United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, CENTERS FOR DISEASE CONTROL AND PREVENTION And AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2883	Case No. 20 FSIP 077

DECISION AND ORDER

The U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (Agency or CDC) located in Atlanta, Georgia filed a request for assistance with the Federal Service Impasses Panel (Panel) under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, concerning a dispute from negotiations over a successor collective bargaining agreement (CBA). The CDC's mission is to protect America from health, safety and security threats, both foreign and in the United States. To accomplish its mission, CDC conducts critical science and provides health information that protects our nation against expensive and dangerous health threats.

The American Federation of Government Employees, Local 2883 (Union) is one of eight unions at the CDC and represents a bargaining unit consisting of approximately 2,000 employees located in Atlanta and Miami. The bargaining unit includes some of the following positions: grants management specialist; information technology specialist; health communication specialist; and management analyst. The parties are covered by a 2013-CBA over 47 Articles that expired in July 2017. The agreement remains in effect until the parties reach a successor CBA.

BACKGROUND AND PROCEDURAL HISTORY

On June 7, 2017, the Agency notified the Union that it wished to renegotiate all 47 articles of the parties' CBA. On October 11, 2017, the parties executed a ground rules agreement for successor CBA negotiations. The parties initiated successor CBA negotiations in October 2017, and continued those negotiations until November 2018. The parties sought Federal Mediation and Conciliation Service (FMCS) assistance in November 2018 and January 2019. The FMCS Mediator released the parties in March 2019, and the Agency filed a request for Panel assistance in July 2019, in Case No. 19 FSIP 056 over the 47 articles in dispute.

During the Panel's investigation of that case, the Agency submitted an unsolicited revised final offer over five articles to the Union and the Panel's Staff. On September 20, 2019, the Panel accepted jurisdiction over 42 articles in dispute, but declined to assert jurisdiction over the five articles that the Agency revised during the Panel's process: Article 7 Union Rights; Article 9 Dues Deductions; Article 35 Grievances; Article 36 Arbitration; and Article 47 Agreement Duration and Changes. The Panel determined that there was a colorable question as to whether the parties exhausted bargaining and mediation efforts over the Agency's revised articles. The Panel directed the parties to resume concentrated negotiations with the assistance of FMCS for a 45-day period over the 42 articles in dispute. During those negotiations, the parties resolved 39 articles. On January 13, 2020, the Panel issued a Decision and Order over the remaining three articles in dispute in Case No. 19 FSIP 056.

After the Panel issued its Decision, the parties resumed negotiations on the five articles that the Panel declined to assert jurisdiction over with FMCS's assistance on the following dates: May 19, 2020; June 3, 2020; June 9, 2020; July 1, 2020; July 28, 2020; and July 30, 2020. Despite the parties mediation efforts, they were unable to reach agreement over the five articles. Therefore, on July 30, 2020, the FMCS Mediator released the parties from mediation. On August 20, 2020, the Agency filed a second request for Panel assistance in the instant case.

On November 11, 2020, the Panel advised the parties that it asserted jurisdiction over the five articles in dispute and ordered the parties to provide their written position statements by November 23, along with any rebuttal statements by November 30. The parties timely provided their position statements. The Union requested an extension of time to submit its rebuttal statement. The Agency did not object. The extension was granted and the parties were permitted to provide their rebuttal statements by December 7. The Union timely provided its rebuttal. The Agency did not provide a rebuttal statement.

POSITIONS OF THE PARTIES

I. Article 7 Union Rights

a. Agency's Position

The Agency asserts that its proposal follows Executive Order (EO) 13837 Ensuring Transparency, Accountability, and Efficiency in Taxpayer Funded Union Time Use with respect to the Union's official time use. Specifically, the Agency states that its proposal is consistent with the EO for requests, tracking, and the use of official time under section 7131(a), (c), and (d) of the Statute. As a result, the Agency requests that the Panel implement its article.

b. Union's Position

The Union asserts that its main objective for this article is to ensure that the bargaining unit employees' rights are protected. In this respect, the Union states that its proposal ensures that the Union is able to meet its statutory duty to represent and protect the bargaining unit. The Union contends that its article is consistent with the Statute. The Union further contends that

the Agency's position to adopt the EO violates the Statute. Finally, the Union argues that the Agency's section 7.4, 7.5, and 7.6(h) proposals interfere with internal Union business.

c. Conclusion

The Panel will adopt the Agency's proposal with modification. The parties' main disagreement concerns the Union's use of official time under the Statute. The Agency proposes that Union representatives may receive up to one hour of official time per bargaining unit employee for section 7131(d) activities under the Statute each fiscal year. The Agency also proposes that the Union will receive "reasonable amounts" of official time for section 7131(a) and (c) activities. Currently, there are approximately 2,000 employees in the bargaining unit. The Agency's proposal for section 7131(d) time would equate to roughly 2,000 hours of official time. The Union proposes that the Agency grant its representatives official time that is "reasonable, necessary, and in the public interest."

The Union argues that the Agency's position to formulate proposals consistent with the EO violates the Statute. The Union's argument has no merit. Further, the Union did not produce any authoritative source to support its position. As a result, the Panel will deny the Union's conclusory argument.

The Union next argues that the Agency's section 7.4, 7.5, and 7.6(h) proposals interfere with internal Union business. The Agency's section 7.4 proposal indicates that the Union has a right to designate officers of its choice, which is consistent with the Statute. The Agency does propose to limit the number of Union stewards to one per 100 bargaining unit employees; however, because the Agency did not provide any explanation for this limitation, the Panel will remove this language. The remainder of the Agency's proposal indicates that the Union will provide the Agency contact information for the Union's officers. The Union has not explained how this would interfere with its internal Union business.

The next proposal the Union argues that interferes with its internal Union business is section 7.5. In that proposal, the Agency requires Union representatives to stagger their official time use over the course of the fiscal year to ensure that the Agency's ability to meet its mission requirements are not comprised. The Union has not explained how this proposal interferes with its internal Union business, nor is it clear to the Panel how a proposal to balance the Agency's needs to ensure that its mission is met with the Union's right to official time is not a proper proposal for collective bargaining.

Finally, the Union argues that the Agency's section 7.6(h) proposal interferes with internal Union business. That proposal states that when a Union representative needs to leave the work site and his or her immediate supervisor is unavailable, the representative will request to be released from another supervisor in the chain of command prior to leaving. Once again, it is not clear here how a proposal to balance the Agency's need to ensure it mission is met with the Union's right to official time interferes with the Union's internal business. As a result, the Panel will deny all of the Union's arguments that the Agency's three proposals interfere with its internal Union business.

Turning to the merits of the parties' proposals, the Panel has stated that official time agreements that do not exceed one hour per bargaining unit employee union time rate ordinarily are considered reasonable, necessary and in the public interest.[1] The Panel has required the moving party who seeks official time in excess of that amount to demonstrate that the requested time is reasonable, necessary, and in the public interest.[2] The Union has not met that burden here.

The Union only made conclusory statements that its official time proposal is needed to represent the bargaining unit and is consistent with the Statute. The Union put forth no further explanation, nor did it provide any evidence to support its position. As a result, the Panel will adopt the Agency's 7131(d) proposal. The Panel will, however modify the Agency's section 7131(a) and (c) proposal.

The Agency's proposal for section 7131(a) and (c) activities provides the Union official time that is "reasonable, necessary, and in the public interest." While this official time, which consists of negotiations of collective bargaining agreements, attendance at impasse proceedings, and participation in Federal Labor Relations Authority (FLRA) proceedings is required under the Statute, the Panel will modify the language, per below to ensure that the Union's official time rate does not exceed 1 hour per bargaining unit employee.

> "The Union will be afforded official time under section 7131(a), (c), and (d) of the Statute that shall not exceed 1 hour per bargaining unit employee. If, however, the Union exhausts the official time bank, the Agency will grant the Union's use of official time for section 7131(a) and (c) consistent with the Statute."

Finally, the Agency proposes under section 7.3 to exclude official time for worker's compensation claims. However, it provided no rationale for such an exclusion. Thus, the Panel will reject the Agency's language.

II. Article 9 Dues Deductions

a. Union's Position

The Union's main objective in this article is to ensure that employees are permitted to make a request to the Agency to deduct Union dues from their pay and become a member of the Union. The Union proposes to carry over the language in the parties' 2013-CBA to the successor CBA over dues deductions, along with an update to the language, which the Union states is consistent with 5 C.F.R. §2429.19, Revocation of assignments. The Union asserts that its proposal offers the parties the ability to maintain the status quo, which it states has worked for the parties since 2013, while complying with government-wide regulations.

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[1] *See, e.g., HHS*, 2019 FSIP 031 (2019).
[2] *Id.*

b. Agency's Position

The Agency's position on this article is that its "proposal incorporates changes in revocation of dues withholdings in accordance with FLRA rule effected [sic] August 10, 2020."

c. Conclusion

The Panel will adopt the Agency's proposal with modification. The parties' main disagreement is over the employee's revocation of a due's assignment to the Union. The Agency proposes under section 9.5 that for revocation notices for employees hired on or after August 10, 2020, who have had dues assignments in effect for more than one year, the employees can terminate the assignment at any time after the initial one-year period expires. For dues assignments in place prior to August 10, 2020, the Agency proposes that the employee may only revoke those assignments by submitting a request for revocation on or before December 31. The Agency also proposes that revocations will only be effectuated if the Union President or designee has initialed the form. If the form is not initialed, then the Agency proposes to return the form to the employee to contact the Union for a signature.

The Agency's rationale for its proposal is that it incorporates the Authority's recently issued regulation explaining how section 7115(a) of the Statute operates. The new regulation appears at section 2429.19 of the Authority's Regulations and became effective August 10, 2020. It states that "after the expiration of the one-year period during which an assignment may not be revoked under 5 U.S.C. § 7115(a), an employee may initiate the revocation of a previously authorized assignment at any time that the employee chooses." The employing agency must process the employee's dues-revocation made after the first year "as soon as administratively feasible." The Authority explained that the rule applies to the revocation of assignments that were authorized under section 7115(a) on or after August 10, 2020, but will not apply to the revocation of assignments that were authorized prior to the effective date of the regulation.

The Agency's proposal is mostly consistent with the Authority's recently published rule explaining an employee's right to revoke his or her dues withholding after one year. The inconsistent part of the proposal relates to the requirement that an employee must be hired on or after August 10, 2020, to revoke their union dues at any time after the one-year period. The Authority's regulation does not condition the ability to revoke union dues based on an employee's start date. Instead, the ability to revoke a union dues withholding at any time depends not on an employee's start date, but on when the revocation was submitted. Thus, the Panel will modify the Proposal to ensure that it is consistent with law, rule, and regulation as follows:

> "An employee may initiate and the Agency will process a dues revocation consistent with law, rule, and regulation."

The Union also states that its proposal is also consistent with the Authority's regulation. Its proposal is partially consistent with the regulation; however, the Union requires the employee to provide the dues revocation form to the Union prior to the Agency. This language

appears to be inconsistent with the new regulation, which states that "an agency must process the revocation as soon as administratively feasible." Nowhere in the regulation does it first require the employee to present the dues revocation form to the Union. What's more, the regulation requires agencies to process the revocation "as soon as administratively feasible." The Union's proposal would have the opposite effect and would delay the process.

Similarly, the Agency's proposal requires the employee to obtain the Union President's or designee initial on the dues revocation form before the Agency will process the request. The effect of this proposal would mean that the employee would have to provide the dues revocation form to the President for signature, which would not only delay the process, but could create unforeseen consequences resulting in the Union not signing the form. Then, the Agency would be in a position to have to potentially violate the contract if it processed the revocation without the Union's signature. As a result, the Panel will adopt the Agency's article, but modify section 9.5 to remove the language that requires the Union President or designee to sign off on the revocation prior to the Agency processing the request.

The Panel will also strike the Agency's language in section 9.1, which indicates that the Agency may modify the CBA after it becomes effective if there is a later-issued rule or regulation which amends the topics in the article. In *Patent and Trademark Office*, the Authority held it is an unfair labor practice to enforce any rule or regulation which is conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the regulation was prescribed.[3] As such, the Panel will impose the following modified language:

> "The parties agree that the provisions of this Article will be applied consistent with the law and may be modified in order to ensure that the provisions remain consistent with the law."

The Union argues that two subsections within section 9.2 of the Agency's proposal interfere with internal Union business. The first subsection states that in order for an employee to be eligible to pay Union dues, he or she must not have any other current allotment for the payment of dues to a labor organization. The second subsection states that the employee must submit a written request to the Labor Relations Officer or designee authorizing the deduction on SF-1187.

Section 7115(a) of the Statute provides that if an agency receives, from an employee in an appropriate unit, a written assignment authorizing a deduction of dues, the agency shall honor the assignment and make an appropriate allotment to the exclusive representative. It is unclear to the Panel how the Agency's proposal, which requires the employee to make a written request authorizing his or her dues deduction is not a permissible proposal. Similarly, it is not clear how the Agency's proposal, that an employee cannot make a dues payment to two different Unions interferes with the Union's internal business. As a result, the Panel will deny the Union's argument.

[3] 65 FLRA 817, 819 (2001).

III. Article 35 Grievances

a. Agency's Position

The Agency states that its proposal seeks to streamline the grievance process by moving from a three-step grievance process to a two-step process. In addition, the proposal defines matters excluded from the grievance process, which the Agency states is consistent with the Statute and EO 13839 Promoting Accountability and Streamlining Removal Procedures. Finally, the Agency states that its proposal seeks to require both parties to adhere to the timeframes at each step of the grievance process by allowing the employee to advance to the next step if the Agency does not respond, or permitting the Agency to dismiss the grievance if the Union or employee fail to abide by the proposed timeframe.

b. Union's Position

The Union states that it favors a broad-scope grievance procedure compared to the one offered by the Agency. The Union states that the Panel is to impose a broad-scope grievance procedure unless the limited-scope proponent can persuade it to do otherwise. The Union argues that the Panel is expected to rule against the limited-scope proponent who fails to convincingly establish that such a grievance procedure is more reasonable in that particular setting.[4]

The Union argues that in this particular setting, the Agency has not established convincingly that the limitations that it proposes to the grievance procedure are more reasonable than the broad-scope procedure that the Union proposes, which is maintained in the parties' current CBA. The Union states that the Agency proposes to remove important matters from the grievance procedure such as performance ratings, adverse actions, and other matters appealable to the Merit Systems Protection Board. The Union asserts that grievances over these matters constitute an overwhelming majority of the grievances filed by the employees. Thus, the Union requests that the Panel adopt its proposal, in favor of a broad-scope approach to the parties' grievance procedure.

c. Conclusion

The Panel will impose the Agency's proposal with modification. The parties' disagreement centers on the Agency's proposed exclusions from the grievance procedure. The Agency proposes to exclude the following matters from the parties' grievance procedure, which the Union opposes: prohibited personnel practices that can be reported to the Agency's Inspector General or the Office of Special Counsel; complaints concerning individual rights related to a reduction-in-force; any adverse action taken under 5 U.S.C. § 7512; non-selection for non-bargaining unit positions; non-selection for bargaining unit positions from amongst properly rated and ranked candidates with the exceptions that employees may file grievances alleging unlawful discrimination and for non-selection from the exercise of a priority consideration; complaint's concerning veteran's preference; separation or termination of an

[4] *See AFGE,* 712 F.2d 640 (D.C. Cir. 1983).

employee serving a probationary, trial period, temporary, or time limited appointment; return of an employee serving in a supervisory or managerial position; the termination of an employee in the Student Educational Employment Program, including STEP and SCEP; a notice of proposed action or warning; an action terminating a temporary promotion; the substance of performance standards, elements, and measures, and the determination as to whether an element or measure is critical or non-critical; ratings on individual performance elements and performance measures; progress reviews and counseling sessions; order to divest; and any matter raised in an on-going unfair labor practice (ULP) charge. The Agency does state that if any of the actions are alleged to have been taken for discriminatory reasons, those actions may be grieved.

The Agency's rationale to support its proposed exclusions is that the exclusions are consistent with EO 13839 and the Statute. The Union defends is position by pointing to the *AFGE v FLRA*[5] case. The Panel has now consistently recognized the significance of that Federal court case setting forth the precedent concerning grievance exclusions. In that case, the court stated that a proponent of a grievance exclusion must "establish convincingly" in a "particular setting" that its position is the "more reasonable one."[6] The Panel has recognized that this language means that a party seeking to exclude this topic has a burden to demonstrate that exclusion is reasonable under the "particular circumstances" of the dispute before the Panel.[7]

Here, the Agency seeks to exclude grievances involving any adverse actions based on its reliance of the EO. Adverse actions are the most serious personnel actions and involve removals, but also include suspensions, reductions in grade and pay, and furloughs of 30 days or less.[8] The EO states that an agency "shall endeavor" to exclude grievances involving removal actions in a negotiated grievance procedure "[w]henever reasonable in view of the particular circumstances."[9] Aside from the Agency pointing to the EO, which encourages agencies to exclude removal actions, the Agency did not provide any additional rationale for the proposed exclusion. As a result, the Panel finds that the Agency has not demonstrated "convincingly" that its position is the more reasonable one and should strike the exclusion.

The Agency proposes to exclude ratings of record from the grievance procedure based on the EO. Under section 4(A) of the EO, it directs agencies to not subject assignment of ratings of record to the grievance procedure. The Panel has applied this direction to agencies to remove these actions where the union has not rebutted the agency's arguments. Aside from making mere conclusions that the Panel should impose a broad-scope grievance procedure, the Union has not provided any rationale or evidence in support of its position. Beyond that, the Panel finds that the Agency's proposal is the most reasonable. As explained by the FLRA in a case enforcing an interest arbitrator's imposition of a grievance exclusion, and interpreting the AFGE decision, "...the Arbitrator's factual findings show that he examined the evidence and found the Agency's arguments as to a limited-scope grievance procedure 'persuasive...The Arbitrator's findings show that he did not unlawfully place the burden on the Union, but

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[5] 712 F.2d 640 (D.C. Cir. 1983).
[6] *Id.*
[7] *See e.g., U.S. Dep't of Def., Dep't of the Air Force, Fairchild Air Force Base*, 19 FSIP 070 at 10-11 (2020).
[8] 5 U.S.C. 7512.
[9] EO 13839, Section 3.

properly assessed the persuasive weight of each side's presentation in reaching his conclusion. Accordingly, the Union has not established that the award is contrary to *AFGE v. FLRA". NAGE, Local R3-77 and* PBGC, 59 flra No. 168 (2004). Contrary to our dissenting Member's view, the Panel has determined that under the precedent of the FLRA cited here, where the Panel determines as fact that the Agency argument in support of a limited scope grievance process is persuasively more reasonable as it has here and in the following portions of this decision and order, that the exclusion should be imposed. The Panel has found that the Agency proposals in this case, as in others, is the more reasonable. As a result, the Panel will impose the Agency's performance rating exclusion.

Next, the Agency proposes to exclude the substance of performance standards, elements, and measures, and the determination as to whether an element or measure is critical or non-critical. As the Panel has stated in prior cases, the Panel will exclude these actions, as a proposal challenging those matters may interfere with management rights under the Statute.[10] As a result, the Panel will remove these actions from the grievance procedure.

The Agency proposes removing non-selection of non-bargaining unit positions and non-selection of bargaining unit positions from amongst properly rated and ranked candidates from the grievance procedure. As to the latter, the Agency's proposal is consistent with government-wide regulations.[11] As to the former, the Agency's proposal is consistent with management rights, since the Union does not have a representational responsibility to non-bargaining unit employees. Thus, the Panel will impose those exclusions.

Finally, the Agency proposes to exclude any matter raised in an on-going unfair labor practice charge from the grievance procedure. The Agency's proposal is consistent with the case law.[12] The Panel will impose the exclusion, along with the following exclusions: the separation or termination of an employee serving a probationary, trial period, or time limited appointment; the return of an employee serving in a supervisory or managerial position; an action terminating a temporary promotion; and employee progress reviews and counseling sessions.

For the remaining exclusions proposed by the Agency, the Agency did not provide any further explanation establishing the basis for the removal of those matters. Thus, the Panel will not exclude those actions from the parties' grievance procedure.

IV. Article 36 Arbitration

a. Agency's Position

The Agency states that its proposal is aligned with the Statute, ensures general cost saving measures, defines the role of the arbitrator, and clarifies the arbitration process. The Agency asserts that the key proposals it seeks require the moving party to incur the expenses associated with arbitration, which include obtaining a list of arbitrators from FMCS, the cost of

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[10] *See e.g., Dep't of Commerce, NOAA, NWS,* 20 FSIP 021 (2020).
[11] 5 C.F.R. § 335.103(d).
[12] *See e.g., U.S. Dep't of the Navy, Navy Region Mid-Atl., Norfolk, Va.,* 70 FLRA 512 (2018).

a hearing room, and the expenses and fees of the arbitrator. The Agency also states that its proposal limits the discretion and authority of the arbitrator to amend the CBA, to address statutorily excluded matters, or to hear new issues not raised in the grievance.

Additionally, the Agency proposes to bifurcate the hearing process to allow the arbitrator to render a decision on the arbitrability issues prior to hearing the merits of the grievance. The Agency also proposes to implement an expedited arbitration procedure to provide a swift and economical method for the resolution of disputes. Finally, the Agency believes that it is prudent to set forth a time limit for having issues heard by an arbitrator to avoid the issues becoming moot.

b. Union's Position

The Union proposes to carry over the parties' language in the current CBA over the arbitration article. The Union states that this language has been successfully used by the parties since 2013, without any issues. The Union states that its arbitration article represents the standard language that is used in CBA across the Federal government.

c. Conclusion

The Panel will impose compromise language. The parties' disagreement is over the procedures they will use for the arbitration of a grievance. Neither party provided much, if any rationale to support the adoption of their proposal. The Agency did not indicate why the parties should alter the status quo language by identifying issues that the parties have had adhering to the current language and how the new language would address those issues. Similarly, the Union did not provide much in the way of support for its proposal. As a result, the Panel will defer to the status quo language where appropriate.

Under the status quo and the Union's section 36.1 proposal, the parties will be required to invoke arbitration within 30 days from the last grievance response. Within 10 days from invoking arbitration, the invoking party is required to request a list of arbitrators from FMCS, and the parties will strike names until they arrive at one arbitrator. Both parties proposed a "coin toss" to determine which party will have the ability to strike an arbitrator from the FMCS list first, with the Agency offering a more elaborate plan. The Agency indicated that if the coin lands on heads, then the Union strikes first, but if the coin lands on tails, the Agency strikes first. Neither party explained the need for a coin toss, but one can assume that the parties have had trouble agreeing on who shall strike the first arbitrator. The Panel will adopt the Agency's more defined approach to striking arbitrators, or the parties always can agree to scrap the entire idea in favor of an old-fashioned game of "rock, paper, scissor."

The Panel will remove the language from the Union's proposal that permits the parties to request a new list of arbitrators from FMCS in the event that the last surviving arbitrator on the list is not mutually agreeable to the parties. This language could allow a party to delay the

arbitration by simply disagreeing with the final arbitrator appearing on the list of struck arbitrators. That would not be effective or efficient.

The Panel will adopt the Union's 36.1 proposal, which requires both parties to split the costs associated with the arbitration. This approach will ensure that both parties have some "skin" in the game and should incentivize the parties to reach agreements prior to invoking arbitration. Consistent with that order, the Panel will adopt the Agency's section 36.6. proposal, but modify it to require both parties to share the expenses associated with a transcriber. Thus, the Panel imposes the following modified language:

> "If the parties mutually agree that a transcription of the arbitration is necessary, the parties shall split the costs evenly."

The Panel will modify the Union's section 36.4 proposal to allow the parties to bifurcate the arbitration process, as the Agency proposes, when there is a question of arbitrability. This will ensure that only appropriate matters are arbitrated and not waste the parties' valuable time and resources. This has been a consistent approach adopted by the Panel.

The Panel will also adopt the Union's 36.1 pre-hearing activities proposal, which is clear and concise. The Panel will adopt the Agency's section 36.7 proposal, which permits the parties to file exceptions to an arbitration award in the appropriate venue. Finally, the Agency proposed an expedited arbitration procedure for select matters in section 36.8, such as final decisions to withhold a within-grade increase, suspensions of 14 days or less, AWOL charges, to name a few. The Agency, however, did not explain the need for the proposal, nor did it explain the need for a sunset provision in section 36.9. In theory, an expedited process and sunset clause could serve the parties' and employees' interests where there are a significant amount of grievances pending, but without further explanation, it is difficult to discern its need. As a result, the Panel will not adopt those proposals.

V. Article 47 Agreement Duration and Changes

a. Agency's Position

The Agency states that its proposal seeks to make the contract effective for a five-year duration and provides an opportunity for the parties to open and renegotiate changes in law, rule, or regulation during the term of the contract.

b. Union's Position

The Union argues that the Agency's proposal requires it to waive its statutory right under section 7111(f)(3)(A) of the Statute. Specifically, the Union states that an agreement that is longer than three years, would make the Union susceptible to a raid from another labor organization seeking to represent the bargaining unit. The Union states that the Agency's proposal unlawfully restricts its ability to bargain future changes to the successor CBA. The Union also states that the Agency has introduced new language that the parties did not bargain over contained in sections 47.1, 47.4, 47.5, 47.6, and 47.7, and the language contained in those

articles waives its rights under the Statute. Finally, the Union states that the Agency has proposed to include language in this article that the parties reached agreement over in Articles 2, Bargaining and Negotiations and Article 3, Mid-term Bargaining.

c. Conclusion

The Panel will impose the Agency's proposal with modification. The parties' dispute centers around the duration of the successor CBA. The Agency proposes a five-year term, while the Union proposes a two-year term. The Union argues that by having a contract with a duration of more than three years waives its statutory rights under section 7111(f)(3)(A) of the Statute.[13] The Union's argument is unpersuasive and speculative. The Union presented no authoritative source to suggest that a proposal which offers a contract term of over three years is permissive. As a result, the Panel will deny the argument.

On the merits, neither party demonstrated support for their proposed duration of the CBA. The Agency did not provide any rationale or evidence to justify the Panel imposing its language. Similarly, aside from the Union's legal argument, it did not demonstrate why its proposal is superior to that of the Agency's. In the absence of either party providing support for their proposal, the Panel will impose its own language on the parties.

The Panel has consistently imposed durational clauses in CBAs that will provide the parties stability and allow the parties a reasonable period of time to effectuate the terms and conditions of the new contract. Consistent with that notion, it is effective and efficient for the parties to implement a contact with a duration that will not require them to utilize their resources and bargain anew in a short period of time. Thus, the Panel orders a comprise on the length of the contract, which will require the parties to adhere the successor CBA for three years. This length of time will also render the Union's legal argument addressed above moot.

The Union argues that the Agency's section 47.1 proposal, which requires the successor CBA to remain in effect unless the parties mutually agree or are required by law to amend it, is unlawful. First, the Union presented no authoritative support for this argument. Second, it is standard practice for a CBA to remain in effect unless both parties agree to modify it. Otherwise, the parties would be in a perpetual state of renegotiation, which is neither effective or efficient.

The Agency's proposal requires the parties to modify the agreement to ensure that it is consistent with law. This is a permissible proposal, as a provision in a CBA that is contrary to law is not enforceable under the Statute.[14] Further, under section 47.1(C), the Agency reaffirms the Union's right to engage in bargaining over such changes. As such, Panel will deny the Union's argument.

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[13] 5 U.S.C. § 7111(f)(3)(A) states, that "[e]xclusive recognition shall not be accorded to a labor organization…if there is then in effect a lawful written collective bargaining agreement between the agency involved and the exclusive representative covering any employees included in the unit specified in the petition, unless the collective bargaining agreement has been in effect for more than three years.

[14] *See, e.g., Office of the Adjutant Gen., Ga. Dep't of Defense, Atlanta, Ga., 54 FLRA 654 (1998).*

The Panel will modify the Agency's section 47.1(C) proposal and the second paragraph of proposal 47.4, by removing the language which permits the Agency to sever and negotiate over provisions in the agreement that might become inconsistent with later issued government-wide rules and regulations. As discussed above, it is permissible for an agency to modify an agreement in order to ensure that the provision in question is consistent with law, but it is impermissible to do so if the rule or regulation was implemented after the agreement became effective. As for executive orders, the Authority has held that executive orders issued pursuant to statutory authority are to be accorded the force and effect given to law enacted by Congress.[15] Thus, the Panel will impose the following language to ensure that this article is permissible:

> "Provisions of this Agreement that are or become inconsistent with law or executive orders issued pursuant to statutory authority may be severed from the Agreement in accordance with the Statute. The Union will be provided the opportunity to bargain consistent with the Statute."

In section 47.4, the Agency proposes that any changes in law, regulation, or "decisions of appropriate authorities" may necessitate changes in personnel policies, practices, or other matters affecting working conditions. The Agency states that if the changes leave it with no discretion in the matter, the Union will be notified of the change. But, if the "law or regulation leaves administrative discretion to the Employer, the Union will be given the opportunity to meet and confer over such implementation." The Authority has consistently held that insofar as an agency has discretion regarding a matter affecting conditions of employment it is obligated under the Statute to exercise that discretion through negotiation unless precluded by regulatory or statutory provisions.[16] The Agency's proposal appears to be consistent with the case law, but it is unclear as worded. Therefore, in an effort to ensure that the language is consistent with law, the Panel will impose the following language in place of the Agency's proposal:

> "If the Agency has discretion over a condition of employment, and it is not outside the duty to bargain, then the Agency will negotiate over it. However, where a law or applicable regulation provides the Agency sole and exclusive discretion over a matter, the Agency is not obligated to exercise that discretion through bargaining."

The Union also argues that the Agency's proposals, specifically in section 47.1, 47.4. 47.5, 47.6. and 47.7 are an attempt to waive the Unions' rights to negotiate. The Union further argues that the parties are not at impasse over this language and the Agency introduced new language during the final stage of the Panel's process. The Union's arguments are without merit.

First, the Union put forth no evidence to support its claim that the Agency offered proposals that the parties did not negotiate. Second, parties are permitted to make modifications over their proposals during the Panel's dispute resolution phase in order to reach an agreement, or offer language that it is more reasonable in an effort to convince the Panel to adopt its position. The Union argues against this benefit, yet it took advantage of it by modifying a proposal within Article 9.

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[15] *See NFFE, Local 15*, 30 FLRA 1046, 1070 (1988).
[16] *NTEU, Chapter 6*, 3 FLRA 748, 759–60 (1980).

Similarly, the Union provides no support for its conclusory statement that the Agency's proposals waive the Union's rights under the Statute. Looking at the language of the Agency's proposals in those sections mentioned by the Union, aside from two sections discussed above, the Union's arguments are without merit. As a result, the Panel will deny those arguments.

Finally, the Union argues that the parties reached agreement in Article 2, Bargaining and Negotiations, and Article 3, Mid-term Bargaining Criteria and Procedures, which conflict with the Agency's proposals in the aforementioned sections. The Union did not explain how any of the agreements reached in those articles conflict with the Agency's proposals. Further, a review of those articles does not indicate an apparent conflict between the agreed upon language and the Agency's proposals.[17] For the remainder of the article, the Panel will impose the Agency's proposals.

ORDER

Pursuant to the authority vested in the Federal Service Impasses Panel under 5 U.S.C. §7119, the Panel hereby orders the parties to adopt the provisions as stated above.

Mark A. Carter
FSIP Chairman

Member Newman concurring in part and dissenting in part:

I respectfully dissent from the determination of the majority of the Panel over excluding the following matters from the parties' grievance procedure under Article 35: the separation or termination of an employee serving a probationary, trial period, or time limited appointment; the return of an employee serving in a supervisory or managerial position; an action terminating a temporary promotion; and employee progress reviews and counseling sessions. Under *AFGE,*[18] the proponent of such an exclusion must establish convincingly in this particular setting that its position is the "more reasonable one." Here, the Agency did not meet this burden. The Agency did not provide any rationale for excluding the aforementioned matters aside from asserting that its proposals are consistent with EO 13839. As a result, I disagree that the Agency satisfied its burden and that those matters should be excluded from the grievance procedure.

[17] The Union also stated in its rebuttal, that the Agency's proposals conflict with agreements made in Article 27; however, the Union did not provide that article to the Panel.
[18] 712 F.2d 640 (D.C. Cir. 1983).

Andrea Newman
FSIP Member

January 17, 2021
Washington, D.C.

ATTACHMENTS

- Parties' proposals

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
ARTICLE 7 – UNION RIGHTS	The Union is recognized by the Employer as the Exclusive Representative of BUEs. The Union is responsible for representing the interests of all employees in the BU without discrimination and without regard to labor organization membership.	n/a	
7.1 Governing Requirements	A. This Article provides an equitable process for the allocation and approval of official time for representational activities as negotiated pursuant to the Federal Service Labor-Management Relations Statute (FSMLRS) and shall be administered in accordance with said Statute and this Agreement. Official time users are expected to accomplish the duties of the Agency position to which they have been assigned. The Agency recognizes that in the furtherance of good labor-management relations as provided for in the Civil Service Reform Act of 1978, Union officials have the responsibility of carrying out representational duties. 1. "Official" time, or taxpayer-funded union time, is duty time that a Union representative spends performing the representational duties specified in 5 U.S.C. §7131(a), (c), and (d). While on official time, the employee receives his or her regular salary if otherwise in a duty status. It does not include payment for overtime. 2. "Union" time, or non-taxpayer-funded time, is duty time that a Union representative spends performing representational duties specified in 5 U.S.C. §7131(b). If granted by management, the absence will be charged to either annual leave or leave without pay. B. "Union representatives" as used in this Article, means any employee representing the exclusive representative (in this case as a duly designated AFGE Local Union representative). C. This Article respects the Statute's goals of promoting collective bargaining while honoring the Statute's requirement that its provisions be interpreted to promote an effective and efficient government. The Agency and the Union	**7.1 Exclusive Representation of Bargaining Unit Employees** The Union is recognized by the Employer as the Exclusive Representative of BUEs. The Union is responsible for representing the interests of all employees in the BU without discrimination and without regard to labor organization membership.	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
	share the responsibility to ensure that any official time used for representational activities: 1. Is authorized in writing at least sixteen (16) hours prior to use, unless this requirement is otherwise waived by management; 2. Is used appropriately, in accordance with the Statute and this Article; and, 3. Utilize appropriate recordkeeping mechanisms, as determined by the Employer, for tracking and recording all time by all Union representatives for performing representational activities during the term of the Agreement. D. It is the Union's responsibility to ensure that any official time used for representational activities is used appropriately, in accordance with the Statute and this Article. E. In the interest of an effective and efficient government as stewards of the American Taxpayer, abuse of any official time used for Union representational matters, to include failure to timely and accurately report the time used, will not be tolerated. Alleged abuses of official time shall normally be brought to the attention of an appropriate Union official on a timely basis by an appropriate management official. Abuse of official time may result in administrative action against the Union officer, representative or bargaining unit employee at the Employer's discretion and will be procedurally addressed as follows: 1. Any employee who uses taxpayer-funded union time without advanced written Agency authorization, or for the purposes not specifically authorized by the Agency, shall be considered absent without leave (AWOL), and may be subject to appropriate disciplinary action. 2. Repeated misuse of taxpayer-funded union time may constitute serious misconduct that impairs the efficiency of the Federal service, which may result in suspension of the Union representative up to and including removal from the Federal service.		

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
7.2 Use of Official Time	A. In accordance with 5 U.S.C. §7131 of the FSLMRS, Union Officers and Representatives (not to exceed the number of individuals designated as representing the Employer for such purposes) will receive reasonable amounts of official time within the scope of the FSLMRS for:1. Negotiations of collective bargaining agreements and attendance at impasse proceedings (excluding travel and preparation time) under 5 U.S.C. §7131 (a) of the FSLMRS. Mid-Term Negotiations—to prepare for and bargain over issues raised during the life of a term agreement.2. Participation in any phase of a Federal Labor Relations Authority (FLRA) proceeding, for which official time is ordered by the FLRA under Section 7131 (c) of the FSLMRS.3. Participation in any phase of a Federal Service Impasse (FSIP) proceeding, for which official time is ordered by the FSIP under Section 7131 (a) of the FSLMRS. B. Management agrees to provide official time in accordance with 5 U.S.C. §7131 (a) and (c). Management further agrees to work with the Union on a case by case basis to determine when and what official time is reasonable, necessary and in the public interest in accordance with 5 U.S.C. §7131 (d), but not exceeding sixty (60) minutes of official time per bargaining unit employee per fiscal year. The number of hours will vary based on the number of bargaining employees at the start of each fiscal year so that it does not exceed a total of sixty (60) minutes per bargaining unit employee. Unused hours do not carry over into subsequent years. 1. Dispute Resolution—to process grievances up to and including arbitrations and to process appeals of bargaining unit employees to the MSPB, FLRA and, as necessary, to the courts consistent with 5 U.S.C. §7131 (c) and (d).2. General Labor-Management Relations—meetings between labor and management officials to discuss general conditions of employment, labor relations training for union representatives, union participation in formal meetings and investigative interviews, and all other general labor relations activities	**7.3 Official Time for Representational Activities** The Employer agrees to allow Union officials to use official time, without loss of pay or leave, to perform appropriate representational activities in accordance with statute, case law, this agreement, and other applicable rules and guidelines. Union officials' use of official time will be reasonable, necessary, and in the public interest. **7.3.1 Covered representational activities** Examples of appropriate representational activities for which official time can be used include but are not limited to the following: □ researching and assisting employees with concerns regarding terms and conditions of employment, including reasonable accommodation requests; □ representing employees in grievances and appeals; □ preparing grievances and appeals of employees; □ attending formal discussions; □ representing an employee in an investigatory interview when requested by the employee [in accordance with Article 5, Section 5 and 5 USC 7114(a)(2)(B)]; □ attending grievance meetings as the Union's representative when the employee is not represented by the Union; □ holding discussions initiated by the FLRA with Union Officers and Stewards and activities carried out in response to requests from the FLRA; □ preparing and participating in statutory appeals and Unfair Labor Practice (ULP) charges and complaints, and assisting employees as may be requested in Inspector General or U.S. Office of Special Counsel disclosures and complaints, to the extent that such disclosures and complaints relate to employees' terms and conditions of work; □ meeting with members of Congress and their staffs on matters relating to BU conditions of employment; □ representing employees in matters related to performance management as	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
	consistent with 5 U.S.C. §7131 (d). C. At no time will any Union representative's use of official time exceed 25% of the representative's paid time in any fiscal year. Any time in excess of 25% of a representative's paid time will count toward the limitation in each subsequent fiscal year.	provided in Article 27 (Performance Management) or other sections of this Agreement or as otherwise provided by applicable law, regulation, or policy; up to 8 hours for preparing reports, forms, and documents required by law or regulation concerning the proper operation and administration of a labor organization; communicating with BUEs and gathering information on representational matters of concern; and consulting with management, including exchanges of views relative to formulating, changing, or implementing personnel policies and practices and working conditions, and discussing any views, objections, or suggestions before final action is taken.	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
7.3 Exclusions	In accordance with 5 U.S.C. §7131 (b), the use of official time is prohibited for internal Union business. A. Union representatives and bargaining unit employees shall not perform any activity relating to internal Union business on official time, including the solicitation of membership, elections of labor organization officials, and collection of dues. These activities must only be performed while in a non-duty status, i.e., leave without pay (LWOP) or annual leave.B. Official time is not permissible for Worker's Compensation Cases.C. Designated official time users on an Opportunity to Demonstrate Acceptable Performance (ODAP) plan will not be authorized official time during the period of the plan.	**7.3.2 Activities not covered** Official time shall not include time spent on internal Union business, including the following: □ attending Union meetings; □ soliciting members; □ collecting dues; □ posting notices of Union meetings; □ campaigning for elective office, distributing or posting campaign materials, or carrying out elections; □ preparing and distributing information about internal Union business; and □ soliciting grievances or complaints. Solicitation of membership, solicitation of dues, or other internal Union business shall not be conducted during work time of either the employees concerned or the Union representative. Deliveries of hard copy materials in secured areas shall adhere to established security policies.	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
7.4 Designations of Union Officers and Stewards	A. The Employer agrees to recognize duly elected or appointed Union officials and further agrees to recognize such officials at all CDC facilities to which employees in the BU can be assigned. The Union reserves the right to designate the Union official(s) of its choice to handle any particular case or representational issue. The Union is entitled to one steward per 100 BUEs. While the Agency recognizes the Union's entitlement to identify representatives, the parties agree the appointment of representatives will be reasonably distributed so that multiple representatives are not assigned to the same unit within an organization.B. The AFGE Local President will provide the Agency's Labor Relations Officer, or designee, written notification of the name, Union position, designated representational time (official time), duty station, telephone number, organizational unit, and immediate supervisor of each Union representative within ten (10) workdays of the effective date of this Agreement so that appropriate discussions can be held with these supervisors and managers.B. The AFGE Local President shall provide the Agency's Labor Relations Officer, or designee, the same information in writing of any change in the list of Union representatives no later than ten (10) workdays before the effective date of the change. Temporary changes, e.g., to cover another representative's absence, shall not be utilized to increase the number of representatives entitled to use official time, provided by this Article. The AFGE Local President will indicate the duration of any temporary appointment.	**7.2 Union Officers and Stewards** I. The Employer agrees to recognize duly elected or appointed Union officials and further agrees to recognize such officials at all CDC facilities to which employees in the BU can be assigned. The Union reserves the right to designate the Union official(s) of its choice to handle any particular case or representational issue. The Union is entitled to one steward per 100 BUEs. II. Management shall not restrain, interfere with, or coerce representatives of the Union in the exercise of their rights under 5 USC 71 and this agreement. Nothing in this agreement shall be construed as abrogating the Union's right to communicate with its membership, the public, public officials, elected officials, or other appropriate parties. III. It is the Union's responsibility to ensure that any official time used for representational activities is used appropriately, in accordance with the Statute and this Article. IV. The Union will be given adequate advance notice and the opportunity to be represented at all formal meetings (formal discussions) between the Employer and the employee concerning any grievance, settlement agreement, personnel policy or practices, or other general conditions of employment. Consistent with 5 USC 71, the Employer will not negotiate directly with its employees concerning matters that can be bargained on, nor will it communicate directly with employees regarding grievances, settlement agreements, personnel policies or practices, or other conditions of	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
		employment in a manner that will improperly bypass the Union under law.	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
7.5 Impact of Official Time	A. Union representatives are required to stagger their use of authorized and approved official time over the course of the fiscal year. Union representatives will work out official time usage for official representational purposes consistent with this Agreement with their supervisors to accommodate both Union representational activities and Agency assigned duties.B. The AFGE Local President will maintain close oversight over the use of official time to ensure that the use of official time is kept to a minimum. C. While the Agency recognizes the Union's right to designate representatives of their choice, the parties agree that designated representatives will be selected in a manner that will not unduly impact the Agency's ability to meet mission requirements.	n/a	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
7.6 Requirements for Use of Official Time	A. Management shall not restrain, interfere with, or coerce representatives of the Union in the exercise of their rights under 5 USC 71 and this agreement. Union representatives will be permitted to leave their assigned work area on official time, as appropriate, as authorized under and subject to this Agreement, including the limitations on pay and official time, after:1. Submitting a request into the electronic Official Time Tracking System (OTTS) to their immediate supervisor or appropriate Management Official at least two (2) workdays in advance;2. Any verbally approved official time requests must be followed up by entering the request into OTTS for supervisory approval.3. Providing a good faith estimate of the amount of time for which release is requested;4. Indicating the destination; if any.5. Specifying the appropriate representational category.Supervisors may delay the use of official time based on workload and operational needs. If the representative cannot be released at the time of the request and the amount of time the parties agree to, is reasonable, the representative and the supervisor may discuss a mutually agreeable time for departure. The Union representative will be given a brief amount of time to inform any bargaining unit employee(s) involved in the delay. Any employee who uses official time without advance management approval will be considered absent without leave (AWOL) and subject to appropriate disciplinary action.B. If there is more than one (1) Union representative reporting to the same supervisor, the parties agree to work closely and constructively to reduce the impact of multiple representatives on performance of the work of the unit. C. A Union representative shall, to the extent possible, schedule his/her absences so as not to compromise important work assignments, impede work, or interfere with the effective, efficient, and timely accomplishment of the Agency's mission. D. Supervisors and Union representatives are encouraged to meet, periodically, to forecast official time use and to assess potential impact of official time on office	**7.4 Procedures and Requirements for Use of Official Time** The following procedures and requirements apply to Union officials' use of official time under this Agreement: □ Union representatives are authorized to perform representational duties on official time irrespective of the work location, so long as the work location is approved, as with a telecommute agreement. □ Union representatives who work schedules that allow employees to earn and use credit hours may earn credit hours for time spent on representational work beyond 8 hours in a day, provided they have prior supervisory approval to do so. □ When a Union representative is initially appointed, or there is a change in his or her supervision, the supervisor and the Union representative will meet to discuss workload and performance expectations. □ No Union representative will be disadvantaged in the assessment of his/her performance based on his/her use of documented official time when conducting labor-management business authorized by this Article. However, it is understood that performance problems unrelated to the use of official time may be addressed in accordance with other relevant provisions of this Agreement. The performance of employees serving as Union representatives will be rated on the basis of Employer-assigned work consistent with the elements identified in the respective employee's performance plan. □ The Employer will not deny Union representatives opportunities for career growth and advancement due to serving in that capacity. In addition, the Employer agrees to provide meaningful work assignments	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
	workload.E. If management is unable to approve a request for official time, management will, within one (1) workday, identify an alternate time for use of the requested official time.F. Upon entering any work area to meet with an employee, the representative will advise the employee's immediate supervisor of his or her presence, the employee to be contacted, and the estimated duration of the meeting.G. On occasion, discussions between the Union representative and the employee may take longer than originally anticipated. In these cases, both will contact their supervisors telephonically or by e-mail to notify them of the need to extend the anticipated return time and the amount of additional time needed. The supervisor (of the employee and Union representative) will determine if the time can be extended for each individual or if rescheduling is necessary due to work requirements.H. When the Union representative needs to leave the work site and his or her immediate supervisor is unavailable, or in unforeseen circumstances is unable to get approval from the immediate supervisor, the representative will request release from another supervisor or manager in the chain of command prior to leaving the work site.	consistent with their official position description. □ Union representatives shall make all reasonable efforts to request the use of official time no less than 2 workdays (minimum 16 duty hours) in advance of the time the official time is to be used. The approving official will respond to requests submitted with 2 workdays or more advance notice within 2 workdays (16 duty hours) of submittal if feasible. Lack of response within this time frame will constitute approval. □ If the official time request form (Appendix A) cannot be submitted right away, as in an emergency situation or one in which the official time form cannot be emailed or hand carried right away to the approving official, an email or phone call to the approving office can suffice as the initial notice, provided that the form is submitted as soon as the Union official is able. If the approving official is unavailable or cannot be contacted, the Union official shall submit the request in hard copy or by email or telephone to the next higher level of supervision. □ In the event of an emergency situation where use of official time is necessary and 2 workdays advance notice cannot be provided, the official time will not be denied based solely on the lack of timely submission. The request is to be made by promptly submitting the official time form to the approving official. □ Requests for official time for authorized purposes shall be granted unless a compelling work-related reason exists that the Union representative cannot be released from his or her officially assigned duties at the time requested. When that is the case, the management official denying the official time request shall explain in detail in writing on the official time request form the compelling work-	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
		related reason precluding use of official time at the requested time, and shall confer as soon as feasible with the Union representative to designate a mutually agreeable time in the future when the official time can be used as requested. □ Before a Union representative meets with an employee: □ Either the representative or the employee will notify the employee's supervisor of the plans to meet in relation to a matter of concern about conditions of employment, giving the planned meeting location, date, time, and estimated amount of time needed for the meeting. The Union representative will confirm that the supervisor has been notified. □ If the supervisor of the employee has potential problems with the planned meeting date and time, the supervisor, employee, and representative will reach a mutually agreeable alternate date and time. □ The employee will let the supervisor know when he or she leaves the work station for the meeting and also when he or she returns from the meeting to resume his or her normal duties. □ The Union representative will notify his/her supervisor after returning to the work area and provide the supervisor a completed official time form. By the last workday of each month, representatives' supervisors will ensure that a copy of all completed forms for that month have been sent to the designated Labor Relations representative.	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
7.7 General Accountability Provisions for Official Time Users	A. Each Union representative shall timely submit to his/her supervisor a biweekly written report of the amount of official time that he/she has spent on Union activities covered by this Article, and shall provide an amended report to his/her supervisor if official time is used after submission of their time and attendance. If there is a change in technology, the Agency may need to utilize a different system to report official time.B. Union representatives will use the following categories in completing their time and attendance report-• Term Negotiations— this category is for reporting official time hours used by Union representatives to prepare for and negotiate a basic collective bargaining agreement or its successor as provided in 5 U.S.C. §7131 (a). • Mid-Term Negotiations— this category is for reporting official time hours used by Union representatives to bargain over issues raised during the life of a term agreement as provided in 5 U.S.C. §7131 (a). • Dispute Resolution— this category is for reporting official time hours used by Union representatives to process grievances up to and including arbitrations, and to process appeals of bargaining unit employees to the various administrative agencies such as the Merit Systems Protection Board (MSPB), Federal Labor Relations Authority (FLRA) and the Equal Employment Opportunity Commission (EEOC) and, as necessary, to the courts as provided in 5 U.S.C. §7131 (c) and (d). • General Labor-Management Relations— this category is for reporting official time hours used by Union representatives for activities not included in the above three categories. Examples of such activities include meetings between labor and management officials to discuss general conditions of employment, Union participation in formal meetings, and investigative interviews as provided in 5 U.S.C. §7131 (d).	n/a	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
7.8 Union-Sponsored Training	A. The Agency recognizes that Union-sponsored training is an appropriate representational activity for which official time may be used. When requesting official time for Union-sponsored training or conferences, the Union will provide the Labor Relations Officer with documentation (e.g. agenda), at the time of the request, denoting the date, location, subject matter, and provider or sponsor of the training or conference. The request will also include a statement detailing how the course content is appropriate for time in accordance with 5 USC 71 and the provisions of this article. Management will timely respond to the request after receiving the information from the Union.B. The Agency's sole expense for all Union-sponsored training will be official time.C. Official time will not be authorized for any Union-sponsored training, meeting, or conference held at a restaurant, casino hotel, spa resort/hotel, or any other similar type of facility, or for any training prohibited under 5 U.S.C 7131 (b).	**7.7 Union-Sponsored Training** The Agency recognizes that Union-sponsored training is an appropriate representational activity for which official time may be used. Request for official time should be submitted through the appropriate supervisory chain to the Labor Relations Officer at least 15 working days in advance if any request. The request must include the names (s) of the Officers/Stewards(s), date, time, and place of training or orientation sessions and the subject form. The union President is responsible for providing the Labor Relation Officer with sufficient information concerning the training curriculum. The official time approval/disapproval will be provided to the union by the Labor Relations Officier within ten working days of receipt of the request.	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
7.9 Use of Agency Email	The parties understand that access to and use of the Agency's electronic mail shall not interfere with the mission or operation of Agency. Union officials and representatives shall be on approved official time (or other non-duty time) when using the Agency's electronic mail for representational activities. A. Therefore, the Agency agrees to provide the Union with access to and use of the Agency's electronic mail subject to the following restrictions:1. The Union agrees its access and use will comply with applicable government-wide and Agency policies and guidelines and the Collective Bargaining Agreement.2. Access and use is limited to those situations where available hardware and software permit.3. Employees must be on non-duty or break time when accessing electronic messages from the Union. 4. Electronic mail cannot be used for internal Union business.5. Consistent with 18 U.S.C., Section 1913, electronic mail transmissions shall not be used to urge or promote lobbying activities by non-Union representative employees either in support of or in opposition to any legislation or appropriation of Congress. 6. It is recognized that a transmission with large numbers of addressees could affect system performance. Therefore, the Union agrees that an e-mail message, with the exceptions noted below, will be transmitted to not more than 100 recipients at one time, including any CCs or BCCs. The e-mail message must state "read on non-duty time" in the subject line. 7. The parties agree that when utilizing official time for the purpose of this Section, requests will be made in accordance with Section 6 of this Article, or if requesting leave for these purposes, following the procedures outlined in Article 16.	**7.8 Use of Agency ~~Email~~** Counter proposal – reference 7.7 The parties understand that access to and use of the Agency's electronic mail shall not interfere with the mission or operation of Agency. Union officials and representatives shall be on approved official time (or other non-duty time) when using the Agency's electronic mail for representational activities. A. Therefore, the Agency agrees to provide the Union with access to and use of the Agency's electronic mail subject to the following restrictions: • The Union agrees its access and use will comply with applicable government-wide and Agency policies and guidelines and the Collective Bargaining Agreement. • Electronic mail cannot be used for internal Union business. Consistent with 18 U.S.C., Section 1913, electronic mail transmissions shall not be used to urge or promote lobbying activities by non-Union representative employees either in support of or in opposition to any legislation or appropriation of Congress.	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
7.10 Access to Facilities	All AFGE, Local 2883 Union officials employed by CDC including retirees and non-CDC employees will be granted access to its facilities, to perform representational duties, in accordance with CDC's internal security policies and procedures. The Union shall maintain and furnish to the Employer a roster of all elected and appointed Union officials, in a timely manner, of any change thereto.	**7.5 Access to Facilities** All Union officials including retirees and non-CDC employees will be granted access to CDC facilities while on official Union business or performing Union/representational duties, subject to security and/or other valid considerations as deemed by management. The Union shall maintain and furnish to the Employer a roster of all elected and appointed Union officials, in a timely manner, of any change thereto.	
	n/a	**7.6 Information Requests** The Employer will provide to the Union, upon request, copies of Federal personnel regulations and related regulations and guides issued by DHHS and the Atlanta Human Resources Field Office (AHRFO). Requests should be submitted in writing to the Labor Relations Office. Additional information requests under the provisions of Section 7114, Title 5 USC 7114 will be properly submitted in writing to the Labor Relations Office. The Union has the option of sending a copy of the information request to the appropriate manager.	
Article 9. Dues Deductions			

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
9.1 Governing Requirements	The parties agree that the provisions of this Article are subject to and will be governed by 5 U.S.C. 71, applicable Federal rules and regulations issued by the Office of Personnel Management (OPM) and the Department of Health and Human Services (DHHS), and may be modified by any future amendments thereto.	9.1 Governing Requirements The parties agree that the provisions of this Article are subject to and will be governed by 5 U.S.C. 71, applicable Federal rules and regulations issued by the Office of Personnel Management (OPM) and the Department of Health and Human Services (DHHS), and may be modified by any future amendments thereto.	
9.2. Requirements for Making Voluntary Allotments	It is further agreed that to be eligible to make a voluntary allotment for the payment of his/her Union dues, the employee must: • be a member in good standing of the Union; • be an employee of the Bargaining Unit covered by this Agreement; • have a regular salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues; • have no other current allotment for the payment of dues to a labor organization; and • submit a written request to the Labor Relations Officer or designee authorizing the deduction on SF-1187 (Request and Authorization for Voluntary Allotment of Compensation for Payment of Labor Organization Dues).	**9.2. Requirements for Making Voluntary Allotments** It is further agreed that to be eligible to make a voluntary allotment for the payment of his/her Union dues, the employee must: be a member in good standing of the Union; be an employee of the BU covered by this Agreement; and have a regular salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues.	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
9.3 Withholding Amounts and Schedule	The Employer shall deduct dues only for those pay periods where the employee's regular salary, after other legal and required deductions, is sufficient to cover the amount of the authorized allotment for dues. The dues for which allotments may be made are the regular periodic amounts required to maintain the employee as a member in good standing of the Union. Initiation fees, special assessments, back dues, fines, and similar items are not considered dues and shall not be deducted. Dues will be withheld on a bi-weekly basis conforming to the regular pay period. Changes in the dues structure and amount shall be limited to no more than once per year.	**9.3 Withholding Amounts and Schedule** The dues for which allotments may be made are the regular periodic amounts required to maintain the employee as a member in good standing of the Union. Dues will be withheld on a bi-weekly basis conforming to the regular pay period. Changes in the dues structure and amount shall be limited to no more than twice per year.	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
9.4. Union Dues	9.4 Procedures for Making AllotmentsA. Employees will authorize voluntary allotments for payment of dues by initiating an SF-1187. Upon receipt of a properly completed SF-1187, the Employer will initiate processing within fourteen (14) calendar days. The Employer shall thereupon begin to deduct dues as of the next complete biweekly pay period after processing is complete. The Employer's Designated Official (EDO) shall document the receipt of the SF-1187 in writing.B. If the Union votes to increase/decrease dues, the Local President will submit an SF-1187 for all affected members reflecting the increase/decrease, to ensure proper recording. The Employer shall thereupon begin to deduct dues as of the next complete biweekly pay period. The EDO shall document the receipt of the SF-1187 in writing.In this increase/decrease dues scenario, the original SF-1187 anniversary date will be the one utilized to establish proper revocation dates.9.4.1 Responsibility of UnionIt is the responsibility of the Union to:A. Inform and educate its members of the voluntary nature of the system for the allotment of labor organization dues, including the conditions under which the allotment may be revoked;B. Assist as necessary in making SF-1187 forms available to all employees who need them; this form may be found at http://www.opm.gov/forms/html/sf.asp;C. Complete Section A of SF-1187 and keep the EDO informed of any changes in this information. The Union will assure that the employee's Social Security number, job title, and work location are properly annotated in the appropriate blocks on the SF-1187. The Union will promptly submit the completed SF-1187 to the EDO after the signing by both the authorized official and the employee;D. Inform the EDO of the name of any particular employee who has been expelled or ceases to be a member in good standing in the Union;E. Inform the EDO of any changes in the dues amounts or the formula for membership dues.Changes in the dues amounts will begin the first full pay period in the	9.4 Procedures for Making Allotments (Union Dues) Employees will authorize voluntary allotments for payment for dues by initiating an SF-1187. The completed form will be given to a union official who will then transmit it to Labor Relation for processing before the Union adds the new member to the Union's roster. The union will purchase SF-1187s and make the forms available to its members as appropriate. Deductions for allotments will begin to be made for the first complete biweekly pay period following receipt by Human Resources office/Labor Relations of the allotment form SF-1187. The employee's Social Security number will be inserted in the Identification Number block. The Union will: • Assume responsibility for any and all matters associated with dues, including, but not limited to, collections, revocations, reports, disputes, withholding provisions, and schedules for the eDues system. • Provide its members with the Union's eDues System requirements and access for authorizing automatic draft or debit deductions. The Employer will :• Provide the options of payroll deductions (SF-1187 form) or eDues system (refer to the union) to new employees or at the end of the anniversary date of existing employees under payroll deductions.	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
	calendar year. Changes in the dues amount will be made as soon as possible, but no later than sixty (60) days after notification. AFGE will make no more than one (1) such change in a twelve (12) month period; andF. Promptly advise the EDO of the names of and complete mailing addresses and changes thereto of officials who are responsible for certifying SF-1187s and to whom remittances, printouts, and other dues withholding data should be submitted.9.4.2 Responsibility of EmployerA. It is the responsibility of the Employer to:1. ensure payment of net dues in accordance with established accounts;2. send the balance due if it erroneously underpays a payment of net dues;3. upon request, provide the Union or employee with their deduction anniversary date;4. inform the Union of the EDO responsible for the reports and updates of Union dues deduction annually and upon change of EDO; and5. provide the Union with remittance reports monthly.		

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
9.5 Termination of Union Dues	If exclusive recognition should cease to exist for the covered unit, all allotments shall be terminated. In addition, the Employer shall terminate an individual employee's allotment when: A. the employee ceases to be a member in good standing of the Union; or B. the employee is reassigned, transferred, separated or otherwise excluded from the bargaining unit.Termination due to loss of membership in good standing, loss of recognition, separation or reassignment out of the exclusive unit will occur beginning the first full pay period after the date of notification into the Employer's automated personnel and pay system.Termination due to revocation by the employee: Revocation notices for employees hired on or after August 10, 2020 who have had dues allotments in effect for more than one (1) year can be terminated upon the employees request at any time after the assignment's initial one (1)-year period expires. These revocations will become effective as soon as administratively feasible following the one (1)-year anniversary date and upon receipt of the employee's request. Request to revoke authorized assignments in place prior to August 10, 2020 may only be revoked by submitting a request for revocation on or before December 31, to be effective the first full pay period after this date. The request should be submitted to the Human Resources Office, Labor Relations Officer. The Labor Relations Officer will forward a copy of the request to the Union Treasurer. Revocations will only be affected by submission of a completed SF-1188 that has been initialed by the Local President or the Local President's designee(s). If the SF-1188 is not initialed, the Employer will return the SF-1188 to the employee and direct the employee to contact the proper Union official for initialing. All SF-1188s must be signed by the Local President (or his/her designee) within the pay period it is submitted.	9.5 Termination of Union Dues • When an employee ceases to be a member in good standing of the Union; as per notification (SF-1188 from the employee or the Union). • If the Union loses exclusive recognition for the bargaining unit or if this Agreement is terminated. • If the employee is separated from CDC or is reassigned, promoted, or transferred to a position that is not included in the bargaining unit • Employee will notify eDues system to terminate agreement.	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
9.6 Receipt of Remittances and Reports	The Union will advise the Labor Relations Officer, in writing, of the name and complete address of the person or office authorized to receive remittances and reports. Remittances will be made directly to the person designated in writing by the Union. The reports shall show, by Bargaining Unit:A. Names of members for whom deductions are made, and amounts;B. Total number of members for whom dues are withheld;C. Total amount withheld; and,D. Amount remitted.	9.6 Receipt of Remittances and Report The Union will advise the Labor Relations Officer, in writing, of the name and complete address of the person or office authorized to receive remittances and reports. Remittances will be made directly to the person designated in writing by the Union.	
9.7 Extension of Dues Withholding Provisions	If the parties are negotiating a new Agreement at the time this Agreement would otherwise terminate, the dues withholding provisions contained in this Article shall be extended until a new Agreement is reached.	n/a	
Article 35. Grievances			

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
35.1 Principles and Requirements	The purpose of this article is to provide a mutually acceptable and orderly method for the prompt and equitable resolution of grievances filed by employees, Agency management, or the Union. A grievance is defined, for purposes of this Agreement, with the exceptions enumerated in Section 35.3, as any complaint:• by any employee concerning any matter relating to the employment of that employee;• by the Union concerning any matter relating to the employment of any employees in• the Bargaining Unit;• by any employee, the Union, or the Employer concerning:• the effect of interpretation, or claim of breach, of this Agreement; or• any claimed violation, misinterpretation, or misapplication of any law, rule; or• regulation affecting conditions of employment.The grievance procedure set forth in this article shall be the sole procedure for processing grievances within its scope. Grievances may be initiated by employees, singularly or jointly; by the Union for itself; by the Union on behalf of one or more employees; or by the Employer.Employees, Agency management, and the Union are encouraged to work together to resolve grievances that have not been formally submitted to avoid having to enter the formal grievance process.By mutual agreement, the parties may opt to attempt to resolve grievances through Alternative Dispute Resolution (ADR) at any stage of the grievance process, including during the employee's fifteen (15) workday timeframe for formal grievance filing. If the parties mutually agree to attempt to resolve a grievance through ADR, all timelines will be suspended pending the outcome of ADR. If the grievance is not resolved through ADR, the applicable timeline will resume after ADR is completed.It is agreed that the terms and conditions of this Agreement and rules, regulations, policies, and practices will be applied fairly and impartially to all employees within the Bargaining Unit. The Union will encourage reasonable and non-frivolous use of the grievance procedures. The parties agree to respect and maintain the confidentiality of all	**35.1 Principles and Requirements** The purpose of this article is to provide a mutually acceptable and orderly method for the prompt and equitable resolution of grievances filed by employees, Agency management, or the Union. A grievance is defined, for purposes of this Agreement, with the exceptions enumerated in Section 35.3, as any complaint: □ by any employee concerning any matter relating to the employment of that employee; □ by the Union concerning any matter relating to the employment of any employees in □ the Bargaining Unit; □ by any employee, the Union, or the Employer concerning: • the effect of interpretation, or claim of breach, of this Agreement; or • any claimed violation, misinterpretation, or misapplication of any law, rule; or • regulation affecting conditions of employment. The grievance procedure set forth in this article shall be the sole procedure for processing grievances within its scope. Grievances may be initiated by employees, singularly or jointly; by the Union for the employee, by the Union for itself; by the Union on behalf of one or more employees; or by the Employer. Employees, Agency management, and the Union are encouraged to work together to resolve grievances that have not been formally submitted to avoid having to enter the formal grievance process. By mutual agreement, the parties may opt to attempt to resolve grievances	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
	information involving performance or conduct of individuals.	through Alternative Dispute Resolution (ADR) at any stage of the grievance process, including during the employee's twenty (20) workday timeframe for formal grievance filing. If the parties mutually agree to attempt to resolve a grievance through ADR, all timelines will be suspended pending the outcome of ADR. If the grievance is not resolved through ADR, the applicable timeline will resume after ADR is completed. It is agreed that the terms and conditions of this Agreement and rules, regulations, policies, and practices will be applied fairly and impartially to all employees within the Bargaining Unit. The Union will encourage reasonable and non-frivolous use of the grievance procedures. The parties agree to respect and maintain the confidentiality of all information involving medical documentation/reasonable accommodations, performance or conduct.	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute

35.2 Matters Excluded from the Grievance Process	Complaints about the following matters are not considered grievances for the purpose of this Agreement and are specifically excluded from the grievance process:• Claimed violations of Subchapter III of Chapter 73 of Title 5 U.S.C., relating to Prohibited Personnel Practices. Prohibited Personnel Practices can be reported to the agency Inspector General and/or the U.S. Office of Special Counsel.• Any claimed violation of 5 U.S.C. 73 relating to prohibited political activities;• Any complaint concerning individual rights related to a reduction-in-force;• Any complaint concerning retirement, life insurance, or health insurance;• Any suspension or removal under 5 U.S.C. 7532 relating to national security;• Any adverse action taken under 5 U.S.C. 7512;• Any examination, certification, or appointment;• The classification of any position that does not result in the reduction in grade or pay of an employee;• Non-selection for non-bargaining unit positions;• Non-selection for bargaining unit employees from amongst properly rated and ranked candidates with the exception that employees may file grievances alleging unlawful discrimination as defined by Title VII. However, employees may file a grievance for non-selection from the exercise of a priority consideration. Employees may also file either a grievance or unfair labor practice, but not both, alleging anti-union animus.• Complaints concerning veteran's preference;• Separation or termination of an employee serving a probationary or trial period; return of an employee serving a supervisory or managerial probation to a non-supervisory or non-managerial position; termination of an employee during a trial period; the termination of an employee (including staff fellows or visiting scientists) serving on a temporary or time limited appointment; the termination of an employee in the Student Educational Employment Program, including STEP and SCEP; or temporary employees and/or employees serving a probationary or trial period. However, if any of the actions mentioned in this paragraph are	35.2 Matters Excluded from the Grievance Process
		Complaints about the following matters are not considered grievances for the purpose of this Agreement and are specifically excluded from the grievance process:
		  any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);
		  retirement, life insurance, or health insurance;
		  a suspension or removal under section 7532 of this title;
		  any examination, certification, or appointment; or
		  the classification of any position which does not result in the reduction in grade or pay of an employee	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
	alleged to have been taken for discriminatory reasons prohibited by statute, those issues may be grieved pursuant to Section 4B of this Article;• A notice of proposed action or warning. However, disputes regarding a proposal may be merged into a grievance concerning the final decision of the Employer after that final decision is issued;• The substance of performance standards and elements/measures, and/or the determination as to whether an element/measure is critical or non-critical. However, if such substance is alleged to have been created for discriminatory reasons prohibited by statute, that issue may be grieved pursuant to Section 4B of this Article;• Ratings on individual performance elements and performance measures.; • Progress reviews and counseling sessions.;• All other matters made nongrievable by any provision of this Agreement;• Order to divest;• Any specific matter raised in an on-going unfair labor practice charge; or• An action terminating a temporary promotion.		

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
35.3 Formal Grievance Processing Requirements	• At each step of the formal grievance process, the following requirements apply: • The grievant will submit to the reviewing/deciding official copies of all submissions and decisions for previous steps, and all supporting documentation.• An employee processing a grievance under this article is entitled to Union representation or self-representation. If an employee presents a grievance without Union representation, the Union will be given the opportunity to participate and present its institutional concerns during grievance discussions and/or discussions of resolution of the grievance.• When an employee represents him or herself, a copy of any management decisions will be provided to the Union. • Issues not addressed by either side during Step 1 of the grievance process will not be raised or considered at subsequent steps or in arbitration, including rebuttals by any of the parties.• The parties may elect, by mutual agreement, to combine multiple grievances filed on the same or similar issue and will process the combined grievance in accordance with the procedures described in this section.• Before the Employer or Union is required to render a decision, the grievance must clearly describe the matter(s) being grieved, including the date/place of the occurrence and the individuals involved. The grievance must also identify the article(s), section(s), and provisions of the agreement that are involved, explain the alleged violation, state the requested relief, and must not include any subject matter that is specifically excluded from the negotiated grievance procedure. • If the matter grieved includes subject matter specifically excluded from the negotiated grievance procedure, the grievance shall be terminated and disqualified from advancement through the grievance process.• In the event either party should declare a grievance nongrievable or nonarbitrable, the grievance decision shall reference this determination. • All disputes of grievability/arbitrability shall be referred to the impartial arbitrator as threshold issues in the related grievance, except where the parties agree to hear the threshold issue and merits of the	**35.3 Formal Grievance Processing Requirements** At each step of the formal grievance process, the following requirements apply: • The grievant will submit to the reviewing/deciding official copies of all submissions and decisions for previous steps, and all supporting documentation. • An employee processing a grievance under this article is entitled to Union representation or self-representation. If an employee presents a grievance without Union representation, the Union will be given the opportunity to participate and present its institutional concerns during grievance discussions and/or discussions of resolution of the grievance. • When an employee represents him or herself, a copy of any management decisions will be provided to the Union. • Issues not addressed by either side during Step 1 of the grievance process will not be raised or considered at subsequent steps and the grievant will have an opportunity to provide a rebuttal to the step 1 grievance decision. • To maintain confidentiality and discretion, participants in formal grievance meetings will be limited to those specified in the steps below, except by mutual agreement of the parties. If the parties agree to try to resolve the grievance in ADR, participants in ADR sessions will be limited likewise, with the addition of a mediator, the appropriate CIO management official negotiating official, and employee representatives such that the number of persons	

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	grievance separately.• The parties agree to raise any questions of grievability or arbitrability of a grievance, at least fifteen (15) workdays prior to the arbitration hearing. • To maintain confidentiality and discretion, participants in formal grievance meetings will be limited to those specified in the steps below, except by mutual agreement of the parties. If the parties agree to try to resolve the grievance in ADR, participants in ADR sessions will be limited likewise, with the addition of a mediator, the appropriate CIO negotiating official (as determined through coordination between ADR staff and management), management representatives, and employee representatives such that the number of persons participating for the employee equals the number participating for management.• Upon mutual agreement, any steps of the formal grievance process may be varied.• Any time limits stipulated in the steps of the formal grievance process shown in the table in this section may be extended for stated periods of time by the appropriate parties by mutual agreement in writing. Failure of the Employer to observe the time limits shall entitle the employee to advance the grievance to the next step.• If the grievant fails to adhere to the timeframes outlined in the grievance steps below, the grievance shall be nullified and will not be eligible for advancement through the grievance procedure or subject to the invocation of arbitration. • The following table shows the steps of the formal grievance process.Step 1 • A grievance shall be submitted in writing on the approved grievance form (Appendix C) by the grievant or a Union representative to the Step 1 official with a copy to the Labor Relations Officer. The Step 1 official is the immediate supervisor, the person who took the action being grieved, the management official with the authority to make a decision on the grievance, or management's designee. The grievance shall be submitted within fifteen (15) workdays of the incident; of the date the grievant becomes aware of the incident; or in a grievance based on a disciplinary	participating for the employee equals the number participating for management. □ Upon mutual agreement, any steps of the formal grievance process may be varied. □ Any time limits stipulated in the steps of the formal grievance process shown in the table in this section may be extended for stated periods of time by the appropriate parties by mutual agreement in writing. Failure of the Employer to observe the time limits shall entitle the employee to advance the grievance to the next step. **The following table shows the steps of the formal grievance process**. Step 1□ A grievance shall be submitted in writing on the approved grievance form (Appendix C) by the grievant or a Union representative to the Step 1 official. The Step 1 official shall be the CIO Management Official or Director. The grievance shall be submitted within twenty (20) workdays of the incident; or the date the grievant becomes aware of the incident; or in a grievance based on a disciplinary or adverse action or a removal or reduction-in-grade based on unacceptable performance under 5 USC 4303 or 7512, of the date of the employee's receipt of the deciding official's written decision to take the action.	

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	action. The grievance shall state that the first step of the grievance procedure is being invoked. The written grievance shall identify the facts giving rise to the grievance, the parts of the Agreement, laws, policies, and regulations, claimed to have been violated, and the relief requested. At the request of either party, a formal meeting shall be held within five (5) workdays of grievance receipt with the Step 1 official, the Step 1 official's representative (if any), the employee, and the Union to discuss and/or resolve the grievance. • The supervisor/management official shall give his/her decision in writing within five (5) workdays of the date of the grievance meeting or of the initial grievance receipt if no meeting was held. The decision will include the name of the management official to receive the Step 2 grievance.Step 2 • If a satisfactory resolution has not been reached at Step 1, the grievance will be submitted in writing by the grievant or a Union representative to the management official designated to receive the Step 2 grievance within ten (10) workdays after receipt of the first step decision, or within ten (10) workdays of the due date of the Step 1 decision. The Step 2 Official will be on an organizational level above the Step 1 Official.• At the request of either party, a formal meeting will be held within ten (10) workdays of the Step 2 receipt with the Step 2 official, the Step 2 official's representative, the employee, and the Union to discuss and/or resolve the grievance.• The management official receiving the Step 2 grievance shall give a written decision within ten (10) workdays of the grievance meeting, or of the Step 2 submittal if no meeting was held. A copy of the decision shall be furnished to all parties concerned. This decision is final except that it may be subject to arbitration if invoked as outlined in Article 36.The Union, acting as the responsible representative of all employees in the bargaining unit, may, at any step of this procedure, withdraw on a nondiscriminatory basis from the grievance.	The grievance shall state that the first step of the grievance procedure is being invoked. The written grievance shall identify the facts giving rise to the grievance, the parts of the Agreement, laws, policies, and regulations, claimed to have been violated, and the relief requested. At the employee's request, a formal meeting shall be held within ten (10) workdays of grievance receipt with the Step 1 official, the Step 1 official's representative (if any), the employee, and the Union representative to discuss and/or resolve the grievance. The CIO Management Official or Director shall give his/her decision in writing within ten (10) workdays of the date of the grievance meeting or of the initial grievance receipt if no meeting was held. If the decision is unfavorable, it will be advance to the step 2 official Step 2 If a satisfactory resolution has not been reached at Step 1, the grievance will be submitted in writing by the grievant or a Union representative to the CDC Director or his/her designee. The grievance must be presented to the CDC Director or his/her designee within 10 workdays after receipt of the Step 1 or of the due date of the Step 1 decision. The Step 2 submission will include a copy of Step 1 submission and decision. Issues not addressed in Step 1 will not be considered at subsequent steps. The grievant will attach a rebuttal to the Step 1 decision. At the grievant option, a formal meeting will be held within 10 workdays of receipt of the Step 1 grievance with the step 2 official. The meeting shall include Step 2 official, and their representative, the employee, and their Union Representative to resolve the	

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		grievance. A formal meeting will occur at this step. □ The CDC Director or his/her designee shall give a written decision within ten (10) workdays after receipt of the grievance meeting, or from the date of the grievance meeting, if a meeting was held. A copy of the decision shall be furnished to all parties concerned. This decision is final except that it may be subject to arbitration if invoked as outlined in Article 36. At each step of the formal grievance process, the following requirements apply: • The grievant will submit to the reviewing/deciding official copies of all submissions and decisions for previous steps, and all supporting documentation.• An employee processing a grievance under this article is entitled to Union representation or self-representation. If an employee presents a grievance without Union representation, the Union will be given the opportunity to participate and present its institutional concerns during grievance discussions and/or discussions of resolution of the grievance.• When an employee represents him or herself, a copy of any management decisions will be provided to the Union. • Issues not addressed by either side during Step 1 of the grievance process will not be raised or considered at subsequent steps and the grievant will have an opportunity to provide a rebuttal to the step 1 grievance decision.• To maintain confidentiality and discretion, participants in formal grievance meetings will be limited to those specified in the steps below, except by mutual agreement of the parties. If the parties agree to try to resolve the grievance in ADR, participants in ADR sessions will be limited likewise, with the addition of a mediator, the appropriate CIO management official negotiating official, and employee representatives such that the number of	

Commented [MDR(1]: 35.3 language and header are accurate. However, we had different formatting for this section

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		persons participating for the employee equals the number participating for management. • Upon mutual agreement, any steps of the formal grievance process may be varied.• Any time limits stipulated in the steps of the formal grievance process shown in the table in this section may be extended for stated periods of time by the appropriate parties by mutual agreement in writing. Failure of the Employer to observe the time limits shall entitle the employee to advance the grievance to the next step.The following table shows the steps of the formal grievance process.Step 1 • A grievance shall be submitted in writing on the approved grievance form (Appendix C) by the grievant or a Union representative to the Step 1 official. The Step 1 official shall be the CIO Management Official or Director. The grievance shall be submitted within twenty (20) workdays of the incident; or the date the grievant becomes aware of the incident; or in a grievance based on a disciplinary or adverse action or a removal or reduction-in-grade based on unacceptable performance under 5 USC 4303 or 7512, of the date of the employee's receipt of the deciding official's written decision to take the action. • The grievance shall state that the first step of the grievance procedure is being invoked. The written grievance shall identify the facts giving rise to the grievance, the parts of the Agreement, laws, policies, and regulations, claimed to have been violated, and the relief requested. At the employee's request, a formal meeting shall be held within ten (10) workdays of grievance receipt with the Step 1 official, the Step 1 official's representative (if any), the employee, and the Union representative to discuss and/or resolve the grievance. • The CIO Management Official or Director shall give his/her decision in writing within ten (10) workdays of the date of the grievance meeting or of the initial grievance receipt if no meeting was held. If the decision is unfavorable, it	

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		will be advance to the step 2 official. Step 2 • If a satisfactory resolution has not been reached at Step 1, the grievance will be submitted in writing by the grievant or a Union representative to the CDC Director or his/her designee. The grievance must be presented to the CDC Director or his/her designee within 10 workdays after receipt of the Step 1 or of the due date of the Step 1 decision. The Step 2 submission will include a copy of Step 1 submission and decision. Issues not addressed in Step 1 will not be considered at subsequent steps. The grievant will attach a rebuttal to the Step 1 decision. • At the grievant option, a formal meeting will be held within 10 workdays of receipt of the Step 1 grievance with the step 2 official. The meeting shall include Step 2 official, and their representative, the employee, and their Union Representative to resolve the grievance. A formal meeting will occur at this step. • The CDC Director or his/her designee shall give a written decision within ten (10) workdays after receipt of the grievance meeting, or from the date of the grievance meeting, if a meeting was held. A copy of the decision shall be furnished to all parties concerned. This decision is final except that it may be subject to arbitration if invoked as outlined in Article 36.	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
35.4 Union's Institutional Grievances	35.4.1 DefinitionsA group grievance is a grievance initiated by the Union on behalf of a group of employees on matters affecting members of the group likewise. A group grievance will to the extent the Union is able identify the group of employees on whose behalf the grievance is being filed. An institutional grievance is a grievance initiated by the Union on a matter or matters affecting the institutional rights of the Union. When the Union initiates a group grievance or an institutional grievance, it will state the type of grievance being initiated.35.4.2 Other procedures and requirementsGroup grievances or institutional grievances will be initiated within fifteen (15) workdays after the date that the Union becomes aware of the action or actions giving rise to the grievance, or if information necessary to support the grievance is requested, within fifteen (15) workdays after the date that the requested information is provided. All other provisions specified in this article for individual grievances including but not limited to those pertaining to processing and response timeframes beyond the initial fifteen (15)-workday timeframe and those pertaining to Alternative Dispute Resolution also apply to group and institutional grievances. It is understood that where a provision of this article refers to the employee, it means the grievant, which in the case of a group grievance or an institutional grievance will be the Union.	**35.4 Union's Institutional Grievances** If the basis of an institutional grievance filed by the Union is an action against Labor Relation and/or the Executive Officer, the grievance shall be submitted directly to the Director of CDC.	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
35.5 Employer's Grievance	Prior to filing a grievance against the Union, the Employer will apprise the Union President of a potential grievance to provide the Union with an opportunity to review the issue(s). Employer notification to the Union through the Labor Relations Officer of a potential grievance shall be made within fifteen (15) workdays of the incident or knowledge of the incident. Upon the request of the Union, the parties will meet to discuss and/or resolve the issue(s) in the potential grievance. If the issue(s) is not resolved, the Employer may then file a written grievance with the Union President within twenty (20) workdays of the initial notification to the Union. The issue(s) and requested relief will be included in the articulation of the grievance. The Union President will respond to the grievance in writing within ten (10) workdays. If the grievance is not resolved, and prior to the Employer invoking arbitration, the grievance will be submitted to mediation in an attempt to resolve the issue(s). If the parties fail to resolve the grievance, the Employer may invoke arbitration pursuant to Article 36.	**35.5 Employer's Grievance** • Prior to filing a grievance against the Union, the Employer will apprise the Union President of a potential grievance to provide the Union with an opportunity to review the issue(s). Employer notification to the Union through the Labor Relations Officer of a potential grievance shall be made within 20 working days of the incident or knowledge of the incident. Upon the request of the Union, the parties will meet to discuss and/or resolve the issue(s) in the potential grievance. If the issue(s) is not resolved, the Employer may then file a written grievance with the Union President within 20 working days of the initial notification to the Union. The issue(s) and requested relief will be included in the articulation of the grievance. The Union President will respond to the grievance in writing within 10 working days. If the grievance is not resolved, and prior to the Employer invoking arbitration, the grievance will be submitted to mediation in an attempt to resolve the issue(s). If the parties fail to resolve the grievance, the Employer may invoke arbitration pursuant to Article 36. • The Employer shall refrain from using the grievance process as retaliation of and/or to intimidate. • The Employer shall ensure that all grievances against the Union have documented merit and are initiated based upon violations of the collective bargaining agreement.	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
35.6 Choice of Forum for Addressing Complaints	If an employee's complaint about a workplace matter can be addressed through either a grievance or a formal discrimination complaint under the provisions of 29 CFR Part 1614, the employee can choose only one of these two forums—that is, either a grievance or a formal EEO complaint—and cannot change to a different forum later. An employee shall be deemed to have made the choice of forum at such time as he or she timely files a written grievance or a formal discrimination complaint, whichever occurs first. A grievance on a disciplinary action must be filed at the level of the official who made the decision to take the action.A grievant affected by a removal or reduction-in-grade based on unacceptable performance as outlined in 5 USC 4303 or an adverse action as outlined in 5 USC 7512 may appeal the action taken to the Merit Systems Protection Board (MSPB) either by filing a grievance under the negotiated grievance procedure or by filing a formal EEO complaint under the provisions of 29 CFR Part 1614. The employee can choose only one of these three forums and cannot change to a different forum later. An employee shall be deemed to have made the choice of forum at such time as he or she timely files an appeal with the MSPB, a Step 1 grievance, or a formal EEO complaint, whichever occurs first.	**35.6 Choice of Forum for Addressing Complaints** □ If an employee's complaint about a workplace matter can be addressed through either a grievance or a formal discrimination complaint under the provisions of 29 CFR Part 1614, the employee can choose only one of these two forums that is, either a grievance or a formal EEO complaint. An employee shall be deemed to have made the choice of forum at such time as he or she timely files a written grievance or a formal discrimination complaint, whichever occurs first. A grievance on a disciplinary action must be filed at the level of the official who made the decision to take the action. □ A grievant affected by a removal or reduction-in-grade based on unacceptable performance as outlined in 5 USC 4303 or an adverse action as outlined in 5 USC 7512 may appeal the action taken to the Merit Systems Protection Board (MSPB) either by filing a grievance under the negotiated grievance procedure or by filing a formal EEO complaint under the provisions of 29 CFR Part 1614. The employee can choose only one of these three forums. An employee shall be deemed to have made the choice of forum at such time as he or she timely files an appeal with the MSPB, files a written grievance, or files a formal EEO complaint, whichever occurs first.	
Article 36. Arbitration			

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
36.1 Governing Requirements	This article shall be administered in accordance with the Federal Service Labor-Management Relations Statute (FSLMRS), Title 5, U.S. Code Chapter 71, and this Agreement. This article establishes the procedures for the arbitration of disputes between the Union and the Agency, which are not satisfactorily resolved by the negotiated grievance procedure found in Article 35 of this Agreement.A referral to arbitration can be made only by the Union President or Labor Relations Officer (LRO), or designee.	**36.1 Procedures and Requirements** • If the Employer and the Union fail to settle any grievance processed in accordance with the procedures outlined in Article 35, then such grievance shall, upon written request by either party, be referred to arbitration. Such written request must be submitted not later than 30 calendar days following the receipt of the written decision at the third step. Arbitration may be invoked only by the Labor Relations Officer for the Employer or by the Union President for the Union. • Within 10 workdays, the invoking party shall request a list of potential arbitrators (i.e., arbitration panel) from the Federal Mediation and Conciliation Service (FMCS) consisting of seven impartial persons qualified to act as arbitrators. This timeframe may be extended by mutual agreement between the parties. The parties shall evenly divide the cost of requesting the list. Within 7 workdays of receipt of the list, the parties shall alternately strike one name at a time (the party to strike the first name will be determined by a coin toss) until one name remains on the list. In the event the remaining name is mutually unacceptable to the parties, a new list may be requested from FMCS within 7 workdays and names struck as above. • The invoking party will obtain a new list should a chosen arbitrator recuse himself or herself for any reason (to include self-disqualification) or if the chosen arbitrator is unable to schedule the case for hearing within ninety (90) calendar days of the date of selection. A new arbitration list will be requested within fourteen (14) calendar days of notification and the	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
		parties will select another arbitrator using the prescribe process. The invoking party shall schedule a meeting with the other party, in person no later than ten (10) workdays after the invocation of Arbitration is served on the receiving party. At this meeting the parties shall consider possible settlement and attempt to agree on a resolution. The Federal Mediation and Conciliation Service shall be empowered to make a direct designation of an arbitrator to hear the case in the event either party refuses to participate in the selection of an arbitrator. The parties may, by mutual agreement, agree to stipulate the facts and the issues in a particular case directly to an arbitrator for decision without a formal hearing. All fees and expenses of the arbitrator, and if no government space is available in the Atlanta area, the cost of the hearing room, shall be shared equally by the parties. Costs of witnesses who are not CDC employees shall be borne by the party requesting the appearance of said witnesses. The grievant, his/her representative, and all witnesses determined to be necessary by the arbitrator, if CDC employees, will be excused from duty to the extent necessary to participate in the arbitration hearing without loss of pay or charge to annual leave. Arbitration hearings shall be held during normal business hours, Monday through Friday, except by mutual consent of the parties. Overtime will not be authorized for attendance at arbitration hearings. The arbitration hearing shall be conducted between the hours of 9:00 AM and 5:00PM at the	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
		location of the hearing Monday through Friday, unless the parties agree otherwise. The parties may mutually agree to continue the hearing beyond 5:00PM but will not be compelled to do so**.** .	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
36.2 Arbitrator Selection Process	A. The party invoking arbitration (moving party) shall request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service (FMCS) by submitting an appropriate request to the FMCS within seven (7) calendar days after the date arbitration is invoked. The moving party will be responsible for payment of any panel fee. The party requesting the panel list shall specify that the arbitrators be members of the National Academy of Arbitrators (NAA) and/or the American Arbitration Association (AAA) and that the panel contain arbitrators within reasonable proximity to the site of the dispute. The panel members should be within 60-mile radius from the location of the hearing unless the parties agree otherwise. The moving party will request that the FMCS serve a copy of the panel list on both parties (AFGE Local President and the Agency's Labor Relations Officer). B. Within ten (10) workdays after receiving the list of arbitrators from the FMCS, the parties shall select an arbitrator. The parties shall each strike one (1) name from the list alternately and then repeat the procedure until only one (1) name remains. The person whose name remains shall be selected as the arbitrator. The moving party will arrange the logistics for a coin toss to determine the order for striking, i.e., whether management or the Union strikes first. The logistics will include provision of the coin and securing a mutually agreeable time, date, and location for the coin toss. The non-moving party will flip the coin. If the coin lands "heads up," the Union strikes first; if the coin lands "tails up," the Agency strikes first. C. Within five (5) workdays of the selection of the arbitrator, the party invoking arbitration will contact the arbitrator assigned to the case to schedule the hearing to take place on a date mutually agreeable to all parties. If within twenty (20) workdays after arbitration is invoked, the parties have not agreed on a hearing date, the arbitrator has unilateral authority to schedule the hearing at their	n/a	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
	next available date but no sooner than twenty (20)workdays from the arbitrator's decision to schedule the hearing. Failure of the moving party to notify the arbitrator and pursue an arbitration hearing date within the above timeframes will be considered a withdrawal of the grievance from arbitration with prejudice. D. The cost of obtaining a list of arbitrators from the FMCS shall be borne by the party invoking arbitration. If a grievance is scheduled for arbitration and subsequently settled prior to the date of the hearing, the chosen arbitrator may be utilized to hear the next arbitration on the docket for the same geographical location of dispute if the parties mutually agree. All fees and expenses of the arbitrator, and if no government space is available in the Atlanta area, the cost of the hearing room, shall be borne by the moving party. Costs of witnesses who are not CDC employees shall be borne by the party requesting the appearance of said witnesses. E. The moving party will obtain a new list should a chosen arbitrator recuse himself or herself for any reason (to include self-disqualification) or if the chosen arbitrator is unable to schedule the case for hearing within ninety (90) calendar days of the date of selection. A new arbitration list will be requested within ten (10) workdays of notification and the parties will select another arbitrator for the former case using the procedures in Section 2.C of this Article when a new list is obtained.		

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
36.3 Arbitrator's Role and Authority	A. The arbitrator shall have the jurisdiction and authority to hear and decide the arbitration assigned to him/her except: 1. The arbitrator will have no authority to add to, subtract from, alter, amend, or modify any provision of this Agreement. 2. The arbitrator will have no authority to address any matters excluded from the grievance procedure regardless of the specific allegation(s) or issue(s) raised. 3. The arbitrator will have no authority to consider new issues, allegations, arguments and defenses raised by the grievant that he/she had not specifically and previously raised, in writing, in the formal grievance. Mere references to an alleged violation of a contract article or to issues, allegations or defenses, without reference to the underlying facts and circumstances supporting the assertion, shall not be arbitrable. B. In making awards, the designated arbitrators shall be bound to apply, as necessary, the provisions of all relevant statutes, regulations, and executive orders. C. Any disputes regarding arbitrability will be resolved in accordance with Section 4 of this Article. D. The arbitrator's decisions will be final and binding, except as altered on appeal or provided by law. E. The arbitrator may retain jurisdiction over a case when necessary to clarify the award.	**36.1 Arbitrator's Role and Authority** □ The arbitrator's decisions shall be final and binding subject to the Parties' right to take exceptions to an award in accordance with law,or the grievant's right, if applicable, to initiate court action. However, the arbitrator shall be bound by the terms of this Agreement and shall not have the authority to change, alter, amend, modify, add to, or delete from it; such right is the sole prerogative of the parties to this Agreement. □ The arbitrator will be requested to render his/her decision to the parties as quickly as possible but in no event later than 20 workdays after the conclusion of the hearing. The written decision will include findings of fact and an opinion containing the reasoning and basis for the decision. Any questions concerning the interpretation of an arbitrator's award shall be returned to the arbitrator for settlement. □ The Arbitrator shall possess the authority to make an aggrieved employee whole to the extent such remedy is not limited by law, including the authority to award back pay, interest, and attorney's fees in accordance with 5 CFR 550.801(a), reinstatement, retroactive promotion where appropriate, and to issue an order to expunge the record of all references to the disciplinary action, if appropriate. □ The Arbitrator must submit a copy of the decision to the Employer and the Union. The decision will be emailed to all parties, and a record copy will be sent by certified mail.	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
		The arbitrator may retain jurisdiction over a case when necessary to clarify the award, and will retain jurisdiction in all cases where exceptions are taken to an award and FLRA sets aside all or a portion of the award. Disputes between the parties about the validity of a grievance or the need of arbitration for any issue shall be settled by arbitration in accordance with the provisions of this article. The Employer agrees to raise any question of the validity of a grievance and/or arbitration for a grievance prior to the selection of the arbitrator. The arbitrator shall hear arguments regarding both the validity of the grievance and the merits of the case at the same hearing except that either party may request that the arbitrator first decide on arbitrability.	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
36.4 Grievability and Arbitrability Disputes	The arbitrator designated to hear the case on the merits shall have the authority to make all OTHER determinations regarding grievability and arbitrability. If the Agency and/or the Union considers a grievance to be nongrievable or nonarbitrable, that issue shall be raised and determined as follows: 1. A party challenging the arbitrability of a grievance based on an alleged failure to timely file a grievance, invoke a grievance to arbitration or failure to follow the arbitration procedures, may require that the hearing be bifurcated to provide for a separate hearing and decision to decide the arbitrability issue. A hearing on the merits shall not be scheduled to commence prior to receipt of the arbitrator's decision on arbitrability, unless the parties jointly agree to proceed with the merits during the same hearing. 2. The arbitrator shall have the authority to make determinations regarding grievability and arbitrability in accordance with this Agreement. If the Agency or the Union considers a grievance nongrievable or nonarbitrable, it should communicate such determination to the other party at the earliest possible time after the determination is made.	n/a	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
36.5 Arbitration Processing Requirements	A. As set forth in this Agreement, a grievance may be referred to arbitration by either party within thirty (30) calendar days of receipt of an unfavorable grievance decision, or if a grievance decision is not received within thirty (30) calendar days after the date due of the grievance decision. The right to invoke Arbitration is limited to the Union President and the Agency's Labor Relations Officer; an employee may not independently invoke any of the provisions of this Article. B. The party invoking arbitration shall notify the other party of its intention to invoke the provisions of this Article. Such notification shall be in writing and will include a copy of the grievance being arbitrated, and the decision, if any. The notice shall also designate the name of the representative of the moving party and be signed and dated by the Union President or designee, or the Labor Relations Officer, or designee, as appropriate. Notification by either party of its invocation of arbitration will be served by email with delivery receipt. Failure to timely serve an invocation will result in the invocation being untimely and will render the grievance not arbitrable. C. The moving party shall schedule a meeting with the other party, in person no later than ten (10) workdays after the invocation of Arbitration is served on the receiving party. At this meeting the parties shall consider possible settlement and attempt to agree on a submission agreement which shall include a statement of the issue(s) to be referred, proposed joint exhibits and stipulations, and, as appropriate, the procedures and the manner of presentation to be followed. In the event the parties cannot agree on the issues or the procedures, each shall formulate its own version of the issues to be submitted to the arbitrator. The moving party will ensure the other party has the basic documents at hand in preparation for the meeting, (i.e., the grievance, any grievance decisions	**36.1 Pre-Hearing Activities** □ Absent mutual agreement, the parties will be entitled to submit post hearing briefs, provided that all documents given to the arbitrator are also provided to the opposing party's representative at the same time. □ The grievant, grievant's representative, and witnesses who are Agency employees shall be granted a reasonable amount of duty time for purposes of preparation for and testifying at the hearing while in a duty status. □ The Employer shall ensure that all witnesses who are employed by the agency are available for the hearing. In those instances when a witness cannot be made available on the day required, the arbitrator may decide to postpone the hearing. □ the Parties agree to exchange a complete list of prospective witnesses at least 10 workdays prior to the hearing.	

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	issued at the applicable steps, and a copy of the invocation). If the other party is missing any documents, the moving party will provide them at least two (2) workdays in advance of the meeting. Each party is responsible for its travel costs and/or per diem for the meeting. D. The scope of the arbitration must be set forth in the grievance form and in the Agency's responses. Copies of any documents filed with the arbitrator at any stage of the arbitration proceeding shall be simultaneously served on the other party. E. There will be no communication with the arbitrator on the merits of the matter, unless both parties are participating in the communication. F. Each party shall be responsible for securing its respective witnesses. 1. The grievant, grievant's representative, and witnesses who are Agency employees shall be granted a reasonable amount of duty time for purposes of preparation for and testifying at the hearing while in a duty status. 2. A written list of each party's prospective witnesses shall be exchanged at least fourteen (14) calendar days prior to the hearing date, briefly identifying the relevance of the testimony expected from each witness. Only material and relevant witnesses shall be called. Either party may object to the other party's witnesses on the grounds that the witness' proffered testimony is not relevant, probative or competent. The arbitrator will be requested to resolve the disputes over the other party's witnesses at the hearing. 3. The Agency shall make all reasonable efforts to ensure approved witnesses who are employed by the Agency are released on duty time for the hearing if otherwise in a duty status. However, the Union is responsible for notifying the employee-witness's supervisor of the date and time of the hearing and the approximate time the employee will be needed to testify. The Agency's representative will be copied on all communications.		

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
	4. The Agency Director may not serve as a witness. G. The arbitration hearing shall be conducted between the hours of 9:00 AM and 5:00PM at the location of the hearing Monday through Friday, unless the parties agree otherwise. The parties may agree to continue the hearing beyond 5:00PM but will not be compelled to do so. H. The arbitrator will be requested to issue his/her award promptly and normally no later than sixty (60) calendar days after the conclusion of the hearing or after the final date for the filing of post hearing briefs, if any. If additional days are needed, the arbitrator must secure an extension from the parties. Failure to secure an extension to the sixty (60) day award decision deadline, the arbitrator will forfeit his/her pay. The parties will jointly notify the arbitrator of the decision deadline and the forfeiture of pay. I. In computing periods of time for the purposes of this Article, the first day of counting will be the day following the date of the act or event (e.g., the day after the employee received a final decision to take discipline or the day after the deadline for submitting a response to a grievance). If the last day in the count is a Saturday, Sunday, or a legal holiday, that day shall not be counted, and the last day will be the next regular work day. This recognizes that days the employer's office may be closed due to weather or other emergency, but employees are authorized to telework, such days will be considered regular workdays for purposes of the count.		

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
36.6 Transcription Requirements	A. The party requesting transcription will make arrangements to have a transcriber and pay for the transcription. The parties will share associated costs for the transcription where both are interested in obtaining a copy of the transcript. B. Costs of regular fees, including reasonable travel expenses of the arbitrator selected to hear the case, will be borne by the losing party. The arbitrator will have authority to determine the costs when the award is a split decision. C. In the event the parties mutually agree to postpone, delay and/or cancel an arbitration proceeding, the parties shall share equally any fees charged by the arbitrator for such cancellation. In the event there is no mutual agreement, the party who postpones, delays, or cancels the hearing shall pay all fees charged.	n/a	
36.7 Exceptions to the Arbitrator's Award	Where the arbitrator's award is binding on the parties thereto, the Agency and the Union retain their rights to file exceptions to an award with the Federal Labor Relations Authority (FLRA), the Equal Employment Opportunity Commission (EEOC), or Merit Systems Protections Board (MSPB) pursuant to their respective regulations, or with the Federal Courts as provided by law.	**36.4 Exceptions to the Arbitrator's Award** Either party to this Agreement may file exceptions to the arbitrator's award with FLRA under regulations prescribed by the Authority. For the purpose of this article, the date of the arbitrator's decision shall be the date of the parties' receipt of the written decision.	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
36.8 Expedited Arbitration Procedures	The moving party will request a list of arbitrators who are willing to hear expedited cases with respect to any grievance which involves: - Final decision to withhold a within-grade salary increase; - Reprimands and suspensions of fourteen (14) days or less; - Action imposing sick leave restriction; - Denials of sick leave, annual leave, and LWOP; - AWOL charges; and - Any other matter mutually agreed upon. A. 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 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. 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 five (5) workdays after conclusion of the hearing. This decision shall be	n/a	

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	based on the record developed by the parties before and at the hearing and shall include a brief written explanation of the decision. D. 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. At the approximate mid-point of the National Agreement, the parties will review the status of the arbitration process. This will include a review of the FMCS process, and how it is working.		

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
36.9 Sunset Provisions	If a hearing date has been set as of the effective date of this Agreement and is postponed for any reason, a twelve (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 this Agreement but not scheduled, the case must be heard within one (1) year after the effective date of this Agreement. All cases invoked on or after the effective date of this Agreement must be heard within two (2) years from the date of invocation. If any of these timeframes are not met, the case terminates and can no longer be heard. A three (3)-month extension from the end of the sunset period will be granted based on any of the following conditions: (a) postponement by the mutual consent of the parties; (b) withdrawal by the arbitrator; (c) illness or death of the arbitrator; or (d) inclement weather or catastrophic event.	n/a	
ARTICLE 47 – AGREEMENT DURATION AND CHANGES	n/a	□ Either party gives the other party notice of its intention to terminate or renegotiate this Agreement no less than 60 nor more than 105 calendar days following the changes to applicable laws and executive orders. □ In the event it is found that sections of this Agreement are defective or unworkable, this Agreement may be opened for amendment provided that any request for amendment for these reasons is submitted in writing and is accompanied by a summary of the basis for the request;	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
		and provided further that both Parties consent to the opening of the Agreement for the purpose requested. A written notice of desire to alter and amend by renegotiation shall not terminate this Agreement.	
47.1 Agreement Precedence	A. The Employer and the Union agree that for the full term of the Agreement (as set forth in Section 2 and, as may be applicable, in Section 3 of this Article) the provisions of this Agreement shall remain in full force and effect and unchanged except as mutually agreed, or as may be required by applicable law. B. This Agreement supersedes and replaces any and all previous agreements, understandings (whether written or oral), and supplements between the parties made under the auspice of a previous collective bargaining agreement (CBA) or other agreement between the parties, including but not limited to midterm bargaining, memoranda of understanding/agreement based on such bargaining. C. Provisions of this Agreement that are or become inconsistent with law, government wide rule, executive order/memoranda, or regulation, etc., will be severed and compliance with the law, rule, order, or regulation will take effect upon notification to the Union. The Union will be provided the opportunity to bargain as required by law, government wide rule, executive order/memoranda, or regulation. D. All other past practices, oral or written understandings, or provisions of written memoranda of understanding (MOUs) or memoranda of agreement (MOAs) existing at the time this Agreement comes into effect, not otherwise identified and merged into this Agreement, or inconsistent with this Agreement, law, or government wide rule, executive	n/a	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
	order/memoranda, or regulation, are superseded by this Agreement. MOUs/MOAs negotiated under the terms of this Agreement shall be considered to be part of this Agreement and shall have duration concurrent with the Agreement, unless otherwise specified in the MOU/MOA. 1. Agreements negotiated under the terms of this Agreement which are subject to Agency Head Review must undergo the Agency Head Review (AHR) requirements of 5 U.S.C. 7114(c). E. Nothing in this section is to be interpreted to foreclose the Agency's obligation to notify and bargain at the Union's request post-implementation the impact of and appropriate arrangements for employees adversely impacted, or reasonably likely to be negatively impacted, by changes to law, government-wide rule, executive order/memorandum, or regulation.		
47.2 Agreement Duration	This Agreement shall remain in effect for five (5) years from the effective date shown on the first page of the Agreement.	n/a	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
47.3 Agreement Renewal	A. This Agreement shall be automatically renewed from year to year thereafter unless one party gives the other written notice of its intention to renegotiate this Agreement no less than sixty (60) or more than ninety (90) calendar days prior to its expiration date. B. Before the Agreement is extended, it must be reviewed by the Agency to ensure it conforms to the law, government-wide rules, executive orders/memoranda, or regulations. If the Agency determines any provision of the Agreement does not conform with any law, government-wide rule, executive order/memoranda, or regulation, that law will prevail.	**47.1 Agreement Renewal** This Agreement shall remain in full force and effect for a period of 2 years from the date of approval. □ Amendments to this Agreement shall be required in the event of changes in any and all applicable laws and executive orders that are binding upon the Employer. Where such changes contain provisions that prohibit a practice specified in this Agreement. If renegotiations of the agreement is in process but not completed upon the expiration of this agreement, this agreement should be extended until renegotiations have been completed.	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
47.4 Changes in Future Laws and Regulations	It is recognized that during the life of this Agreement, changes in law regulations of appropriate authorities, or decision of appropriate authorities may necessitate changes in personnel policies, practices, or other matters affecting working conditions. If the changes leave the Employer no discretion in the matter, the Union will be notified of the change. When the law or regulation leaves administrative discretion to the Employer, the Union will be given the opportunity to meet and confer over such implementation. When amendments to the Agreement are required by changes in law, regulations, or the decisions of appropriate labor relations authorities, the Parties shall meet within thirty (30) calendar days to begin negotiations on impact and implementation to bring the agreement into conformity with those requirements.	n/a	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
47.5 Renegotiation	In the event that one of the parties decides to renegotiate this Agreement as provided for in Section 3 of this Article, the following procedures will apply: 1. The parties will meet within thirty (30) calendar days after notice to renegotiate is given to begin ground rule negotiations. If the parties agree, ground rule negotiations may be bypassed and the parties may move directly into substantive negotiations. In the event the parties elect to enter into ground rule negotiations, the parties will exchange ground rule proposals, which must include a reasonably substantive negotiation schedule, no later than ten (10) workdays prior to the date negotiations are scheduled to begin. Two weeks of ground rules negotiations will be scheduled to occur during a four (4)-week period (that is, two, one (1)-week bargaining sessions, each with one (1)-week break in between), beginning at 9:00AM and concluding at 5:30PM, with a one (1) half-hour lunch break. If agreement is not reached by the end of the four (4) weeks of bargaining, the parties will jointly request mediation within three (3) calendar days of the conclusion of the last bargaining session. 2. Ground rule negotiation shall be held at the Employer's Office Space in Atlanta, GA. Each party shall be represented by up to four (4) persons, including the Chief Negotiator who will have collective bargaining authority. Each party will be responsible for its own travel and per diem. 3. The Employer will make a room available for negotiations and caucuses, including a private caucus room for the visiting party at their respective facility.	n/a	
47.6 Participation in Discussions	All discussions between the Union and the Employer regarding the subject matter contemplated in this Agreement can occur by videoconference, teleconference, or in person, as decided by the Employer.	n/a	

Article/Section	Agency Proposal	Union Proposal	Summary of Dispute
47.7 Governing Article	In the event of any inconsistency or conflict between this Article 47 and any other Article contained in this Agreement, the terms, conditions and provisions of this Article shall govern and control.	n/a	