

ARBITRATION

SECTION 1. SUBMISSION TO ARBITRATION: If the Agency and the Union fail to settle any grievance under the negotiated grievance procedure, such grievance, upon written request by either the Agency or the Union within fifteen (15) calendar days after issuance of the final decision, may be submitted to arbitration.

SECTION 2. SELECTION OF ARBITRATOR: Within fourteen (14) calendar days from the date of the request for arbitration, the parties will meet to select an arbitrator that will hear and decide the case. If the parties cannot agree on an arbitrator, they will jointly request from the Federal Mediation and Conciliation Service (FMCS), a list of seven (7) arbitrators and they will jointly pay for that service. The request to the FMCS will specify that the parties request a list of seven (7) impartial persons from within the local geographical area that have Federal Sector Labor Law experience. The parties will meet within seven (7) days after receipt of such list. If the parties cannot agree on an Arbitrator, the Agency and the Union will each strike one arbitrator's name from the list of seven (7) and will repeat this procedure until one person remains who will be the duly sworn selected arbitrator. The flip of the coin will determine who strikes a name first.

SECTION 3. ISSUES: If the Parties fail to agree on a joint submission of the issue for arbitration, including any threshold issues, each will submit a separate submission and the arbitrator will determine the issue(s) to be heard. The submission of the issue(s) for arbitration will be done once the arbitrator has been selected, and will be submitted prior to the hearing.

SECTION 4. ARBITRATION DATE: Upon selection of the arbitrator, the respective 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.

SECTION 5. WITNESSES:

A. Testimony: The parties shall exchange list of proposed witnesses no later than fifteen days prior to the hearing. Upon timely request by the Union (or upon the exchange of witness lists), the Agency will adjust the shifts of employees in order to allow them to testify during duty hours. Local travel procedures as per the Joint Travel Regulation will apply. All Agency employed witnesses on behalf of the Union shall be on official time during the proceeding. Overtime, if approved by the Agency, will be paid to the extent not inconsistent with any federal law or any government wide rule or regulation. This does not preclude either party calling witnesses after the submitting of the initial list. It shall be the sole discretion of the arbitrator to determine who may testify.

B. Management Officials: If the agency objects to the Union's request to call a management official at the Chief of Staff and above level as a witness, either party may ask the arbitrator to make a ruling prior to the hearing, via a pre-hearing telephone conference.

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SECTION 6. FEES: The arbitrator's fee and the expense of the arbitration, if any, will be equally borne by both parties. If prior to the arbitration hearing or decision, the parties resolve the grievance the cancellation fee will also be shared equally. Each party will bear the expenses of its own witnesses who are not employees of NCR and will be responsible for arranging for the appearance of those witnesses at the hearing. The arbitration hearing will normally be held on the Agency's premises during the regular day shift hours of the basic workweek. All participants in the hearing who are bargaining unit employees will be in duty status.

SECTION 7. TRANSCRIPTS: When a formal hearing is used, verbatim transcription will be utilized if agreed to by both parties. The cost of this transcription service will be equally divided between the Agency and the Union. If the parties cannot agree to share costs equally, either the Agency or the Union may utilize verbatim transcriptions at its own expense. If either party desires a transcript of the proceedings, that party will bear the expense of the transcript. If both parties desire a transcript, the parties will share the cost. Either Party may request to file a post-hearing brief, subject to the Arbitrator's approval.

SECTION 8. ARBITRATOR AUTHORITY: The arbitrator will be requested to render his/her decision as quickly as possible after the conclusion of the hearing or after submission of closing briefs, if applicable. The arbitrator shall confine himself/herself to the precise issue submitted for arbitration and shall have no authority to determine any other issues not so submitted to him/her. In matters covered under Title 5 USC § 4303 and 7512 which have been raised under this procedure, an arbitrator shall be governed by Title 5 USC § 7701.



SECTION 9. EXCEPTIONS: The decision and award of the arbitrator will be final and binding except that either party may file an exception to the award as provided in 5 USC § 7122. The parties retain their rights under 5 USC § 7122, 5 USC § 7123, and 5 USC §7702. The filing of an exception with the FLRA will serve to stay the implementation of any award until the FLRA accepts or denies the appeal.

SECTION 10. DISPUTES: Any dispute over the application of an arbitrator's award will be returned to the arbitrator for settlement, including remanded awards.

SECTION 11. RESTRICTIONS: The arbitrator will not in any manner or form whatsoever, directly or indirectly add to, detract from, or in any way alter the provisions of this agreement.

SECTION 12. ATTORNEY FEES: In accordance with applicable laws and regulations, and where attorney fees are allowed, the arbitrator may award reasonable attorney fees.

Section 13. EXTENSIONS: All time limits in this arbitration procedure may be extended by mutual written consent.

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