

**ARTICLE 28**  
**Grievance Procedure**  
**Effective November 6, 2022**

The purpose of this article is to provide a mutually acceptable procedure for resolution of all grievances.

**Section 1**

- A. The Parties agree that grievances and complaints should be settled in an orderly, prompt, and equitable manner which will maintain the morale of all parties involved. Every effort will be made by supervisors and officials of the Union to settle grievances at the lowest level of supervision.
- B. An employee or any representative will be unimpeded and free from restraint, interference, coercion, discrimination, or reprisal in seeking appropriate adjustment of a grievance. The initiation or representation of a grievance in good faith by an employee will not cause any reflection on the employee's standing with Management nor on the employee's loyalty to the office.
- C. Union representatives will be granted such time approved in accordance with Article 8 as is reasonable and necessary to prepare for and present their grievances. Employees who are not Union representatives or are not authorized time under Article 8, will be granted duty time, as is reasonable and necessary, to prepare for and present their grievances. An employee must obtain prior supervisory approval prior to using duty time to prepare for their grievance.

**Section 2**

- A. A grievance means any complaint:
  - 1. By an employee concerning any matter relating to the employment of the employee;
  - 2. By the Union concerning any matter relating to the employment of any employee;  
or
  - 3. By any employee, the Union, or the Employer concerning:
    - a. The effect or interpretation, or a claim of breach of this Agreement; or
    - b. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

B. The term grievance does not include:

1. Any claimed violation of law relating to prohibited political activities;
2. Retirement, life insurance, or health insurance;
3. A suspension or removal under Section 7532 of Title 5 U.S.C.;
4. Any examination, certification, or appointment;
5. The classification of any position which does not result in the reduction in grade or pay of an employee;
6. The termination of any employee serving a probationary or trial period pursuant to law and/or regulation.
7. Non-adoption of a suggestion.
8. Non-selection for any bargaining unit positions where the selectee and non-selectee(s) were properly rated and ranked.
9. Non-selection for non-bargaining unit positions.
10. Oral or written counseling;
11. Performance progress reviews;
12. Written notice of proposed action;
13. Adjudication of claims, the jurisdiction over which is reserved by Statute and/or regulation to another Department, e.g., Department of Labor determinations on workers compensation;
14. Actions taken by the Employer required by lawful court orders (e.g., garnishment of wages for indebtedness or child support). However, personnel actions taken by the Employer as a result of the application of lawful court orders, not otherwise excluded, are grievable.
15. Decisions regarding requests for approval of outside activities or employment that are raised prior to the appeal of the decision to the Office of the Chief Administrative Law Judge (OCALJ), as defined by Article 5.

### **Section 3**

An employee affected by a prohibited personnel practice under Section 2302(b)(1) of the Civil Service Reform Act, may raise the matter under a statutory procedure or the negotiated procedure but not both. An employee shall be deemed to have exercised their option at such time as the employee timely files a grievance in writing or files a written complaint under the statutory EEO procedure, whichever event occurs first.

#### **Section 4**

- A. A grievance under this negotiated system can be initiated by an employee, a group of employees, the Union, or Management. An employee or group of employees may not invoke arbitration proceedings on their grievance on their own initiative. Only the Union or Management may request arbitration.
- B. Employees dissatisfied with orders properly grounded in supervisory authority are expected to follow the order first and then consider filing a grievance. Any grievance on which action is not initiated with the immediate supervisor within twenty (20) working days after the occurrence of the incident or event from which such grievance arose will not be presented or considered at a later date unless the employee was not aware of being aggrieved within the stated time limit. When the basis for a grievance is a continuing practice or condition, a grievance may be filed at any time.
- C. Where the grievant elects Union representation, communications with regard to the grievance shall be made in accordance with Article 7.
- D. For employees on flextime, the Parties agree to schedule any meetings/oral presentations in the grievance process during the core hours of the grievant unless the Parties mutually agree otherwise.
- E. For employees on a fixed shift, the Parties agree to schedule any meetings/oral presentations in the grievance process during the fixed shift of the grievant unless the Parties mutually agree otherwise.

#### **Section 5**

The following shall normally serve as the Step 1, 2, and 3 management officials for all employee grievances filed under the negotiated grievance procedure. The first line supervisor will serve as the Step 1 official and the second line supervisor will serve as the Step 2 official. The Chief Administrative Law Judge or designee within OCALJ will serve as the Step 3 official for grievances (except for those addressing individual employee performance appraisals, reprimands and individual leave requests, in which case the employee's third line supervisor will serve as the Step 3 official).

## **Section 6**

### **Step 1**

- A. A grievance must be presented in writing to the Step 1 management official within twenty (20) working days after the occurrence of the incident or event from which such grievance arose or the employee first became aware of the matter or should have become aware, whichever is later. An email will be considered “in writing” as long as the email clearly states it is a grievance.
- B. Before the Agency or Union is required to render a decision at the first step of the grievance process, the written grievance must describe the matter(s) being grieved, including the date of the occurrence and the individuals involved. The written grievance must also identify the Article(s) and Section(s) of the Agreement that are involved, describe the alleged violation, explain how the action(s) or inaction violate those particular Articles and Sections, and state the requested relief. The Agency may raise the failure to provide this information as part of its grievance response.
- C. Consideration of the grievance at subsequent levels shall be limited to those issues raised in Step 1 of the grievance procedure as well as any issues raised by Step 2. Any unrelated or new issues not contained in Step 2 of the grievance procedure will not and cannot receive consideration by an official or arbitrator. This does not require the Parties to cite portions of law or regulation, nor does it preclude them from responding to issues raised by the Employer or the deciding official at Step 1 or 2.
- D. Within ten (10) workdays from receipt of the grievance, the Step 1 management official, if requested, will grant a face-to-face meeting with the grievant.
- E. Within twenty (20) workdays from receipt of the grievance, the Step 1 official will issue a decision in writing, either granting, modifying, or denying the relief requested.
- F. The decision will notify the employee of the name, title, location, and telephone number of the Step 2 official with whom to proceed, if necessary.

## **Section 7**

### **Step 2**

- A. The employee may appeal to the Step 2 official in writing within ten (10) workdays after the Step 1 decision was, or should have been, issued. An email will be considered “in writing” as long as the email clearly states it is a grievance.

1. A copy of the Step 1 presentation and decision must be attached by the employee. The employee must set forth specific reasons for dissatisfaction with the Step 1 decision.
  2. If no Step 1 decision was issued within the time period required, then that fact should be noted with no other explanation except for being accompanied by a copy of the initial grievance.
- B. Within twenty (20) workdays from receipt of the grievance the Step 2 official will issue a final decision in writing to the employee either granting, modifying, or denying the relief requested.
- C. The decision will notify the employee of the name, title, location, and telephone number of the Step 3 official with whom to proceed, if necessary.

## **Section 8**

### **Step 3**

- A. The employee may appeal to the Step 3 official or designee in writing within ten (10) workdays after the Step 2 decision was, or should have been, issued. An email will be considered "in writing" as long as the email clearly states it is a grievance.
1. A copy of the Step 1 and 2 grievances and decisions must be attached by the employee. The employee must set forth the specific reasons for dissatisfaction with the Step 2 decision.
  2. If no Step 2 decision was issued within the time period required, then that fact should be noted with no other explanation except for being accompanied by copies of all the previous available grievances and decisions.
- B. Within ten (10) workdays from receipt of the grievance the Step 3 official will issue a final decision in writing to the employee either granting, modifying, or denying the relief requested.

## **Section 9**

If the Step 3 decision is not acceptable to the employee or the Union, or if no timely decision is issued, the Union may proceed to arbitration if it so elects, in accordance with the provisions of Article 29, (Arbitration), or Article 30, (Expedited Arbitration), as appropriate based on the issue(s) contained within the grievance.

## **Section 10**

- A. Responses to grievances including the decisions shall be served by the Employer on the appropriate named representative and Chief Steward and the grievant. Notification of the Employer's decision at Step 3 must also be sent to the designated Union email address.
- B. Any grievance response or appeal to the next step will be considered timely if postmarked or delivered no later than the final day of the designated time period.
- C. Any of the time limits or steps established in this Article may be waived or extended by mutual agreement of the Parties. Requests for extensions submitted in advance of the expiration of the time limits will normally be approved.
- D. The Employer's final decision shall contain the reasons supporting the decision, will address any disputes over the facts contained in the grievance or reasons explaining the basis for its resolution of the dispute, and will be served on the employee and the employee's representative.

## **Section 11**

- A. Where the Employer elects to file a grievance pursuant to this Article, such grievance shall be inwriting addressed to the President of NTEU and the appropriate NTEU Field Representative. The NTEU President or designee shall, within twenty (20) workdays after receipt of such grievance, issue a written decision addressed to the Deputy Commissioner and/or designee who signed the grievance.
- B. If the Employer is not satisfied with the decision of the NTEU President or designee, the Employer may proceed to arbitration in accordance with the provisions of Article 29, Arbitration.
- C. Where the Union files an institutional grievance pursuant to this Article, such grievance shall be inwriting addressed to the Deputy Commissioner and/or designee. The Employer shall, within twenty (20) workdays after receipt of such grievances, issue a written decision addressed to the NTEU President and designee.
- D. If the Union is not satisfied with the decision of the Deputy Commissioner or designee, the Union may proceed to arbitration in accordance with the provisions of Article 29, Arbitration.
- E. The Employer and/or Union grievances must be filed within twenty (20) working days of the date the Party became aware of the matter, unless the matter is a continuing practice or condition which may be filed at any time.

## **Section 12**

- A. At the discretion of the Step 2 and/or 3 official at whose level the grievance is pending, the employee and/or the employee's representative may meet with that official in a manner determined by management.
- B. Failure of the Employer to observe the time limits stated in this grievance procedure shall, at the election of the grievant, advance the grievance to the next step.
- C. Grievance decisions will be served on the grievant and their representative by email, when the representative's email address has been provided to management as part of the grievance process.
- D. In computing any period of time prescribed by or allowed by this Article, the day of the act, event or occurrence from or after which the designated period of time begins to run shall not be included. A document postmarked or received by email by the last day of any time period prescribed under this Article, or as mutually extended in writing, will be accepted as timely filed.
- E. It is understood that an employee processing a grievance under this Article shall be limited to Union representation, self-representation, or a representative approved by the Union. If an employee presents a grievance without Union representation, the Union will be given the opportunity to be present at all formal discussions of the grievance. The Union shall be given reasonable advance notice of such meetings.

### **Section 13**

The Agency may elect to combine multiple grievances filed on the same or similar issue and will process in accordance with the procedures described in Section 5 or Section 11 as determined by the Agency.

### **Section 14**

- A. When the Employer alleges an issue is non-grievable and/or is not arbitrable then the Employer shall notify the employee in writing, stating all the reasons for such determination.
- B. When the Employer alleges an issue is non-grievable or non-arbitrable, the Union, if it wishes, will have ten (10) workdays to amend and refile the grievance so that it will be procedurally correct. It will be resubmitted at the level at which the issue was raised and proceed as a normal grievance.
- C. If a question of grievability is raised, the grievance shall proceed through the grievance procedure with the question of grievability joined to the grievance.

- D. Questions that cannot be resolved by the Parties as to whether a grievance is on a matter subject to the negotiated grievance procedure or arbitration shall be resolved by first submitting the issue to the arbitrator assigned the full case.
- E. If the issue of timeliness is raised, a grievance may be denied on the grounds it was not presented within the time frame specified. Denial of a grievance on that ground, however, will not deprive the grievant of the right to present the merits of the grievance, or deprive Management of the right to rely on untimeliness as a ground for denial, at each successive step of the grievance procedure, including arbitration. Either Party may raise the issue of grievability/arbitrability at any time in the process.
- F. For questions of grievability and arbitrability, including timeliness issues, if the arbitrator determines that the matter is grievable/arbitrable, the arbitrator will proceed to hear and address the merits of the case. To the extent permitted by applicable law, either Party may challenge the arbitrator's ruling(s) on matters of grievability and arbitrability.

## **Section 15**

Where a grievance is filed and the Union or employee alleges violation of rules or regulations, the Employer agrees that it will not dispose of the grievance solely because of an incorrect citation.

## **Section 16**

Notwithstanding the provisions of Section 11.C. of this Article, when the Union files a grievance on behalf of an employee or group of employees, as opposed to an institutional grievance, pertaining to the employment of the employee(s), it may at its option file the grievance in accordance with the Step 1 procedures described in Sections 5 and 6 and may advance through Steps 2 and 3 in accordance with Sections 7 and 8. The procedure described in Section 11.C. is intended for institutional grievances.

## **Section 17**

When a 7114 information request has been made by the Union in connection with a grievance, the timeframes for processing the grievance or for invoking arbitration will be suspended, at the request of the Union and beginning with the day of the Union's request, until ten (10) working days after the Employer has provided a substantive response to the 7114 request. It is understood that:

- A. The Union may file a separate grievance or charge over the failure to provide a denial of the information request.



- B. The Union may elect to have the issue of the denial automatically amended to the underlying grievance to include the denial of the 7114 information request as another issue to be resolved.
- C. This provision will not serve to stay Management from taking any action or implementing any decision.