

## GRIEVANCE AND ARBITRATION

### GRIEVANCE

**SECTION 1. PURPOSE:** The purpose of the following grievance and arbitration procedure is to provide a process to ensure timely consideration of the grievances of bargaining unit employees, the Union, or the Agency.

**SECTION 2. DEFINITION:** A grievance is any complaint:

- A. By an employee concerning any matter relating to his/her employment; or
- B. By the Union concerning any matter relating to the employment of any employee in the bargaining unit; or
- C. By an employee, the Union, or the Agency concerning:
  - 1. The effect or interpretation, or a claim of breach of this agreement.
  - 2. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

**SECTION 3. EXCLUSIONS:** This negotiated grievance procedure shall not apply with respect to any grievance concerning:

- 1. Non-selection from a group of properly ranked and certified candidates;
- 2. A notice of proposed disciplinary, adverse, or performance-based action (however, the subsequent decision may be grieved);
- 3. The granting of, or failure to grant, the amount of an award or retention allowance;
- 4. A return of an employee from a non-bargaining unit position as a supervisor or manager to a bargaining unit position;
- 5. Any claimed violation of subchapter III of Chapter 71 of Title 5 U.S.C. as amended relating to prohibited political activities;
- 6. Retirement, life insurance, or health insurance;
- 7. Any examination, certification, or appointment under 5 U.S.C. 7121 (c)(4);
- 8. A suspension or removal for national security reasons;

FCS      10/13/23  
Agency      Date

CM      10/13/23  
Union      Date

## GRIEVANCE AND ARBITRATION

9. Termination of a probationary or trial period employee;
10. Supervisory determination of job elements and performance standards;
11. The classification of any position which does not result in the reduction in grade or pay of an employee;
12. Oral or written counseling, written warning: as such actions shall not be used in determining penalty for subsequent actions; and
13. A fitness for duty decision which does not result in an action against the employee.

**SECTION 4. EXCLUSIVITY:** This negotiated procedure shall be the only procedure available to the Union and bargaining unit employees for resolving grievances except as provided in Section 6 below. If a bargaining unit employee wishes to present a grievance on his/her own behalf a representative of the Union will have the right to be present at any meeting with the Agency concerning the grievance.

**A. Invocation of Arbitration:** This right of grievance presentation without Union representation does not extend to arbitration which may be invoked only by the Union on the employee's behalf.

**B. Designation of Union Representative:** Employees reserve the right to request Union representation at any time during the grievance procedure. The designation of a Union representative must be in writing.

**SECTION 5. RESOLUTION:** Employees and the parties shall endeavor to cooperate to resolve grievances informally at the earliest possible time and at the lowest possible supervisory level.

**SECTION 6. ELECTION:** In areas where employees have the option of utilizing a statutory appeals procedure, including but not limited to: (1) employment discrimination complaints; (2) removal or reduction in grade for unacceptable performance; and (3) adverse actions (removal, reduction in grade for other than unacceptable performance, suspension for more than 14 days, and furlough for 30 days or less) employees have the option to use either the negotiated procedure or a statutory appeals procedure, but shall not utilize both. Employees exercise their option when they file a timely notice of appeal under the appropriate appellate procedure or file a timely grievance in writing under this procedure. In employment discrimination complaint actions this election is made in accordance with procedures set forth in the Agency and Equal Employment Opportunity Commission (EEOC) regulations.

FCS      10/13/23  
Agency      Date

CM      10/13/23  
Union      Date

## GRIEVANCE AND ARBITRATION

**SECTION 7. COMPUTATION AND APPLICATION OF TIME LIMITS:** In computing time periods for Steps 1 and 2 of this Article, should the time to either file a grievance or respond to a grievance fall on a weekend, a holiday, or during a shutdown or furlough, the time limit will automatically be extended to the next business day.

**SECTION 8. JURISDICTION:** If either Party considers a grievance non-grievable or non-arbitrable, they must state any claim of non-grievability or non-arbitrability in the written response and no later than the Step 3 decision. The original grievance will be considered amended to include the issue of non-grievability or non-arbitrability.

### SECTION 9. STEPS FOR FILING A GRIEVANCE:

#### STEP 1.

**A.** The grievance shall first be presented in writing by the employee and his/her Union representative, if any, to the grievance official, i.e., the lowest level Agency official with authority to grant the relief sought. Normally, this will be the employee's first-line supervisor. Grievances must be presented within fifteen (15) calendar days from the date of the event giving rise to the grievance or the date the grievant became aware of the occurrence. The written grievance shall contain the following information:

1. Name of grievant;
2. Specific article, section, law, rule, or policy allegedly violated, if known;
3. A specific statement of the grievance;
4. The personal relief desired;
5. The name of the representative, if any.

**B.** The grievance official shall arrange a meeting to be held within fifteen (15) calendar days after receipt to discuss the grievance. Within fifteen (15) calendar days following the meeting, the grievance official shall reply to the grievant and his/her representative in writing.

**C.** The Step 1 decision shall include the appropriate Agency contact to receive a Step 2 grievance.

FCS      10/13/23  
Agency      Date

CM      10/13/23  
Union      Date

## GRIEVANCE AND ARBITRATION

### STEP 2.

A. If the employee is not granted the requested relief with the reply received at Step 1, the grievance may be submitted to the next higher person in the chain of command over the person rendering the Step 1 decision within fifteen (15) calendar days from the receipt of the answer at Step 1. The Step 2 grievance shall be submitted in writing and shall contain the same information submitted in Step 1 (see Section 7, Step 1 A.), the Step 1 reply, and any additional information/evidence the employee wishes to submit.

B. The Step 2 official, or his/her designated representative, shall conduct such investigation as he/she deems necessary to determine the facts in the case. If requested by the employee or the Step 2 Official, he/she shall meet and discuss the grievance with the employee and/or the Union representative for the purpose of giving the employee the opportunity to make any argument he/she believes may impact the decision. The Union may decline the meeting in writing. The Step 2 official, after considering all the facts, shall render his/her decision in writing to the employee within fifteen (15) calendar days after the employee submits his/her Step 2 written grievance or within fifteen (15) calendar days after meeting with the employee and his/her representative, if such meeting is held.

C. The Step 2 Decision shall include the appropriate Agency contact to receive a Step 3 grievance.

### STEP 3.

A third step grievance must be filed within fifteen (15) calendar days from receipt of the Step 2 written decision to be timely. It must be filed with the higher management official above the step two official or his/her designee, as designated in the Step 2 decision. If requested by the employee or the Step 3 Official, he/she shall meet and discuss the grievance with the employee and/or the Union representative for the purpose of giving the employee the opportunity to make any argument he/she believes may impact the decision. The Union may decline the meeting in writing. The third step management official shall render a written decision within fifteen (15) calendar days after the meeting, or fifteen (15) calendar days after receiving the grievance if a meeting is not held. If the grievance is denied, the decision will set forth the reasons for the denial in writing. The Step 3 written decision is final and not subject to further review unless the matter is submitted to arbitration as discussed below.

FCS            10/13/23  
Agency            Date

CM            10/13/23  
Union            Date

## GRIEVANCE AND ARBITRATION

**SECTION 10. ALTERNATIVE DISPUTE RESOLUTION:** At any point during the grievance process, the Parties, by mutual agreement, may elect to utilize the services of a mediator obtained for Alternative Dispute Resolution (ADR). Time periods shall be tolled during the ADR process. Enforcement of discipline, other than removal, may be held in abeyance during the ADR process by mutual agreement.

**SECTION 11. HIGH LEVEL DECIDING OFFICIAL:** Where an employee wishes to grieve a written decision to suspend or remove from a Designated Deciding Official at the Deputy Associate Director (DAD) level or above, the Grievance will be filed at Step 2 (See Section 8, Steps for Filing a Grievance above).

### **SECTION 12. UNION GRIEVANCE:**

**A. Procedures:** In the case of any grievance which the Union may have against the Agency, such grievance shall be submitted, in writing, to the DHA Director or their designee with a copy to the LMER Chief. In the case of any grievance which the Agency may have against the Union, it shall be submitted to the Local President, or their designee, with a copy to the Local's shared mailbox. The mailbox email address will be provided to the Agency by the Local President. Union grievances will be submitted, in writing, within fifteen (15) calendar days after the date of occurrence of the event giving rise to the grievance or the date the Party became aware of the occurrence and shall contain the following:

1. A statement setting forth the facts upon which the grievance is based;
2. The bargaining unit employee(s) or bargaining unit employee group(s) impacted by the grievance, if applicable;
3. The specific Article and section of the agreement, law, rule, regulation or policy alleged to have been misapplied and/or misinterpreted; and
4. The relief sought.

**B. Meeting:** A meeting of the Parties will be held within fifteen (15) calendar days after receipt of the grievance with a written response by the appropriate Party within fifteen (15) calendar days after the meeting.

**SECTION 13. ADVANCEMENT OF GRIEVANCE:** Failure of the grievant or the Union to proceed with a grievance within any of the time limits specified in this agreement shall render the grievance void or settled on the basis of the last decision given by the Agency, unless an extension of time limits has been agreed upon. Failure of the Agency to answer a grievance within the time limits prescribed in each step shall allow the grievant or the Union to proceed to the next higher step of the procedure unless an extension of time limits has been agreed upon by the Parties.

FCS            10/13/23  
Agency        Date

CM            10/13/23  
Union            Date

## GRIEVANCE AND ARBITRATION

### ARBITRATION

**SECTION 14. SUBMISSION TO ARBITRATION:** A request for arbitration may be invoked only by the Union or the Agency. 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. The Parties strongly agree that grievances or issues may be resolved informally and may attempt informal resolution before filing an arbitration. Meeting informally does not preclude either Party from invoking arbitration.

**SECTION 15: SELECTION OF ARBITRATOR:** On or after the date of the notice to invoke arbitration, the appropriate Party, as detailed in Section 15.1 below, will request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven impartial persons to act as an arbitrator:

- 1. Requesting the List of Arbitrators and Cost:** The Parties will bear the cost of such list equally. The Parties will alternate the request and payment of the list. The flip of a coin will determine who will request and pay first. The parties shall meet within 10 calendar days after receipt of such list to select an arbitrator (this may be done virtually). The Parties shall jointly maintain a document detailing in chronological order which Party paid for which Arbitrator's List.
- 2. Striking Arbitrators:** If the parties cannot mutually agree on one of the listed arbitrators, then the Agency and the Union will alternatively strike one potential arbitrator's name from the list of seven and will then repeat this procedure until one name remains. The remaining person shall be the duly selected arbitrator. The parties will choose lots to determine who strikes the first name.
- 3. Notification to FMCS:** Following the selection, the moving Party will, within 14 calendar days, notify the FMCS of the name of the arbitrator selected. A copy of the notification will be served on the other Party. The time limits may be extended by mutual consent.

**SECTION 16. 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 shall 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, at a date to be determined by the arbitrator.

FCs 10/13/23  
Agency Date

CM 10/13/23  
Union Date

## GRIEVANCE AND ARBITRATION

**SECTION 17. 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 18. WITNESSES:

**A. Testimony:** The Parties shall exchange a list of their anticipated witnesses no later than fifteen (15) days prior to the hearing. Upon exchange of the witness lists, the Agency will notify supervisors of employees who may be called as witnesses. The Agency will normally adjust the work schedule of employees in order to allow them to testify during their duty hours. It shall be the sole discretion of the arbitrator to determine who may testify. All Agency employed witnesses requested by the Union shall be on official time during the proceeding. Overtime shall not be paid except by order of the arbitrator or mutual consent. This does not preclude either Party calling witnesses after the submitting of the initial list.

**B. Travel Expenses:** Each Party will bear the expenses of its own witnesses who are not employees of the Agency and will be responsible for arranging for the appearance of those witnesses at the hearing. The Agency will bear the travel and per diem expenses of participating Agency employees to the extent permitted under the Joint Federal Travel Regulations (JTR). Upon request, bargaining unit employees will receive training on the Defense Travel System and how to request a Government Travel Credit Card (GTCC). Vouchers must be submitted within five (5) calendar days after returning from travel, pursuant to the DHA Travel Guidebook. Observers will not be entitled to travel and per diem expenses.

**C. 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.

**SECTION 19. LOCATION:** 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. By mutual agreement or by decision of the Arbitrator for good cause, the Parties may select an alternative location for the hearing, including virtual hearings or hearings on the briefs/motions. Any costs incurred for a change in default location will be equally borne by the Parties.

**SECTION 20. FEES:** The arbitrator's fee and the expense of the arbitration, if any, will be equally borne by the Parties. If prior to the arbitration hearing or decision, the parties resolve the grievance the cancellation fee will also be shared equally.

FCS      10/13/23  
Agency      Date

CM      10/13/23  
Union      Date

## GRIEVANCE AND ARBITRATION

**SECTION 21. 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 22. 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 U.S.C. 4303 and 7512 which have been raised under this procedure, an arbitrator shall be governed by the applicable laws, rules, and regulations.

**SECTION 23. 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 U.S.C. Section 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 24. DISPUTES:** Any dispute over the application of an arbitrator's award will be returned to the arbitrator for settlement, including remanded awards.

**SECTION 25. 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 26. ATTORNEY FEES:** In accordance with applicable laws and regulations, and where attorney fees are allowed, the arbitrator may award reasonable attorney fees.

**SECTION 27. EXTENSIONS:** All time limits in this arbitration procedure may be extended by mutual written consent/agreement.

FCS      10/13/23  
Agency      Date

CM      10/13/23  
Union      Date



The above provisions for Employee Rights and Grievance and Arbitration are hereby agreed to and effective this 31<sup>th</sup> day of October 2023.

For the Agency:

SHARP.FELICIA  
CYRANA.10156  
00841

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Date: 2023.10.31 16:39:01  
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For the Union:

Catherine McWhiston 10/31/23

The above provisions for Employee Rights and Grievance and Arbitration are hereby agreed to and effective this 31<sup>th</sup> day of October 2023.

For the Agency:

SHARP.FELICIA.C  
YRANA.1015600  
841

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For the Union:

*Cathie McHuston 10/31/23*