Article 25

Arbitration

Section 1. Invoking Arbitration

**Any grievance filed prior to July 9, 2018, concerning the assignment of ratings of record; or the award of any form of incentive pay, including cash awards; quality step increases; or recruitment, retention, or relocation payments, cannot move to binding arbitration.**

A grievance processed under this agreement, if unresolved, may be referred to arbitration as provided for in this article. Only the Union or the Administration may refer a grievance to arbitration. A notice to invoke arbitration must be in writing and served on the opposite party within fifteen (15) work days after receipt of the written decision rendered in the final step of an action processed under Article 24, Section 9 (Grievance Procedure) or under the conditions specified elsewhere in this agreement (e.g. Article 24, Section 10 and Article 24, Section 8).

The parties within fifteen (15) working days prior to the date of the arbitration hearing shall try to define the issue(s). If the parties fail to agree on a joint submission of the issue for arbitration, each party shall submit a separate submission and the arbitrator shall determine the issue or issues to be heard.

Section 2. Panels

The parties will continue to have arbitration panels for expedited and regular arbitration hearings.

Section 3. Removal of Arbitrators

Any arbitrator on a panel may be removed from the list by either party between October 1st and October 31st of each year by giving a written notice to the other party within this period. The parties will then mutually inform the arbitrator in writing that the arbitrator has been removed from the panel. Upon receipt of written notice, no further cases will be assigned to that arbitrator. The arbitrator will hear and decide any cases that are scheduled for hearing within the next 120 days.

By December 1st, the parties will use the existing panel roster procedures to reassign all other cases of any arbitrator(s) who is removed from the panel.

Either party may also remove an arbitrator (up to 5 per fiscal year, with no more than one from any individual panel) outside of the October 1st through October 31st window, by giving written notice to the other party at the OLMER and General Committee Level. The parties will mutually inform the arbitrator in writing of the removal. Upon receipt of written notice, no further cases will be assigned to that arbitrator, but the arbitrator will hear and decide any cases scheduled for hearing within the next 120 days. All other cases currently assigned to that arbitrator will be assigned to another arbitrator in accordance with existing panel roster procedures.

The parties may mutually agree to remove an arbitrator at any time. The parties will mutually inform the arbitrator in writing of the removal. No further cases will be assigned to that arbitrator, but the arbitrator will hear and decide any cases scheduled for hearing within the next 120 days. All other cases currently assigned to that arbitrator will be assigned to another arbitrator in accordance with existing panel roster procedures.

If an arbitrator who is removed elects not to hear and decide any scheduled cases, another arbitrator will be assigned in accordance with existing panel roster procedures.

Section 4. Refusal to Participate

Should either party refuse to participate in arbitration, the other party may present the case to the assigned arbitrator, who shall have authority to render a decision.

Section 5. Arbitration Sunset Provisions

If a hearing date has been set as of the effective date of the agreement and is postponed for any reason, a 12-month extension from the cancellation date will be granted to hold that hearing.

For any case for which arbitration was invoked before the effective date of the agreement but not scheduled the case must be heard within two years.

All cases invoked on or after the effective date of this agreement must be heard within 2 ½ years from the date of invocation.

The following exceptions will be applicable to all of the above cases:

A six month extension will be granted based on (a) postponement by the mutual consent of the parties; (b) motion of one party that is granted by the arbitrator; (c) withdrawal or termination of the arbitrator by the Panel; (d) illness or death of the arbitrator; (e) inclement weather event.

If a hearing is rescheduled to a date within the extended six month period and it cannot be heard because one of the exceptions above, an additional six month extension will be given to hold the hearing. However, if a party requests this additional extension under provision (b), that party will bear the full cost of the arbitrator fees and expenses including cancellation fees. Further extensions will be granted with these conditions.

Section 6. Procedures

1. Upon selection of the arbitrator, each party will identify its representative for communications with the arbitrator and for responding to any questions. If either party changes the originally identified representative, that party will notify the other party, as well as the arbitrator, as soon as possible.

B. The procedures used to conduct the arbitration shall be determined by the arbitrator. Each party will be entitled to have one (1) representative and one (1) technical advisor at each hearing. Each party is entitled to one (1) observer. ~~The Union observer, if an agency employee, will be on official time in accordance with Article 30 of this Agreement and at no cost to the Agency.~~  **Employees serving as representatives, technical advisors, or observers may not use taxpayer-funded union time to pursue arbitration of grievances.**

C. The arbitrator's fees and expenses will be shared equally by the parties.

D. ~~If the Administration requests a transcript, the Administration will bear the entire cost of such transcript and will furnish one copy to the Union.~~ **If either party requests a transcript, the requesting party will bear the entire cost of such transcript and will forward one copy to the arbitrator. If the other party wishes to have a copy of the transcript, both parties will equally share the cost of all transcripts.**

E. The arbitration hearing shall be held, if possible, on government controlled property at or near the city where the dispute arose, unless the parties agree to hold the hearing elsewhere.

~~F. For Article 24, Section 8 and 9 grievances, the agency will pay the authorized travel and per diem costs of one grievant, if the grievant is an SSA employee at the time of the hearing. If the grievant is no longer an SSA employee at the time of the hearing, the agency will pay authorized travel and per diem from the grievant’s duty station at the time the grievance was filed to the site of the hearing.~~

The parties agree to keep the number of witnesses to a reasonable number. The union will pay all costs for its representatives and witnesses. ~~with the exception that the agency will pay the travel and per diem costs of two union witnesses who are current SSA employees.~~

The parties will normally exchange preliminary witness lists 15 workdays prior to arbitration.

G. The arbitrator's decision shall be final and binding. In other than expedited cases, the arbitrator shall make specific finding of fact(s) based on the evidentiary record. However, either party may file an exception to the arbitrator's award in accordance with applicable law and regulations. The arbitrator will be requested to render the decision as quickly as possible, but in any event not later than the timeframes specified in Section 9 of this article unless the parties mutually agree to extend the time limit.

H. If the arbitration award is unclear to either party, the award shall be returned to the arbitrator for clarification.

Section 7. Effect of Arbitrator's Award

The arbitrator shall have no power to add to, subtract from, disregard, alter, or modify any terms of this agreement.

Section 8. Expedited Arbitration Procedures

The following expedited arbitration procedure is hereby adopted with respect to any grievance which involves:

~~- An employee's formal performance appraisal, other than demotions or removals for unacceptable performance under 5 U.S.C. Chapter 43;~~

- Final decision to withhold a within-grade salary increase;

- Reprimands and suspensions of 14 days or less;

* Counseling and oral warnings;

- Action imposing sick leave restriction;

- Denials of sick leave, annual leave, and LWOP;

- AWOL charges; and

- Any other matter mutually agreed upon.

1. The parties agree that the primary purpose of this supplemental arbitration procedure is to provide a swift and economical method for the resolution of identified disputes. The parties agree to take positive action to see that this purpose is fulfilled; and, in addition the arbitrator shall have the authority to take steps necessary to see that the purpose is fulfilled.

The hearing shall be informal.

No briefs shall be filed or transcripts made.

There shall be no formal evidence rules.

If possible, two (2) cases a day will be scheduled and heard by the same arbitrator.

The hearing shall be scheduled not more than sixty (60) days after notification to the arbitrator. If the designated arbitrator is not available to conduct a hearing within sixty (60) days, the next panel member in rotation shall be notified until an available arbitrator is obtained.

B. A single case should normally not require more than four (4) hours to be heard with each party being allowed up to two (2) hours to examine witnesses and make opening and closing statements. The arbitrator shall ensure that the length of the hearing is not unnecessarily extended because of irrelevant or repetitious testimony. The arbitrator may also waive the time limits for good and sufficient reasons.

C. The arbitrator may issue a bench decision at the hearing but, in any event, the arbitrator shall render the decision within forty-eight (48) hours after conclusion of the hearing. This decision shall be based on the record developed by the parties before and at the hearing and shall include a brief written explanation of the decision.

1. The arbitrator's decision shall be final and binding on both parties. However, either party may file an exception to the arbitrator's award in accordance with applicable law and regulations.

Section 9. Arbitration Panels

* 1. Purpose:

It is to the advantage of both Parties to minimize the cost of travel and expenses to be paid and shared for the selected arbitrators, as well as their availability for a given time frame. Therefore, the Parties constituted panels for both regular and expedited arbitrations, established a National case control system for the panels, and adopted the following provisions:

II. Structure:

A. Each regular and expedited panel will be composed of the number of arbitrators indicated below for both panels. There will be one regular and one expedited panel for each of the following geographic areas:

1. Baltimore-Washington (20) (Panel 1)

(Headquarters, Washington, D.C., the entire States of Maryland and Virginia)

2. Philadelphia (10) (Panel 2)

(Eastern Pennsylvania, Southern New Jersey and Delaware)

3. New York (20) (Panel 3)

(Metropolitan area, Northern and Central New Jersey)

4. Syracuse (5) (Panel 4)

(Western New York)

1. Albany (5) (Panel 5)

(Eastern New York)

6. Boston (10) (Panel 6)

(Massachusetts, Connecticut, Rhode Island, New Hampshire, Vermont, and Maine)

7. Atlanta (10) (Panel 7)

(N. Georgia, North and South Carolina)

8. Florida (10) (Panel 8)

(Florida, S. Georgia)

9. Birmingham (10) (Panel 9)

(Alabama, Kentucky, Tennessee, and Mississippi)

10. Pittsburgh (5) (Panel 10)

(Western Pennsylvania, West Virginia)

11. Chicago (10) (Panel 11)

(Illinois, Wisconsin, and Minnesota)

12. Cleveland (10) (Panel 12)

(Michigan, Ohio, and Indiana)

13. Kansas City (10) (Panel 13)

(Missouri, Kansas, Iowa, North and South Dakota, Nebraska, Colorado, Utah, and Wyoming)

14. Dallas/Ft. Worth (10) (Panel 14)

(Texas, Oklahoma, Louisiana, Arkansas, and New Mexico)

15. Seattle/Portland (10) (Panel 15)

(Washington, Idaho, Oregon, and Montana)

16. San Francisco (10) (Panel 16)

(Northern California, Northern Nevada)

17. Los Angeles (10) (Panel 17)

(Los Angeles, South Central Valley and Coastal Area, San Diego, and Imperial Counties, Arizona and Southern Nevada)

18. Puerto Rico (5) (Panel 18)

(All of Puerto Rico and the Virgin Islands)

19. Alaska (2) (Panel 19)

20. Hawaii (3) (Panel 20)

1. New panels can be established or panels can be reformed as the Parties jointly decide. Similarly, the Parties can jointly reduce the size of panels or alter the method of selecting panels as they see fit.

III. Exclusions

If an arbitration arises and a panel is depleted, the moving party will request a list of 7 arbitrators from FMCS within 60 calendar days from the date of invocation. The request will include the rates specified in this Article. The parties will equally share the costs of the requested list from the FMCS. Within ten (10) workdays after receipt of the list, the parties will consult in an attempt to select an arbitrator from the list. If agreement is not reached, each party will strike from that list until one arbitrator is selected, who will hear that case. A coin toss will determine which party strikes first. If the invoking party does not request a list of arbitrators from the FMCS within 60 calendar days of invocation, the invocation of the arbitration is considered withdrawn. The parties will equally share the arbitrator costs.

IV. Fee Schedule

A. Expedited Arbitration

1. The fee for all expedited cases will be $500 a case.
2. If the hearing is cancelled or postponed 9 calendar days or less prior to the scheduled hearing date and the arbitrator is so notified, or if the arbitrator appears at the hearing and the case is settled or cancelled by the parties without a hearing, the arbitrator shall be paid the arbitrator's published cancellation fee, not to exceed $500 per case, plus any travel and lodging expenses that the arbitrator incurs. If the hearing is cancelled or postponed 10 calendar or more days prior to the scheduled hearing date and the arbitrator is so notified, there is no charge to the Parties.
3. The Parties agree to pay up to ½ study day for each expedited case heard.

B. Regular Arbitration

1. Arbitrators selected will be paid their regular published rate on file with FMCS up to a maximum of $1,000 a day, or portion thereof for hearing days. Study days will be paid at the Arbitrator's published fee up to a maximum of $1,000 a day.

2. The Parties agree to pay up to 2 study days for each 1 day of hearing. Arbitrator's request for additional study days must be mutually agreed to by the Parties prior to communicating approval to the arbitrator.

1. If a hearing is cancelled or postponed 14 calendar days or less prior to the scheduled hearing date and the arbitrator is so notified, or if the arbitrator appears at the hearing and the case is settled or cancelled by the Parties without a hearing, the arbitrator shall be paid the arbitrator's published cancellation fee, not to exceed the maximum amount established for the panel per day, plus any travel and lodging expenses that the arbitrator incurs.
2. If the hearing is cancelled 15 calendar days or more prior to the scheduled hearing date and the arbitrator is so notified, there is no charge to the parties.

C. Travel Expenses for both Regular and Expedited Hearings

Arbitrator's travel expenses will be reimbursed based on Government Travel Regulations.

D. Discontinuing the Hearing for both Regular and Expedited Cases

If the arbitrator discontinues/leaves the hearing without proper cause, no fee or travel expenses are payable, and his/her name will be removed from the panels.

V. Rules for Arbitrators Serving on the Panels

1. Arbitrators selected for the panels may only serve on one geographic panel. Arbitrators must maintain a permanent (tax) residence within the assigned geographic panel area.
2. The arbitrator's travel expenses will be paid from the point of origin being the arbitrator's residence or office located within the geographical area of the panel, or another location, if travel from that location is more advantageous to the Parties.
3. The arbitrator will be available to hear cases all year long within the entire geographical area of his/her panel assignment. Failure to adhere to this provision is grounds for removal from the panels.
4. Any arbitrator who removes himself/herself from any panel forfeits assigned cases.
5. The arbitrator will abide by and be reimbursed for travel and per diem expenses in accordance with Federal Travel Regulations.
6. Arbitrators will be informed in the “Rules for Arbitrators serving on Panels” that if a decision in a regular arbitration is not rendered within 45 days, their fees will be reduced by 20%. If a decision is not rendered within 90 days, the original fee will be reduced by 40%.

Arbitrators will be informed in the “Rules for Arbitrators serving on Panels” that if a decision in an expedited arbitration is not rendered within 15 days, their fees will be reduced by 20%. If a decision is not rendered within 30 days, the original fee will be reduced by 40%.

These timeframes begin either the day after the hearing concludes or the day after post-hearing briefs (if applicable) are due, whichever is later. The Parties may mutually agree to extend the timeframes for a decision without imposing a reduction in fee penalty.

G. If the arbitrator is unavailable due to illness to hear a case, the arbitrator's name will be placed at the bottom of the panel rotation list. Should an arbitrator decline to hear a case, he/she may be removed from the panel by mutual agreement of the parties.

H. If a case is settled, cancelled or postponed by the Parties, the arbitrator's name will be placed at the beginning of the appropriate panel rotation list.

I. Any arbitrator who refuses to participate in a hearing in accordance with Article 25 of the National Agreement will be removed from the panel.

VI. Removal and Replacement of Arbitrators

A. If due to attrition, any panel has less than 50% of the number of arbitrators specified in Section 9.II of this Article, the Parties will request a list of arbitrators from the Federal Mediation and Conciliation Service. The parties will share the costs of any list(s) requested. The foregoing process will not prevent the Parties from considering other interested arbitrators who wish to serve on the panels. The Parties at the national level will take steps to ensure that all panels are adequately staffed.

B. The parties will write to the entire list of arbitrators to determine the arbitrators' availability and acceptability of the conditions and/or fee and expenses for both regular and expedited panels.

C. The Parties will compile a final list of available arbitrators into a list of qualified candidates for each panel of regular and each panel of expedited arbitration. A final list of at least 5 for each panel vacancy must be established before the striking process begins. If 5 arbitrators are not available for each panel vacancy, an additional request will be made to FMCS for additional names of arbitrators, including their biographical sketches.

This process will be repeated until a list of 5 available arbitrators is established.

D. A coin toss will determine which party strikes first. The striking will be accomplished by phone or in person. However, no travel is authorized for the striking process unless by mutual agreement.

E. The Parties will use an appropriate joint letter (Appendix A1) to send to arbitrators regarding their removal as well as for soliciting for replacement arbitrators.

1. An arbitrator will be removed from the panel on the date of the joint removal letter to the arbitrator (Appendix A1). This letter may be sent to the arbitrator at any time SSA's panel coordinator and AFGE's panel coordinator mutually consent to the arbitrator's removal. Absent mutual consent, the parties will follow the procedures in Section 3 of this Article.

VII. Operation of the Panels

Each Party will have a Panel Representative. If the Panel Representative is unavailable, the Parties may designate backups to perform panel functions.

Arbitrators will be assigned weekly based upon the date of invocation of arbitration. The Party invoking arbitration will send copies of the invocation to both Panel Representatives simultaneously. The moving party may utilize e-mail to invoke arbitration. The invocation will specify if the case is a regular or expedited arbitration. The invocation will include the name, address, telephone and fax number of the representative invoking arbitration and date of the final step grievance decision or that no final decision was issued.

In the case of any disagreement between the Parties on whether the arbitration is a regular or expedited arbitration, the panel representatives will refer to Section 8 of this Article to determine if the expedited or regular arbitration process will be used. If the parties still do not agree on which process will be utilized, the procedural issue of whether the case is expedited or regular will be settled by the arbitrator assigned, by prehearing conference call.

The panel representatives (or backups) will contact each other once a week at a mutually agreed upon time for the purpose of assigning arbitrators on the invocations received that week. If one panel representative (backup) is unavailable, the panel representatives will mutually agree to another time as soon as possible to make the arbitrator selection.

Panel representatives (backups) will proceed to assign arbitrators for the invocations. If there is more than one invocation for a panel, the invocation dated first will be selected first. If there is more than one invocation for a particular date and panel, the Parties agree to take turn selecting which case is assigned next. If only the moving party's representative has received an invocation, an arbitrator will be assigned and a copy of the invocation will be forwarded to the other party's panel representative so that each side has a copy of all invocations.

A control number will be assigned to the case, which will be referenced in all correspondence on the case. The panel representative (backups) will forward notice of selection, case control number and arbitrator's telephone number to their respective litigators.

The Parties will contact the arbitrator and set a date, time and place for the hearing when they are ready to move the case to hearing.

After a date for hearing is set by the Parties, the litigators will complete and send to their respective panel representative confirmation of the arbitrator selected, with details regarding the agreed upon hearing date, time and place.

If, for any reason, the arbitration is cancelled, the litigators will jointly inform the panel representatives in writing. This action will automatically place the arbitrator on the top of his or her respective panel.

The Agency panel representative will send a confirming letter to the arbitrator with the date, time and place of the hearing specified. She/he will enclose billing directions and information on Government travel regulations for the arbitrator. A copy of the confirmation letter with attachments will be sent to the litigators.

If the arbitrator's travel billing is questioned by either side, a copy of all correspondence concerning this will be sent to the other party.

A printout of the panel screens will be provided to the panel representative prior to each week's meeting when the panel representatives select and assign arbitrators to pending cases.

The Union's panel representative will be provided with reasonable ~~official time~~ **taxpayer-funded union time** to perform the duties and responsibilities associated with these functions. This ~~official time~~ **taxpayer-funded union time** will be handled in accordance with Article 30. It is understood that no travel or per diem will be authorized in connection with these functions.

The Parties recognize that it is in their best interest to discuss and resolve any problems that arise with these procedures. These procedures may be changed by mutual agreement of the Parties.

VIII. Combined Cases

The Parties recognize that it can be efficient and cost effective to join cases to be heard by an arbitrator at a single hearing. The Parties encourage representatives at the panel level to work together to identify and schedule cases that can be joined and heard consecutively.

IX. Review Process

At the approximate mid-point of the 2012 National Agreement, the Parties will review the status of the arbitration panel process. This will include a review of the fee schedule, and how it is working. If the parties mutually agree, this section (9) of Article 25 may be reopened, in order to update or modify any provision.

(Appendix A1)

Panel

Mr.

Dear Mr. :

This is to notify you that you are being removed from the permanent panel of arbitrators as established by the American Federation of Government Employees, General Committee and the Social Security Administration.

As of (insert date), no further cases will be assigned to you. However, if a hearing is scheduled within the next 120 days, you may hear and decide that case. All other cases assigned to you will be reassigned.

Thank you very much for your participation on the arbitration panel(s).

Sincerely

Panel Designee Panel Designee

American Federation of Social Security Administration
Government Employees

cc:
Federal Mediation and Conciliation Service