Collective Bargaining Agreement

U.S. Department of Education

and

National Council of Department of Education Locals

American Federation of Government Employees, AFL-CIO, Council 252

(Effective March 12, 2018)

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PREAMBLE

In accordance with the provisions of Title VII of the Civil Service Reform Act of 1978, commonly known as the Federal Service Labor-Management Relations Act (FSLMRS or Statute), the Parties, recognize that labor organizations and collective bargaining in the civil service are in the public interest.

The following articles of this agreement constitute a total and complete agreement on the subjects addressed in the articles, by and between the U.S. Department of Education, hereinafter referred to as the EMPLOYER or AGENCY, and the American Federation of Government Employees, AFL-CIO through its agent, National Council of Education Locals, Council No. 252, hereinafter referred to as the UNION or the COUNCIL and collectively known as the PARTIES.

The intent and purpose of this Agreement is to promote and improve the effectiveness and efficiency of the Agency and the well-being of its employees within the meaning of the FSLMRS.

ARTICLE 1: RECOGNITION AND UNIT DESIGNATION

Section 1.01 – Exclusive Representative

A. The Employer recognizes the Union as the exclusive representative of all employees in the bargaining unit as defined in Section 1.02 of this Article. The Union recognizes that it is responsible for representing the interests of each bargaining unit employee, without discrimination and without regard to whether the employee has secured actual membership in the Union, as a dues paying member.

B. All labor matters, including but not limited to grievances, requests/demands to bargain, change notices, formal discussion notices, other union notices, etc., will only be addressed at the proper National level of recognition with the Council President. The Council President may appoint a single designee to receive/designate union representatives for these matters, however at no time will this obligate the Employer to provide multiple notices to any other entity except at the level of recognition with either the Council President or his/her designee.

1. Should the Employer receive a Council officer/steward appointment, grievance, request/demand to bargain, etc. from a union representative other than the Council President or designee, it shall be considered improperly filed and will be rejected and returned to the filer along with the reason for rejection. Ensuring proper Union filing/notice will not toll timelines, where applicable.

Section 1.02 – Definition of the Unit

The Federal Labor Relations Authority on July 22, 1981, in Cases No. 3-R0-71 and 3-R0-72, certified the Union as the exclusive representative for a bargaining unit of all professional and non-professional employees of the Department, excluding the following as set forth therein:

A. Management officials and supervisors;

B. Confidential employees;

C. Employees engaged in personnel work in other than a purely clerical capacity;

D. An employee engaged in administering the Federal Labor-Management Relations Program and the exercise of its statutory provisions;

E. Employees engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security;

F. Employees primarily engaged in investigation or audit functions relating to the work of individuals employed by the Department;

G. Employees of the Office of Inspector General; [The Office of Inspector General is excluded, by agreement, because of the existing organization of its functional responsibilities.]

H. Experts and consultants;

I. Intermittent employees;

J. Employees hired under the summer employment program and employees under student appointments (except those in the Cooperative Education Program);

K. Faculty advisers;

L. Employees appointed under fellowship programs;

M. Schedule C employees;

N. Members and staff of independent agencies, boards, commissions and councils for which the Department provides administrative services; and,

O. Employees on temporary appointments of ninety (90) days or less.

ARTICLE 2 – FORCE AND EFFECT OF AGREEMENT, DURATION OF AGREEMENT, AND NEGOTIATION OF SUBSEQUENT AGREEMENTS

Section 2.01 – Force and Effect of Agreement

A. The Employer and the Union agree that for the full term of the Agreement (as set forth in Section 2.02 and, as may be applicable, in Section 2.03) 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) to include midterm bargaining, memoranda of understanding/agreement based on such bargaining, etc.

1. This includes, but is not limited to all articles from the 2013 CBA between the Parties to include those that carried over as past practice upon the expiration of the 2013 CBA under the Past Practice Document (PPD) and Article 16 of the 2013 CBA.

2. All other items previously administered under the 2013 CBA or PPD will be administered in accordance with applicable laws, Executive Orders, Agency regulations and policies, and the Code of Federal Regulations (CFR), negating the need for bargaining under 5 USC 7106 (a) and 7106 (b), if there are future changes in conditions of employment of the bargaining unit related to these items during the term of this Agreement.

3. All past practices concerning the subjects in paragraphs B. 1 and B. 2. above, which concern mandatory subjects of bargaining, are considered superseded with implementation of this Agreement.

C. Provisions of this Agreement that become inconsistent with the law, government wide rule, executive order/memoranda, regulation, etc., will be severed and compliance with the law, rule, order or regulation will take effect upon notification to the Union.

D. Any existing past practices, oral understanding, or provisions of written memoranda of understanding (MOU) or agreement (MOA) 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 order/memoranda or regulation, are superseded by this Agreement.

1. Where such MOUs/MOAs have a specific term or duration extending beyond the effective/expiration date of this Agreement, and where such MOUs/MOAs are not inconsistent with this Agreement, or inconsistent with law, government wide rule, executive order/memoranda or regulation, they shall continue in effect until the MOU/MOA expiration date.

E. If, after the effective date of this Agreement, any practice develops which is inconsistent with this Agreement, either Party may require the other to conform to this Agreement by providing notice of its intention to enforce this Agreement in the future. Thereafter, both Parties shall conform to the terms of the Agreement.

F. 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, must undergo Agency Head Review (AHR) requirements of 5 U.S.C. 7114(c).

    a. MOUs/MOAs must be provided to the AHR authority within five (5) calendar days of signature, otherwise the AHR review timeframe will commence once signed copy is received by the AHR authority.

Section 2.02 – Duration of Agreement

This Agreement shall remain in effect for seven (7) years from the effective date shown on the cover of the Agreement.

Section 2.03 – Notice to Renegotiate the Expired Agreement

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. If notice to renegotiate is given, the Agreement shall be extended for one (1) year or until a new agreement becomes effective, whichever is earlier.

B. Before the Agreement is extended, it must be reviewed to ensure it conforms to the law, Government-wide rules and/or regulations.

Section 2.04 – Negotiation Procedures for a Subsequent Agreement

In the event that one of the Parties decides to renegotiate this Agreement as provided for in Section 2.03, the following procedures will apply:

A. The Parties will make arrangements to meet within thirty (30) calendar days after notice to renegotiate is given to begin ground rules negotiations. If the Parties agree, ground rules negotiations may be bypassed and the Parties may move directly into substantive negotiations. In the event the Parties elect to enter into ground rules negotiations, the parties will exchange ground rules proposals which must include a reasonable substantive negotiation schedule, no later than ten (10) workdays prior to the date negotiations are scheduled to begin. Ground Rules negotiations will be scheduled for a total of four weeks (two week bargaining sessions with one week break in between), beginning at 9:00 AM and concluding at 5:30 PM, with a one half hour lunch break. If agreement is not reached by the end of the four weeks of bargaining, the parties will jointly request mediation within three (3) workdays of the conclusion of the last bargaining session.

B. Ground rules negotiation shall be held at the Employer's Headquarters in Washington, D.C. 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.

C. The Employer will make a room available for negotiations.

ARTICLE 3: LABOR-MANAGEMENT NEGOTIATING PROCEDURES

Section 3.01 – General

This Article governs the mid-term bargaining relationship of the parties over matters which are not covered by this Agreement. The parties agree that the purpose of this Article is to establish a complete and orderly process to improve efficiency and expedite mid-term negotiations in the interest of the Department, its employees and its stakeholders.

Section 3.02 – Mid-Term Negotiation Parameters

A. The Union and the Employer agree to be bound by the terms of this Agreement without regard to geographical location or organizational component. Meaning, the exclusive representative, AFGE, AFL-CIO, through its designee, Council 252, is responsible for mid-term negotiations on behalf of all bargaining unit employees (BUEs) located throughout the Department, without regard to geographical location or organizational component.

1. The Council will timely designate a spokesperson of its choosing from its list of officers, stewards and representatives, for negotiations.

B. The Parties agree, as expressed in Article 2 (Force And Effect of Agreement, Duration of Agreement, and Negotiation of Subsequent Agreements), that the terms of this Agreement shall remain unchanged during its entire term except as provided by Article 2, or as may be required by law.

1. The Parties recognize that operational need, or other situations (i.e. exigencies) permitted by law may mandate that a change be implemented before bargaining concerning the matter is concluded where an obligation to notify the Union and bargain upon request, exists. Where basic management rights are involved, and an operational need or other situation permitted by law requires the Agency to act without undue delay, the Agency may implement the proposed change and any required impact negotiations will occur or continue on a post-implementation basis.

C. Mid-term agreements negotiated under the terms of this Agreement, must undergo Agency Head Review (AHR) requirements of 5 U.S.C. 7114(c). Mid-Term agreements reached under this Article, must be provided to the AHR authority within five (5) calendar days of signature for AHR, otherwise the review timeframe will commence once the signed copy is received by the AHR authority.

Section 3.03 Mid-Term Negotiation Procedures

A. **GENERAL**: The Agency will notify the Union of changes that are more than de minimis in conditions of employment that affect the bargaining unit and provide an opportunity for the union to comment. The Agency will consider the Union's input prior to implementing the changes(s). This will completely satisfy the Union's right to bargain over any substantive matter(s) and the Union's bargaining rights under 5 U.S.C. 7106(b)(2) and (3) concerning procedures and appropriate arrangements for employees adversely affected by the exercise of a management right during the term of this Agreement.

B. Where an obligation to negotiate during the term of this Agreement does arise, such notice and bargaining will be limited to only those negotiable changes in conditions of employment that are more than de minimis. This article shall be administered in accordance with Title 5, United States Code, Chapter 71, and this Agreement.

C. The parties recognize that from time-to-time during the life of the Agreement, the need may arise for either party to propose changes to existing personnel policies, practices, and/or working conditions not covered by this Agreement. All negotiations shall be carried out at the level of exclusive recognition (i.e., at the Council and Department level). The Parties will approach negotiations in good faith with a sincere resolve to efficiently reach an agreement.

1. As such, if the receiving party intends to exercise its bargaining rights regarding the proposed change, it must request to bargain and submit timely bargaining proposals in writing, in accordance with the procedures and time frames specified below, or it will be considered to have waived its right to bargain.

C. **NOTIFICATION**: When notice of mid-term bargaining is required, the Employer shall serve its notice of the proposed change on the Council President. The Union through the Council President will serve notice on the Agency's Chief, Labor Relations, or designee, at the Department level.

1. Employer Notice of Mid-Term Bargaining**:** The Employer written notice for mid-term bargaining shall include:

   a. The known nature and scope of the proposed change;

   b. A description of the change;

   c. An explanation of the initiating Party's plans for implementing this change;

   d. An explanation of why the proposed change is necessary;

   e. The proposed implementation date; and,

   f. The initiating party's point of contact.

2. Union Notice For Mid-Term Bargaining: The matter or subject of Union initiated change, not already covered by this Agreement and not expressly covered or reasonably encompassed in this Agreement or inseparably bound up with and thus an aspect of a matter in this Agreement, impacting the working conditions of the unit, will be limited to one (1) per year during the life of the collective bargaining agreement and may only be served by the National Council President or designee thirty (30) days prior to March 5th of each year while this Agreement is in effect. The notice will contain the following information:

   a. An explanation of the matter the union desires to address through mid-term bargaining.

   b. A statement describing the impact to BUEs and identification of the BUEs impacted by the matter.

c. Union proposals describing in sufficient detail the union's desired change/outcome. The proposals may not be supplemented prior to or during the negotiations unless mutually agreed.

d. Designated point of contact for the matter.

3. Service of Notification: by either Party will be by federal-express, certified mail, or email on the proposing party. When sent by email, the receiving party will confirm receipt to the sending party, or system verified emails will serve as proof of receipt.

D. **DEMAND TO BARGAIN:** The receiving party will submit its written demand to bargain (DTB), if bargaining is desired, no later than three (3) work days after the notice of the proposed change is served on the receiving party. Failure to timely DTB will result in waiver of the right to negotiate on the matter. If a briefing is requested, the briefing will be requested with the demand to bargain and scheduled to occur within five (5) workdays after receiving the demand to bargain/request for briefing. Bargaining proposals will be served on the proposing party within five (5) workdays after the briefing. The receiving party's demand to bargain will designate their Chief Spokesperson.

E. **INFORMATION REQUESTS**: The receiving party may request information in accordance with the Statute or case law of the Federal Labor Relations Authority. If the receiving party has requested information related to the proposal, the receiving party may serve amended proposals on the proposing party no later than five (5) workdays after its receipt of the information. If the information requested is denied, the denial will not delay bargaining.

F. **TIMEFRAMES TO BEGIN BARGAINING**: Bargaining shall commence as soon as possible, but no later than ten (10) workdays after the receiving party submits its final bargaining proposals or the date the Union receives notice of the denial of information requested, and the reason(s) therefore, unless otherwise agreed. If a Federal holiday falls within the specified timeframe for bargaining, the timeframe for commencement will be extended one work week.

G. **MID-TERM BARGAINING GROUND RULES**: The following ground rules will govern all mid-term bargaining, and as such, there will be no further bargaining on additional ground rules.

1. General: As responsible entities to the Department, its employees and stakeholders, the Parties will minimize to the greatest extent possible, Agency expenditures during negotiations. As such, virtual, telephonic and all other means of low cost negotiations will be utilized to the greatest extent practicable.

a. Where practicable and agreeable, the Parties agree to coordinate negotiations meetings with other scheduled meetings.

b. If the Parties agree that face-to-face negotiations are needed:

(i) Negotiations will take place at an Agency-provided location in Washington, D.C.

(ii) Unless otherwise agreed upon, negotiations will be conducted during the regular business hours of operation where the negotiations are taking place. Participant schedules will be adjusted to allow for a full week of bargaining and to account for all time spent on duty/official time/and for related negotiation travel.

(iii) An employee representing the Union in bargaining under this Article shall be authorized official time under 5 U.S.C. 7131 (a) (excluding travel time and preparatory time) for such purposes during the time the employee otherwise would be in regular duty status.

2. Travel and Per Diem: Each Party is responsible for the travel and per diem cost of its team associated with negotiations for all phases of negotiations, inclusive of assistance before the Federal Mediation and Conciliation Service (FMCS) and the Federal Service Impasses Panel (FSIP).

3. Proposals: Proposals must be negotiable and must be related to the proposed change and, where applicable as an appropriate arrangement, shall identify the adverse impact upon the employees which the proposals are intended to reduce or remedy. If the Parties agree, negotiations on different proposed changes may be consolidated or held concurrently. At any point in the bargaining process, the initiating party may elect to withdraw any proposed change, in whole or in part. However, nothing considered in this paragraph shall prevent either Party from subsequently initiating negotiations over the same subject matter.

4. Number of Negotiators/Spokesperson Authority/Alternates: The Union shall be entitled to the same number of negotiators at the bargaining table as Management designates. Each Party shall be represented at the negotiations at all times by one (1) duly authorized Chief Spokesperson or designee, who is prepared and authorized to reach agreement on all matters subject to negotiations and to sign-off on agreements for their respective Party. The parties will exchange the names of their bargaining team members for the specific issues to be negotiated no later than ten (10) workdays prior to the commencement date of bargaining. Alternates may substitute for team members with advance notice to the either side. Such alternates will be entrusted with the right to speak for and bind the members for whom they substitute. Inability to have all team members present will not delay negotiations.

5. Subject Matter Experts (SMEs): Technical advisors and subject matter experts may be used by each party by mutual agreement. The requesting party will be responsible for all costs associated with the attendance of technical advisors and or subject matter experts. Technical advisors/subject matter experts will be excused once they have served their purpose.

6. Mid-Term Bargaining Schedule:

   a. Negotiations will be held on five consecutive workdays, Monday through Friday. Participant schedules will be adjusted to allow for a full week of bargaining and to account for all time spent on duty/official time/and for related negotiation travel.

   b. In-person bargaining sessions will commence at 8:30AM EST and conclude at 5:00PM EST, with thirty (30) minutes allocated for lunch, except that Monday's bargaining session will commence at 1:00 PM and Friday's bargaining session will conclude at 12:00 Noon EST, to allow for travel (when mutually agreed to).

   c. Bargaining sessions conducted by teleconference or videoconference will commence at 9:00AM EST and conclude at 4:00PM EST, with thirty minutes allocated for lunch.

7. Caucus: Either team may request a caucus, and may leave the negotiating room to caucus at a suitable site provided by the Employer for thirty (30) minutes unless otherwise

communicated. There is no limit on the number of caucuses which may be held, but each Party will make a concerted effort to restrict the number and length of caucuses.

8. Failure to Reach Agreement: If an agreement is not reached by the end of the third day of bargaining (Wednesday), the parties will exchange last and best offers (LBO) no later than the fourth day (Thursday) at a mutually agreeable time, however, no later than 12:00 Noon (EST). By close of business on Thursday, mediation services of the Federal Mediation Conciliation Services (FMCS) will be requested for the fifth day of bargaining if agreement is not reached on the LBOs. If the services of a mediator are not available for the Friday bargaining session as specified, negotiations will be concluded for the week and a subsequent session will be scheduled by the parties to be held within ten (10) workdays or as soon as a mediator is available, unless mutually agreed otherwise. Virtual meeting methods will be used to the maximum extent possible, unless the parties agree otherwise.

9. Memorializing Agreement: Agreements will be in the form of MOUs/MOAs. The Chief Spokesperson for each Party (or designee) will signify agreement on each section of the MOU/MOA by initialing and dating the agreed-upon Section of the working document. The Chief Spokesperson for each party will retain his/her copies and initial and date the other party's copy. This will not preclude the parties from reconsidering or revising any agreed-upon Section(s) by mutual consent.

    a. All MOUs/MOAs will contain an expiration date. When an agreement is reached, it will be typed in final form and signed by both Parties without delay. Such agreements and understandings shall conclude negotiation on such matter(s).

    b. All MOUs/MOAs signed by the parties and entered into during the life of the parties' CBA will be considered an addendum to the CBA and subject to its duration or as otherwise agreed in the memorandum of agreement.

    c. All Agreements must undergo AHR before being considered final.

10. Official Time: Official time for negotiations under this Section shall be as provided by 5 U.S.C. 7131(a).

    a. Time for preparation will be limited to eight (8) hours Leave Without Pay for Union Activities (LWPUA) per weekly negotiation session, per Union team, unless otherwise requested by the Union and approved by the Agency. Such time will be administered in accordance with Article 5 as Leave Without Pay for Union Activities, coded as (LWPUAM).

11. Impasse: Any bargaining impasse not resolved through the FMCS may be submitted by either party to the Federal Services Impasse Panel (FSIP) within three (3) workdays of either Party declaring impasse.

12. Negotiability disputes: Negotiability disputes will be processed in a manner consistent with the Statute and implementing regulations.

ARTICLE 4 – UNION USE OF OFFICIAL FACILITIES AND EQUIPMENT

Section 4.01 – Office Space for Union Use

A. As a responsible steward of the American Taxpayer, the Parties recognize the need to utilize space in a manner consistent with space saving initiatives aligned with Department and other Federal initiatives to reduce office footprints and fiscal impacts.

B. As such, the Employer agrees to provide the Union dedicated private office space for the designated recognized entity, Council 252, for the conduct of official business. This space shall be provided in the vicinity of the Council President's locality and will not be the regularly assigned office for any individual. One additional office shall be provided in the Washington, DC headquarters region for use as designated by the Council President, if desired. Under no circumstances will Union office space be required to exceed 200 square feet. Use of this space will be subject to paragraph C below.

C. The Union agrees to pay fair-market rent for the use of space in paragraph B above as determined by the Agency. The rental amount will be calculated to include a reasonable estimate of the cost of furnishings and other Agency resources provided for use by the Union pursuant to this Article. The Agency will provide to the Union the cost of any space permitted for Union use for the upcoming fiscal year prior to the beginning of the fiscal year, or any portion thereof where a full fiscal year is not available. The Union agrees to remit to the Agency the cost of such space at least 30 calendar days prior to the beginning of the new fiscal year or when otherwise due, if it desires to rent or continue renting the space for the upcoming fiscal year. The Union agrees to pay such rent when due or immediately cede access to the space. Charges will be assessed and paid before the union occupies any dedicated private space. Use of space only intermittently will not impact the rental cost of any space by the Union.

D. The Employer agrees to provide access to conference room space reservations for the conduct of official business for appointed Council officers and stewards for the conduct of official business. These space reservations are to be used for Union meetings with employees, to include during employees' non-duty status. Union Representatives will be responsible for scheduling and cancelling space as needed and failure to adhere to cancellation protocols could result in denial of future reservations.

E. All union office space is subject to audit requirements and other internal security requirements as any other Department space is, and when needed, Agency officials will not be denied entry to the space.

F. The Employer agrees that, where available, the Union may have access to the use of Video Teleconferencing and Computer Training Rooms for Union Sponsored Training, as approved by the Employer. The Union will have the same access as other groups.

Section 4.02 – Office Furnishings and Union Equipment

A. The Employer agrees to provide customary office furnishings in Union designated office spaces in similar fashion as Agency designated office spaces (i.e. desks, chairs, filing cabinets).

B. The Union shall be responsible for furnishing its own equipment (laptops, mobile devices, printers, etc.) as to relieve any burden of audit accountability and internal security requirements by the Department. The Union will be provided WIFI access by the Department, where available.

Section 4.03 – Reasonable Use of Employer Resources

A. Union representatives shall be permitted reasonable use of public hard line telephones provided by the Employer along with the Department's internal mail system when necessary for conducting labor-management activities not inclusive of internal union business. Consistent with postal and Departmental regulations, the Union shall have use of Employer metered mail limited to labor relations representational matters but not including matters relating to internal Union business. This, however, does not permit the Union representative to use other types of mailing such as express, overnight, registered, certified mail, etc.

1. Official publications of the Union, which may include newsletters, fliers, or other notices, may be distributed on Employer property by Union representatives during non-duty time.

2. Where available, Union representatives will use centralized employee mail slots/drops to distribute Union publications. Distribution shall be accomplished so as not to disrupt operations. All such materials shall be properly identified as official Union issuances.

B. The Employer agrees to provide public area access to copying machines for representational business. Use of copiers shall be reasonable and shall not substantially interfere with conduct of official business. The Union will use private sector sources when twenty (20) or more copies of a single document are required. The Union will assume responsibility for arranging those services and related costs.

C. The Employer agrees to provide public access to "FAX" machines for the transmission of documents from the Union to the Employer at different locations. Use of such machines shall be reasonable and shall not substantially interfere with the conduct of official Employer business.

D. The Employer will provide the Union with access to a Council 252 email address, and a single email address for each of its regional stewards who are Agency employees. The provision of additional email addresses for union use will occur at the expense of the Union. The Union is subject to the same standards that apply to all users as established by Departmental policy, to include cybersecurity training requirements, machine audits for units using Department systems, etc. Non-Agency employees will not receive internal Agency email addresses.

E. Where available, the Employer agrees to provide the Union physical space for official Union materials on public bulletin boards. Prior to posting, all such union materials must be approved by the Chief, Labor Relations, OM or designee and will be limited to the designated space and shall be properly identified as official Union issuances.

1. The Union is responsible for the content of all Union materials posted or distributed.

   a. Union postings will be maintained in an orderly condition.

   b. Posted material shall be pertinent to the conduct of workplace business and not related to partisan political matters.

   c. Posted and distributed Union materials shall not malign or negatively refer to specific managers or individuals.

Section 4.04 – Use of Government Documents, Correspondence and Records

A. Regardless of jurisdictional laws, absent written consent from all Parties (with the exception of

court reporting transcripts in the conduct of official business), the recording (audio, visual, or any other form) while conducting Union business in the capacity of an exclusive representative (on or off premises) is prohibited.

B. Access to Employer policies, documents, correspondence and so forth, to include items related to an individual employee, are for official business use only and will not be distributed, posted, or shared in any way outside the strict scope of the business capacity in which they are used by the exclusive representative.

1. All laws, (i.e. the Privacy Act and others) will be observed by all Parties in the handling of Agency documents and records.

ARTICLE 5 – OFFICIAL TIME AND LEAVE WITHOUT PAY FOR UNION ACTIVITIES

Section 5.01 – General

A. This Article provides an equitable process for the allocation and approval of official time and Leave Without Pay for Union Activities (LWPUA) for representational activities as negotiated pursuant to the Federal Service Labor-Management Relations Statute (FSMLRS or Statute), and shall be administered in accordance with said Statute and this Agreement.

B. "Union representatives" as used in this Article, means any employee representing the exclusive representative (in this case as a duly designated Council 252 Union officer or steward).

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 share the responsibility to ensure that any official time and LWPUA hours used for representational activities:

1. Is authorized prior to use;

2. Is used appropriately, in accordance with the Statute and this Article; and,

3. That appropriate recordkeeping mechanisms are utilized for tracking and recording all time by all union representatives for performing representational activities during the term of the Agreement as described in this Article.

D. In the interest of effective and efficient government as stewards of the American tax payer, abuse of any official time and LWPUA hours used for union representational matters, to include failure to timely and accurately report the time used, will not be tolerated and may result in administrative action against the union officer or representative at the Employer's discretion and will be procedurally addressed as follows:

1. First offense = The Council President is notified and the Union officer/steward receives a warning;

2. Second offense = The Council President is notified and the Union officer/steward is prohibited from using official time and LWPUA hours for representational activities for thirty (30) days; and

3. Third offense = The Council President is notified and the Union officer/steward is prohibited from using official time and LWPUA hours for representational activities for the remainder of the duration of the CBA.

E. All Official Time and LWPUA hours used for representational purposes is to occur on Agency premises, unless otherwise approved by the Chief of Labor Relations, OM or designee.

Section 5.02 - Statutory Official Time

In accordance with 5 U.S.C. Section 7131of 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:

A. Negotiations of collective bargaining agreements and attendance at impasse proceedings (excluding travel and preparation time) under 5 U.S.C. Section 7131 (a) of the FSLMRS.

C. 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.

Section 5.03 - Statutory Prohibition on Official Time

Union representatives and bargaining unit employees shall not perform any activity relating to internal Union business on official time or LWPUA, 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 (other than LWPUA which is for union representational use only as described in this article), i.e., regular leave without pay (LWOP) or annual leave.

Section 5.04 - Designation of Union Representatives

A. The Council President will provide the Chief, Labor Relations, OM, or designee, written notification of the name, union position, designated representational time (official time and LWPUA) to the representative, 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 Council President shall provide the Chief, Labor Relations, OM, or designee, Employer 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 Council President will indicate the duration of any temporary appointment.

SECTION 5.05 – Allocation of Official Time under 7131 (d) of the FSLMRS

The Parties agree that beyond the reasonable official time required under 5 U.S.C. 7131(a) and (c), no additional official time is reasonable, necessary, and in the public interest; therefore the Parties agree that no official time shall be granted under 5 U.S.C. 7131(d).

SECTION 5.06 – Allowance of Leave Without Pay for Union Activities (LWPUA) Under 5 U.S.C. 7131(d)

A. A bank of 4,927 hours of leave without pay per fiscal year will be made available to the AFGE, Council 252, for representational duties under Section 5.08 that fall under 5 U.S.C. 7131(d). The bank calendar year will begin as of the effective date of this Agreement, and any bank hours not used by the end of the calendar year will be lost. The bank will be distributed between the National Council 252 and its affiliated internal Locals. The Council President will be responsible for distribution and allocation of bank hours between the National Council and the internal Locals.

B. The Council President will be entitled to up to 50 percent leave without pay for Union activities (LWPUA) covered by Section 5.08. The distribution of all other bank LWPUA time may include LWPUA allotments for up to ten union representatives (one at each existing Region). Should

there be future reduction of regions, there would be a reduction of regional union representatives. The total distribution for all union representatives may not exceed the total number of bank hours designated in Section 5.06 (A) above. Holding more than one position in the Union will not serve to increase LWPUA hours.

C. The Council President will inform the Agency of the total number of hours assigned to the National Council positions and the number of hours assigned to each internal Local representative within fourteen (14) workdays after the effective date of this Agreement. Once the distribution of hours has been determined by the National Council, said distribution may be adjusted not-to-exceed the total number of bank hours, quarterly (January, April, July, October), and reported to the Chief, Labor Relations, OM, or designee, no later than the 10th of the month following the end of the quarter.

SECTION 5.07 – Parameters of Leave Without Pay for Union Activities (LWPUA) Bank Usage for Union Representatives Allocated LWPUA:

A. Union representatives are required to stagger their use of authorized and approved official time and LWPUA hours over the course of the fiscal year. Union representatives will work out official time and LWPUA usage for official representational purposes consistent with this Agreement with their supervisors to accommodate both union representational activities and Agency assigned duties.

B. The Council President will maintain close oversight over the use of official time and LWPUA to ensure that official time and LWPUA is kept to a minimum and to ensure that over usage by the union representatives of allotted LWPUA bank time does not occur. However, in those cases where such overage in LWPUA hours occurs by a union representative, the Council President will make immediate adjustments in other areas of the LWPUA designations to keep the amount within the hours allocated in Section 5.06 (A). At the end of the year if the Union has used more LWPUA than allotted, the Council President will, within five (5) workdays, identify to the Chief, Labor Relations, OM, or designee, the LWPUA hours that were used by one or more union representatives to be converted to regular leave without pay (LWOP) to reduce the number of LWPUA hours to the amount allocated by the Agency. If an over usage does occur, the Council President will send an updated status of LWPUA hours used and pending at the end of each bi-weekly pay period from the date that the over usage is identified to the Chief, Labor Relations, OM, until advised that such reports are no longer necessary.

Section 5.08 – Representational Activities for Union Representatives Allocated Official Time and LWPUA

A. The Council President and Union representatives selected or appointed by the Council President under the terms of this Article, shall be granted official time and LWPUA when they would otherwise be in a duty status to carry out representational activities as identified below:

1. Meeting with employees to discuss alleged grievances, and investigation of grievances (LWPUAD);
2. Preparing for and attending grievance conferences LWPUAD), formal discussions (LWPUAG), other meetings with Management (LWPUAG), and formal appeals or Arbitration hearings (LWPUAD);
3. Preparing and presenting replies to proposed disciplinary and adverse actions, unacceptable performance actions, denials of within-grade increases and statutory appeals (LWPUAD);

4. Preparing for and attending labor-management meetings (LWPUAG);
5. Participating in alternative dispute resolution procedures when representing a BUE under the negotiated grievance procedure contained in this Agreement (LWPUAD);
6. Attending mid-term negotiations and impasse proceedings with the Employer in accordance with the provisions of this Agreement (LRM);
7. Preparation time for mid-term negotiations and impasse proceedings (must be reasonably requested by the Union and approved by the Agency (LWPUAM);
8. Up to four hours for preparing reports required to be submitted by the Union to the Department of Labor (LWPUAG);
9. Generally, up to four hours preparation time will be allowed, to review documents in connection with an activity specified in this Section, with the understanding that the number of hours will vary depending on the issue (official time or LWPUA category for preparation should reflect the same category as for activity giving rise to its use under this section);
10. Travel time where necessary to conduct an activity specified in this Section will be permitted while on LWPUA where the travel occurs while the employee is otherwise in a duty status and travel is solely and directly for covered official representational purposes (LWPUAG);
11. Federal Labor Relations Proceedings under 5 U.S.C. 7131 (c) where official time is ordered by the FLRA (LRD).

B. Only one designated union representative will be authorized official time or LWPUA in conjunction with the above representational matters, unless specifically stated otherwise in this Agreement.

Section 5.09 – Supervisor/Representative Considerations for Representatives Release on Official Time and LWPUA:

A. The Employer recognizes the importance of official time and LWPUA to the Union's ability to meet its representational responsibilities, and the Parties intend that this Section be applied accordingly. Union representatives will be permitted to leave their assigned work area on official time and/or LWPUA, as appropriate, as authorized under this Agreement after:

1. Providing written or verbal notification to their immediate supervisor or appropriate Management Official;
2. Providing a good-faith estimate of the amount of time for which release is requested;
3. Indicating the destination; if any.
4. Specifying the appropriate representational category in Section 5.08 A.

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. Management may initiate a reassignment if management determines that the impact on the work unit is not satisfactorily resolved.

C. A Union representative shall, to the extent possible, schedule his/her absences so as not to compromise important work assignments or impede work. The supervisor shall, to the extent possible, schedule assignments, and inform Union representatives of assignments, in advance in order to reduce the likelihood of conflicting demands. The time spent in carrying out the representational duties described in this Article may require some adjustment of a representative's workload if, in the judgment of the Employer, an adjustment is necessary and practicable.

Supervisors and Union representatives are encouraged to meet, periodically, to forecast official time and LWPUA use and to assess potential impact of official time and LWPUA on office workload.

D. Union representatives will be permitted to leave their assigned work area on official time and LWPUA as authorized under this agreement only after reporting to their immediate supervisor or appropriate management official and identifying the purpose of their activity. The representative will be released unless a union representative's presence is necessary to meet customer service and the work of the office requirements. 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 will arrive at a mutually agreeable time for departure. The Union representative will be given a brief amount of time to inform any bargaining unit employees involved in the delay.

E. If management is unable to approve a request for official time or LWPUA, management will, within one workday, identify an alternate time for use of the requested official time or LWPUA.

F. Upon entering any work area to meet with an employee, the representative will advise the 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 supervisor is temporarily absent from the site, the representative will request release from another supervisor or manager in the chain of command prior to leaving the work site.

Section 5.10 – Reporting the Use of Official Time and LWPUA

A. Each Union representative shall timely submit to his/her supervisor a biweekly written report of the amount of official time and LWPUA that he/she has spent on Union activities covered by this Article through the Employer's time and attendance system, and shall provide an amended report if official time and/or LWPUA is used after submission of their time and attendance though the Employer's system.

B. Union representatives will use the following categories in completing their time and attendance report -

1. Term Negotiations (currently LRT): This category is for reporting official time hours used by union representatives to negotiate a *basic collective bargaining agreement or its successor*.

2. Mid-Term Negotiations (currently LRM): This category is for reporting official time hours used to bargain over issues raised during the life of a term agreement. i.e., mid-term bargaining.

3. Preparation Time for Term Negotiations (currently LWPUAT): This category is for reporting leave without pay for union activity used to prepare for term negotiations

4. Preparation Time for Mid-Term Negotiations (currently LWPUAM): This category is for reporting leave without pay for union activity used to prepare for mid-term negotiations.

5. Dispute Resolution (currently LWPUAD): This category is for reporting LWPUA hours used to process grievances, arbitrations, and appeals of bargaining unit employees to the various administrative agencies.

6. General Labor-Management Relations (currently LWPUAG): This category is for reporting LWPUA hours used for activities not included in B(1) through B(5) above (e.g., Employer approved labor-management training; travel time for a covered activity where travel is required and is within the representative's hours of work; etc.)

Section 5.11 – Union Training

A. Subject to workload requirements, the Employer may grant LWPUA for short periods of training to the Council President and Council elected and appointed Union representatives authorized to engage in representational activities. The purpose of this allowance of LWPUA is so that the Council President and union representatives may attend external training courses that relate directly to matters within the scope of the FSLMRS and, which in the opinion of the Employer, are of mutual benefit to the Union and the Employer (i.e. Union-sponsored and/or third-party labor relations training in contract administration, handling of statutory actions such as grievances and information related to Federal personnel/labor relations laws, regulations and procedures, etc.) This union training time will not exceed forty (40) hours per individual to include the Council President, each year this Agreement is in effect.

B. The Council President shall submit all requests for LWPUA for training to the Chief, Labor Relations, OM, or designee, for the necessary administrative clearances and arrangement for supervisory approvals, no later than fifteen (15) workdays before the training date. The Union shall submit a copy of the training agenda at the same time.

C. The Union shall bear all other costs associated with this training including any travel costs, travel time or attendant costs.

D. When a request for LWPUA hours for training is disapproved for any reason, the reasons for such disapproval will be furnished to the Council President at the time of disapproval.

ARTICLE 6 – VOLUNTARY ALLOTMENT OF UNION DUES

Section 6.01 - Eligibility

To make a voluntary allotment for the payment of Union dues, an employee must:

A. Be an employee in the unit covered by this Agreement;

B. Be a member in good standing of the Union;

C. Have a regular net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues;

D. Have no other current allotment for the payment of dues to a labor organization; and,

E. Submit a written request to the Labor Relations dues point of contact authorizing the deduction on SF-1187 ("Request and Authorization for Voluntary Allotment of Compensation for Payment of Labor Organization Dues").

Section 6.02 – Precedence of Payment

The Employer shall deduct dues only for those pay periods where the employee's net salary, after other legal and required deductions, is sufficient to cover the amount of the authorized allotment for dues.

Section 6.03 – Limitation of Allotment

An employee may authorize an allotment of only those dues which are the regular and periodic dues required by the Union for that employee. Initiation fees, special assessments, back dues, fines, and similar items are not considered dues and shall not be deducted.

Section 6.04 – Processing of Dues Deduction

A. The Employer shall withhold dues on a biweekly basis conforming to the regular pay period. The Employer may take up to ten (10) workdays to process the SF-1187. The Employer shall thereupon begin to deduct dues as of the next complete biweekly pay period. The designated Labor Relations dues point of contact, shall document the receipt of the SF-1187 in writing.

B. If a union votes to increase/decrease dues, the Union 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 designated Labor Relations dues point of contact shall document the receipt of the SF-1187 in writing.

1. In this increase/decrease dues scenario, the original SF-1187 anniversary date will be the one utilized to establish proper revocation dates.

Section 6.05 – Allotment Revocation

A. An allotment shall be effective for one (1) year after the first deduction, and cannot be revoked during that time except as specified in 5 U.S.C. 7115(b). At the first pay period after the anniversary of the first deduction, the allotment shall expire.

B. To renew an allotment past the one (1) year, the employee may submit an SF-1187 at any time prior to the thirty (30) calendar-day period beginning before the anniversary date of the first

deduction, to the labor relations office. If the employee does not submit the SF-1187 prior to the thirty (30) calendar-day period of his/her anniversary date of the first deduction, the allotment will expire. An SF-1187 that is not received in a timely fashion will be treated as a new request under Section 6.04.

C. The Labor Relations Officer, or designee, shall notify the Union of the renewals submitted by its members no later than ten (10) workdays after receipt of the renewal.

Section 6.06 – Termination of Allotments

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;

B. The employee is reassigned, transferred, or otherwise excluded from the bargaining unit; or

C. The employee is separated from the Department.

D. Termination of allotments as required in (A) and (B) shall be effective on the first full pay period following receipt and necessary processing of the appropriate notice by the designated Labor Relations dues point of contact. Terminations as required by (C) shall be effective as of the date of separation. However, when separation occurs during a pay period, the Employer shall withhold the allotment from the employee's salary for that pay period.

Section 6.07 – Union Responsibility

It is the responsibility of the Union to:

A. Provide SF-1187;

B. Certify on the SF-1187 the amount of dues to be withheld each biweekly pay period;

C. Certify to the designated Labor Relations dues point of contact when there is a change in the amount of the Union dues (changes can be made only once every twelve (12) months);

D. Promptly notify the Labor Relations dues point of contact when an employee with an allotment ceases to be a member in good standing with the Union;

E. Ensure its members understand the conditions, procedures, and time limits which they must meet in order to voluntarily renew allotments, to include providing the employee with their deduction anniversary date;

F. Promptly refund an erroneous remittance to the Employer; and timely notify the Labor Relations dues point of contact when any changes occur; and,

G. The Council President or designee shall make the necessary certifications required by this Section for the Union.

Section 6.08 – Responsibility of the Employer

A. It is the responsibility of the Employer to:

1. Ensure payment of net dues in accordance with established accounts;

2. Promptly send to the Union 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; and,
4. Inform the Union of the Labor Relations dues point(s) of contact responsible for the reports and updates of Union dues deduction annually and upon change of designated Labor Relations representative.

Section 6.09 – Dues Reports

The Employer shall provide biweekly Union dues deduction reports to the Counsel President or designee. The reports shall show, by Principal Office:

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. Net amount remitted.

Section 6.10

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.

ARTICLE 7 – NEGOTIATED GRIEVANCE PROCEDURE

Section 7.01 - Purpose

The purpose of this Article is to provide a fair, simple, mutually satisfactory and expeditious method for the settlement of grievances of the Parties.

Section 7.02 - Definitions

A. A grievance is defined as any complaint:

1. By any bargaining unit employee concerning any matter related to the employment of the employee;

2. By the Union concerning any matter related to the employment of any bargaining unit employee; or,

3. By any employee, the Union, or the Employer concerning:

a. The effect or interpretation, or a claim of breach, of this Collective Bargaining Agreement; or,

b. Any claimed violation, misinterpretation, or misapplication of any law, rule or regulation, affecting conditions of employment.

B. The term grievant in this Article refers to the aggrieved Party, which is the bargaining unit employee, the Union, or the Employer.

Section 7.03 - Exclusions

A. Grievances on the following matters are excluded by Statute:

1. Any claimed violations relating to prohibited political activities;

2. Retirement, life insurance, or health insurance;

3. Suspension or removal for national security reasons;

4. Any examination, certification, or appointment; or,

5. The classification of any position which does not result in the reduction in grade or pay of an employee.

B. Grievances on the following matters are excluded by this Agreement:

1. Written notice of proposed action;

2. Letters of Counseling/Warning/Instruction or other informal discipline;

3. Performance progress reviews;

4. Informal Assistance Plan;

5. Performance Improvement Plan;

6. Non-selection for promotion from a group of properly ranked and certified candidates unless the basis of the grievance involves a statutory violation, (i.e., EEO, Prohibited Personnel Practice, etc.);

7. Removal of a probationary employee during his or her probationary period;

8. Non-adoption of a suggestion, disapproval of an honorary or discretionary award not directly related to job performance ;

9. The content of published Education-wide policy, except where it conflicts with this Agreement, law, or government-wide regulations;

10. Adverse personnel action (as enumerated in Section 7512 of Chapter 75 of Title 5, United States Code) taken against probationary, temporary, or excepted service employees except where appeal rights to the Merit Systems Protection Board exist under Chapter 75 or 43 of Title 5, United States Code;

11. Adjudication of claims the jurisdiction over which is reserved by Statue and/or regulation to another Department, such as, but not limited to, Department of Labor determinations on workers compensation; and/or,

12. Claims alleging violations of the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 et. seq.

13. Actions taken by the Employer required by lawful court orders (i.e., garnishment of wages for indebtedness or child support), or actions that can be adjudicated in an employer alternate venue, (i.e. overpayment actions) which can be adjudicated through the Employer's Office of Hearing and Appeals.

14. RIF actions are excluded from the negotiated grievance process but can be appealed to the Merit Systems Protection Board under the provisions of the Board's regulations if, under authority of the RIF regulations, the employee was:

    a. Separated;

    b. Demoted; or

    c. Furloughed for more than:

        (i) 30 consecutive calendar days, or

        (ii) 22 discontinuous workdays, but not more than one year.

15. Decisions regarding performance awards, on the spot awards or any other types of awards;

16. Decisions regarding incentive pay;

17. Disputes regarding the grant or denial of official time or LWPUA related to union representational activities;

18. Disputes related to grants of authority under the management rights Section 7106 of the FSLMRS;

19. Expiration or other termination of an allotment of union dues under the terms of this Agreement;

20. Determinations of an employee's performance rating;

21. Performance based actions appealed under another statutory procedure;

22. Disciplinary or adverse actions appealed under another statutory procedure;

23. Disputes regarding whether these exclusions apply to a particular grievance.

Section 7.04 - Election of Remedy

Any aggrieved employee affected by discrimination, a removal, or other adverse action, or actions based on unsatisfactory performance, may, at his or her option or through his/her exclusive representative, raise the matter under a statutory appeal procedure or under this negotiated grievance procedure, but not both. This choice of remedy venue shall not exist for issues excluded from this negotiated grievance procedure under Section 7.03 as they are excluded from the negotiated grievance process altogether. Pursuant to 5 USC 7121 (d), an employee shall be deemed to have exercised his or her option under either a statutory procedure or a negotiated procedure at such time the employee or Union timely initiates an action under the applicable statutory procedure or timely files a negotiated grievance in writing according to this Article, whichever occurs first. Similarly, an employee affected by a prohibited personnel practice under 5 U.S.C.2302 (b) (1) of the Civil Service Reform Act, which lists types of discriminatory personnel practices, may raise the matter under a statutory procedure or the negotiated procedure, but not both.

Section 7.05 – Exclusivity of Representation

Negotiated grievances may be initiated by bargaining unit employee(s) covered by this Agreement, the Union, by the Union on behalf of a bargaining unit employee(s), or by the Agency. Representation of bargaining unit employees shall be the sole and exclusive province of the Union. Except as provided by law this is the exclusive procedure available to bargaining unit employees, the Union, or the Agency, for the resolution of negotiated grievances within this Agreement's scope.

Section 7.06 - General Provisions

A. Level of Recognition: All grievances, including Union and Agency grievances, will be filed at the National level of recognition by the Council President or designee or the Chief of Labor Relations, OM or designee.

B. Union Representation: When electing to be represented, a bargaining unit employee may only be represented in the negotiated grievance procedure by a union representative who has been properly designated as a Union Representative under Article 5 Section 5.04. This representative must be designated by the Council President or designee, and must be identified on the grievance form located in the Appendix to this Article.

C. Informal Resolution: Informal methods of resolution (i.e. discussions between the grievant and the deciding official) are available to the Parties where mutually desired and in the best interest of the Parties, however these informal discussions are not mandatory on either Party and will not toll grievance timelines as indicated in the relevant grievance section, unless otherwise mutually agreed to by the Parties. The use of Alternative Dispute Resolution (ADR) is also an option available to the Parties. Timelines will be tolled once ADR is triggered by a Party, but failure to timely trigger ADR will not in itself serve as an untimeliness excuse.

1. In order to trigger ADR, the requesting Party must notify in writing ADR and the other Party within five (5) workdays after the date of the grievance being filed or the date the Party became aware of the grievable matter, of the desire to conduct ADR. In situations where ADR was triggered within five (5) workdays of the Party becoming aware of the grievable matter and a grievance was not filed; if the Party desires to pursue a grievance, they must file the grievance within five (5) workdays after completion of the ADR process as provided in 7.06 C. 2., or they lose the opportunity to file a grievance.

   a. The employee is entitled to Union representation during the ADR process.

   b. The Deciding official or designee, is entitled to Labor Management Relations representation during the ADR process.

2. Once ADR is invoked, a period of twenty (20) workdays shall be reserved for resolution under the ADR process.

   a. If resolution of the matter has not been accomplished within the designated twenty (20) workday ADR timeframe, the Parties must continue processing the grievance within five (5) work days. Absent a mutually agreed to extension, the grievance decision will be due within a total of ten (10) workdays after completing ADR.

      (i) The ADR Counselor's Report, if available, shall be included as part of the grievance file.

   b. If a settlement is reached, it shall be forwarded to Chief, Labor Relations, OM or designee, for review/approval prior to the Parties signature. Settlements must be approved for compliance with Departmental policy, law, rule, regulation and the CBA and must be signed within five (5) calendar days after approval by the Chief, Labor Relations, OM or designee. No settlement may be effected that is not in conformance with applicable law, rule, regulation, departmental policies where applicable, and the CBA.

D. Grievance Form/Delivery: When a bargaining unit employee or the Union is filing a grievance, the grievance form found in the Appendix at the end of this Article, will be used to file the grievance. Grievants shall complete all sections of the form; otherwise the grievance form may be returned as rejected. A grievance may be presented in person, by mail, or email. If presented in person, signature should be obtained to establish the date delivered. If filed electronically, the delivery receipt or system delivery confirmation will serve as the certificate of service and prove the date received for purposes of the timeline for a response. Copies will be distributed to the Parties and other officials according to the instructions on the form. Forms may be transmitted electronically as PDF files once signed.

E. Grievance Composition. All grievances shall:

1. Identify the type of grievance being filed;

2. Identify a Representative if any;

3. Establish Procedural timelines;

4. Clearly state the factual basis of the grievance, providing sufficient information for the deciding official to understand the basis for the grievance and make an informed decision (Parties shall disclose all issues, concerns and information which is releasable and which it reasonably believes to be relevant to the matter. Failure to disclose an issue or other information during the grievance process will preclude that issue(s) and/or other information from being submitted to an arbitrator);

5. Cite the specific Article(s) and Section(s) of this Agreement, regulation, or law alleged to have been violated or misapplied and any act giving rise to the grievance; and explain how the referenced Section(s) and Article(s) in the Agreement, regulation or law were violated or misapplied;

6. Clearly specify the remedy sought;

7. Identify if a grievance conference is being requested;

8. Be signed by the grievant(s) or the Union representative filing the grievance on behalf of the employee or on its own behalf; and

9. Include the grievance form (when filed by a BUE or the Union) and include all other relevant documentary evidence and written responses that are being offered, or will be introduced to support the grievance.

F. Rejection of Grievance – Allowance for Correction. Grievances may be rejected for:

1. Not clearly stating the factual basis of the grievance or providing sufficient information for the deciding official to understand the basis for the grievance in order to make an informed decision;

2. Not citing the specific Article(s) and Section(s) of this Agreement, regulation, or law alleged to have been violated or misapplied and any act giving rise to the grievance; and explain how the referenced Section(s) and Article(s) in the Agreement, regulation or law were violated or misapplied; and/or

3. Not clearly specifying the remedy sought.

In the case of a grievance rejection, the Deciding official will identify why the grievance is being rejected, stating the alleged defect, and provide the grieving Party three (3) work days to provide the required conforming information. Failure of the grieving Party to timely submit the conforming information will result in denial of the grievance.

G. Denial of Grievance. Grievances will be denied without recourse, if:

1. Filed untimely;

2. Improperly filed by someone other than the Council President or designee, when a Union Grievance or an employee grievance citing union representation;

3. Filed below the level of recognition, when a Union Grievance or an employee grievance citing union representation.

4. Drafted to include issues that are excluded from this negotiated grievance procedure under Section 7.03.

H. Grievance Decisions. All grievance decisions will:

1. Be in writing and state the issue being grieved;

2. Provide a summary of the findings, and the rationale for the decision.

a. Issues of arbitrability will be raised in the decision if reasonably known at the time.

3. When the grievant is represented by the Union, the decision shall be presented to the designated Union representative. The decision may be presented in person or by email. When the grievant has elected self-representation, the deciding official or Labor Management Relations Specialist will present the decision to the grievant, and will provide a copy to the Union. If delivered in person, the Union representative, or grievant, to whom the decision is presented, shall sign for receipt and indicate the date received. If served by email, the delivery receipt or system delivery confirmation will constitute both the delivery and receipt date.

4. A supervisor or Union official to whom a grievance is presented for a decision under this procedure is responsible for issuing a timely decision or timely arranging for an extension of the time limit. If a grievance decision is not issued within the established or extended timeframes the grievance and the relief shall be considered denied. The Union or Agency may then advance the grievance to arbitration within the allotted timeframe. The timeframe will start with the next workday after the date the decision was due.

I. Grievance Files: The Labor Relations Office will maintain all grievance files, including grievances, grievance decisions, relevant documentation, ADR history (if applicable), written clarifications, etc.

J. Extension of Time Limits: The time limits provided in this Article may be extended for good cause. The party requesting the additional time is responsible for formally requesting in writing the extension of time through the appropriate Union or Management Official. Any such request shall specify the reason(s) an extension is needed and specify the additional time requested. The request and response shall be made part of the official grievance file.

Section 7.07 – Employee Grievances

A. Timeframe: A bargaining unit employee grievance shall be filed by the aggrieved employee within ten (10) work days after the incident giving rise to the grievance or when the grievant could reasonably be expected to have become aware of the circumstances giving rise to the grievance.

B. Deciding Official: The grievance shall be presented by the aggrieved employee with the immediate supervisor or designee involved in the incident giving rise to the grievance. The Employee must also provide a copy of their grievance to the Council President and Chief, Labor Relations, OM or designee, and clearly identify whether they are electing Union representation. If the employee elects union representation, the Council President or designee must designate who the union representative is.

   1. The only exceptions are grievances involving a proposal and deciding official (i.e. a suspension of any kind or an adverse action) or a performance appraisal, which will be filed at the administrative action deciding official level or appraisal reviewing official level. Designees at similar managerial levels may be appointed as designees, if necessary.

C. Employee Election to Representation: On the Grievance Form in the Appendix at the end of this Article, the employee must designate whether they are electing to be represented by the Union or whether they choose to represent themselves. If a bargaining unit employee elects to represent him/herself, they must forward a copy of their grievance to the Council President and the Chief, Labor Relations, OM, or designee. Election to self-representation will not preclude the Union from being privy to and/or attending grievance conferences or other formal meetings related to the employee grievance. The Union may also present its views related to an employee grievance in writing in lieu of sending a representative. Any written Union position shall be made a part of the official grievance file and be considered by the deciding official.

D. Grievance Conference: If properly requested in the written grievance, the deciding official will schedule the grievance conference to occur within five (5) workdays of receipt of the request for the conference or as otherwise mutually agreed.

   1. The deciding official will take into consideration any facts brought forth during the grievance conference.

   2. If the Employee elected self-representation, the deciding official will notify the Union and the Chief of Labor Relations, OM or designee, of the meeting as soon as practicable but no later than within 24 hours of the date of the meeting. The meeting may be held in person or by phone.

E. Grievance Decision: The deciding official will issue a written decision within ten (10) workdays after the date of the meeting if a meeting was held or within ten (10) workdays after receipt of the grievance if no meeting was held. The decision shall meet the requirements of Section 7.06 H.

F. Group Grievances: When two (2) or more employees initiate separate grievances involving the same facts or events arising out of the same incident, the grievances shall be consolidated and processed through the grievance procedure as a single grievance. When processing such a consolidated grievance, no more than two (2) employees covered by the grievance will be permitted to attend any meeting concerning the grievance.

G. If the decision is not acceptable, the Union may invoke Arbitration in accordance with the Arbitration Article in this Agreement.

Section 7.08 – Union and Management Grievances

A. Timeframe/Form: Union and Management grievances shall be filed in writing in accordance to the requirements of Section 7.06 within ten (10) workdays after the event being grieved or from the date of awareness of the issue of dissatisfaction. The Union shall use the Grievance Form attached in the Appendix to this Article and shall provide all relevant attachments and pertinent material. Failure to properly complete the grievance form will result in the grievance being rejected.

B. Representative: The grievance form will identify the Union representative or management official handling the grievance.

C. Grievance Conference: If properly requested in the written grievance, a grievance conference will be scheduled to occur within ten (10) workdays of receipt of the request for the conference or as otherwise mutually agreed.

1. The deciding official will take into consideration any facts brought forth during the grievance conference.

D. Grievance Decision: The deciding official will issue a written decision within fifteen (15) workdays after the date of the grievance conference if a meeting was held or within twenty (20) workdays after receipt of the grievance if no meeting was held. The decision shall meet the requirements of Section 7.06 H.

Section 7.09 – Invocation to Arbitration

A. Only the Union or the Employer can refer a grievance to arbitration.

B. Invocations to arbitration will be made within twenty (20) workdays from the date on which the disputed grievance decision is or should have been issued. All invocations will be made at the National level of recognition.

Article 7 - Appendix A- GRIEVANCE FORM
Department of Education and AFGE, National Council 252

General Information

1. Name of Grievant:_____

2. Type of Grievance: (circle one)
   a. Employee
   b. Union
   c. Management

3. Point of Contact for the grievance:_____

4. Designated Representative/contact info: _____
   _____

5. Is a grievance conference being requested: (circle one)

   a. Yes
   b. No

6. Date of Alleged Violation (Procedural Timelines for Grievance): _____
   _____
   _____

7. Alleged Violation:

   a. Contractual:
      _____
      _____
      _____
      _____

   b. Specific description of how each contract article, section and/or subsection was violated:
      _____
      _____
      _____
      _____

   c. Statutory or regulatory violations:
      _____
      _____
      _____
      _____

   d. Specific description of how each statute or regulation was violated:
      _____
      _____

_____
_____

8. Underlying facts of the grievance:
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

9. Remedy Requested:
_____
_____
_____
_____
_____
_____

Signature: _____
Date: _____

Relevant Attachments/Supporting Evidence: _____
_____
_____

All Grievances must be distributed to:

Union Council President
Agency, Chief of Labor Relations, OM or designee
For Employee Grievances only: The immediate supervisor or designee involved in the incident giving rise to the grievance, except when a grievance involves a proposal and deciding official (i.e. a suspension of any kind or an adverse action) or a performance appraisal. In which case, the Grievance will be distributed to the administrative action deciding official or appraisal reviewing official, or designee.

Note:
1. May attach additional sheets of paper as necessary. Each additional sheet should be appropriately labeled.
2. Issues and/or allegations not raised during the grievance process will not be addressed by an arbitrator (See Article 8 of this agreement).

ARTICLE 8 – ARBITRATION

Section 8.01 - General

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 7 of this Agreement.

A referral to Arbitration can be made only by the Council President or Chief, Labor Relations, OM, or designee. The Parties agree their interests and those of the employees are served by providing economical and expeditious Arbitration procedures to resolve promptly and finally disputes which other good-faith means have failed to resolve.

Section 8.02 - Designation of Arbitrator and Site of Hearing

A. The Parties agree to the following procedures to designate arbitrators to be used for all disputes properly referred by either Party for disposition under the provisions of this Article.

B. 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 including payment of any panel fee within five (5) workdays after the date arbitration is invoked. The Party requesting the panel list shall specify that the arbitrators be members of the American Arbitration Association (AAA) and that the panel contain arbitrators within reasonable proximity to the site of the dispute. In addition, for grievances involving allegations of equal employment opportunity (EEO) discrimination, only arbitrators with experience in EEO or civil rights case law will be requested. The moving party will request that the FMCS serve a copy of the panel list on both Parties (Union and Management).

C. The hearing will be held within the commuting area of the site of the dispute. The site of the dispute is defined as the location of the grievant's official duty station. For employees whose official duty station is their home due to telework arrangements, the site of the dispute will be the official duty station the employee would otherwise be assigned to, but for the telework arrangement. The site of the dispute for grievances designated as National (not an employee grievance invoked by the Council) is Washington D.C. The Agency will secure a location for the hearing within the Agency's facilities. Each party will be responsible for any travel-related expenses and per diem associated with travel to the location of the hearing for its advocates and witnesses. LWPUA time for attendance and travel to arbitration hearings, if otherwise in a duty status, is covered under Article 5, Section 5.08, A. 2. and 8.

D. Within ten (10) work days 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.

E. A party may make a direct designation of an arbitrator to hear the case on the eleventh (11^{th})

workday after receiving the list in the event that the other party is non-responsive, declines, or otherwise refuses to participate by striking arbitrators leading to the selection of an arbitrator (inclusive of participating in the coin toss) within the first ten (10) workdays. In any event, once the tenth (10^{th}) workday has passed and the other party has not completed its obligation to participate in the selection process to select an arbitrator, a direct designation may be made and the other party so notified of the selection. FMCS will also be notified in the event of a direct designation in accordance with FMCS procedures.

F. The arbitrator selected must be contacted by the party invoking arbitration within five (5) workdays after the date of selection to pursue a hearing date, and/or no later than five (5) workdays after the arbitrator contacts the parties for availability. This provision will also apply when a selection is made unilaterally in accordance with the Section 8.02 (E). 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.

G. The cost of obtaining a list of arbitrators from the FMCS shall be initially borne by the party invoking arbitration. However, the party whose principal contention is rejected by the arbitrator shall bear the ultimate cost for the arbitration referral fee, which shall be included in the allocation of fees determined by the arbitrator. 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 site of dispute if the parties mutually agree.

H. 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. The arbitrator may be used for the next case scheduled for the same site of dispute if the parties agree. A new arbitration panel 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 8.02 (D) when a new list is obtained.

Section 8.03 - Combining Arbitration Cases

In the interest of cost reduction, efficiency and quicker resolution, the parties will give serious consideration to (1) combining hearings when the site of dispute is the same and there is a similarity of facts, law, or witnesses (i.e. REACH cases, etc.) or (2) seeking third party mediation from FMCS or FLRA's Collaboration and Alternative Dispute Resolution Office (CADRO) to pursue settlement while hearing dates are pending.

Section 8.04 – Authority and Decision of the Arbitrator

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. The grievant (i.e., moving party), has the burden of proof regarding the merits of the grievance by a preponderance of the evidence.

C. In making awards, the designated arbitrators shall be bound to apply, as necessary, the provisions of law and the standards for review provided in the Statute, other applicable provisions of Title 5, United States Code, and this Agreement, including applicable decisions of administrative authorities to which the parties are subject by law, such as the Federal Labor Relations Authority (FLRA), the Merit Systems Protection Board (MSPB), the Equal Employment Opportunity Commission (EEOC), the Comptroller General of the United States, the General Services Administration, as well as The United States courts.

D. Any disputes regarding arbitrability will be resolved in accordance with Section 8.05 of this Article.

E. The arbitrator's decisions will be final and binding, except as altered on appeal or provided by law.

F. The arbitrator may retain jurisdiction over a case when necessary to clarify the award.

Section 8.05 - Grievability and Arbitrability

A. The arbitrator designated to hear the case on the merits shall have the authority to make all 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.

2. The arbitrator shall have the authority to make all determinations regarding grievability and arbitrability. 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.

Section 8.06 – Arbitration Procedures

A. As set forth in this Agreement, a grievance may be referred to arbitration by either party upon an unfavorable grievance decision, or if no grievance decision is received by the grievant or representative, no later than within twenty (20) workdays after the date the grievance response was due. The right to invoke Arbitration is limited to the Union and the Agency at the level of recognition; 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 Council President or designee, or Chief, Labor Relations, OM or designee, as appropriate.

Notification by either party of its invocation of arbitration will be served by certified mail, email with delivery receipt, or hand delivery. If the notification is served by certified mail, the moving party is responsible to ensure that the date of service is established by postmark and/or certified mail receipt stamped with the mailing date by the U.S. Postal Service. If the notification is served by email, the date of service is established by the Delivery Receipt date or verified system delivery date. Failure to timely serve an invocation will result in the invocation being untimely and will render the grievance not arbitrable.

C. Submission Agreement:

1. The moving party shall schedule a meeting with the other party, in person, by teleconference or video conference to occur no later than ten (10) work days 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. 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 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.

2. Absent settlement, the parties shall prepare a joint letter submitting the matter in dispute to the arbitrator. The letter shall present in question form the issue on which arbitration is sought, including questions of arbitrability. In the event the parties cannot agree on the issue submitted or the procedures, each shall formulate its own version of the issue(s) and submit it to the arbitrator. Thereafter, the Parties may request to meet jointly with the designated arbitrator to attempt to resolve procedural differences and, where possible, execute a submission agreement reflecting any such understanding(s) reached. In the event the Parties cannot decide, the arbitrator may decide these issues.

3. A joint exhibit list, witness lists and any stipulations agreed to shall be signed by the parties and attached to the submission agreement, which upon completion shall be delivered by the moving party to the arbitrator no later than ten (10) workdays prior to the hearing.

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 Union witnesses who are Department employees shall be granted a reasonable amount of duty time for purposes of preparation for, and

testifying at the hearing, if in a duty status

2. The Union's advocate and technical representative, if one is designated, may be granted up to 8 hours of LWPUA each for purposes of preparing for the hearing, depending on the complexity of the case.

3. A written list of each Party's prospective witnesses shall be exchanged at least ten (10) work 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 by a conference call with the parties at least five (5) calendar days prior to the hearing.

4. 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 advocate will be copied on all communications. Testimony may be in-person or by videoconference or by telephone.

G. The arbitration hearing shall be conducted between the hours of 9:00 AM to 5:00 PM at the location of the hearing Monday through Friday, unless the parties agree otherwise. The parties may agree to continue the hearing beyond 5:00 PM 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 thirty (30) calendar days after the conclusion of the hearing or after the final date for the filing of post-hearing briefs, if any. The arbitrator will issue a full written opinion, identifying all significant issues and issues of first impression.

I. The appropriate Party will take the actions upon receipt of the final award within thirty (30) calendar days, unless the Party files an exception or appeal within the appropriate time limits.

J. If no exception or other appropriate legal action is filed within the time limit established by Statute and/or FLRA regulation, the award is final and binding.

K. The failure of the moving Party to adhere to the time requirements of this Article, and/or, failure to take reasonable and definitive steps to expeditiously pursue the arbitration procedures by having a hearing scheduled to be held within six (6) months of the case being invoked, will result in automatic dismissal of the grievance from arbitration and foreclose further processing. In any event, any case not scheduled for a hearing within six (6) months of invocation will be considered withdrawn by the moving party.

L. 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.

Section 8.07 – Transcription

A. The party requesting transcription will ensure that each party (and the arbitrator) is furnished a copy of the transcript in electronic or hard-copy form. The party whose principal contention is rejected by the arbitrator shall bear the ultimate cost for the transcription services and will reimburse the prevailing party, if applicable, for payment of the transcription fees in the same proportion as the arbitrator's fees. The arbitrator will determine final responsibility for payment of the transcription in all other cases. All expenses are allocated by the arbitrator.

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. Travel costs of each party (and witnesses thereof) to travel to the hearing site will remain that party's responsibility regardless of the outcome of the arbitration.

D. 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.

Section 8.08 - Exceptions

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 FLRA, EEOC, or MSPB pursuant to their respective regulations, or with the Federal Courts as provided by law.