**ARTICLE 27**

**Adverse Actions**

The provisions of this article, otherwise applicable to all bargaining unit employees, shall not apply with respect to the following: (a) employees serving a probationary or trial period; (b) reemployed annuitants; (c) a preference eligible in the excepted service who has not completed one (1) year of current continuous service in the same or similar positions; and (d) other employees as excluded by operation of law.

**Section 1**

An adverse action, for the purposes of this article, is defined as a removal, a suspension for more than fourteen (14) calendar days, a reduction in grade, a reduction in pay, or a furlough of thirty (30) calendar days or less. This article does not apply to a reduction-in-grade or a removal based on unacceptable performance as defined in 5 U.S.C. 4303.

**Section 2**

A. No employee will be the subject of an adverse action except for such cause as will promote the efficiency of the service. Adverse actions must be supported by a preponderance of the evidence.

B. The Employer subscribes to the concept of progressive discipline.

**Section 3**

Except for reductions in grade or pay based upon a classification action or decision and furloughs of thirty (30) days or less, in deciding what action is appropriate, the Employer shall give due consideration to the relevance of any mitigating or aggravating circumstances, such as:

A. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;

B. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, or prominence of the position;

C. The employee's past disciplinary record;

D. The employee's past work record, including length of service, performance, ability to relate to employees, dependability;

E. The effect of the offense on the employee's ability to perform at a satisfactory level and its effect on the supervisor's confidence in the employee;

F. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;

G. Consistency of the penalty with any applicable agency table of penalties;

H. The notoriety of the offense and its impact upon the reputation of the Employer;

I. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;

J. Potential for the employee's rehabilitation;

K. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, bad faith, malice or provocation on the part of others in the matter; and

L. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

**Section 4**

An employee’s right to union representation during an investigatory interview, i.e. Weingarten Rights, is set forth in Article 5, Section 4.A.

**Section 5**

A. An employee will, in any adverse action, be furnished a copy of those portions of all materials, written, electronic or otherwise, which contain information or evidence relied upon by the Employer as the basis for the adverse action. The material relied upon will include the favorable and unfavorable evidence that has been collected for the charge(s).

B. Nothing in this section is to be construed as a waiver of the employee's or Union's right to request additional information under other authorities, such as the Freedom of Information Act, the Privacy Act, or the Civil Service Reform Act.

C. Information described in this section shall be provided subject to the requirements and provisions of the Privacy Act.

**Section 6**

Where an action is proposed under this article:

A. The employee against whom the action is proposed is entitled to at least thirty (30) days advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action.

B. The thirty (30) days advance written notice is not required to effect an emergency suspension pursuant to government-wide rules, regulations, and law. When the circumstances warrant immediate action, the proposing official may place the employee in a non-duty status with pay in accordance with law and regulation for such time as is necessary to propose and effect the suspension. The proposed notice of emergency indefinite suspension shall be given a reasonable time, but not less than seven (7) calendar days, to respond orally and/or in writing and to furnish affidavits and other documentary evidence in support of the answer.

C. The employee against whom the action is proposed is entitled to reasonable time (normally fourteen (14) but not less than seven (7) workdays) from receipt of notice of the proposed adverse action and all information as defined in Section 5 of this article, to review the materials relied upon by the Employer and to answer the charges, and specifications orally and/or in writing. If the employee wishes to make an oral reply, the request for an oral reply must be made within seven (7) days of the date the employee receives the letter of proposal and all information. The employee may supplement the oral reply with a written presentation for management’s consideration. The employee may submit affidavits and/or other documentary evidence in support of the answer.

D. The employee against whom the action is proposed is entitled to a written decision and the specific reasons therefore at the earliest practicable date.

Moreover, an employee may be represented by the Union, an attorney, or other representative of his/her choosing.

**Section 7**

The notice of proposed adverse action shall include the following:

A. A statement of the charges, specifications, and reasons for the action proposed;

B. In cases where a suspension is proposed for reasons of off-duty misconduct, the Employer's written notification as required by this section will also contain a statement of the nexus between the off-duty misconduct and the efficiency of the service;

C. A statement that the employee shall receive a reasonable amount of duty time approved in advance by his/her supervisor to review the material relied upon to support the charges and to prepare an answer to the charges orally and/or in writing;

D. A statement that the employee has the right to be represented by the Union or an attorney or other representative of his/her own choosing; and

E. A statement that the Employer will provide a written decision and specific reasons therefore.

**Section 8**

A. An employee will have the right to raise any defense to a proposed adverse action allowed by applicable laws and regulations.

B. The deciding official will carefully consider the employee's oral and/or written replies in rendering his decision.

**Section 9**

The Employer's final decision shall contain the reasons supporting the decision; will specifically address any disputes over the facts contained in the Employer's charges or reasons explaining the basis for its resolution of the dispute; and will be served upon the employee and his or her representative.

**Section 10**

A. An employee aggrieved by a~~n~~ ~~adverse decision~~ **demotion or long term suspension** under this article may appeal the action to the Merit Systems Protection Board or, with the Union’s concurrence, proceed directly to arbitration as provided in this Agreement but not both. **An employee aggrieved by a removal under this article may appeal the action to the Merit Systems Protection Board only.**

B. An employee shall be deemed to have exercised his option under this section at such time as the employee timely initiates an appeal to the Merit Systems Protection Board or the Union timely files a request for arbitration under the provisions of this Agreement, whichever event occurs first.

C. An employee who elects to appeal an action to the Merit Systems Protection Board may be represented by the Union or an attorney or other representative of his own choosing. An employee who elects, with the Union’s concurrence, to appeal ~~an action~~ **a demotion or long term suspension** under the arbitration procedures provided in this Agreement may be represented by the Union, himself/herself, or an individual approved by the Union.

**Section 11**

A. Any of the time limits established in this article may be extended or waived by mutual agreement of the Parties.

B. Reasonable extensions of time will be granted by the Employer, on a case-by-case basis, upon good cause shown.

**Section 12**

As a result of the passage of Public Law 101-376, Civil Service Due Process Amendments, and its signing into law by the President on August 17, 1990, the Parties recognize the following:

A. Public Law 101-376 has extended adverse action due process rights to the following non-preference eligible excepted service employees:

1. Per 5 U.S.C. 7511 (a) (1) (C) (i): employees not serving in a probationary or trial period under an initial appointment pending conversion to the competitive service;

2. Per 5 U.S.C. 7511 (a) (1) (C) (ii): employees who have completed two (2) years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two (2) years or less.

B. Bargaining unit employees referenced in Section A, above, have the same appeal rights for action taken under 5 U.S.C. Chapter 43 and 75 as competitive service employees, including access to the negotiated grievance and arbitration procedures for actions for disciplinary and adverse actions.

C. The provisions of this article do not apply to:

1. A suspension or removal in the interests of national security initiated under Section 7532 of Title 5, United States Code;

2. A reduction-in-force action under Article 31 of this Agreement; or

3. A reduction in grade or removal based upon unacceptable performance initiated under Article 21 of this Agreement.

**Section 13**

The Agency will provide the Chapter President, as soon as practicable, a sanitized copy of all reprimands and proposals and decisions of more serious adverse actions.