.
- I. Pursuing grievances or binding arbitration, except:
 - 1. An employee using taxpayer-funded official time to prepare for, confer with an exclusive representative regarding, or present a grievance brought on the employee's own behalf; or to appear as a witness in any grievance proceeding; or
 - 2. Cases of whistleblower retaliation for activities covered by 5 U.S.C. 7131(c).

Section 4. Provisions for Official time

- A. Consistent with 5 U.S.C. 71 and this Agreement, Union representatives will be granted official time, subject to availability as described below, for only the following representational activities:
 - 1. Term Negotiations. To prepare for and negotiate a collective bargaining agreement, in accordance with 5 U.S.C. § 7131(a).
 - 2. Mid-Term Negotiations. To prepare for and bargain over issues raised during the life of a term agreement, in accordance with 5 U.S.C. § 7131(a).
 - 3. Dispute Resolution. To appear in proceedings before the Federal Labor Relations Authority during such time as an employee would otherwise be in a duty status, in accordance with 5 U.S.C. § 7131(c).

4. General Labor-Management Relations. To perform miscellaneous representational activities authorized under 5 U.S.C. § 7131(d), subject to availability of hours in the Union Bank as described below.
 - B. Union Bank. Total available hours of official time per fiscal year for activities covered by 5 U.S.C. § 7131(d) is calculated by one-quarter hour per BUE (e.g., 1/4 hour x 1000 BUEs = 250 hours available) as of October 1 of that year for the activities identified in Section 4.A. Unused Union bank hours do not carry over into the next fiscal year.
 - C. Union representatives may be authorized official time hours and LWOP as discussed in Section 6, on a fiscal year basis, not to exceed 25% of their established annual tour of duty (subject to the bank noted in Section 4.B.) in the performance of Union representational activities as described in Section 4.A., with the exception of Section 4.D. below.
 - D. Union representatives who reach the 25% cap will be authorized official time in accordance with sections 5 U.S.C. § 7131(a) or 7131(c). Time for these activities are charged to the Union bank for that fiscal year, notwithstanding that time in the Union bank would otherwise be used for activities covered by 5 U.S.C. § 7131(d). However, if the Union bank has been exhausted, time will be charged to the Union bank for the following fiscal year (or years).
 - E. Prior to a Union representative entering a work area or performing Union representational activities, the Union representative must obtain the consent of the immediate supervisor in charge of the work area. The Union representative shall provide the supervisor with the name of the employee, the general purpose of the visit, and how long the employee is expected to be away from duty. The employee must obtain agreement of the supervisor or designee prior to meeting with the Union representative.
 - F. No more than 5% of BUEs in any Park, Division, or Directorate may be assigned as Union Representatives in order to prevent an operational burden.
 - G. Union representatives will make every effort to perform their Union representational duties in a proper and expeditious manner.
 - H. In the interest of saving time and money, the Union will use other media (i.e., conference calls, e-mail) whenever possible.

Section 5. Official Time Requests and Reporting Procedures

- A. A request for official time must be made using the form within this Article at least one workday in advance in order to allow management to be able to consider and plan for Agency mission requirements. Sufficient information (start and stop time, employee represented, date, representational category, contact telephone number, and specific location, if other than the normal duty station or Union office) must be included with each request to use official time to allow the approving official to determine if the time requested and activity described meet the criteria outlined in this Article.

- B. Approval from an authorized supervisor/management official must be obtained by an employee prior to their engaging in official time as a Union representative. Any employee who uses official time without advance supervisory/management approval will be considered AWOL and subject to appropriate disciplinary action. The employee will immediately inform the supervisor when he/she returns to work after completion of the representational activity using the method determined by the supervisor.
- C. If management is unable to approve a request for official time, the reason for denial will be provided. If an operational need does not permit the employee to use the official time when requested, management will generally make a reasonable effort to allow the employee to use official time within two workdays, keeping in mind the interests of the Union, as well as the needs of the employer.
- D. An employee serving as a Union representative is responsible for accurately recording official time on his/her time and attendance for pay purposes.

Section 6. Leave Without Pay

A Union representative may request leave without pay to engage in Union activities (LWOPUA) that would be permitted under U.S.C. § 7131(d). LWOPUA does not count against the Union bank. No Agency employee shall be permitted to spend more than 25% of their established annual tour of duty on official time, LWOPUA, or any combination thereof, except as provided for by Section 4.D. of this Article. Management will consider requests for LWOPUA and determine whether to grant the leave without pay. The denial of LWOPUA cannot be grieved or disputed in any forum.

Section 7. Abuse of Official Time

Abuse of official time, including failure to accurately record official time, may result in disciplinary or other administrative action.

Section 8. Travel to Other Locations

- A. Official time will not generally be authorized for Union representational functions that require travel outside of the Union's representative's duty station. However, travel may be authorized when it is reasonable, necessary, and in the public interest.
- B. Union representatives are prohibited from using a government vehicle for any Union related travel.

Article 17

Use of Official Facilities and Communications

Section 1. Union Office Space

The Union will not be permitted free or discounted use of government property or any other Agency resources, including office or meeting space, phones, computers, computer systems, and reserved parking spaces.

Section 2. Bulletin Boards

Where available, the Agency will provide reasonable bulletin board space in park buildings where employees normally assemble for duty to begin their workdays. When bulletin boards are added or replaced, the Union may purchase a bulletin board for its exclusive use subject to space, security, and other reasonable conditions.

Section 3. Distribution of Literature

With advance, specific written approval, official publications of the Union, which may include newsletters, flyers, or other notices, may be distributed on Agency property by Union representatives during a non-duty time to BUEs. Distribution must be accomplished so as not to disrupt operations. All such materials shall be properly identified as official Union issuances. No Union publication endorsing a candidate for political office may be distributed.

Section 4. Access to Bargaining Unit

While performing representational duties, Union representatives who are BUEs will be granted entrance fee waivers at National Parks within the Northeast Region. Non-employee Union representatives will be granted access and entrance fee waivers upon advance, specific, and written approval when conducting representational duties.

Article 19
Negotiated Grievance Procedure

Section 1. Definitions

- A. A “grievance” means any complaint brought forward under this grievance procedure by any BUE concerning any matter relating to the employment of the employee, or by the Union concerning any matter relating to employment of any BUE, or by any BUE, or by the Union or Agency concerning:
1. The effect, interpretation, or claimed breach of the collective bargaining agreement, or
 2. Any claimed violation, misinterpretation, or misapplication of any laws, government-wide rules, or regulations affecting conditions of employment, subject to the limitations in Section 2.
- B. The term “grievant” means the individual or group filing the grievance, the Union representing the employee(s) or itself, or the Agency.
- C. All references to “days” are calendar days unless otherwise specified.
- D. Any reference to specifically titled individuals shall also include his/her designee.

Section 2. Exclusive Procedure

- A. This process will be the only procedure available to BUEs for the processing and disposition of grievances as defined in Section 1.A. of this Article.
- B. The Parties agree that whenever a matter may be raised under this procedure or the procedure provided in 5 U.S.C. §7118 alleging a violation of law, this procedure shall be used.
- C. This procedure will not be available to address:
1. The substance of an Agency decision invoking a provision of 5 U.S.C. § 7106 (a) or (b)(1);
 2. The classification of a position;
 3. The interpretation or application of Chapter 73 of 5 U.S.C. titled “Suitability, Security, and Conduct.”
 4. Appeals of a reduction-in-force which may be made to the U.S. Merit Systems Protection Board;

5. Retirement, life or health insurance;
 6. A suspension or removal under 5 U.S.C. § 7532, concerning National security;
 7. Any examination, certification or appointment;
 8. For competitive actions, the non-selection from a group of properly ranked and certified candidates;
 9. The classification of any position which does not result in the reduction in grade or pay of an employee;
 10. Termination of a probationary employee during the probationary period;
 11. The termination of a temporary employee during his/her temporary appointment;
 12. Performance appraisal elements or standards;
 13. Performance ratings of record;
 14. Awards of any form of incentive pay, including cash award; or recruitment, retention or relocation payments;
 15. A proposed disciplinary or adverse action;
 16. Matters which are not subject to the control of the Agency;
 17. Removal actions, subject to the Agency's determination the particular circumstances warrant exclusion from the grievance procedure.
- D. Allegations of Prohibited Personnel Practice. An aggrieved BUE claiming to be affected by a prohibited personnel practice under 5 U.S.C. § 2303 (b)(1), may raise the matter under the appropriate statutory procedure or under this procedure, but may not do both. A BUE shall be deemed to have exercised his/her option under this provision to raise the matter under either a statutory procedure or this procedure at such time as the BUE initiates an action under the applicable statutory procedure or files a grievance in writing under this procedure, whichever occurs first.
- E. An aggrieved BUE affected by matters covered under 5 U.S.C. § 4303 and 7512, may raise the matter under the appropriate statutory procedure or under this procedure, but may not do both. A BUE shall be deemed to have exercised his/her option under this provision to raise the matter under either a statutory procedure or this procedure at such time as the BUE initiates a notice of appeal under the applicable statutory procedure or files a grievance in writing under this procedure, whichever event occurs first.

Section 3. Representation

In individual grievances, a grieving employee will have the right to be represented by a Union representative at each step of this process or to represent himself/herself. Group grievances must be filed by the Union on behalf of two or more employees. In the event an employee chooses not to have a Union official as his/her representative, the Agency will notify the Council President or designee of the date and time of any grievance proceeding. The employee declining representation will do so in writing. The purpose of the notification is to afford the Union the opportunity to be present pursuant to 5 U.S.C. § 7114(a)(2).

Section 4. Settlement

- A. Any settlement agreement involving a grievance must:
 - 1. Be reduced to writing;
 - 2. May not conflict with the terms and conditions set forth in this Agreement without the express written consent of the Union and the Agency's Regional Director or designee.
- B. Time frames for filing or acting upon a grievance under this procedure may be extended only by mutual agreement of the Union and the Agency's Regional Director or designee.

Section 5. Informal Resolution

The Agency, the Union, and BUEs shall make reasonable efforts to resolve potential grievances prior to the filing of a formal grievance. Attempts at informal resolution of grievances will not automatically extend the time limits for filing grievances. Any extension of grievance time limits must be agreed upon by the Parties to this Agreement.

Section 6. Requirements for Grievances

- A. Individual and group grievances shall use the Grievance Form (included within this Article) and provide all the information requested on that form.
- B. A grievance must include at a minimum:
 - 1. The name(s) of the affected employee(s).
 - 2. The nature of the incident, with specificity, that gave rise to the grievance, including relevant facts.
 - 3. Specific contract provision, laws, regulations or policies alleged to have been violated.
 - 4. And requested remedy.

- C. The grievance form shall be used throughout the process if the matter proceeds through the steps described below.
- D. Institutional (Party) grievances shall be filed in accordance with Section 8 of this Article.
- E. A grievance, once reduced to writing, cannot be altered or amended to add matters that are not addressed in Step One filing or which would otherwise be untimely except by mutual agreement of the parties.
- F. All written grievances and related documentation will be concurrently provided to the Chief, Labor and Employee Relations, NER.
- G. Failure on the part of the aggrieved or the Union to prosecute the grievance at any step of the procedure will have the effect of nullifying the grievance. Failure on the part of the Employer to meet any of the requirements of the procedure will permit the aggrieved or the Union to move to the next step.

Section 7. Individual (Employee) Grievance Procedure

A. Step One

1. A written grievance utilizing the individual employee grievance form (Appendix 1) must be presented to the immediate supervisor within fourteen (14) days of the incident giving rise to the grievance.
2. If a meeting is requested, it will be held within seven (7) days of the immediate supervisor's receipt of the written grievance, unless mutually agreed otherwise. The immediate supervisor may refer the grievance to an Agency official with authority to resolve the matter if other than himself/herself and that individual shall become the Step One official. The Step One official will respond in writing with a decision within twenty (20) days of receipt of the written grievance or within ten (10) days of the date of the meeting, whichever comes later. The decision will include the name and contact information for the Step Two official if the matter is unresolved at Step One.

B. Step Two

1. Advancement of a grievance concerning a Step One decision must be submitted to the Step Two official within ten (10) days of receipt of a Step One decision or within seven (7) days of the end of the Step One official's response period, whichever is later. The grievance form (Appendix 2) shall be used for this purpose.
2. If a meeting is requested, it must be held within seven (7) days after receipt of the appeal at Step Two, unless mutually agreed otherwise. The Step Two official will respond with a decision in writing within thirty (30) days of receipt of the Step Two form or within twenty-one (21) days of the date of the meeting, whichever comes

later. The decision will include the name and contact information for the Step Three official if the matter is unresolved at Step Two.

C. Step Three

1. Advancement of a grievance concerning a Step Two decision, or a decision to a short term suspension or adverse action, must be submitted in writing to the Regional Director or designee within five (5) days of receipt of such decision. The grievance form (Appendix 3) shall be used for this purpose.
2. The Regional Director will respond with a decision in writing within thirty (30) days of receipt of the Step Three form.

D. Group (Employee) Grievances

1. A group grievance is a grievance filed by the Union on behalf of more than one BUE involving the same facts and the same issue(s). Group grievances will follow the steps described in Section 7 above.
2. Group grievances on behalf of two or more BUEs shall be filed utilizing the grievance form (Appendix 5) and shall specify the employees on whose behalf the grievance is filed.
3. Group grievances will follow the steps described above, in Section 7.A. through Section 7.C (Appendix 5 – Appendix 8).

- E. Invoking Arbitration. By law, only the Union or the Agency may invoke arbitration in accordance with Article 20 of this Agreement. Arbitration must be invoked within fifteen (15) days after the date of the decision at Step Three utilizing the Invocation of Arbitration form (Appendix 4 or Appendix 8).

Section 8. Institutional (Party) Grievances

- A. An institutional grievance is a grievance filed by the Union on its own behalf, in its institutional capacity, or by the Agency.
- B. The Union or the Agency shall raise the grievance in writing within thirty (30) days of the incident giving rise to the grievance.
- C. The grievance shall be filed with the Regional Director or designee (if initiated by the Union) or the Council President or designee (if initiated by the Agency).
- D. At the request of either party, the grievance may be discussed informally by the Council President and Regional Director or designee.

- E. A decision will be issued within thirty (30) days of receipt of the grievance or twenty-one (21) days after the date of the discussion, whichever is later.
- F. If the grievance is not resolved, arbitration may be invoked. Arbitration must be invoked within fifteen (15) days of the date of the decision.

Section 9. Rejection of Grievances

- A. A grievance may be rejected if:
 - 1. It was not filed using the agreed upon form;
 - 2. It was not filed within the specified time limits;
 - 3. It consists of a matter or matters excluded from the coverage of the grievance procedures;
 - 4. It contains no specific request for relief;
 - 5. The remedy requested by the grievant would not directly affect that individual's employment conditions;
 - 6. In the case of a group grievance, there is no commonality of interest between or among members of a group of BUEs;
 - 7. It is inconsistent with Section 8 of this Article; or
 - 8. It was not pursued timely by the Union.
- B. A rejection of a grievance under this section on grounds that the matter is not grievable under this Agreement shall constitute a statement by the rejecting party that the grievance is not arbitrable. If the grieving party does not accept the reason for rejection of the grievance, the grieving party may pursue the grievance through the remaining steps of the grievance procedure established by this Agreement, as to both rejection of the grievance and the merits of the grievance. In the event the grievance is not resolved, the procedures established in Article 20, Arbitration, shall apply.

APPENDIX 1

Step One Grievance Form – Individual Grievance	
Your name	Your tour of duty (e.g. M-F 8:30 a.m. - 5:30 p.m.)
Your position	Date of decision or action you are grieving:
Decision or action being grieved/appealed (Why are you filing this grievance/appeal?)	
Specific contract provisions or other laws, regulations or policies alleged to be violated:	
Facts and evidence you want to be considered: (You may attach relevant documents including witness statements or other evidence you want to be considered)	
Number of pages attached:	
Specific remedy requested: (What do you want to happen if the decision is in your favor?)	
Reason Supporting Remedy: (Why Should the matter be decided in your favor?)	
I am requesting a meeting with my immediate supervisor to resolve this grievance. Yes() No()	
I wish to be represented by AFGE: Yes () No ()	
I wish to represent myself : Yes() No()	
Employee's signature:	Date:
Representative's (if one) signature:	Date:

APPENDIX 2

Step Two Grievance Form	
Date Step One decision received:	Step One decision attached: Yes() No()
What, specifically, about the Step One decision are you grieving to Step Two?	
I am requesting a meeting with the Step Two official to resolve this grievance. Yes() No()	
Please attach any evidence, documents, etc. you wish to have considered at Step Two.	Number of pages attached:
Employee's signature:	Date:
Representatives signature:	Date:

APPENDIX 3

Step Three Grievance Form	
Date Step Two decision received:	Step Two decision attached: Yes() No()
What, specifically, about the Step Two decision are you grieving to Step Three?	
I am requesting a meeting with the Step Three official to resolve this grievance. Yes() No()	
Please attach any evidence, documents, etc. you wish to have considered at Step Three.	Number of pages attached:
Employee's signature:	Date:
Representatives signature:	Date:

APPENDIX 4

Invocation of Arbitration	
What is (are) the specific issue(s) you plan to present to the arbitrator?	
Please attach additional pages as needed	
Date Step Three decision received:	Step Three decision attached: Yes() No()
The Union wishes to attempt mediation of this grievance. Yes() No()	
I hereby invoke arbitration on behalf of AFGE.	
Authorized Representative's signature:	
Date:	

APPENDIX 5

Step One Grievance Form – Group Grievance	
Names and positions of employees must be listed on page three.	Date of decision or action being grieved:
Decision or action being grieved/appealed (Why are you filing this grievance/appeal?)	
Specific contract provisions or other laws, regulations, or policies alleged to be violated:	
Facts and evidence you want to be considered: (You may attach relevant documents including witness statements or other evidence you want to be considered)	
Number of pages attached:	
Specific remedy requested: (What do you want to happen if the decision is in your favor?)	
Reason Supporting Remedy: (Why Should the matter be decided in your favor?)	
The union is requesting a meeting with the manager who made the decision being grieved to resolve this grievance. Yes() No()	
Authorized Representative's signature:	Date:

APPENDIX 6

Step Two Grievance Form – Group Grievance	
Date Step One decision received:	Step One decision attached: Yes() No()
What, specifically, about the Step One decision are you grieving to Step Two?	
We are requesting a meeting with the Step Two official to resolve this grievance. Yes() No()	
Please attach any evidence, documents, etc. you wish to have considered at Step Two.	Number of pages attached:
Authorized representative's signature:	Date:

APPENDIX 7

Step Three Grievance Form – Group Grievance	
Date Step Two decision received:	Step Two decision attached: Yes() No()
What, specifically, about the Step Two decision are you grieving to Step Three?	
We are requesting a meeting with the Step Three official to resolve this grievance. Yes() No()	
Please attach any evidence, documents, etc. you wish to have considered at Step Three.	Number of pages attached:
Authorized representative's signature:	Date:

APPENDIX 8

Invocation of Arbitration – Group Grievance	
What is (are) the specific issue(s) you plan to present to the arbitrator?	
Please attach additional pages as needed	
Date Step Three decision received:	Step Three decision attached: Yes() No()
The union wishes to attempt mediation of this grievance. Yes() No()	
I hereby invoke arbitration on behalf of AFGE. Authorized representative's signature: Date:	

APPENDIX 9

Employees Included in the Group Grievance	
Please complete block 1, or list employees' names at block 2 below. Use additional pages as necessary.	
1. This grievance applies to:	
2. List of employees if block 1 is not used.	
Name	Position
No. of additional pages:	

Article 33

Safety and Health

Section 1. Agency Obligations

The Agency agrees to provide a safe and healthful workplace for all employees and to comply with applicable Federal laws, government-wide rules, and regulations relating to the safety and health of employees. All employees are responsible for prompt reporting of observed unsafe conditions. All BUEs will perform duties in a safe manner, wear appropriate personal protective equipment, and obey established safe practices and directives. The agency agrees to supply all appropriate personal protective equipment and necessary training.

It shall be the responsibility of the Agency to establish and maintain an effective and comprehensive Occupational Safety and Health Program (Program) in accordance with Public Law 91-596, the Occupational Safety and Health Act of 1970 (referred to as the Act), Executive Order 12196, 29 CFR Part 1960 (and all its sub parts along with Directives and Directors Orders, RM-50B & DO-50B) and, 29 CFR 1904 (Occupational Safety and Health Administration (OSHA) Recordkeeping Provision for Federal Employees).

Section 2. Employee Rights

The Agency recognizes the rights of employees under 29 C.F.R. Part 1960.

Section 3. Regional Safety and Health Committee

The Parties agree that a Regional Safety and Health Committee will be established in accordance with Article 14.2, Labor-Management Relations Committee. The Regional Safety and Health Committee may establish local safety and health committees. The Parties agree that current or preexisting local safety and health committees will continue.

Section 4. Smoke-Free Environment

There is a no smoking policy in all Parks or Region Indoor facilities and within twenty-five (25) feet of an entrance thereto.

Article 22
Merit Promotion

Section 1. Purpose and Policy.

The parties agree that the purpose and intent of the provisions contained herein are to ensure that merit promotion principles are applied in a consistent manner with equity to all employees and without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, sex, national origin, disabling condition, or age, and shall be based solely on job-related criteria.

Section 2. Competitive Actions.

In accordance with 5 CFR 335.103 (c)(1), competitive merit promotion procedures apply to the following agency actions:

- A. Temporary promotions for more than 120 days to higher-graded positions.
- B. Details for more than 120 days to higher-graded positions or to a position with higher promotion potential.
- C. Selection for training that is part of an authorized training agreement, promotion program, or is required before an employee may be considered for a promotion.
- D. Reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in the competitive service, except as permitted by reduction-in-force regulations.
- E. Transfer to a position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service.
- F. Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service.

Section 3. Non-Competitive Actions.

Competitive procedures do not apply to:

- A. Promotion (without significant change in duties and responsibilities) resulting from the upgrading of a position due to the issuance of a new classification standard or the correction of an initial classification error.
- B. Position change permitted by reduction-in-force procedures in 5 CFR Part 351.
 - a. 5 CFR 335.103 (c)(2).

Section 4. Discretionary Actions.

The Agency may, at its discretion, except the following action from competitive procedures:

- A. Promotion of an employee who was appointed in the competitive service from an OPM register, by direct hire, through delegated examining authority, noncompetitive

appointment or noncompetitive conversion, or under competitive promotion procedures for an assignment intended to prepare the employee for the position being filled (agency intent must be a matter of record and career ladders must be documented in the promotion plan).

- B. Promotion resulting from an employee's position being classified at a higher grade because of additional duties and responsibilities. This type of promotion is also referred to as an "accretion of duties promotion."
- C. Temporary promotion or detail to a higher-graded position or a position with higher promotion potential for 120 days or less.
- D. Promotion to a grade previously held on a permanent basis in the competitive service from which an employee was separated or demoted for other than performance or conduct reasons.
- E. Promotion, reassignment, demotion, transfer, reinstatement, or detail to a position having promotion potential no greater than the potential of a position previously held on a permanent basis in the competitive service and which the employee did not lose because of performance or conduct reasons.
- F. Promotion of an employee when directed by authorized authorities (i.e., judges, arbitrators, FLRA and other appropriate authorities acting within the scope of their authority).
- G. Conversion of temporary or term promotions to permanent positions, when the possibility was clearly stated in the original competitive notice.
- H. Details made in 120-day increments, up to one year to unclassified duties or to the same or lowered graded duties.
- I. Appointment from a certified OPM register for which no further competition is required.
- J. Consideration of a candidate not given proper consideration in a competitive promotion action.
 - a. 5 CFR 335.103 (c)(3).

Section 5. Vacancy Announcements and Areas of Consideration.

All actions requiring the use of competitive procedures under this Agreement will be announced and posted throughout the area of consideration.

- A. Areas of consideration must be sufficiently broad to ensure the availability of high-quality candidates, taking into account the nature and level of the positions covered. The Agency will establish areas of consideration and the length of time an announcement will be open. Employees within an area of consideration are given the opportunity to be considered by means of the vacancy announcement and application procedures.
- B. Information on Vacancy Announcements. Vacancy announcements will include, as a

minimum:

1. Statement of non-discrimination;
2. Announcement number and opening and closing dates;
3. Position number(s), title(s), series, and grade(s);
4. Number of vacancies to be filled.
5. Promotional test to be used, if applicable;
6. Knowledge, skills and abilities required;
7. Geographic and organizational location and tour of duty hours;
8. Time in grade requirements, if any;
9. Area of consideration;
10. Summary of qualification requirements;
11. If appropriate, a statement that the vacant position is a trainee or career ladder position leading to noncompetitive promotion;
12. Permanent or temporary nature, and duration, if temporary;
13. The contact information concerning the vacancy announcement.

- C. Posting and Distribution of Vacancy Announcements. Vacancies will be announced using the Office of Personnel Management USAJOBS System or its successor.

Section 5. Knowledge, Skills and Abilities (KSA's)

KSA's used by the Agency to rank candidates must be fair, job related, and applied equitably.

Section 6. Employee Applications

- A. To be considered for a position, candidates must file a timely application to the appropriate job announcement using the Office of Personnel Management USAJOBS System or its successor.
- B. Employees will complete written applications in accordance with instructions in the vacancy announcement using such the forms as prescribed.
- C. Federal Wage System /General Schedule Crossover. Employees may compete for positions in both the Federal Wage System ("Wage Grade" or WG) or the General Schedule (GS), but must meet legal requirements including minimum qualifications.