

**Memorandum of Agreement on Grievance-Arbitration Procedure
Between
The Government Accountability Office (GAO)
And
The GAO Employees Organization, IFPTE, Local 1921 (Union)**

This Memorandum of Agreement (MOA or Agreement) sets forth the exclusive procedure available to bargaining unit employees, the Union, and the Agency for the processing and disposition of grievances, including arbitration, until the implementation of a Term Master Collective Bargaining Agreement. This MOA supersedes and replaces Article IV of the Interim Agreement implemented on November 7, 2008.

The purpose of this MOA is to provide for a mutually acceptable procedure for the prompt and equitable settlement of all grievances. Many workplace issues arise from misunderstandings and disputes and can be resolved promptly and satisfactorily at the lowest possible level. Accordingly, employees and managers are encouraged to work together to resolve these issues before they are elevated to the status of a grievance. Inasmuch as dissatisfactions and disagreements arise occasionally in any work situation, the filing of a grievance shall not be construed as reflecting unfavorably on the party filing the grievance or the party against whom the grievance is filed. When workplace issues cannot be resolved, the Parties agree to use the grievance procedure contained in this MOA.

GRIEVANCE

- 1.2 A grievance under this Agreement means any complaint--
- a) by any employee concerning any matter relating to the employment of the employee;
 - b) by the Union concerning any matter relating to the employment of any employee; or
 - c) by any employee, the Union, or the Agency concerning--
 - 1. the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or
 - 2. any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.
- 1.3. The scope of the grievance procedure does not include complaints related to:
- a) Any claimed violation relating to prohibited political activities.
 - b) Retirement, life insurance or health insurance.
 - c) A suspension or removal for reasons related to national security.
 - d) Any examination, certification or appointment.
 - e) The classification (title, grade/band, and/or series) of any position which does not result in the reduction in grade or pay of an employee. However, the content of a position description may be grieved.
 - f) Agency decisions subject to administrative review by statute, such as the U. S. Office of Personnel Management review of eligibility for civil service retirement, or the Merit

Systems Protection Board review of claims for reinstatement of annual leave in connection with incorrectly charged military leave.

- g) The content of GAO orders and policies for the purpose of changing the order or policy. However, the application of the order or policy may be grieved.
 - h) Non-selection for a promotion or competitive placement from a group of properly ranked and certified candidates, if otherwise consistent with law, rule, or regulation; an individual may grieve the application of the promotion or competitive placement process.
 - i) The suspension or revocation of a security clearance.
 - j) Any Employee Grievance where there is no personal relief to the grievant.
 - k) The Agency's failure to adopt, or adoption of, a suggestion; employee may grieve the application of a suggestion program.
 - l) Allegations of discrimination based on race, color, religion, sex, national origin, age, and disability.
 - m) The termination of employment during the initial trial (probationary) period unless based on an exception provided by law or regulation.
 - n) The content of performance standards and competencies/critical elements; however the application of the performance standards and competencies/critical elements is grievable.
 - o) Negotiated compensation agreement.
 - p) oral or written admonishment, warning, or caution
 - q) Unfair labor practice charge filed by an individual employee
- 1.4 As an exception to the grievance exclusions contained in this Agreement, an employee may file a grievance comprised of both alleged discrimination as defined in 1.3 (l) and other matters grievable in this Agreement.
- 1.5 Adverse actions, which consist of removals from employment of permanent non-probationary employees, suspensions for more than fourteen (14) days, reduction in grade/band, reduction in pay, and furloughs of thirty (30) days or less may be appealable to the Agency Personnel Appeals Board (PAB) or under the grievance procedure, but not both. Complaints of discrimination related to sexual orientation, marital status, and/or political affiliation may be appealable under the grievance procedure. Any act or occurrence grieved by an employee or Union under the negotiated grievance procedure may not be subsequently filed as a charge with the PAB General Counsel or as a petition before the PAB.
- 1.6 A grievance by the Union or employees for the purposes of this Agreement is considered filed when it is provided in writing to the Director of Workforce Relations, Human Capital Office. A grievance by the Agency is considered filed when it is provided in writing to the Union President.
- 1.7 A grievance must be filed within twenty (20) work days of the act or occurrence giving rise to the grievance, or twenty (20) work days after the grievant knew or should have known of the act or occurrence giving rise to the grievance.

- 1.8 For purposes of counting work days the filer should begin counting the first work day after the act or occurrence giving rise to the grievance or the first work day after the grievant knew or should have known of the occurrence giving rise to the grievance.
- 1.9 If sent by e-mail, the employee should keep a copy of the sent e-mail as proof of timely filing. Employees may also send grievances by commercial overnight carrier or Agency fax. Employees may use the GAO internal mail system but the employee must self-certify grievances by signing and dating grievances filed in this manner. Hand delivered grievances must be received by the HCO receptionist by 5 p.m. Eastern Time. U.S. mail will not be used.
- 1.10 The parties agree that the expeditious processing of grievances is beneficial to the Agency, Union and employees of the bargaining unit. Extensions to any timeframe in a grievance procedure may be granted by mutual agreement and will not be unreasonably denied. All requests must be in writing and state the reason for the request. The refusal to agree to an extension will not form the basis of any grievance under this agreement.
- 1.11 In the event that the Agency fails to issue a decision by the time limits contained in this Agreement or in an extension agreed upon by the parties to the grievance, the grievant is entitled to elevate the grievance to the next level. If the grievance is not elevated to the next step within the timeframes set forth in the grievance procedure the grievance will be terminated.
- 1.12 The grievance must be in writing and must contain the following information:
 - a) The name(s) of the grievant(s); if there are multiple employees involved, list the names of employees, or if the grievance concerns all the employees of a unit, list the name of the unit;
 - b) A description of the act or occurrence giving rise to the grievance including the date that the grievant became aware of the act or occurrence, and information to describe the nature of the dispute;
 - c) If known, the grievant will reference the appropriate contractual provision alleged to have been misinterpreted, applied incorrectly or violated;
 - d) A statement of the remedy sought;
 - e) Whether the employee intends to be represented by the Union; and,
 - f) If the Union is filing a grievance on behalf of an employee, it will name the representative and will reference the appropriate contractual provision alleged to have been misinterpreted, applied incorrectly or violated.
- 1.13 An employee filing a grievance under this Agreement will be granted a reasonable amount of official time, normally up to two (2) hours, to prepare the initial filing of the grievance. Employees will be granted a reasonable amount of official time for preparation and attendance at each step of the grievance including ADR and arbitration. The employee must make a request for official time in advance to the manager responsible for signing his or her time and attendance record. Consistent with mission requirements, requests will not be unreasonably denied.
- 1.14 An employee or group of employees have the right to present and process a grievance under this procedure on his/her/their own behalf (self representation) or be represented by the Union.

- a) The scheduling of any meetings with an employee who has filed a grievance by self-representation will be by mutual agreement between the Agency and the employee.

When a grievance is filed through self-representation, the Agency will notify the Union of the grievance and will provide the Union with all grievance correspondence. The Union has the right to be present at any meetings that are held during the processing of a grievance presented by an employee or group of employees on his/her/their own behalf. The Agency will notify the Union before such meetings occur. Whenever possible, notification will take place at a minimum of 2 workdays prior to the meeting with the employee(s).

- b) The scheduling of any meetings with the Agency concerning grievances filed by the Union or an employee represented by the Union will be by mutual agreement between the Agency and the Union.

If the employee(s) is represented by the Union, the Agency will serve any documents issued by the Agency concerning the grievance on the Union, who will then be responsible for delivering the documents to the employee(s).

- 1.15 If an employee, who is not represented by the Union in the grievance procedure, fails to attend the required first step meeting, the grievance may be dismissed by the Agency.

- 1.16 The first step of the grievance procedure.

The grievance will be presented at the first step to the Managing Director (MD), or equivalent-level manager, who has the authority to provide the relief requested and shall be the first step deciding official. The MD may designate a Director as the first step deciding official if the Director has the authority to provide the relief requested.

The first step deciding official will meet with the employee and his or her representative, if any, within 7 work days of the filing of a grievance. At that meeting the employee and his or her representative, if any, will discuss with the first step deciding official the basis of the grievance and will have an opportunity to present evidence in support of the grievance. Both parties will work towards resolution of the grievance.

The first step deciding official will issue a written decision within 10 work days after the meeting. If both parties mutually agree not to hold a meeting, the first step deciding official will issue a written decision within 15 work days after the grievance is filed.

In the event that the grievant(s) is not satisfied with the decision of the Step One deciding official, the grievant(s) and/or the representative of the grievant(s) on his/her/their behalf may appeal the decision in writing within ten (10) work days of the delivery of the Step One grievance decision.

The appeal must be filed with the Director, Workforce Relations. A second step appeal must include the provision(s) of the contract alleged to be violated, the basis for the second step appeal, and a statement of whether the grievant(s) request(s) to have a Step Two meeting.

The second step of the grievance procedure.

The second step deciding official will be at least at the next level higher in the Agency chain of command.

Either party can request a meeting at the second step. A grievant's request for the meeting will be contained in the second step grievance appeal. The Agency's request

for a meeting must be made within 3 work days of receipt of the appeal. Such meeting will be held by mutual agreement of the parties. The party receiving the request for the second step meeting will notify the requesting party within 3 work days whether there is an agreement to the meeting. If a meeting is agreed to, it will take place within 7 work days of the agreement to meet. At that meeting the employee and his or her representative, if any, will discuss with the second step deciding official the basis of the grievance and will have an opportunity to present evidence in support of the grievance. Both parties will work towards resolution of the grievance.

The second step deciding official will issue a written decision within 10 work days after the meeting. If there is no meeting, the second step deciding official will issue a written decision within 15 work days after the grievance is appealed at the second step.

If the Union disagrees with the final grievance decision, it may refer the grievance to binding arbitration in accordance with the Arbitration section of this MOA. Bargaining unit employees are not able to invoke arbitration.

- 1.17 Where two or more employees file individual grievances involving the same facts and the same issues arising out of the same incident, and all grievants request the same relief, the Union or Agency may request that the grievances be consolidated and, upon mutual consent, the grievances will be processed together through the procedures set forth in this Agreement.
- 1.18 In lieu of the step-by-step procedure set out in this Agreement, the Union may submit a written grievance to the Agency when it alleges that the Agency has violated terms and conditions specifically granted to the Union by statute, regulation or under this Agreement. The only union official who can submit a grievance for the Union under this section is the Union President. Such a grievance must be submitted in writing to the Director, Workforce Relations, within 20 work days after the occurrence of the act which gave rise to the grievance or 20 work days after the Union became aware of the action. Upon receipt of the grievance, Union and Agency representatives (no more than three representatives for each Party unless mutually agreed otherwise) shall meet within 20 work days to discuss the grievance. A written decision will be issued to the Union within 20 work days after the meeting. If the grievance is not settled by this method, or if the Union is not satisfied with the decision, it may appeal the decision to arbitration in accordance with the provisions of the Arbitration section of this MOA. Such appeal will be made within 20 work days after receipt of the written decision.
- 1.19 When Agency grievances arise, they will be submitted in writing to the Union's President. The only management official that can submit a grievance for the Agency under this section is the Director of Workforce Relations. Such a grievance must be submitted in writing within 20 work days after the occurrence of the act which gave rise to the grievance or 20 work days after the Agency became aware of the action. The Agency official who filed the grievance, or designee, will meet within 20 work days with the Union President or designee (no more than three representatives for each Party unless mutually agreed otherwise) to assure that all pertinent facts are made available. The Union will provide a written decision to the Agency within 20 workdays after the date of the meeting. If the grievance is not settled by this method, the matter may be referred to arbitration by the Agency in accordance with the provisions of the Arbitration section of this MOA. Such appeal will be made within 20 work days after receipt of the written decision.
- 1.20 At any step of the grievance procedure the Agency and the Union may mutually agree to use an alternate dispute resolution (ADR) process to attempt to resolve the grievance. This agreement will include a tolling of the grievance time periods while

the parties are engaged in the ADR process and timeframes for the completion of the ADR process.

- 1.21 If an employee is required by the Agency to travel to a location other than their duty station to participate in a grievance meeting at the request of the Agency, they will be reimbursed for travel expenses in accordance with Federal travel regulations and this will be done on duty time.

ARBITRATION

- 2.1 The arbitration procedures contained in this Agreement are the vehicle for resolving grievances that were not resolved using the grievance procedure. The arbitration provisions of this Agreement apply to grievances filed on or after the effective date of this Agreement. Only the Union may invoke arbitration over grievances filed by, or on behalf of, bargaining unit employees. Consistent with 5 U.S.C. §7121(b)(1)(C)(iii), employees have no right to invoke arbitration.
- 2.2 The Agency and the Union shall each have the right to invoke arbitration within (15) work days after a second step decision has been issued under the applicable section of the negotiated grievance procedure.
- 2.3 In the event that a party has failed to provide a second step decision on a grievance as required, the Agency and the Union shall each have the right to invoke arbitration within (15) work days from the date the decision should have been issued under step two of the grievance procedure.
- 2.4 If a party fails to provide a decision at step two, the grievant may provide additional related information and/or issues during arbitration, and the other party may not object to these issues being raised. However, the party that failed to provide a decision is not precluded from responding to these additional issues during arbitration.
- 2.5 The Union may invoke arbitration by notifying the Agency in writing of its decision to seek arbitration, including identifying the designated representative. Notice will be made to the Director, Workforce Relations (with a copy to the Managing Associate General Counsel, Legal Services). The Agency will notify the Union of its designated representative within 3 work days.
- 2.6 The Agency may invoke arbitration by notifying the Union in writing of its decision to seek arbitration, including identifying the designated representative. Notice will be made to the Union President (with a copy to the Vice President for Grievance and Dispute Resolution). The Union will notify the Agency of its designated representative within 3 work days.
- 2.7 Within 5 work days from the date of the Notice of Arbitration, the party requesting arbitration will request that the Federal Mediation and Conciliation Service (FMCS) provide a list of seven impartial persons to act as arbitrators. A copy of such a request will be provided to the opposing party. The requesting party will pay any fees for the list.
- 2.8 The parties will meet within 5 work days after receipt of such a list to select an arbitrator. If the Parties mutually agree that a request for an additional list of arbitrators is appropriate, the Parties will jointly request a new list from FMCS. The Parties will share the cost.

If the parties cannot agree upon one of the listed arbitrators, each side will strike one name from the list in turn. The name remaining after each side has struck three names will be the selected arbitrator. The party to make the first strike will be determined by the toss of a coin.

2.9 Scheduling:

- a) Once an arbitrator has been selected, the party invoking arbitration shall contact the arbitrator within 5 work days and request the arbitrator's availability.
- b) The Parties shall have a conference call with the Arbitrator as soon as the Arbitrator is available. The parties agree to cooperate in good faith in the scheduling of arbitration dates.
- c) It is preferred that grievance arbitrations will be held in the date order that they are invoked. However there may be circumstances such as a specific arbitrator's availability to hear a case, the complexity of a case, or a mutual agreement to reschedule the date for a hearing that may modify the date order. If there are multiple grievances where arbitration has been invoked and no hearings have been scheduled for arbitration, the Parties agree that hearings will be scheduled in the date order that they are invoked.
- d) In the event that the Parties reach a settlement prior to a hearing, the hearing shall not be cancelled until the settlement agreement is signed.
- e) The parties may mutually agree to consolidate grievances containing substantially common issues of law or fact. The parties will endeavor to accomplish any mutually agreed upon consolidation five days after a grievance has been referred to arbitration.
- f) The following procedure applies to grievances pending as of the date of the execution of this agreement:
- g) For those grievances currently being processed through the grievance procedure, the previous grievance procedure will continue to apply. However, the arbitration procedures, commencing with the procedures established for invoking arbitration, set forth in this agreement will be used if arbitration is desired.

2.10 The arbitrator has the authority to make all grievability and/or arbitrability determinations. The arbitrator shall make decisions as to the arbitrability of a grievance before addressing the merits of the case.

2.11 The Agency and the Union will meet and attempt to stipulate as to the issue(s) to be submitted to the arbitrator. The jointly agreed upon stipulation will be provided to the arbitrator as required by the arbitrator. If the parties cannot agree, they will each submit to the arbitrator the issue(s) they believe should be decided by the arbitrator and furnish a copy of the submission to the other party as required by the arbitrator.

2.12 All arbitrations will be held in the GAO Headquarters building with arbitrators from the Washington, D.C. metropolitan area unless the parties mutually agree otherwise in the interest of minimizing costs for grievances arising in a Field Office or otherwise in the interests of both the Agency and the Union.

2.13 The parties shall exchange the following items at least (10) work days prior to the first date of the hearing: a) Potential witness lists and b) Copies of documents proposed to be offered into evidence.

- 2.14 Any arbitration hearing related to an individual employee shall not be open to the public or the press unless mutually agreed to by both Parties.
- 2.15 Attendance at the hearing shall be limited to grievants and those individuals serving as representatives, technical representatives or witnesses unless mutually agreed on by both Parties or permitted by the arbitrator. Under normal circumstances an individual who is serving as a representative on a case should not serve as a witness at the hearing on that case. Under normal circumstances an individual who has served as a witness at a hearing on a case should not later serve as a representative on that same case.
- 2.16 The arbitrator shall not have authority to add to, subtract from, alter, amend or modify any provisions of this agreement. The arbitrator will have the authority to make an aggrieved employee whole, or issue any other remedy, to the extent such remedy is consistent with controlling law, rule, and regulation.
- 2.17 Both Parties agree to request that the arbitrator's decision shall be mailed to them no later than 90 calendar days after the conclusion of the hearing.

The parties will share equally in all costs of binding arbitration with the following exceptions:

- a) Each party will pay the cost of any transcript for its exclusive use. If the parties mutually agree to request a transcript, the cost will be borne equally. Additionally, if both parties request a transcript, the parties will share the cost of a transcript for the arbitrator. If both parties do not request a transcript, then no transcript will be provided to the arbitrator.
 - b) Costs incurred due to cancellation or rescheduling of the arbitration will be borne by the party requesting the cancellation or rescheduling, unless mutually agreed otherwise by the parties.
 - c) Consistent with minimizing costs for grievances, the parties will cooperate and encourage testimony of witnesses not located in the arbitration location via VTC to the extent possible. If it is determined that testimony via VTC is not satisfactory, each party will bear the costs of calling its own witnesses.
 - d) The Agency will pay those travel expenses authorized by regulation, so that the grievant may attend up to four (4) days of the hearing at the Agency's expense. Any additional expenses for the grievant's travel will be borne equally by the Union and the Agency.
- 2.18 Once either Party invokes its right to arbitrate, the Parties may mutually agree that grievances may be submitted to an arbitrator using an expedited arbitration process. Matters which may be subject to expedited arbitration include, but are not limited to, the following:
- a) denial of leave requests;
 - b) Dues withholding;
 - c) Denial of telework requests;
 - d) And any other matter by mutual agreement of the parties.

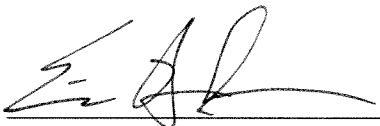
The parties may mutually agree that grievances containing similar issues should be subject to expedited arbitration which can be heard one after another by the arbitrator or grouped together to all be heard at once.

The following expedited arbitration procedures will apply:


- a) The request for expedited arbitration will be made within 7 work days after receipt of the final decision in the grievance procedure. If no final decision has been issued, the request will be made within 7 work days from the date such decision should have been issued. If not mutually agreed to, then the arbitration procedures under this Agreement remain in effect.
- b) The arbitrator will be selected in the same manner as provided for in this Agreement. An arbitrator unable to hear an expedited arbitration case within 20 work days will be deemed unavailable and the parties will select another arbitrator.
- c) The hearing will be conducted as soon as possible. The parties may arrange for a pre-hearing conference with or without the arbitrator to consider means of expediting the hearing.
- d) No transcript may be prepared.
- e) Disputes submitted under the expedited arbitration procedure shall not contain issues alleging prohibited personnel practices or involve questions of bargaining history. All decisions rendered under this procedure shall be non-precedential.
- f) The arbitrator will issue a bench decision, if possible. If not, he or she will issue a brief written decision within 10 work days of the close of the hearing.

Executed this 13 day of December, 2010.

For the GAO:


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Chief Negotiator

For the GAO Employees Organization,
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Ronald La Due Lake
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Approved:


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12/17/2010
Date